

## DECISION AND ORDER

**Decision Issue Date:** Thursday, December 5, 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): ABDUL WADOOD TABIBZADA

Applicant: SOL ARCH

Property Address/Description: 58 RHYDWEN AVE

Committee of Adjustment Case File: 19 105347 ESC 20 MV (A0018/19SC), 19 105346 ESC 20 MV (A0017/19SC)

**TLAB Case File Number: 19 132097 S45 20 TLAB, 19 132110 S45 20 TLAB**

**Hearing date: November 04, 2019 and November 05, 2019**

**DECISION DELIVERED BY S. MAKUCH**

### APPEARANCES

Name	Role	Representative
Sol Arch	Applicant	
Daoud Tabibzada	Owner	
Sodaba Tabibzada	Primary Owner	
Abdul Wadood Tabibzada	Appellant	Sarah Hahn
Fiona Fars	Party	
Sandra Reilly	Party	
Tammy Cooper	Party	
Joseph Wa	Party	
Paul Keene	Party	
Ken Poon	Party	
Jonathan Benczkowski	Expert Witness	
Esau Richard	Participant	

## **INTRODUCTION**

This is an appeal by an applicant of a Committee of Adjustment (COA) refusal decision to grant variances respecting floor space index (FSI) and lot coverage for the construction of two single family residential dwellings on each of two lots resulting from a consent which was approved.

## **BACKGROUND**

The only persons in opposition were Mr. and Mrs. Esau who resided at 56 Rhydwen Rd. They were Participants and their concern was the numerical size of the FSI and lot coverage variances. In particular, they believed the variances to be larger than other such variances granted on the street

## **MATTERS IN ISSUE**

The only matters in issue were the amount by which the FSI variance and lot coverage variance exceeded other such variances approved on the street.

## **JURISDICTION**

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').

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**

Evidence was given orally and in writing by Mr. Benczkowski , a qualified land use planner and by Mr. Esau, an abutting neighbour.

Mr. Esau's concern was the numerical discrepancy between the permitted FSI and the FSI sought by the variance and similarly the discrepancy between the permitted lot coverage and the variance sought. In his opinion the actual size of the dwellings and their coverage exceeded what was common for the street. He did, however, state that such a discrepancy would not be noticeable on the street and that the proposed

dwelling would not stand out. He had an additional concern that the dwelling would extend noticeably into the rear yard.

Mr. Benczkowski gave evidence that the proposed variances cumulatively and individually met the requirements of the PPS and Growth Plan and that they also met the four tests of the Planning Act. In particular, he pointed out that the two lots are smaller than the others on the street thus resulting in variances which are numerically larger. The lots, however, were already approved and he agreed with Mr. Esau that the houses would fit on the street and further, in his opinion, the dwellings would respect and reinforce the character of the neighbourhood. Moreover, he gave evidence that the houses required no length or other set back variances and would not extend into the rear yard as much as neighbouring dwellings.

## **ANALYSIS, FINDINGS, REASONS**

While Mr. Esau was not pleased with the variances in that he believed the variances numerically were not minor, I explained that simple numbers do not determine whether a variance is minor. A major consideration is whether the proposed development fits in the neighbourhood and he agreed that these two dwellings would fit. Although, as stated above, he had a concern about the rear yard, it was clear from Mr. Benczkowski's evidence that the proposed dwellings would not extend into the rear yard and would have no negative impact. I, therefore, find that based on Mr. Benczkowski's evidence, there is no issue regarding the rear yard. In addition, based on Mr. Benczkowski's evidence regarding the PPS, the Growth Plan and the four tests under the Planning Act I find the variances should be approved and that the dwellings will respect and reinforce the character of the neighbourhood as required by the Official Plan and I find that they will have no negative impact on any other properties.

## **DECISION AND ORDER**

The appeal is allowed and the variances in Appendix 1 below are approved for Parts 1 and 2, 58 Rhydwen Ave., subject to the condition that construction is substantially in accordance with the site plans and elevations in Appendix 2.

**X** 

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S. Makuch

Panel Chair, Toronto Local Appeal

## **Appendix 1**

By-law No. 569-2013

1. To permit the proposed floor space index of 0.895 times the lot area or 207.98 square metres;

whereas the Zoning By-law permits maximum floor space index of 0.6 times the lot area or 139.3 square metres.

2. To permit the proposed 47.4% lot coverage;

whereas the Zoning By-law permits maximum 33% lot coverage.

3. To permit the proposed 7.6 metres lot frontage;

whereas the Zoning By-law requires minimum 9 metres lot frontage.

4. To permit the proposed 230 square metres lot area;

whereas the Zoning By-law requires minimum 270 square metres lot area.

5. To permit the proposed 7.5 metres exterior main wall height;

whereas the Zoning By-law permits maximum 7 metres exterior main wall height.

6. To permit the proposed edge of eaves to be 0.23 metres to the east side lot line;

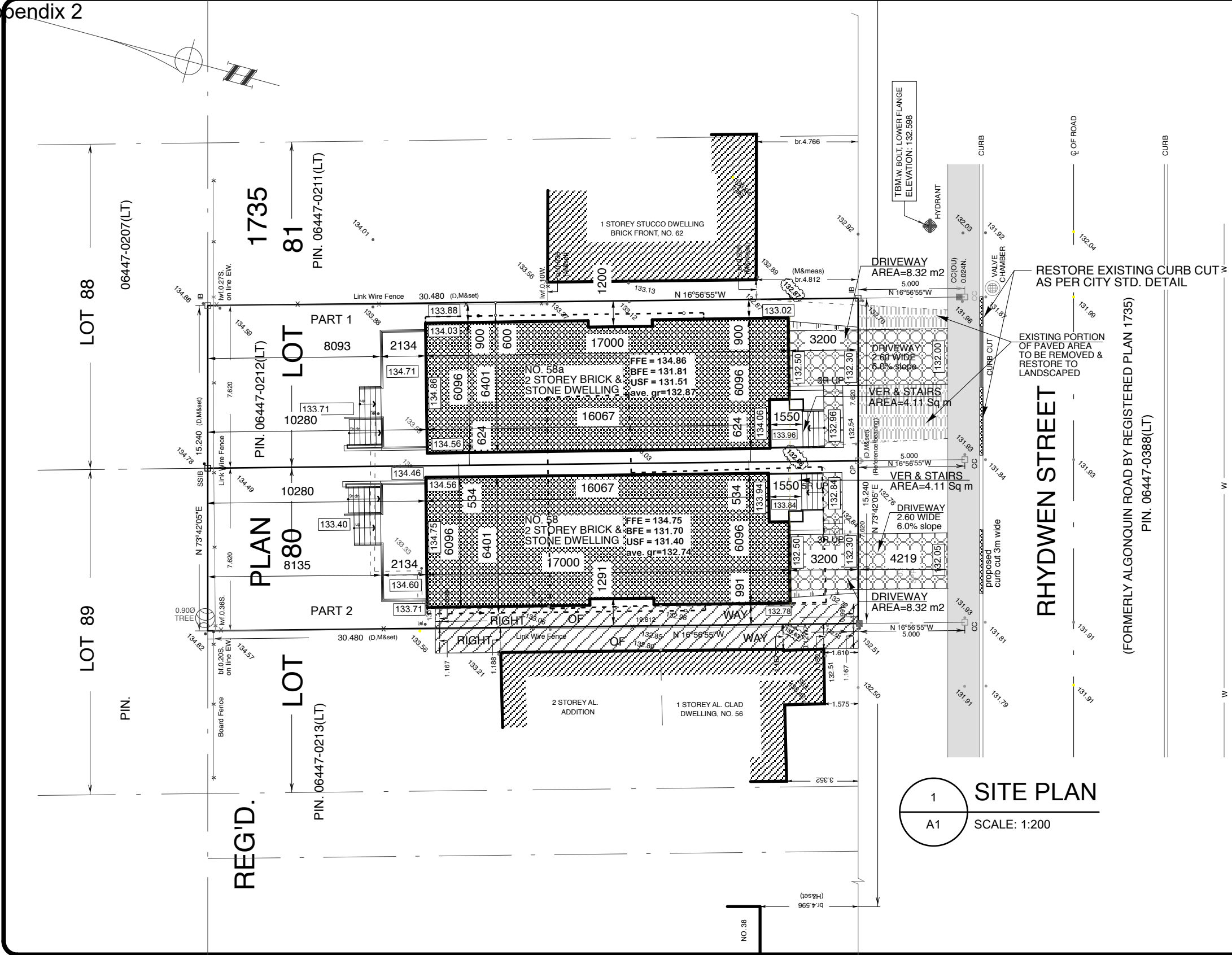
whereas the Zoning By-law permits maximum 0.3 metres to the lot line.

By-law No. 8786

7. To permit the proposed floor space index of 0.895 times the lot area or 207.98 square

metres; whereas the Zoning By-law permits maximum floor space index of 0.6 times the lot area or 139.3 square metres.

## **Appendix 2**



1 SITE PLAN  
A1 SCALE: 1:200

SITE STATISTICS				
	proposed dwelling 58A [ part 1 ]		proposed dwelling 58 [ part 2 ]	
zoning	RD		RD	
lot area	232.20 m2	2499.46 s/f	232.20 m2	2499.46 s/f
permitted coverage 33%	76.63 m2	824.82 s/f	76.63 m2	824.82 s/f
proposed coverage 50.11%	116.35 m2	1252.42 s/f	116.35 m2	1252.42 s/f
permitted g.f.a. 60%	139.32 m2	1499.68 s/f	139.32 m2	1499.68 s/f
proposed g.f.a.				
ground floor [garage]	17.92 m2	192.90 s/f	17.92 m2	192.90 s/f
basement				
first floor	101.37 m2	1091.17 s/f	101.37 m2	1091.17 s/f
second floor	106.17 m2	1142.84 s/f	106.17 m2	1142.84 s/f
total gross floor area	207.54 m2	2234.02 s/f	207.54 m2	2234.02 s/f
required front yard setback	3.17 m	10.40'	3.17 m	10.40'
proposed front yard	3.20 m	10.50'	3.20 m	10.50'
required side yard setback				
proposed side yard				
east	0.60 m	1.97'	0.534 m	1.75'
west	0.624 m	2.05'	0.691 m	2.27'
required rear yard setback				
provided rear yard	10.280 m	33.73'	10.280 m	33.73'
permitted height	9.00 m	29.53'	9.00 m	29.53'
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front yard area	24.38 m2	262.48 s/f	24.38 m2	262.48 s/f
driveway area	8.32 m2	89.56 s/f	8.32 m2	89.56 s/f
front yard area less driveway	16.06 m2	172.87 s/f	16.06 m2	172.87 s/f
verandah, stairs, & walkway	6.71 m2	72.23 s/f	6.71 m2	72.23 s/f
required 50% of FY LOS	12.19 m2	131.22 s/f	12.19 m2	131.22 s/f
provided front yard LOS	11.95 m2	128.63 s/f	11.95 m2	128.63 s/f
required 75% of S. L.	6.02 m2	64.82 s/f	6.02 m2	64.82 s/f
provide soft landscaping	9.35 m2	100.65 s/f	9.35 m2	100.65 s/f
rear yard area	78.333 m2	843.20 s/f	78.333 m2	843.20 s/f
deck and stairs	15.82 m2	170.29 m2	15.82 m2	170.29 s/f
provided soft landscaping	62.513 m2	672.91 m2	62.513 m2	672.91 s/f

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

QUALIFICATION INFORMATION

TONY VALENTIN	20917
Name	BCIN
Signature	20 11 18
Date	

REGISTRATION INFORMATION

Required unless design is exempt under 2.17.4.1 of the building code

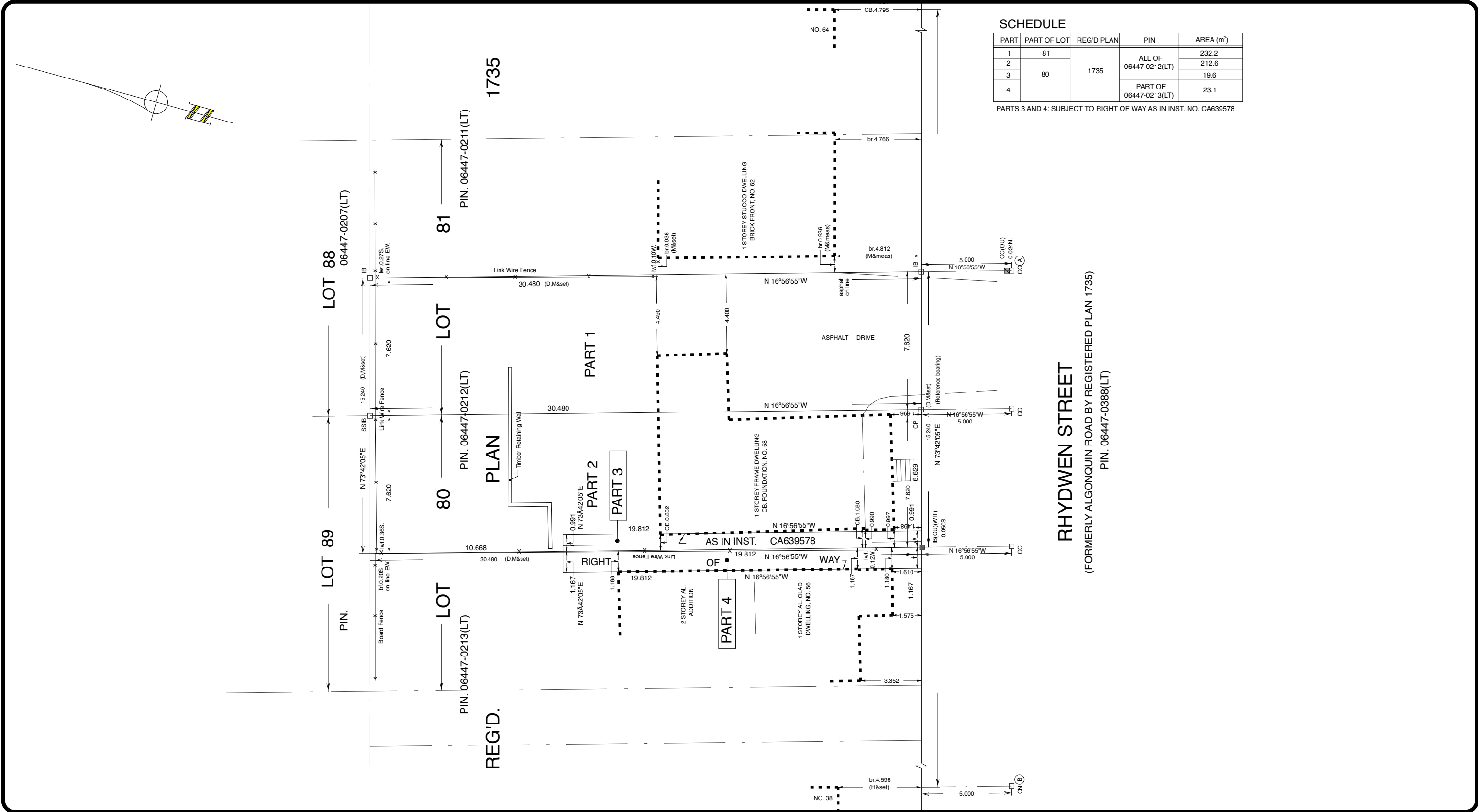
TONY VALENTIN DESIGN	28858
Firm Name	BCIN

ADDRESS:  
58A RHYDWEN AVENUE [ part 1 ]  
CITY OF TORONTO  
[ formerly city of scarborough ]  
SITE PLAN and STATISTICS  
CLIENT:  
ABDUL TABIBZADA

3	08 2019	reduce length of bldg to 17m	AD
2	12 2018	issued for zoning review	AD
1	11 2018	issued for client review	AD
no.	date	revision	by

drawn by: AD  
checked by:  
date: NOV 2018  
scale : 1:200 m

sheet no.  
**A-1**  
1 of sheets



SCHEDULE

PART	PART OF LOT	REG'D PLAN	PIN	AREA (m <sup>2</sup> )
1	81	1735	ALL OF 06447-0212(LT)	232.2
2				212.6
3	80			19.6
4			PART OF 06447-0213(LT)	23.1

PARTS 3 AND 4: SUBJECT TO RIGHT OF WAY AS IN INST. NO. CA639578

RHYDWEN STREET  
(FORMERLY ALGONQUIN ROAD BY REGISTERED PLAN 1735)  
PIN. 06447-0388(LT)

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REFERENCE PLAN

CLIENT:

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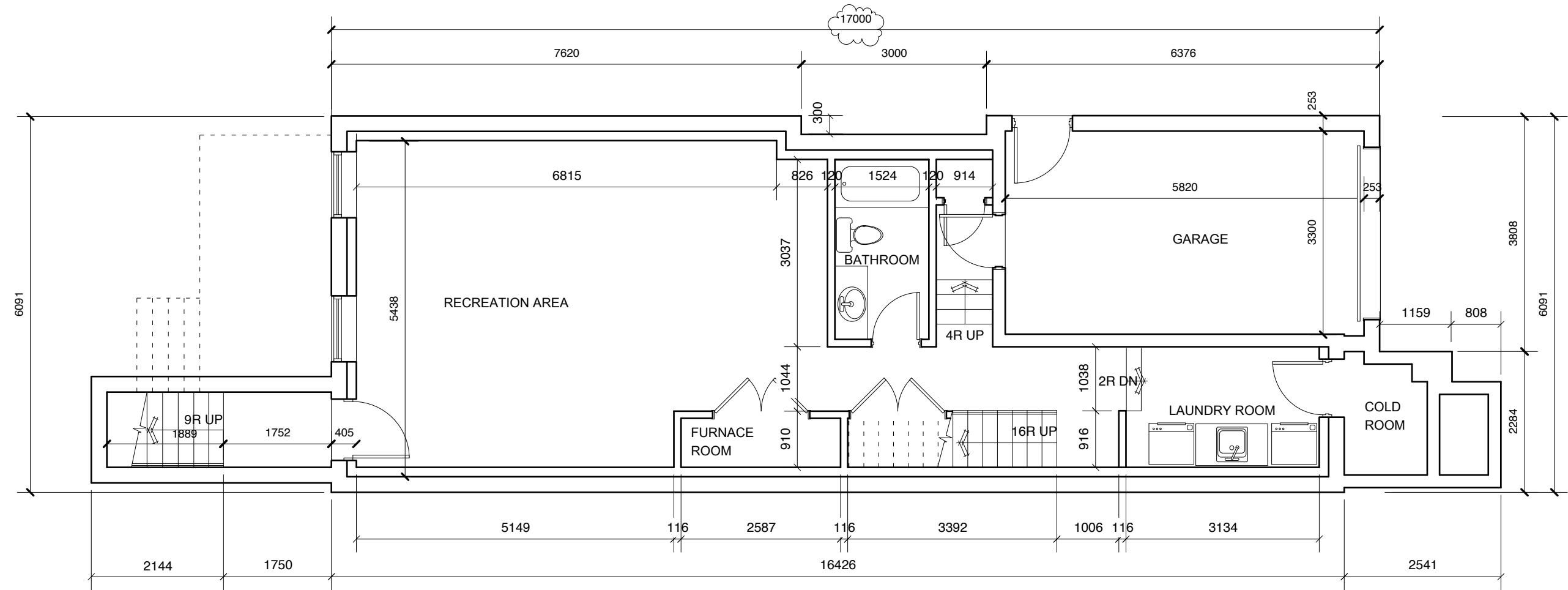
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scale : 1:200 m

sheet no.

A-2

2 of sheets



1 BASEMENT PLAN  
A3 SCALE: 1:75

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BASEMENT PLAN

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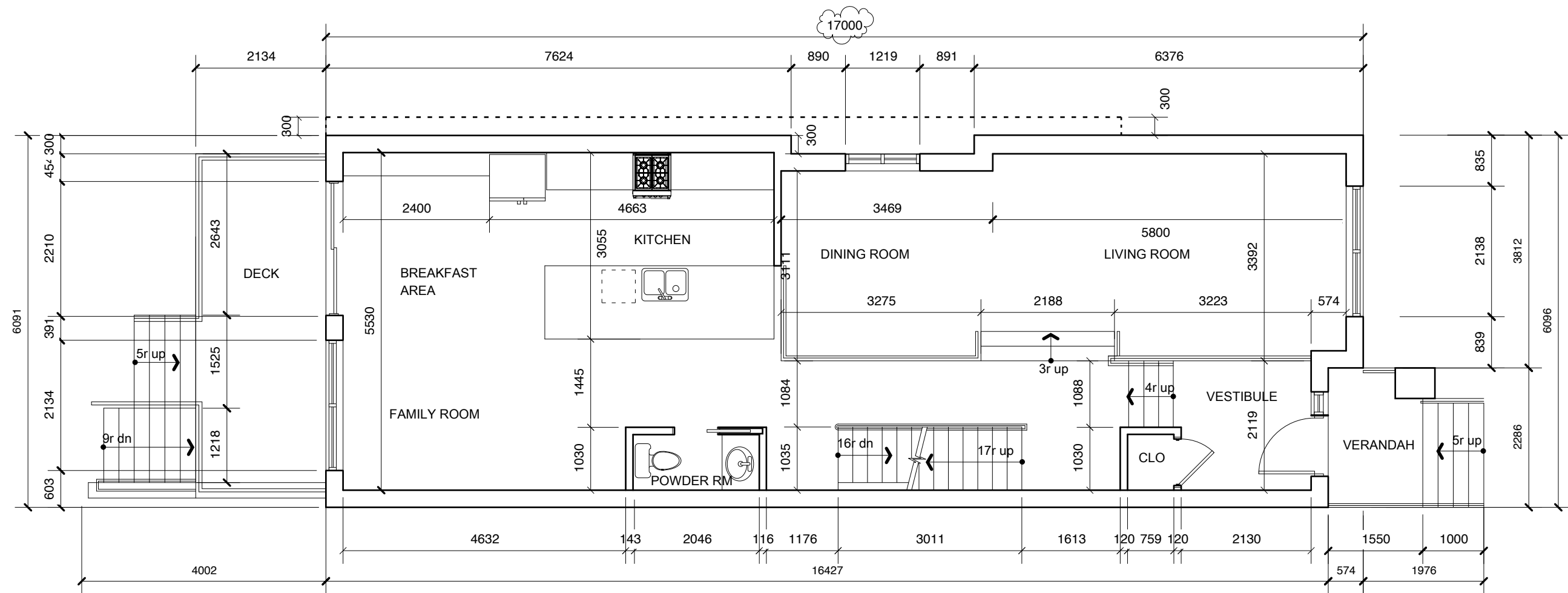
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A-3

3 of sheets



1 FIRST FLOOR PLAN  
A4 SCALE: 1:75 GFA= 101.37 Sq m  
COVERAGE=110.26 Sq m

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FIRST FLOOR PLAN

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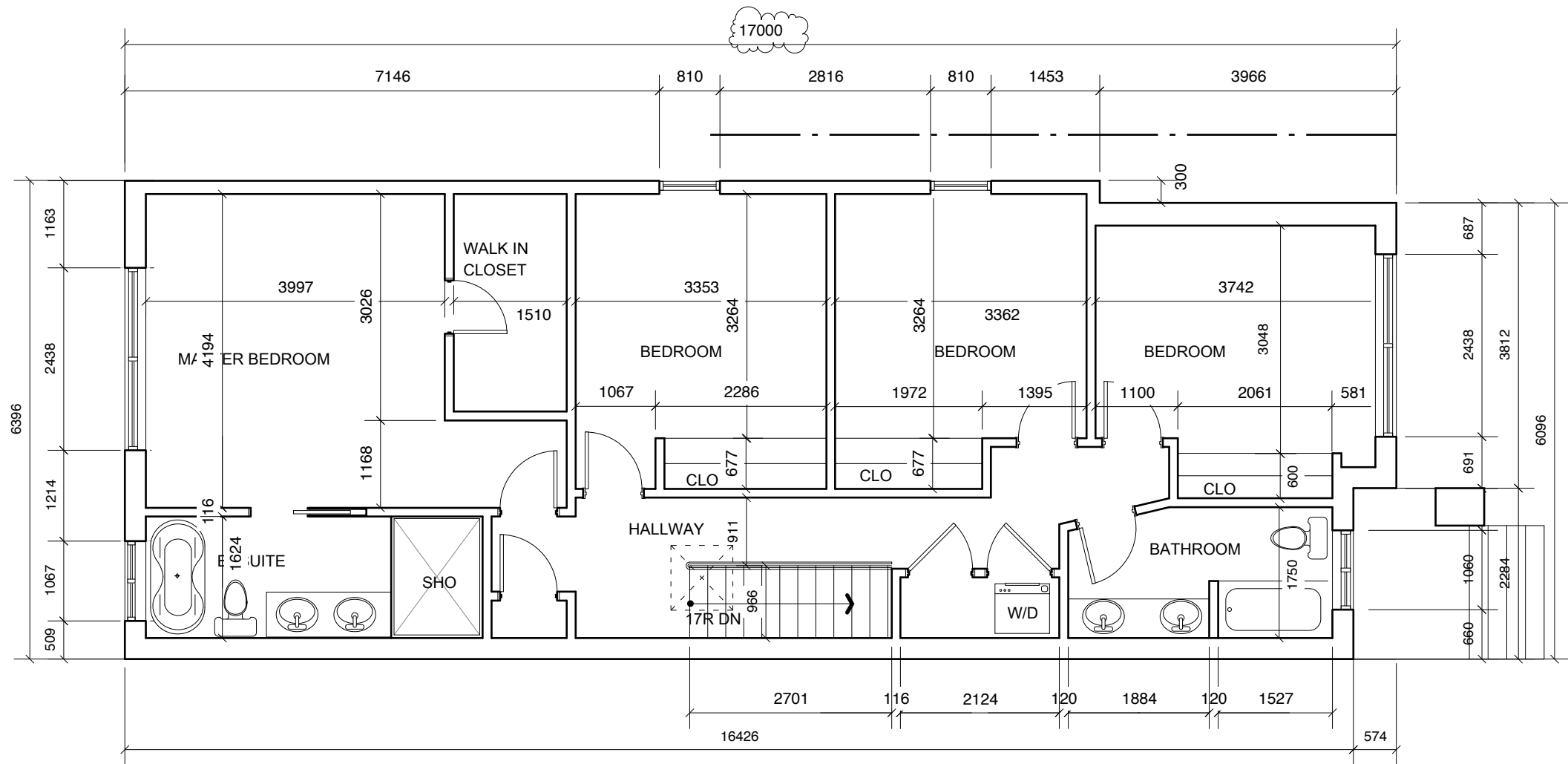
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A-4

4 of sheets





1 SECOND FLOOR PLAN  
A5 SCALE: 1:75 GFA=106.17 Sq m

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SECOND FLOOR PLAN

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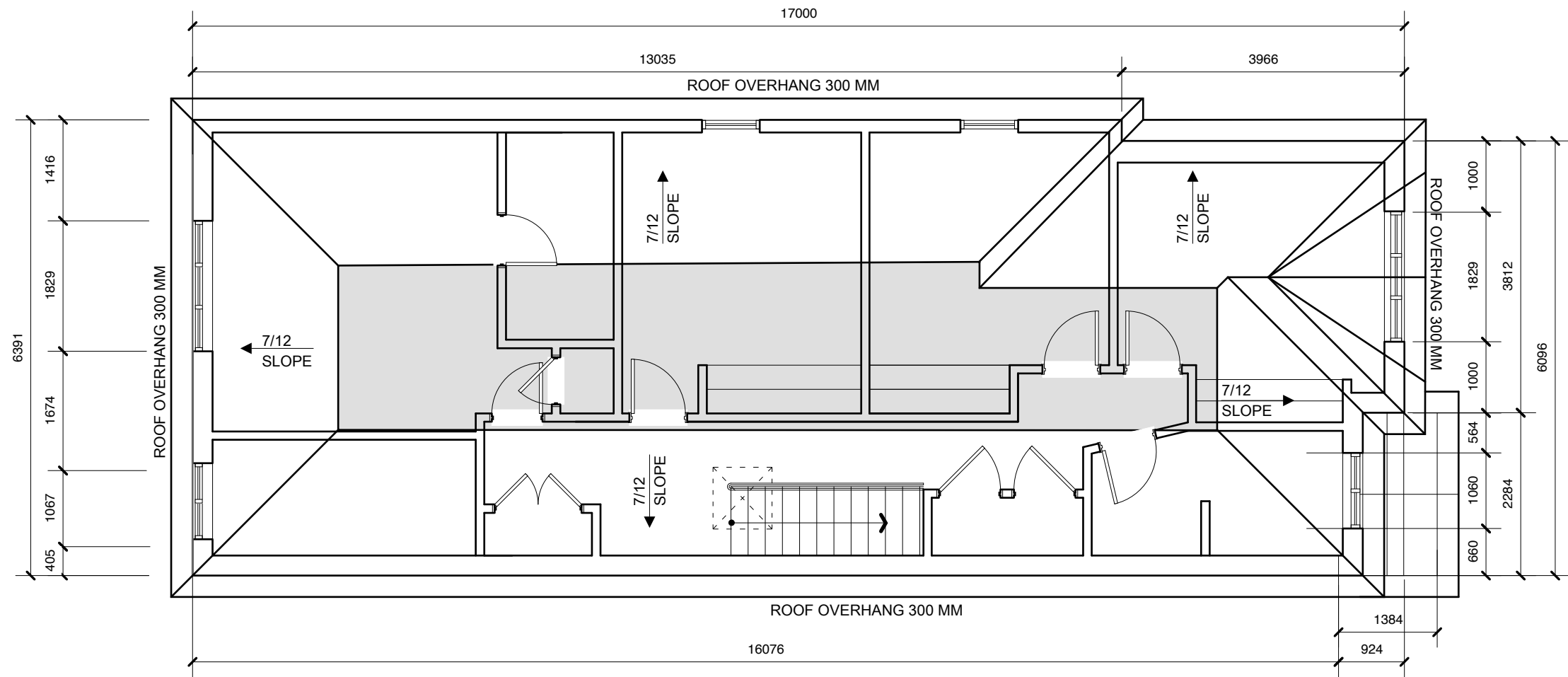
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A-5

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**1** **ROOF PLAN**  
**A-7** **SCALE: 1:75**  
TOTAL ROOF AREA =120.34 Sq m  
FLAT ROOF AREA = 29.29 Sq m [24.34%]

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**ROOF PLAN**

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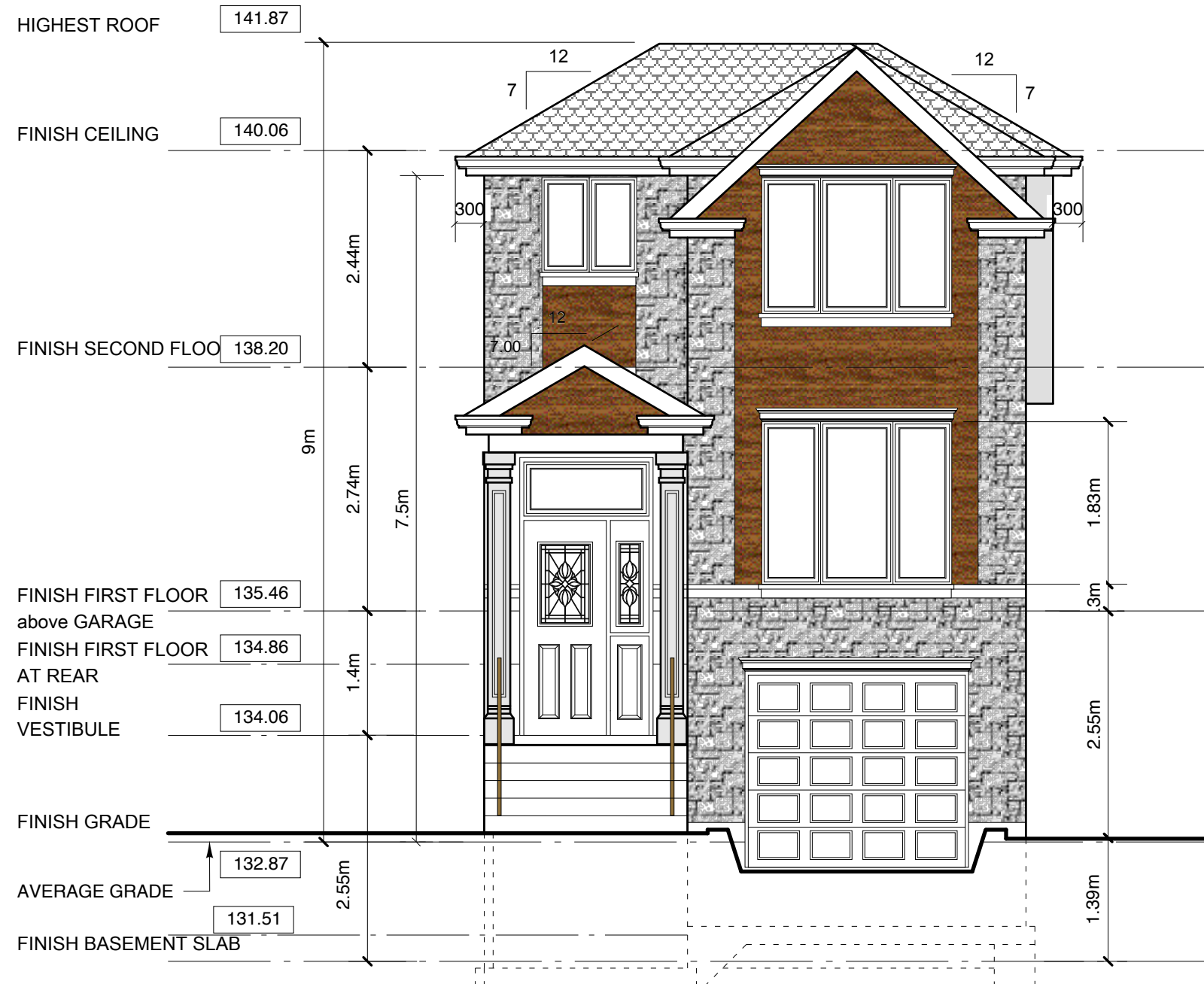
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**A-6**

6 of sheets



1 SOUTH ELEVATION  
A7 SCALE: 3/16" = 1'-0"

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**SOUTH ELEVATION**  
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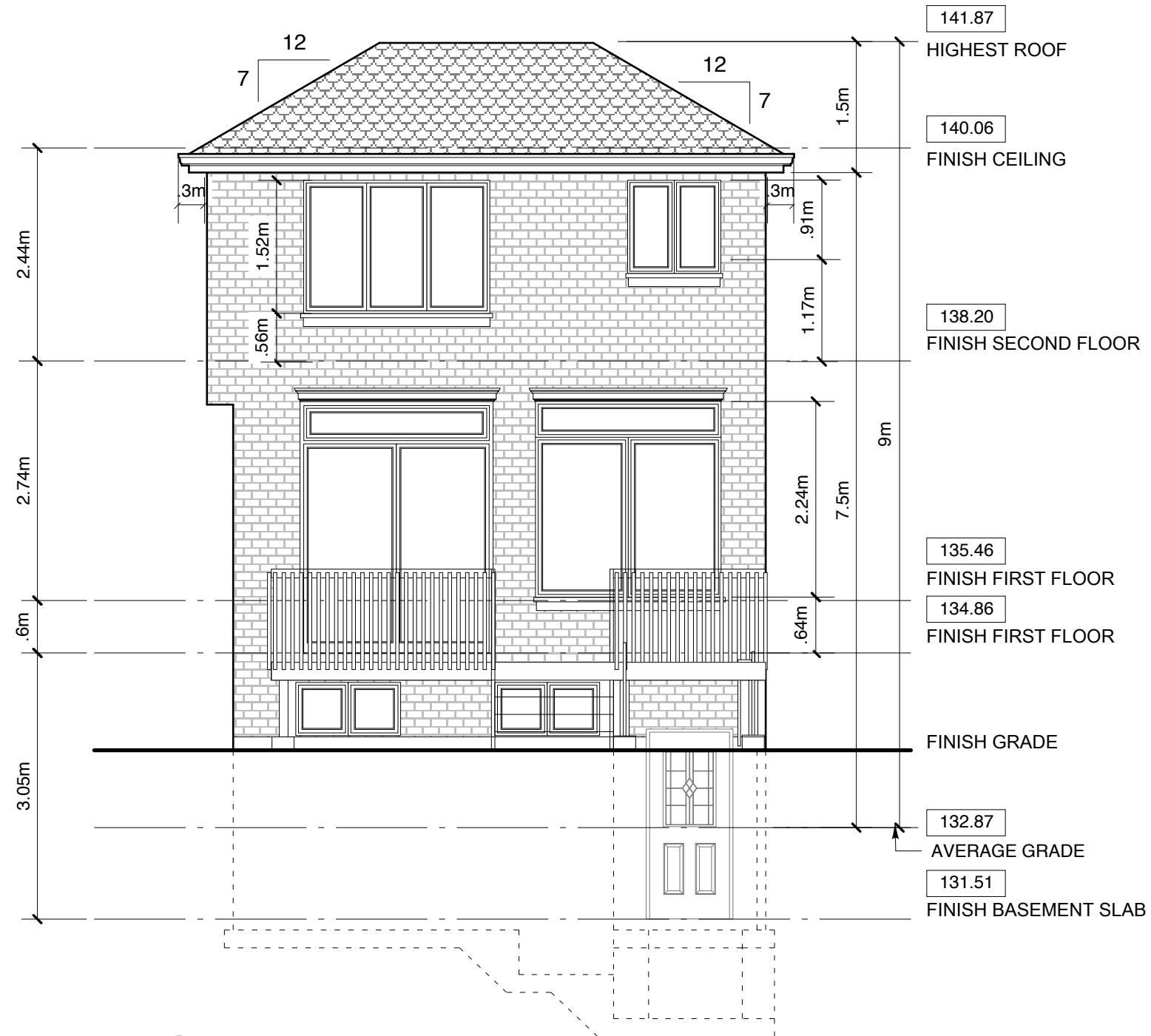
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**A-7**

7 of sheets



1 NORTH ELEVATION  
A8 SCALE: 3/16" = 1'-0"

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CITY OF TORONTO  
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NORTH ELEVATION

CLIENT:

ABDUL TABIBZADA

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no.	date	revision	by
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drawn by: AD

checked by:

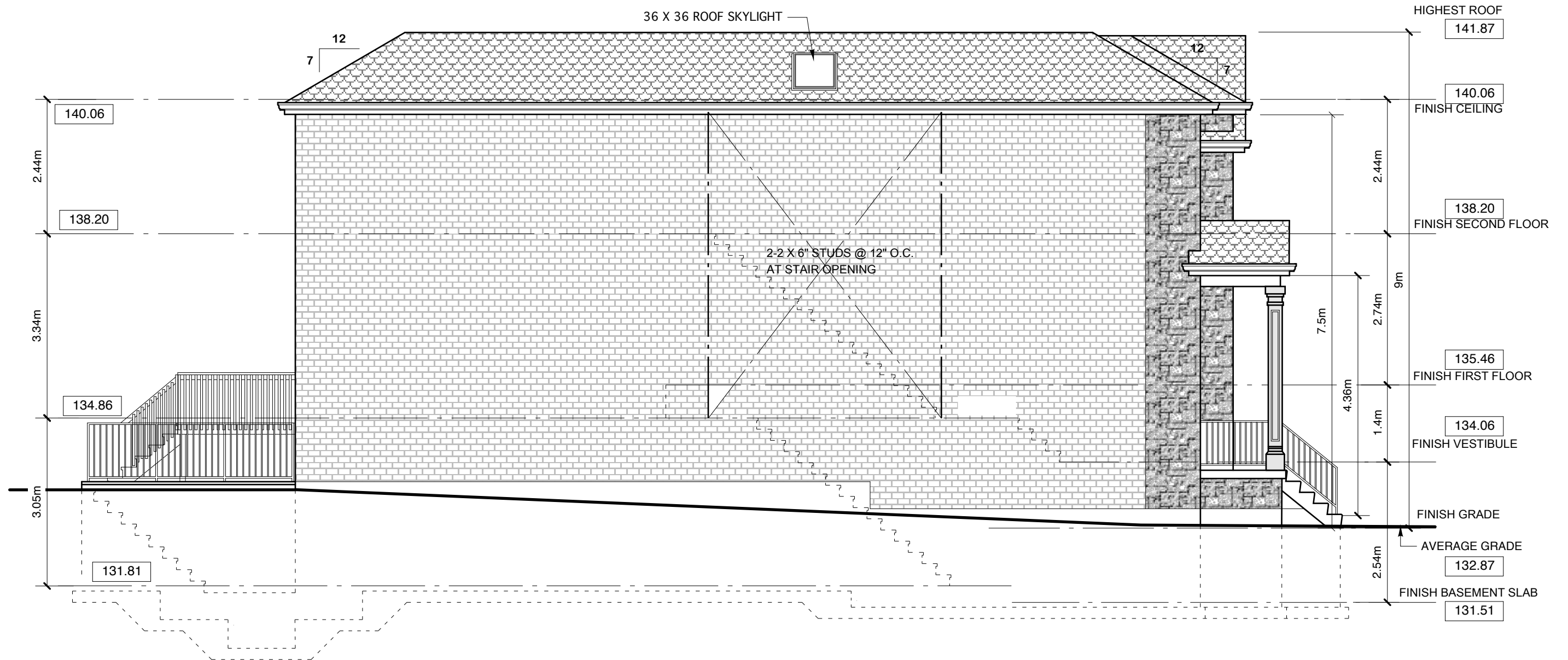
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sheet no.

A-7

7 of sheets



1 WEST ELEVATION  
A9 SCALE: 3/16" = 1'-0"

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WEST ELEVATION

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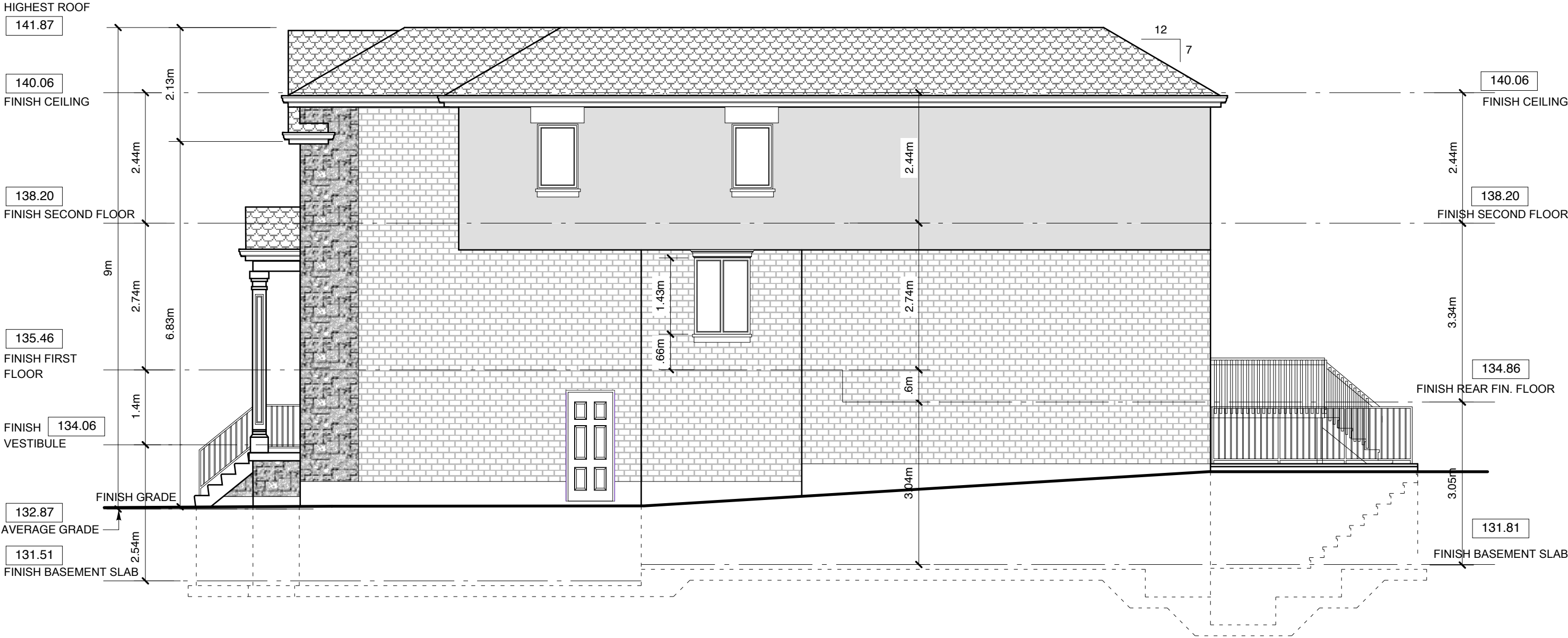
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A-9

9 of sheets



1 EAST ELEVATION  
A10 SCALE: 1:75

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**CITY OF TORONTO**  
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**EAST ELEVATION**  
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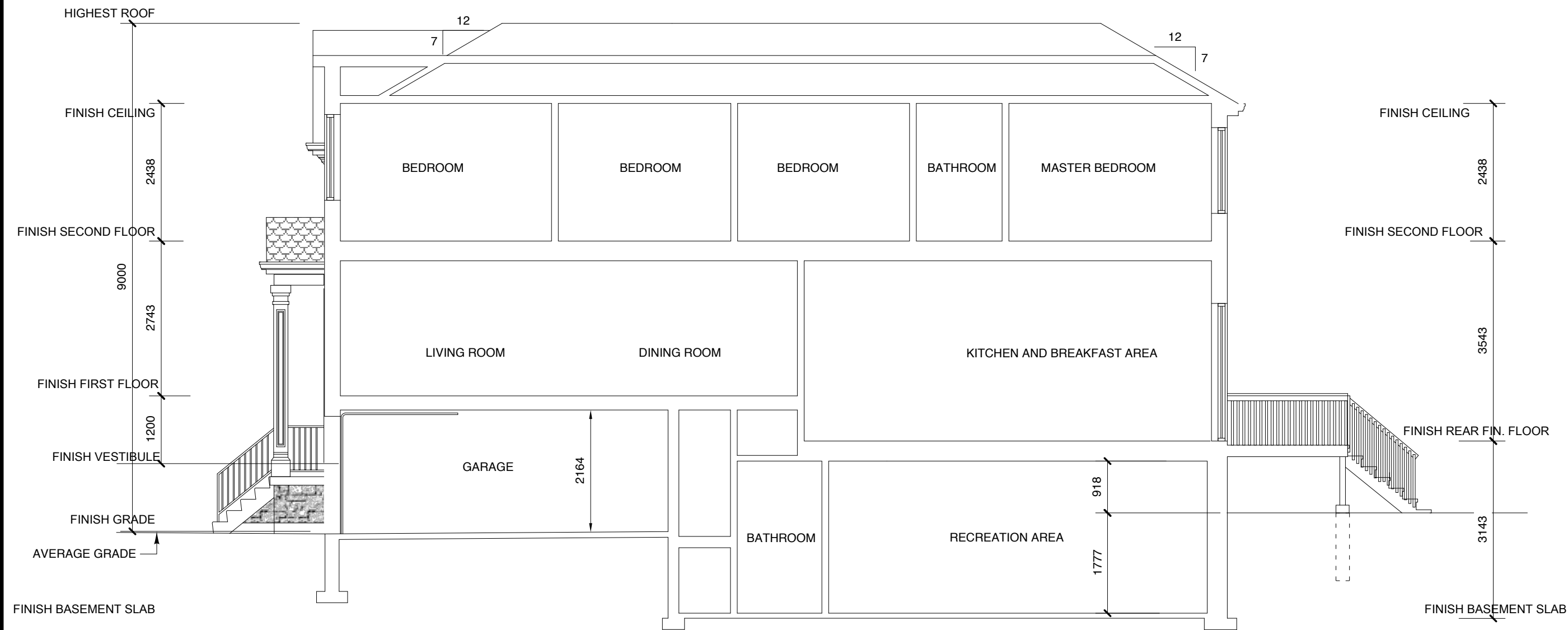
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sheet no.

**A-10**

10 of sheets



1 LONGITUDINAL SECTION  
A11 SCALE: 1:75

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ADDRESS:  
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**LONGITUDINAL SECTION**  
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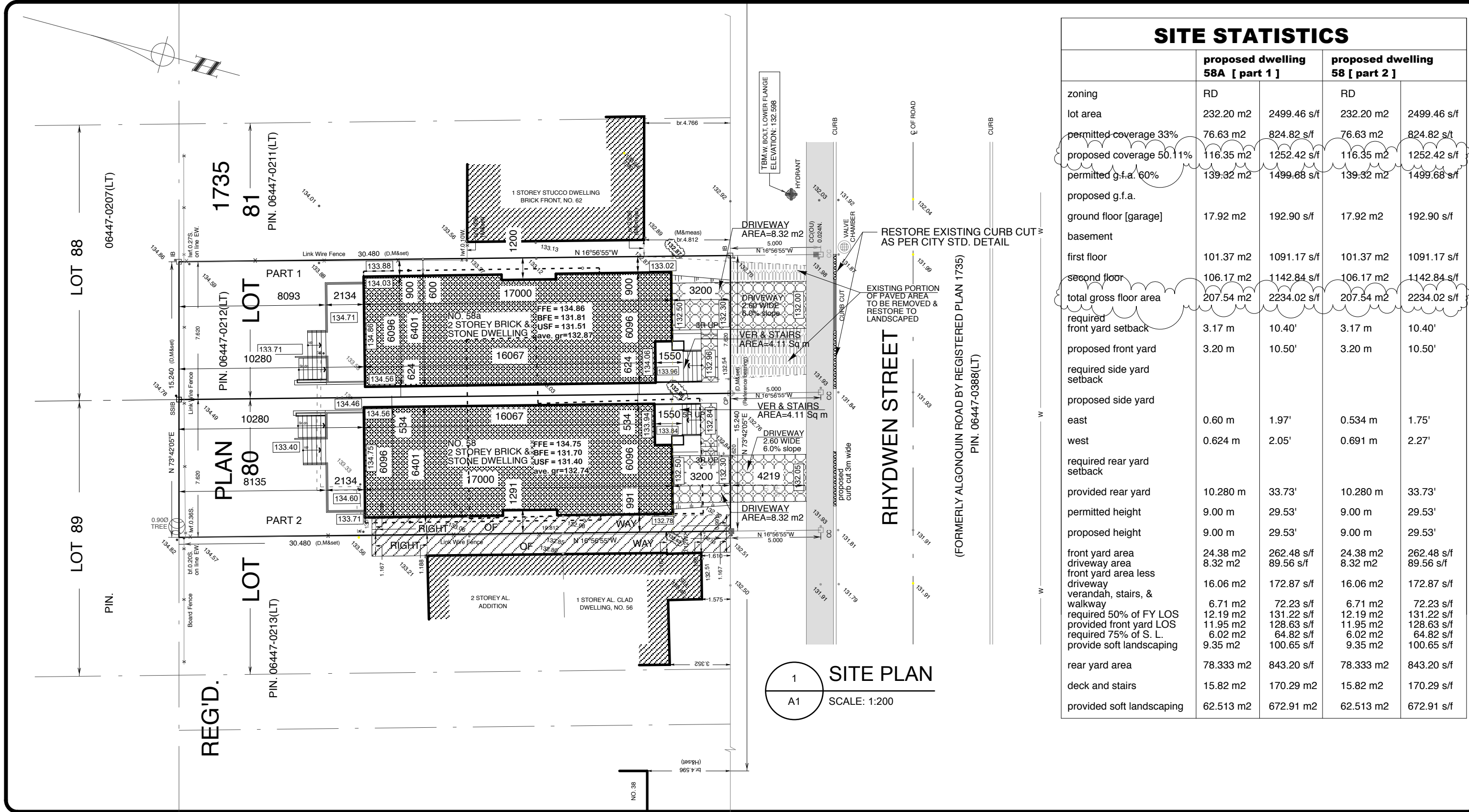
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sheet no.

**A-11**

11 of sheets





SITE STATISTICS				
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Date	

REGISTRATION INFORMATION  
Required unless design is exempt under 2.17.4.1 of the building code

TONY VALENTIN DESIGN	28858
Firm Name	BCIN

ADDRESS:  
**58 RHYDWEN AVENUE [ part 2 ]**  
**CITY OF TORONTO**  
**[ formerly city of scarborough ]**  
**SITE PLAN and STATISTICS**  
CLIENT:  
ABDUL TABIBZADA

2	12 2018	issued for zoning review	AD
1	11 2018	issued for client review	AD
no.	date	revision	by

drawn by: AD

checked by:

date: NOV 2018

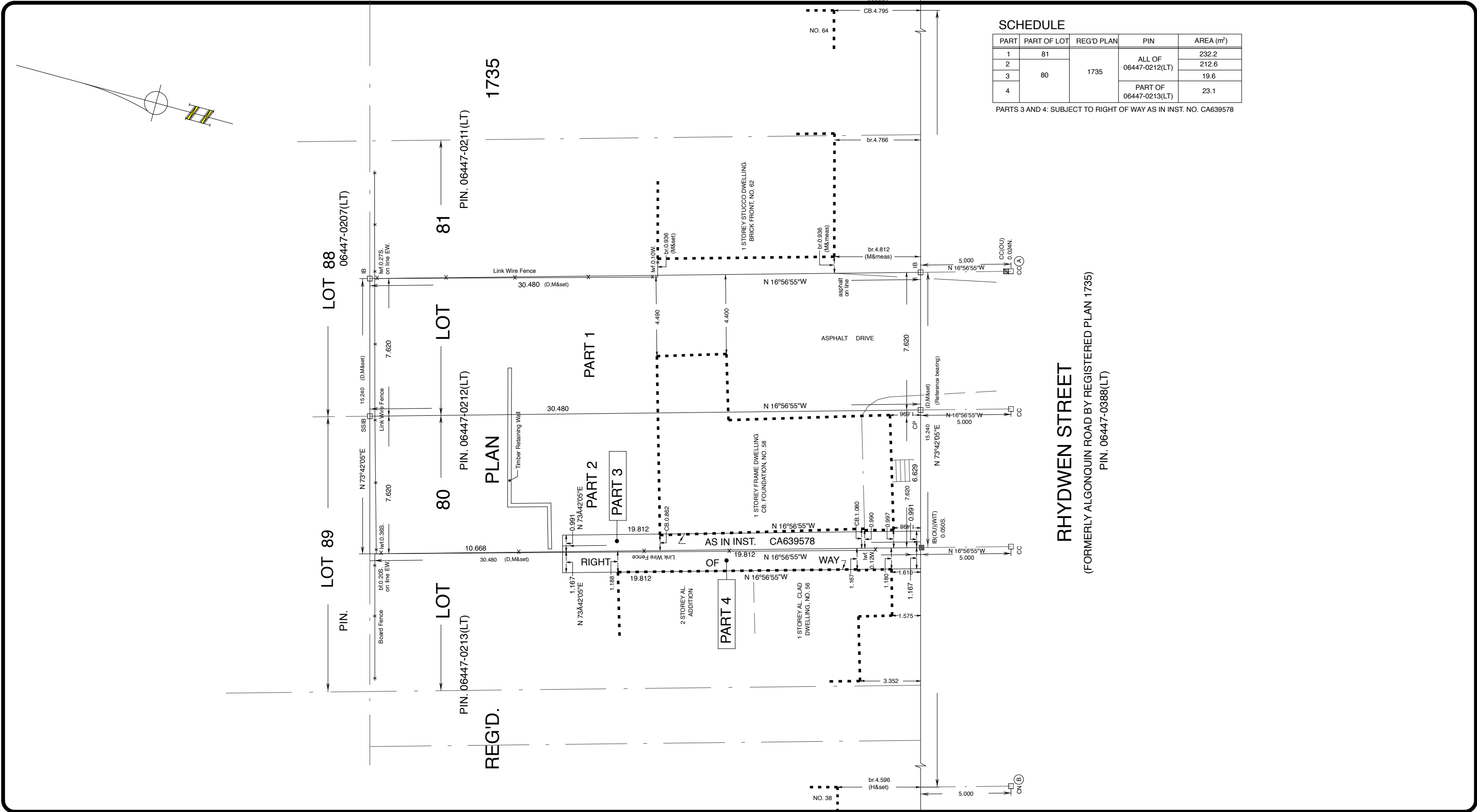
scale : 1:200 m

sheet no.

**A-1**

1 of sheets





SCHEDULE

PART	PART OF LOT	REG'D PLAN	PIN	AREA (m <sup>2</sup> )
1	81	1735	ALL OF 06447-0212(LT)	232.2
2				212.6
3	80			19.6
4			PART OF 06447-0213(LT)	23.1

PARTS 3 AND 4: SUBJECT TO RIGHT OF WAY AS IN INST. NO. CA639578

RHYDWEN STREET  
(FORMERLY ALGONQUIN ROAD BY REGISTERED PLAN 1735)  
PIN. 06447-0388(LT)

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

QUALIFICATION INFORMATION  
Required unless design is exempt under 2.17.5.1 of the building code

TONY VALENTIN	20917
Name	BCIN
Signature	20 11 18
	Date

REGISTRATION INFORMATION  
Required unless design is exempt under 2.17.4.1 of the building code

TONY VALENTIN DESIGN	28858
Firm Name	BCIN

ADDRESS:

58 RHYDWEN AVENUE [ part 2 ]  
CITY OF TORONTO  
[ formerly city of scarborough ]

REFERENCE PLAN

CLIENT:

ABDUL TABIBZADA

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drawn by: AD

checked by:

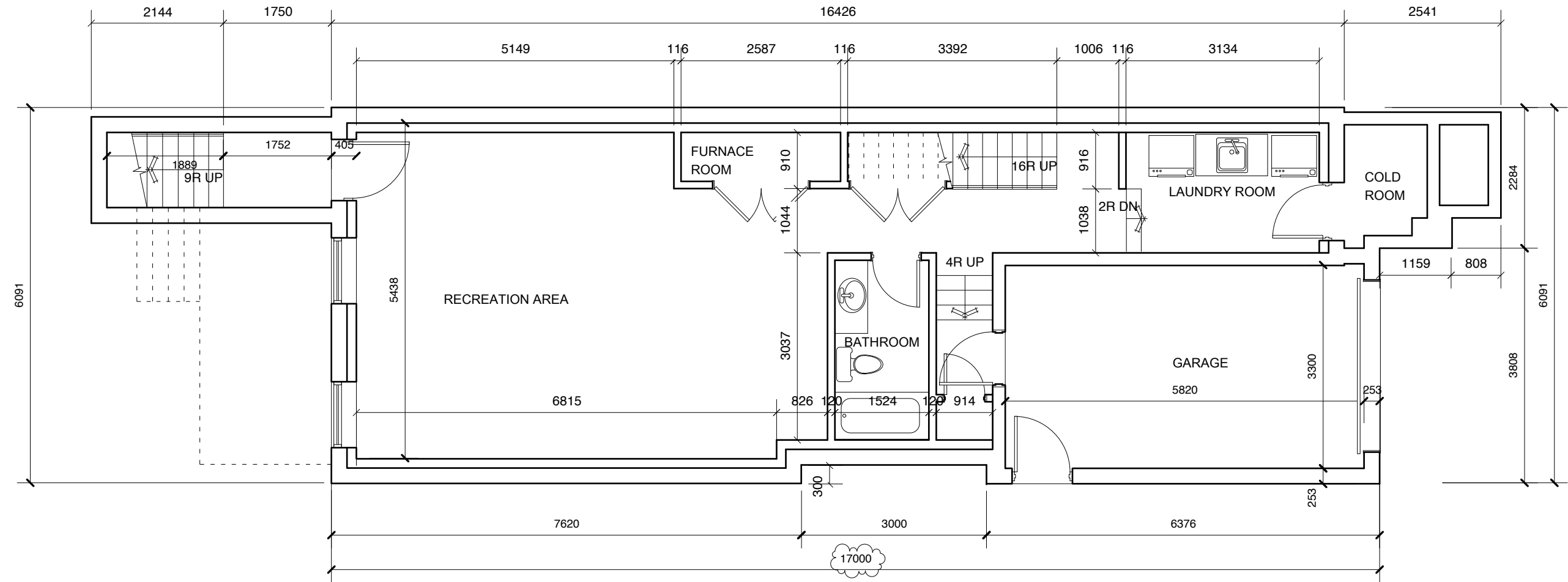
date: NOV 2018

scale : 1:200 m

sheet no.

A-2

2 of sheets



1 BASEMENT PLAN  
A3 SCALE: 1:75

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TONY VALENTIN	20917
Name	BCIN
Signature	20 11 18
	Date

REGISTRATION INFORMATION  
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TONY VALENTIN DESIGN	28858
Firm Name	BCIN

ADDRESS:

58 RHYDWEN AVENUE [ part 2 ]  
CITY OF TORONTO  
[ formerly city of scarborough ]

BASEMENT PLAN

CLIENT:

ABDUL TABIBZADA

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drawn by: AD

checked by:

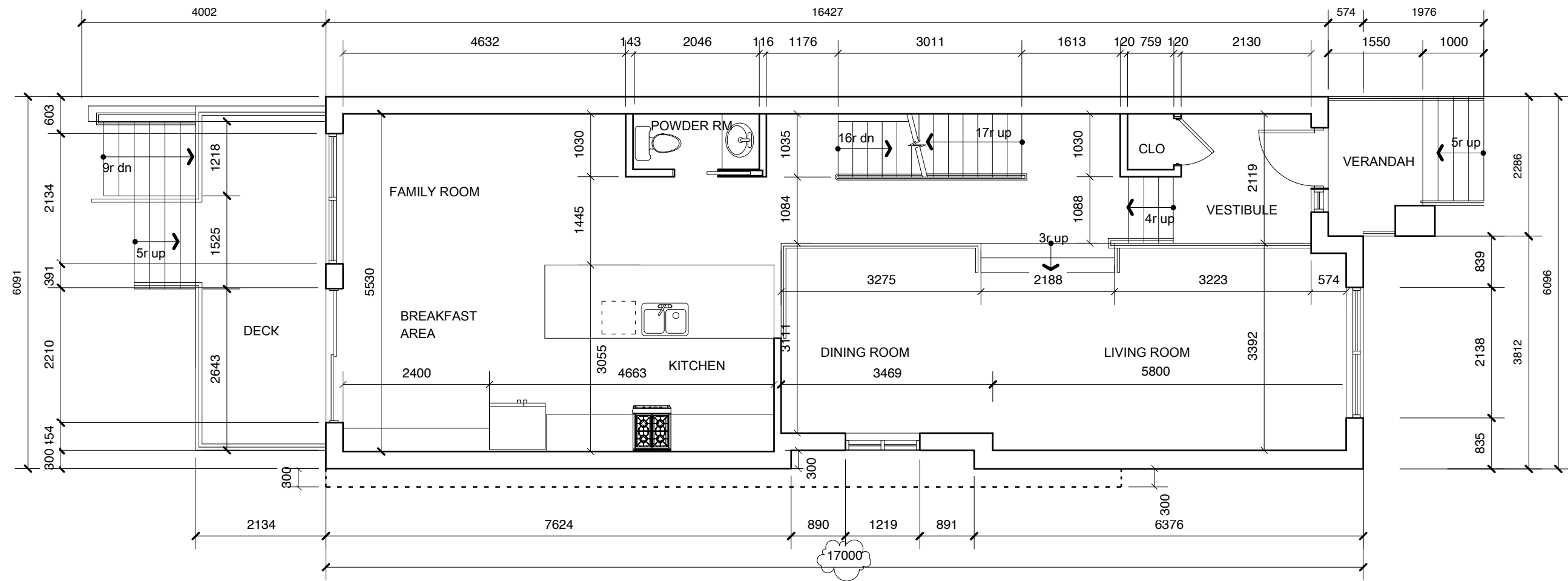
date: NOV 2018

scale : as noted

sheet no.

A-3

3 of sheets



1 FIRST FLOOR PLAN  
A4 SCALE: 1:75 GFA= 101.37 Sq m  
COVERAGE=110.26 Sq m

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TONY VALENTIN	20917
Name	BCIN
Signature	20 12 18
	Date

REGISTRATION INFORMATION  
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TONY VALENTIN DESIGN	28858
Firm Name	BCIN

ADDRESS:

58 RHYDWEN AVENUE [ part 2 ]  
CITY OF TORONTO  
[ formerly city of scarborough ]

FIRST FLOOR PLAN

CLIENT:

ABDUL TABIBZADA

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drawn by: AD

checked by:

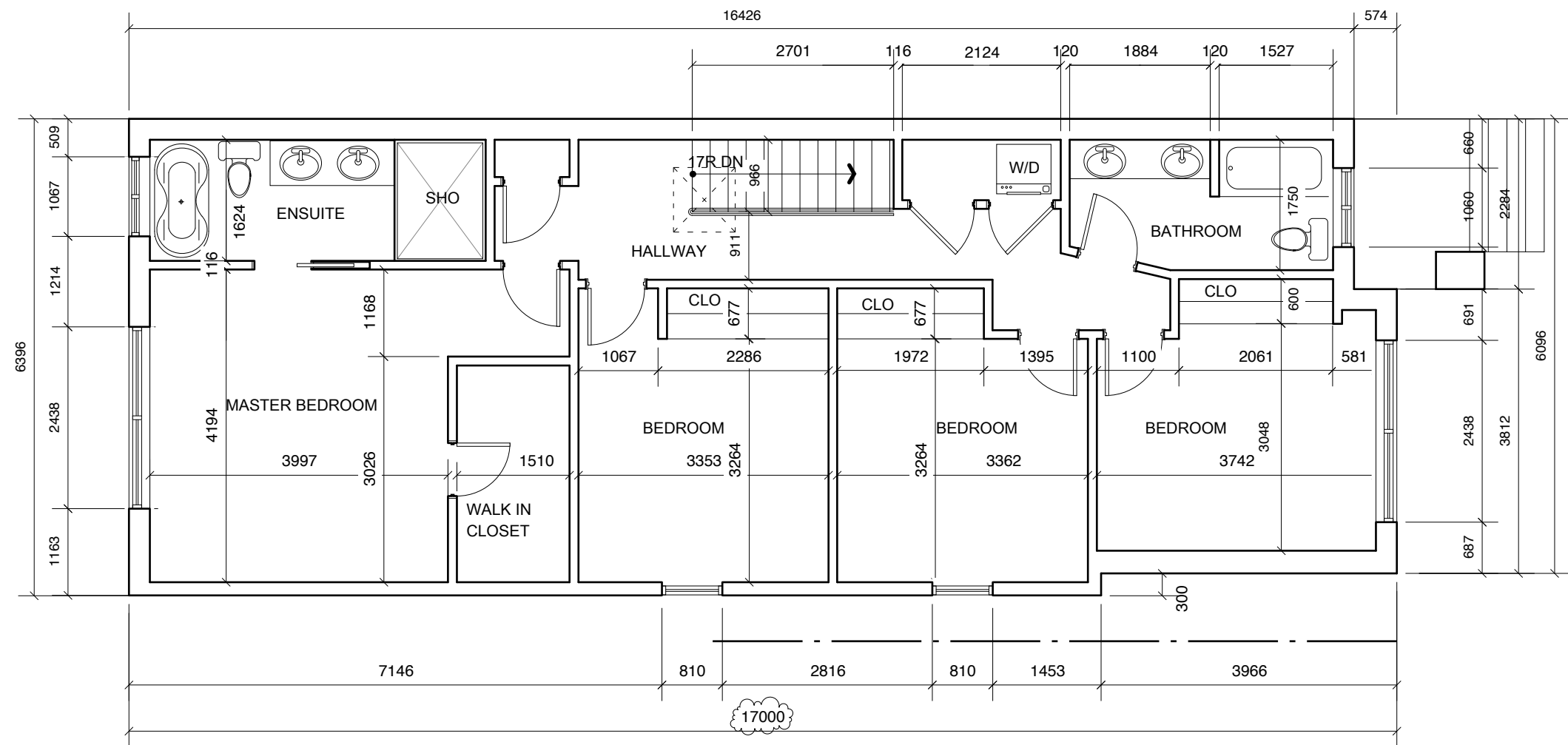
date: NOV 2018

scale : as noted

sheet no.

A-4

4 of sheets



1 SECOND FLOOR PLAN  
A5 SCALE: 1:75 GFA=106.17 Sq m

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TONY VALENTIN 20917  
Name BCIN  
Signature Date  
20 11 18

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

ADDRESS:

58 RHYDWEN AVENUE [ part 2 ]  
CITY OF TORONTO  
[ formerly city of scarborough ]  
SECOND FLOOR PLAN

CLIENT:

ABDUL TABIBZADA

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no.	date	revision	by
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drawn by: AD

checked by:

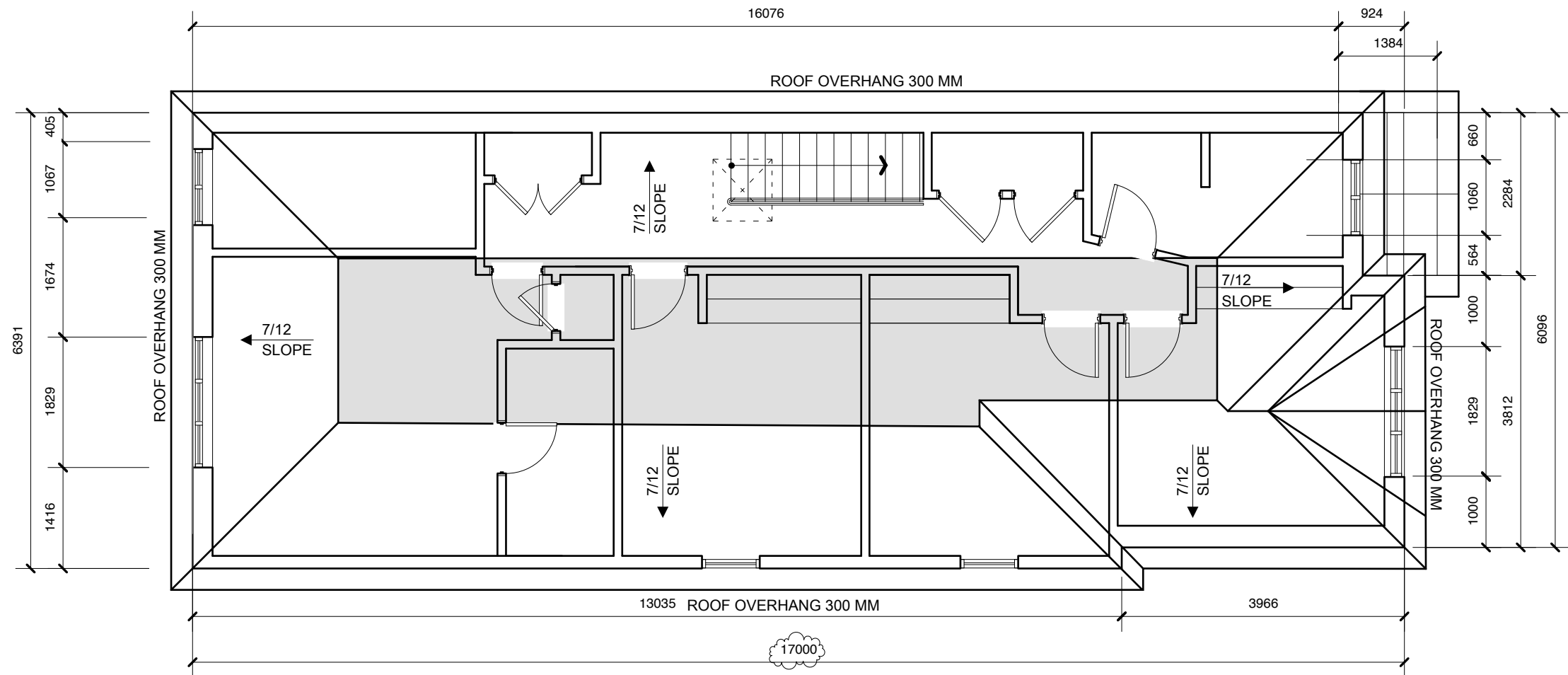
date: NOV 2018

scale : as noted

sheet no.

**A-5**

5 of sheets



1 ROOF PLAN  
A-7 SCALE: 1:75  
TOTAL ROOF AREA =120.34 Sq m  
FLAT ROOF AREA = 29.29 Sq m [24.34%]

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TONY VALENTIN 20917  
Name BCIN  
Signature Date  
20 11 18

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

ADDRESS:

58 RHYDWEN AVENUE [ part 2 ]  
CITY OF TORONTO  
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ROOF PLAN

CLIENT:

ABDUL TABIBZADA

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no.	date	revision	by
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drawn by: AD

checked by:

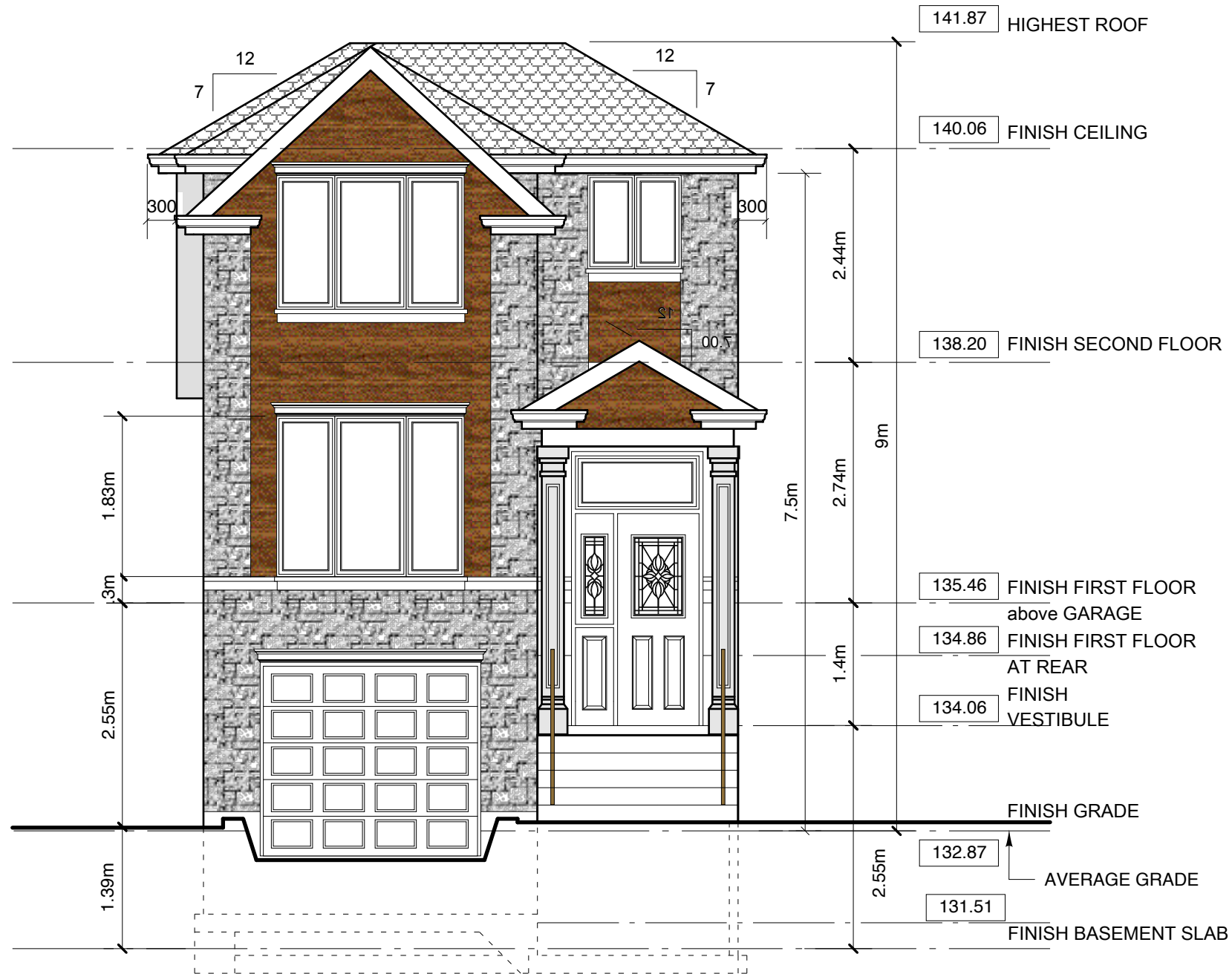
date: NOV 2018

scale : as noted

sheet no.

A-6

6 of sheets



1 SOUTH ELEVATION  
A7 SCALE: 3/16" = 1'-0"

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TONY VALENTIN	20917
Name	BCIN
Signature	20 11 18
	Date

REGISTRATION INFORMATION  
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TONY VALENTIN DESIGN	28858
Firm Name	BCIN

ADDRESS:

58 RHYDWEN AVENUE [ part 2 ]  
CITY OF TORONTO  
[ formerly city of scarborough ]  
SOUTH ELEVATION

CLIENT:

ABDUL TABIBZADA

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no.	date	revision	by

drawn by: AD

checked by:

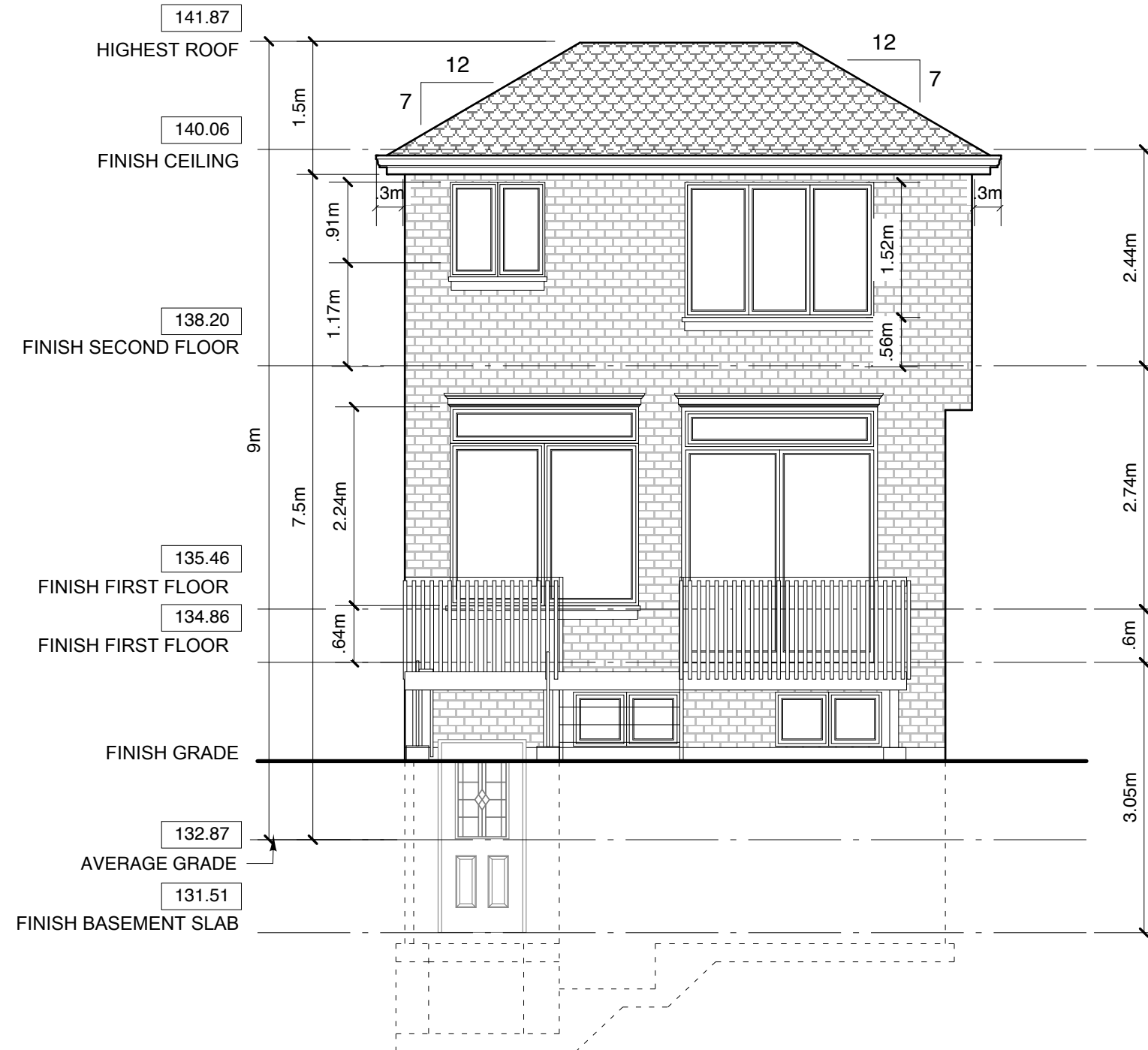
date: NOV 2018

scale : as noted

sheet no.

A-7

7 of sheets



1 NORTH ELEVATION  
A8 SCALE: 3/16" = 1'-0"

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	Date

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Firm Name	BCIN

ADDRESS:

58 RHYDWEN AVENUE [ part 2 ]  
CITY OF TORONTO  
[ formerly city of scarborough ]  
NORTH ELEVATION

CLIENT:

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no.	date	revision	by
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drawn by: AD

checked by:

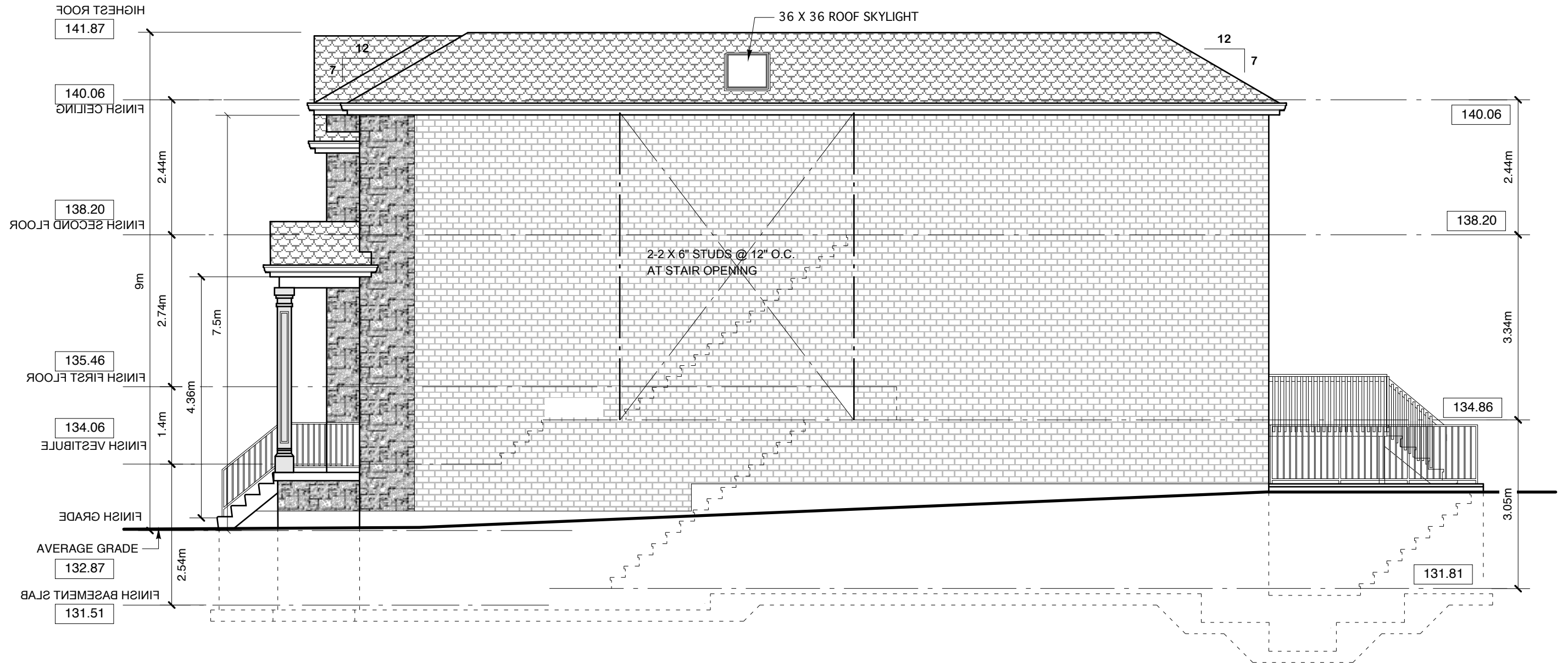
date: NOV 2018

scale : as noted

sheet no.

A-7

7 of sheets



1 EAST ELEVATION  
A9 SCALE: 3/16" = 1'-0"

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	Date

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Firm Name	BCIN

ADDRESS:

58 RHYDWEN AVENUE [ part 2 ]  
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WEST ELEVATION

CLIENT:

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no.	date	revision	by
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drawn by: AD

checked by:

date: NOV 2018

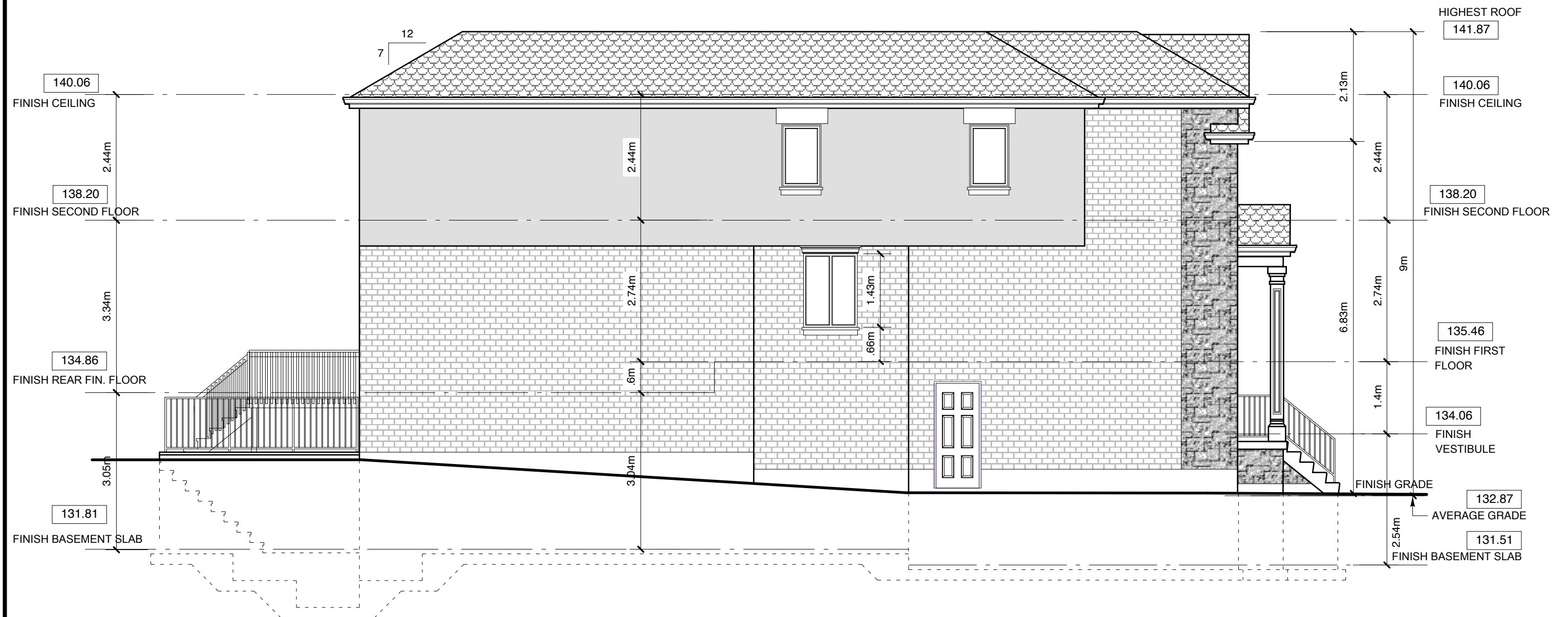
scale : as noted

sheet no.

A-9

9 of sheets





1 EAST ELEVATION  
A10 SCALE: 1:75

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EAST ELEVATION

CLIENT:

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no.	date	revision	by
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drawn by: AD

checked by:

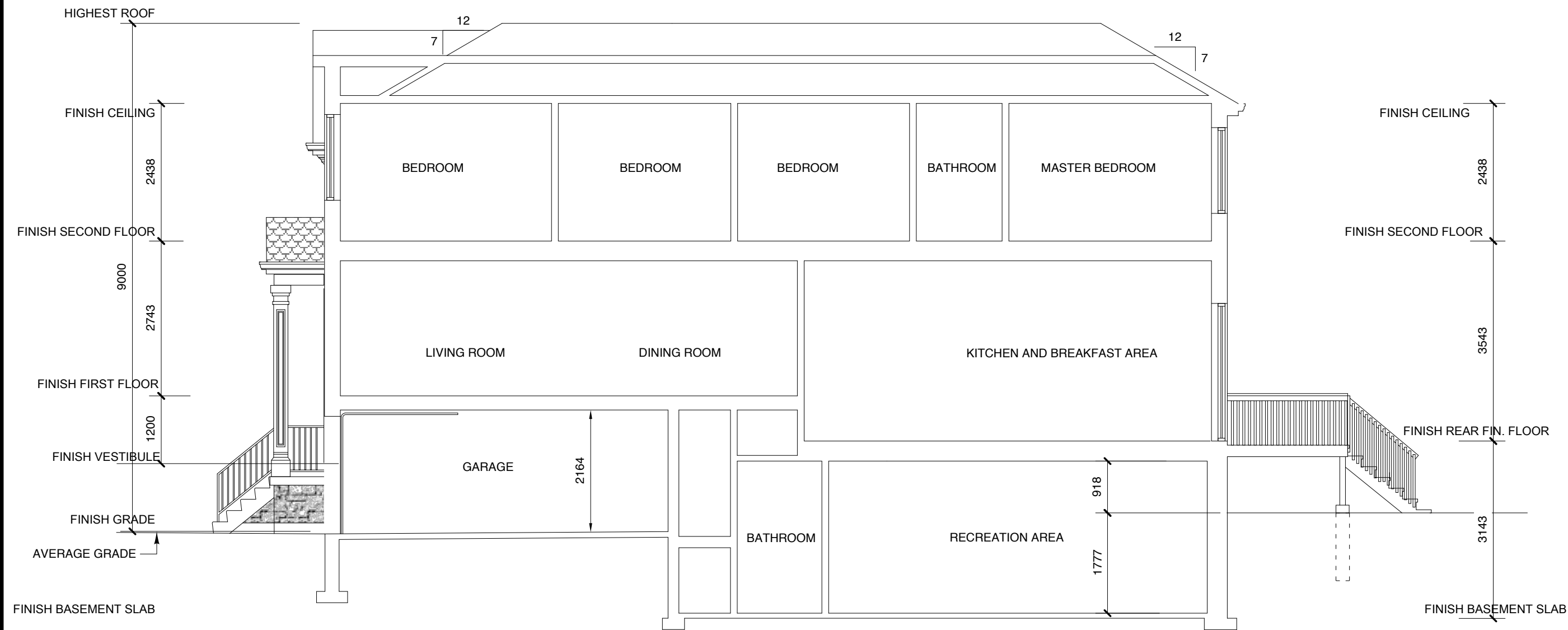
date: NOV 2018

scale : as noted

sheet no.

A-10

10 of sheets



1 LONGITUDINAL SECTION  
A11 SCALE: 1:75

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Firm Name	BCIN

ADDRESS:  
**58 RHYDWEN AVENUE [ part 2 ]**  
**CITY OF TORONTO**  
**[ formerly city of scarborough ]**  
**LONGITUDINAL SECTION**  
CLIENT:  
ABDUL TABIBZADA

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1	11 2018	issued for client review	AD
no.	date	revision	by

drawn by: AD

checked by:

date: dec 2018

scale : 1:75 m

sheet no.

**A-11**

11 of sheets