

# DECISION AND ORDER

**Decision Issue Date**      Tuesday, December 31, 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): SYDNEY KERT

Applicant: ERIK CALHOUN

Property Address/Description: 114 MACPHERSON AVE

Committee of Adjustment Case File: 19 125331 STE 11 MV (A0257/19TEY)

**TLAB Case File Number: 19 197240 S45 11 TLAB**

**Hearing date:**      Friday, December 06, 2019

## DECISION DELIVERED BY S. GOPIKRISHNA

Applicant	ERIK CALHOUN
Owner	ALEXANDER HORA
Appellant	SYDNEY KERT
Appellant's Legal Rep.	DAVID BRONSKILL
Party	LIANNE MILLER
Participant	TED BARLOW
Participant	KAREN GORSLINE

## INTRODUCTION AND BACKGROUND

Alexander Hora and Sydney Kert are the owners of 114 MacPherson Ave., located in Ward 11 (University- Rosedale) of the City of Toronto. They applied to the Committee of Adjustment (COA), to alter the existing two-storey semi-detached house by constructing a front one-storey addition, rear two-storey addition, and a third-storey addition with a rear third floor deck. The COA heard the application on July 11, 2019, and refused all the variances.

**Decision of Toronto Local Appeal Body Panel Member: S. Gopikrishna  
TLAB Case File Number: 19 197240 S45 11 TLAB**

The COA's decision was appealed to the Toronto Local Appeal Body (TLAB) on July 29, 2019, which scheduled a Hearing on December 6, 2019. The ABC Residents Group, a local residents' association, elected for Party status, and retained Mr. Andrew Biggart, a lawyer to represent them. The following neighbours elected for Participant status:

- 1) Mr. Ted Barlow, 112 MacPherson Avenue
- 2) Ms. Karen Gorsline, 118 MacPherson Avenue
- 3) Ms. Lianne Miller, 111 MacPherson Avenue.

Interestingly, no Witness Statements were submitted by the Parties by the scheduled deadline, though the Participants submitted Witness Statements dated September 13, 2019. On November 28, 2019, the Appellants' Expert Witness Statement, submitted an Expert Witness Statement. On December 3, 2019, the TLAB received an email from Mr. Biggart, stating that his client had settled with the Appellant, and would withdraw from the Hearing. The Appellants then submitted a second Expert Witness Statement on December 3, 2019, with a revised Site Plan, and changes to some of the variances.

On December 4, 2019, Mr. Barlow, and Ms. Miller, Participants at the Hearing, put forward Motions asking for Party status at the Hearing

## **MATTERS IN ISSUE**

### **1. Chapter 10.10.40.10.(2), By-law 569-2013**

The maximum permitted height of all side exterior main walls facing a side lot line is 9.5 m. The height of the side exterior main walls facing a side lot line will be 10.49 m.

### **2. Chapter 10.10.40.30.(1)(A), By-law 569-2013**

The maximum permitted depth of a semi-detached house is 17.0 m.

The altered three-storey semi-detached house will have a depth of 18.081 m.

### **3. Chapter 10.10.40.40.(1)(A), By-law 569-2013**

The maximum permitted floor space index of a semi-detached house is 0.6 times the area of the lot (120.58 m<sup>2</sup>). The altered three-storey semi-detached house will have a floor space index equal to 1.094 times the area of the lot ( 219.88 m<sup>2</sup>).

## **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**

At the Hearing held on December 6, 2019, the Appellants were represented by Mr. David Bronskill, a lawyer, and Mr. Tae Ryuck, a land use planner. Mr. Barlow, Ms. Gorsline, and Ms. Miller represented themselves.

As stated earlier, Mr. Barlow, and Ms. Miller had put forward Motions asking for Party status- these Motions were addressed at the beginning of the Hearing. Ms. Miller introduced herself, and said that she lived at 111 MacPherson, opposite the Subject Property. I asked Ms. Miller the reason for her wanting to elect for Party status; she replied that she wanted to cross examine the Appellants, and contribute to the Hearing through sharing her knowledge. In response to a question from Mr. Bronskill, I learnt that Ms. Miller was also a Board Member with the ABC Residents Association- however, she had declared a conflict of interest at the beginning of the negotiations, and had recused herself from participation in the Settlement. She also stated that she was a retired lawyer “who had never cross examined anybody”.

Mr. Barlow introduced himself next, and said that he was the neighbour who lived next door to the Subject Property, at 112 MacPherson, and said that he wanted to ask questions of the Appellants, since he would be impacted significantly if the proposal were approved. Mr. Barlow also said that he was not a lawyer.

Before making a decision on the request for Party status, I asked Mr. Bronskill if he had any concerns, or comments, and was told that his clients went to great lengths to negotiate the Settlement with the ABC Residents Association. Mr. Bronskill did not think it appropriate for the Participants to be given Party status, because his client was aware of their concerns, and had addressed them; however, he also said that no more than one of the two Participants, should be given Party status.

Given that Ms. Miller trained to be a lawyer, I ruled that she could become a Party, while Mr. Barlow could continue as a Participant.

Mr. Bronskill then provided his opening statement, during which he recited the variances, and said that while the height of the side exterior main wall had not changed, the FSI had been reduced to 1.094 x lot size. He said that under Section 45.18.1.1, it was not necessary to provide further notice, because the variances had been reduced ( i.e. they were closer to what is of right ) from what was originally requested. He said that the FSI variance was “technical” in nature.

Mr. Tae Ryuck was then sworn in, and recognized as an Expert in the area of land use planning. He spoke briefly about his retainer, the research he had completed in order to prepare for the Hearing, and the history of the case.

The highlights of his evidence are presented herewith:

Mr. Ryuck's Study Area is bounded by Marlborough Avenue to the north, Yonge Street to the east, Roxborough Street West to the south, and Avenue Road to the west. The Subject Site is located in a stable residential neighbourhood, which consists of a mixture of single-detached, semi-detached, townhouses and walk-up apartments, between two to three storeys in height. The neighbourhood is characterized as a tight urban community, with very little separation between houses. The area is experiencing regeneration in the form of redevelopment and additions. Mr. Ryuck undertook a photo tour of the community, where he highlighted various types of dwellings, and demonstrated that there was no consistent relationship between the size or type of the house, and the lot on which it was located i.e. detached houses had been constructed on small lots, while semi-detached houses had been constructed on larger lots. He said that there was no prevailing type of housing in his Study Area; and that the Area was "eclectic" in nature.

He then described the proposal before the TLAB. He said that a 2-storey single detached dwelling exists on the Subject Site at 114 MacPherson . The proposal is to alter the existing 2-storey single detached dwelling with an integral garage. The proposed dwelling is dimensioned with a total GFA of 219.88m<sup>2</sup>, proposed building height of 10.49 m, proposed building depth of 18.081m, and a Proposed FSI 1.094 times the area of the lot.

The new dwelling is proposed to be built largely on the existing building envelope, though the back of the house would be altered substantially with a reduction in length. The proposed side yard setbacks generally reflect the existing neighbourhood context, where reduced side yards are common, and form part of the general pattern of development for the area.

Mr. Ryuck said that the rear third storey decks are common within the neighbourhood, and no variance is required to facilitate the proposed deck. He said that his clients had also ensured that the proposed 10.49m building "fit into the neighbourhood", because the height is similar to surrounding dwellings, and maintains consistency of the roofline in the overall streetscape.

Mr. Ryuck then described the compatibility between the proposal, and the higher level policies such as the "Provincial Policy Statement", and the "Growth Plan".

He said that the proposal provides for modest intensification of the Subject Site, to make more efficient use of a property, located in close proximity to transit and other services. The intensification of the Subject Site is proposed in a manner that is appropriate, and does not cause any adverse impacts to the area, or neighbouring properties.

At this stage, I asked Mr. Ryuck which "Provincial Policy Statement (PPS)" and "Growth Plan" he referred to in his Expert Witness Statement, since neither had a date attached to them. Mr. Ryuck's answer was "the most recent". When asked "how recent" the PPS and Growth Plan were, he said that he would have to look up the answer, and "get back to" me. Much later in the Hearing, and in response to a very specific follow-up question from me, did Mr. Ryuck state that the Provincial Policy Statement dated back to 2014, while the Growth Plan in question dated back to the earlier part of 2019. I also had to

caution him against looking at his I-Phone when answering the question, because it could be construed as consulting the phone, or somebody on the phone.

Mr. Ryuck then described how the proposal was consistent with the test of the Official Plan (OP). He first referenced Section 2.3.1 of the OP, which discussed the relationship between new development, existing physical character of the area, and the need to reinforce the stability of the neighbourhood.

According to Mr. Ryuck, the proposed single detached dwelling respects and reinforces the existing physical character of the neighbourhood. The house is modest in size, with height, and massing deployed appropriately on the Subject Site. The Proposal introduces a building envelope consistent with the neighbourhood, which has experienced regeneration, and intensification in the form of redevelopment, and additions to existing houses. Mr. Ryuck asserted that the Proposal would fit within this context, and will not impact the stability of the neighbourhood. He then discussed Policy 4.1.5 , parts (a)-(h). The intent of these policies is to ensure that new development does not propose changes that are out of keeping with other development in the criteria as listed below:

**(c) Prevailing heights, massing, scale** – Mr. Ryuck said that this criterion applies to the deployment of built form on the lot, and asserted that the Proposal is “completely consistent” with other homes in the Study Area, which have comparable heights, massing, and scale. He referred to COA decisions from the neighborhood, where FSIs of more than 1.10 had been approved, including a former church transformed into condominiums, with an FSI of 2.83

**(d) Prevailing building types** – Mr. Ryuck said that this subsection spoke to the type of housing, (i.e. singles, semis, towns). Since the proposal is for a 3-storey single detached dwelling, consistent in form and massing with the predominant building types in the area, he said that the proposal satisfies this subsection.

**(f) Prevailing setbacks of buildings from the street** – This criterion addresses the desire to maintain a uniformity of setbacks and a consistent street edge, which is fulfilled by the proposal, because of the front yard, maintains a consistent setback with the adjacent dwellings and overall streetscape.

**(g) Prevailing patterns of rear and side yard setbacks and landscaped open space** – The proposed side yard setbacks reflect the existing condition and pattern of development, that is best described as very tightly knit urban fabric, and is in compliance with the Zoning By-law. The proposal is in conformity with respect to landscaping and no variance is required.

Based on this evidence, Mr. Ryuck concluded that the proposal satisfied the OP.

Mr. Ryuck then discussed how the proposal upheld the intent and purpose of the By-Law. 569-2013. The general intent of the City zoning by-law is to:

- a. Ensure compatible built form within an area.
- b. Ensure no unacceptable adverse impacts on streetscape, or on adjacent properties

**Variances 1: Side Exterior Main Wall Height** – Mr. Ryuck said that the proposed dwelling has been designed with a roofline, that is similar to the immediate adjacent dwellings at 10.49m. The resulting home does not protrude above the adjacent dwellings, and respects the continuous rooflines of the street, to achieve a consistent streetscape. The proposed variance for side exterior main wall height is limited to the triangular portion of the roof. The extent of the side wall variance is limited to 10.49m in height, and is below the building height requirement of 11m. According to Mr. Ryuck, the requested height does not result in a built form, that would be out of character with the neighbourhood.

**Variance 2: Building Depth** – The Proposal requires a variance because the requested depth is 18.081 m for building depth, where 17m is permitted. However, the proposed building depth is an existing condition, and a variance is being sought to recognize the existing condition.

**Variance 3: FSI** – Mr. Ryuck asserted that the house to be built has been designed thoughtfully, such that the built form is consistent with other homes within the neighbourhood, resulting in an FSI of 1.094 x Lot Size. He was clear in his explanation that the house had been designed such that it fit into the community, and an FSI of 1.094 was merely a consequence of the design of the house- in other words, the built form is the driver, while the FSI is an outcome, as opposed to the other way around. The Study Area contains houses with a range of densities, with a range from 1.0, up to 2.95 times the area of the lot. The proposed variance for the FSI of 1.094 X Lot Size represents in most part, an existing building envelope, with a substantial change only to the rear of the house. According to Mr. Ryuck, the variance being sought does not represent over development of the site. The Proposal does not produce a building form that changes the physical character of the neighbourhood, which consists of existing and newer, larger homes that exceed the by-law requirements. The proposed front and rear walls are consistent with the walls of newer dwellings and as such, would not result adverse impacts in terms of views, privacy, shadows and massing that would be deemed unacceptable or unexpected within a tight urban area.

Mr. Ryuck reiterated that the proposed variances maintain a consistent streetscape within the current context, and reflect the tight urban fabric of the neighbourhood. The goal of the Zoning By-law is to maintain a built form (i.e. massing, height, setbacks) that is compatible with “what is on the street, and in the neighbourhood”- however, compatible does not mean the same. Based on this evidence, Mr. Ryuck concluded that the proposal satisfied the test of meeting the intent, and purpose of the Zoning By-Law.

Mr. Ryuck next addressed the test of desirable, and appropriate development. He said that the proposal does not create any additional excessive shadows, or overlook that would be uncharacteristic in the existing context. He reiterated that the scale, massing and size of the proposal was designed to be “sensitive to adjacent properties”, and the neighbourhood. Based on this, Mr. Ryuck concluded that the proposal satisfies the test of desirable development.

Lastly, Mr. Ryuck addressed the test of minor. He said that the Proposal had been designed in a manner that does **not** test the limits of “unacceptable, adverse impact” in terms of overlook and shadows. The proposal has been carefully designed to be mindful

of the height of neighbouring houses, and the neighbourhood streetscape. He also pointed out that no variances for building depth, length and overall height were required, parameters that could result in unacceptable, adverse impact.

Based on this evidence, Mr. Ryuck concluded that the proposal satisfied the 4 tests under Section 45.1. There was a brief discussion of the conditions of approval which is recited at the end of this Section.

Ms. Lianne Miller then cross examined Mr. Ryuck. She established that there were errors in the original Witness Statement, dated November 29, 2019, with respect to the exemplars from the community given by Mr. Ryuck. However, by way of editorial comment, these errors are not recited, because Mr. Ryuck had provided an updated Witness Statement on December 3, 2019. It may be also pointed out that Ms. Miller had not had a chance to review this Statement because it had been circulated to the Parties listed as of December 3, 2019, which excluded her, since she was still a Participant as of that date.

She asked Mr. Ryuck if he had used Site and Area Specific Policies 211 (SASP 211) i.e. for designing the proposal, to which he replied in the negative, and added that the proposal was for a single detached dwelling, where neither the height, nor the massing was so significant that it would violate any guidelines, or policies. In response to a question about conducting shadow studies to understand the impact of the rear two storey addition on the neighbours, Mr. Ryuck said that under the City of Toronto guidelines, shadow studies were not necessary, because the building had to have a minimum of four floors before a shadow study is required. It was also established that Mr. Ryuck had paid more attention to houses on MacPherson, because it is the "immediate context", to come to his planning conclusions- he noted that he had looked at houses on both sides of the street between Yonge St, and Avenue Road. When asked if he had looked at Policy 4.1.5(c), and its emphasis on density, Mr. Ryuck said that he had "paraphrased" the language of the policy in his discussion, and repeated some of the earlier information with respect to density. In response to a question about prevailing density, Mr. Ryuck said that he had not established one, nor was it necessary to establish one. He then explained the physical interpretation of the FSI, and cautioned against "reading too much" into an FSI number.

Ms. Miller then asked if the condominium complex with an FSI of 2.83 X Lot Size was a fair comparator, because the building type was different, to which Mr. Ryuck agreed with Ms. Miller, but said that he had brought up the example only to demonstrate the variance in the FSIs across his Study Area. Mr. Ryuck also agreed with Ms. Miller that many of the examples provided in his COA decisions chart represented bigger houses on small lots, but disagreed with Ms. Miller's conclusions that the examples chosen by him were concentrated on the western part of MacPherson, than the vicinity of the Subject Site. He also disagreed with the proposition that there were no "large" houses on "small" lots in the immediate vicinity of the Subject property. Mr. Ryuck insisted that the distribution of the FSIs demonstrated the eclectic nature of the neighbourhood, which included smaller houses on larger lots, and larger houses on smaller lots. When Mr. Ryuck said that there were 44 properties on MacPherson with FSIs of more than 1 X lot size, Ms. Miller attempted to introduce her "marked up" chart of Mr. Ryuck's submission demonstrating that there was no FSI information for 16 properties, to

demonstrate that they had FSIs of more than 1x lot size. Mr. Bronskill objected to the submission, because it had not been submitted earlier, and asked that it be excluded in order to “not prejudice their case”. I excluded the submission because it was not served earlier on the Appellants.

It was agreed that Mr. Ryuck would make a submission after the Hearing to illustrate the FSIs of the 16 properties, for which Ms. Miller couldn't identify relevant FSI data in Mr. Ryuck's submission.

The opposition then presented their case, with Mr. Barlow presenting first, followed by Ms. Gorsline, and Ms. Miller. Their evidence is recited together, because of the similarity of content, and issues- indeed, they repeated each other's evidence substantially, and concentrated mostly on the adverse impact caused to Mr. Barlow's property. By of editorial comment, where one of the individuals stated something unique, that fact is recited independently.

In terms of impact, Ms. Miller said that there was no impact on her house because she lived opposite the Subject property. Ms. Gorsline said that because of the separation between her house ( 118 MacPherson) and the Subject property, there was “less” impact on her house than Mr. Barlow's house. Mr. Barlow seemed agitated when giving his evidence- his specific issue was that the extension at the back of the house would impact the sunlight in his backyard, and that the balcony on the third storey of the proposed addition could allow an observer to look into the bedroom of his four year old son.

The opposition also contended that the house to be built would be out of character because it had a full third storey, as opposed to the “ half” third storeys that the neighbouring houses had. They also drew attention to the perceived incongruity of a really large house being built on a small lot; the incongruity, was evident from the FSI of 1.094 x Lot size, accentuating the contrast between the proposal, and its neighbours.

The opposition's contention was that Mr. Ryuck's photo tour, and the related conclusion about the afore-mentioned eclecticism of the community, were erroneous because most of the houses with larger FSIs were on the west side of MacPherson; Ms. Miller made the point that the numbering on the houses with large FSIs, on MacPherson started with 156 and went above, and that these properties were quite some distance from the Subject Property at 114 MacPherson. According to the opposition, given this contrast within the geographic neighbourhood, the immediate context was more important, than the broader context, as stated in the OP. They distinguished the house to be constructed, as being out of character, and setting a “wrong precedent” for the neighbourhood.

Ms. Miller then provided evidence against the proposal in front of the TLAB. She attempted to introduce a map, and a 2 D pictorial representation of how the neighbouring houses at 112 MacPherson, and 114 MacPherson would look beside each other, when the construction was completed. Mr. Bronskill objected to the submission of the maps because he claimed that they were inaccurate based on Ms. Miller's description, and more importantly, they had not been disclosed before, preventing him for understanding their relevance, or preparing for cross examination. On the matter of



the picture of the 2 houses side by side, Ms. Miller said she had superimposed the house of the neighbour, Mr. Barlow, on the diagram of the proposal supplied by the Appellants. I ruled that the 2 D dimensional picture could be admitted because I understood the superimposition of the diagrams to be based on accurate calculations and plans of the houses, based on Ms. Miller's description.

Mr. Bronskill's cross examination of the opposition's evidence is not recited in detail because the same points noted above were repeated and reiterated- namely, concerns with a full third storey, how big the size of the house would be, and privacy concerns for the neighbour. Mr. Bronskill and Ms. Miller disagreed on the importance of the FSI, and what inferences could be drawn about the "prevailing" FSI, and how this would be influenced by the "missing" data on the FSIs of 16 properties in the data submitted by Mr. Ryuck, referred to earlier in this Decision. As stated earlier, Mr. Ryuck was asked to submit information about the FSIs of the 16 properties in question, after the Hearing.

Mr. Bronskill asked that no submissions be made after Mr. Ryuck's submission, because of concerns that it would become the subject of more submissions, resulting in the case "being dragged out". He also asserted that nothing hinged on the information about the 16 properties in question. I agreed with his suggestion and ruled that submissions would be limited to Mr. Ryuck's submission about data pertaining to the 16 properties.

During oral argument, I drew Mr. Bronskill's attention to the privacy issue raised by Mr. Barlow, to which he said that his client was prepared to step up back the balcony at the third floor. I asked Mr. Bronskill to make a submission with proposed language reflecting the stepping back of the balcony, so that it could be imposed as a condition, should the proposal be approved.

I thanked the Parties, and asked the Appellants to submit conditions, including the privacy issue raised by Mr. Barlow, and gave them a week to make the submissions

The aforementioned proposed language for the conditions was submitted on 9 December, 2019 while the submission pertaining to lot data was submitted by Mr. Ryuck on 13 December, 2019. I was made aware that the Opposition made another submission, on or around 19 December, 2019, but asked the TLAB staff not to forward the submission to me, because it was agreed at the end of the Hearing that the submissions would be limited to Mr. Ryuck's submission on the property data, as stated above.

## **ANALYSIS, FINDINGS, REASONS**

There are a variety of procedural issues with this Appeal around disclosure of materials pertinent to the Hearing. Neither of the original Parties submitted Witness Statements, by the deadline, as per TLAB's Rules. At the Hearing, I was informed that the reason for not submitting Witness Statements was the Parties were in settlement discussions, and decided not to submit statements by "mutual consent"- I note that the TLAB was not consulted, nor informed about this decision.

**Decision of Toronto Local Appeal Body Panel Member: S. Gopikrishna**  
**TLAB Case File Number: 19 197240 S45 11 TLAB**

My concern with the Parties coming to decisions on mutual consent, without consulting or informing the TLAB, is that it inverts the decision making process on its head, because the TLAB is now put in a spot, where it has to co-opt with the decision of the Parties on procedural issues. This is a slippery slope, where the Parties' wish becomes the TLAB's order, and is captured by the colloquialism about the tail wagging the dog.

It is important to inform, and involve the TLAB in a fulsome way when submission deadlines cannot be met, irrespective of the underlying reasons. Where the Parties do not want to make submissions by the deadline as a result of Settlement discussions, the appropriate step for the Parties would be to contact the TLAB, indicate their desire to continue Settlement discussions without making submissions, and ask for direction if they are not sure of how to proceed from a procedural perspective.

The Opposition's propensity to introduce documents without prior disclosure was not helpful, since one of the principles followed by the TLAB is that there can be no trial by ambush. The reasons provided for not disclosing documents in time, such as lack of awareness of procedure, or lack of experience with cross examination, could have been resolved through reviewing the TLAB's Rules, or attending other Hearings of the TLAB, all of which are open to the public. Of particular concern, is the attempt to justify late submissions by drawing attention to the late filings by the Appellants- responsible Parties have to prioritize procedural fairness, rather than go for a tit-for-tat type response.

The Expert Witness statement by the Appellant submitted on December 3, 2019, could have paid more attention to detail- it would be reasonable to expect Expert Witnesses to include the date of the PPS and the Growth Plan in their Witness Statements. Expert Witnesses should certainly be expected to remember important dates, instead of responding with "The most recent plan", and "I will get back to you", and not doing so, until prompted specifically for an answer. I also note that 16 properties were listed as having FSI's of more than 1, without adequate proof, or research. It is important to reiterate that a Settlement does not change the threshold that needs to be met by the evidence, for the proposal to be approved- a casual, or a cavalier approach, without attention to detail, does not help the Party's case, irrespective of how difficult it was to reach a Settlement.

I agree with the Appellants that MacPherson is eclectic in nature, and includes large houses on small plots, and vice-versa- this feature was evident in the photo tour at the beginning of the Appellants' testimony, as well as my own site visit.

Before delving further into the Appellants' evidence, it may be pertinent to examine the main objections raised by the Opposition. Their concerns are about the size of the house, a full third storey, loss of privacy due to a direct line of sight into a bedroom, and concerns about alleged shadows. The opposition's experiencing a range of feelings from anxiety to anguish to angst, in response to a new house in the neighbourhood is understandable- however the onus of articulating the impact, and demonstrating the nexus with established planning principles, lies with the advocate. In this case, neither was the concern articulated clearly, nor was the necessary nexus to planning principles demonstrated. The allegations of excessive shadowing, and a full third storey, are nebulous, and seem to be consequence of the Appellants not following

the Opposition's advice on how the new home should be designed, as opposed to any provable planning reasons.

It may be pointed out that where a specific objection was raised, such as the view into Mr. Barlow's son's bedroom from the third storey, the Appellants hastened to rectify the situation, and were amenable to the imposition of conditions that minimized the impact.

The Opposition's harping on the FSI, and attempting to interpret the FSI to demonstrate that the proposal does not fit, does not take into account that any FSI number, should be interpreted with caution, more so in a neighbourhood, where there is no demonstrable correlation between the size of the lot, and the size of the house. The neighbourhood data, and COA decisions, provided by the Appellants, demonstrate that small houses on relatively larger lots, are interspersed between larger houses, and different types of dwellings on smaller lots. In a community that personifies eclecticism, the FSI is of little, or no consequence, in interpreting the character of the community. No significant conclusion is drawn from the FSI analysis of the community.

The Opposition's attempting to draw conclusions about the contrast between concentrations of lower FSIs in the vicinity of the Subject Site, and higher FSIs on the opposite end of MacPherson, are not given any weight for the same reason as above; namely, the FSI analysis is not determinative in establishing the compatibility of a new house, with an eclectic community. Further, the conclusions that can be drawn from a Geographic Neighbourhood, that is wide enough to include the whole of MacPherson Avenue, are more reliable than the immediate vicinity of the Subject property, as preferred by the Opposition. This conclusion is further reinforced by the Opposition's dwelling on 112, 111 and 118 MacPherson, but excluding 116 MacPherson, the Subject property's immediate neighbour.

No inference is drawn from the diagram that superimposes the existing house at 112 MacPherson with the proposal at 114 MacPherson, since the methodology used to develop the 2 D outline of the house at 112 MacPherson is in doubt- the TLAB should not be swayed by such visual rhetoric.

As noted earlier, I have accepted the Appellants' Geographic Neighbourhood, as being reasonable, and adequate in terms of arriving at demonstrable conclusions. I accept that the review of Sections 2.3.1, 3.2.1 and 4.1.5, are adequate to demonstrate that the proposal reflects, the intent and purpose of the Official Plan. Given the height of the building, SASP 211 does not have to be applied while evaluating the proposal. The evidence clearly demonstrated how the variances satisfied the appropriate performance standard. Given the absence of significant impact on the neighbour, and the compatibility between the built form, and what exists on the street, the proposal meets the tests of minor, and appropriate development. I commend the sensitivity of the Appellants, , Alexander Hora and Sydney Kert, to their neighbour's concerns about privacy, and make appropriate changes.

On the basis of this analysis, I conclude that the proposal satisfies the four tests under Section 45.1 of the Planning Act. The conditions to be imposed on the approval include a standard condition that requires Appellants to build in substantial compliance with the submitted Plans, and Elevations. The Appellants have voluntarily suggested the

imposition of an extra condition, to respond to the neighbour's concerns about privacy- I am satisfied with the suggested wording, and have included the same as a condition.

I conclude by stating that the Appeal respecting 114 MacPherson Avenue is allowed in part, and the proposal is approved in its entirety, subject to the two conditions discussed above. The Appeal's being allowed in part, reflects the changes to the variances, made as a result of the Settlement

## **DECISION AND ORDER**

1. The Appeal respecting 114 MacPherson is allowed in part, and the decision of the Committee of Adjustment dated July 11, 2019, is set aside.

2. The following variances are approved:

**1. Chapter 10.10.40.10.(2), By-law 569-2013**

The maximum permitted height of all side exterior main walls facing a side lot line is 9.5 m. The height of the side exterior main walls facing a side lot line will be 10.49 m.

**2. Chapter 10.10.40.30.(1)(A), By-law 569-2013**

The maximum permitted depth of a semi-detached house is 17.0 m.

The altered three-storey semi-detached house will have a depth of 18.081 m.

**3. Chapter 10.10.40.40.(1)(A), By-law 569-2013**

The maximum permitted floor space index of a semi-detached house is 0.6 times the area of the lot (120.58 m<sup>2</sup>). The altered three-storey semi-detached house will have a floor space index equal to 1.094 times the area of the lot ( 219.88 m<sup>2</sup>).

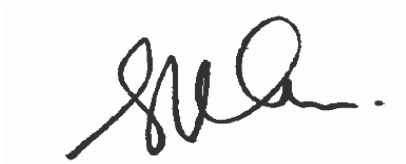
3. No other variances are approved.

4. The following conditions are imposed on the approval:

1. The building shall be completed substantially in accordance with the site plan and elevations prepared by Re: placement Design Inc. and dated October 21, 2019.
2. Any deck or platform on the third floor shall not be located beyond the northerly wall of the existing second floor.

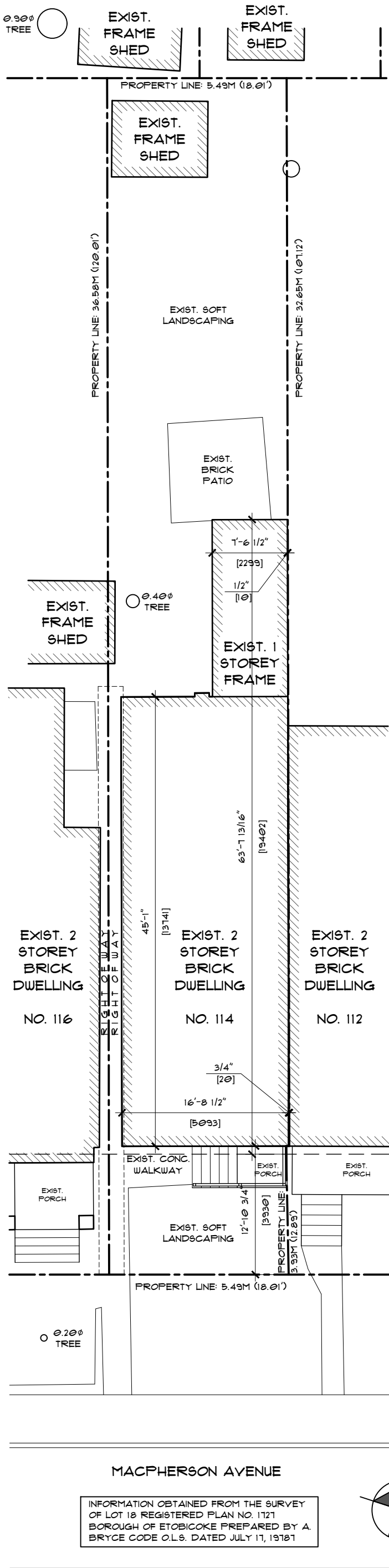
So orders the Toronto Local Appeal Body

X

A handwritten signature in black ink, appearing to read 'S. Gopikrishna', is written over a light gray rectangular background.

---

S. Gopikrishna  
Panel Chair, Toronto Local Appeal Body



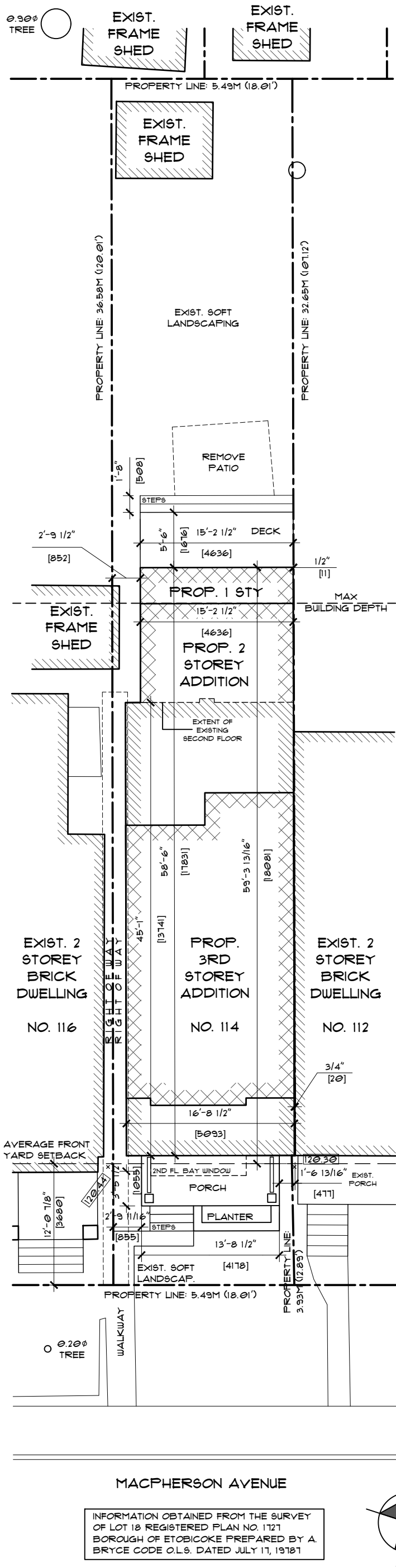
1 SITE PLAN - EXISTING  
ZI SCALE: 3/16"=1'-0"

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**re: placement**  
**DESIGN INC.**  
911 DAVENPORT ROAD  
TORONTO, ONTARIO  
TEL: 416-531-1435  
REPLACEMENTDESIGN.COM

Project:  
114 MACPHERSON AVE.  
TORONTO, ONTARIO  
PROPOSED ADDITION  
PROJECT NUMBER: 18-155

Date:  
21 OCT '19  
Drawing No:  
**Z1**



LOT AREA:	200.96M <sup>2</sup>	(2163.14 S.F.)
PROP. COVERAGE	96.98M <sup>2</sup>	(1043.85 S.F.)
GROSS FLOOR AREAS		
1ST FL. EXIST.:	82.47M <sup>2</sup>	(887.68 S.F.)
1ST FL. PROP.:	88.94M <sup>2</sup>	(957.31 S.F.)
2ND FL. EXIST.:	70.03M <sup>2</sup>	(753.81 S.F.)
2ND FL. PROP.:	85.52M <sup>2</sup>	(920.54 S.F.)
3RD FL. PROP.:	45.42M <sup>2</sup>	(488.90 S.F.)
EXISTING TOTAL GFA:	152.50M <sup>2</sup>	(1641.49 S.F.)
PROPOSED TOTAL GFA:	219.88M <sup>2</sup>	(2,366.75 S.F.)
FLOOR SPACE INDEX		
LOT AREA:	200.96M <sup>2</sup>	(2163.12 S.F.)
PROPOSED TOTAL GFA:	219.88M <sup>2</sup>	(2,366.75 S.F.)
$\frac{219.88}{200.96} \times 100 = 109.4\%$		
	FSI	1.094X
LANDSCAPED OPEN SPACE		
LOT AREA:	200.96M <sup>2</sup>	(2163.14 S.F.)
PROP. COVERAGE	-96.98M <sup>2</sup>	(1,043.85 S.F.)
EXIST. SHED	-6.81M <sup>2</sup>	(73.33 S.F.)
AREA OF LANDSCAPING	97.17M <sup>2</sup>	(1045.96 S.F.)
$\frac{97.17}{200.96} \times 100 = 48.35\%$ LANDSCAPING		
PROPOSED FRONT YARD - LANDSCAPING STATISTICS		
FRONT YARD AREA:	21.39M <sup>2</sup>	(230.21 S.F.)
PERMITTED ENCROACHMENTS:		
(A) PROP. PORCH	6.37M <sup>2</sup>	(68.52 S.F.)
(B) PROP. STEPS	1.01M <sup>2</sup>	(10.83 S.F.)
FRONT LANDSCAPE AREA TOTAL:	14.02M <sup>2</sup>	(150.86 S.F.)
HARD LANDSCAPING:		
(C) PROP. WALKWAY	1.85M <sup>2</sup>	(19.91 S.F.)
(D) PLANTER WALLS	0.92M <sup>2</sup>	(9.89 S.F.)
SOFT LANDSCAPING:		
AREA OF LANDSCAPING-HARD=	2.77M <sup>2</sup>	(29.80 S.F.)
LANDSCAPE AREA - HARD LANDSCAPE		
$14.02M^2 - 2.77M^2 = 11.25M^2$		
$\frac{11.25}{14.04} \times 100 = 80.01\%$ SOFT LANDSCAPING		
PROPOSED REAR YARD - LANDSCAPING STATISTICS		
REAR YARD AREA:	81.01M <sup>2</sup>	(872.00 S.F.)
HARD LANDSCAPING:		
(A)PROP. DECK/STAIRS	9.98M <sup>2</sup>	(107.39 S.F.)
(B)EXIST. SHED	6.81M <sup>2</sup>	(73.33 S.F.)
TOTAL (A+B+C)=	16.79M <sup>2</sup>	(180.72 S.F.)
SOFT LANDSCAPING:		
AREA OF LANDSCAPING-HARD=	64.22M <sup>2</sup>	(691.28 S.F.)
$\frac{64.22}{81.01} = 79.27\%$ SOFT LANDSCAPING		

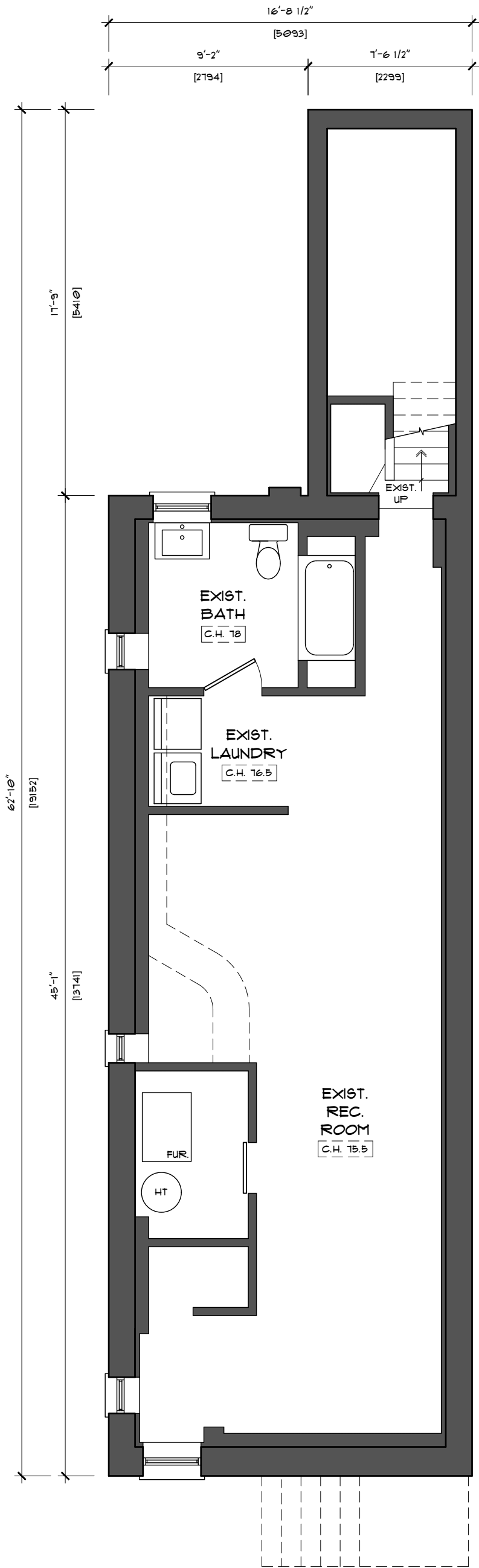
1 SITE PLAN - PROPOSED  
Z2 SCALE: 3/16"=1'-0"

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Drawing No:  
**Z2**



1 BASEMENT FLOOR PLAN - EXISTING  
Z3 SCALE: 3/16"=1'-0"

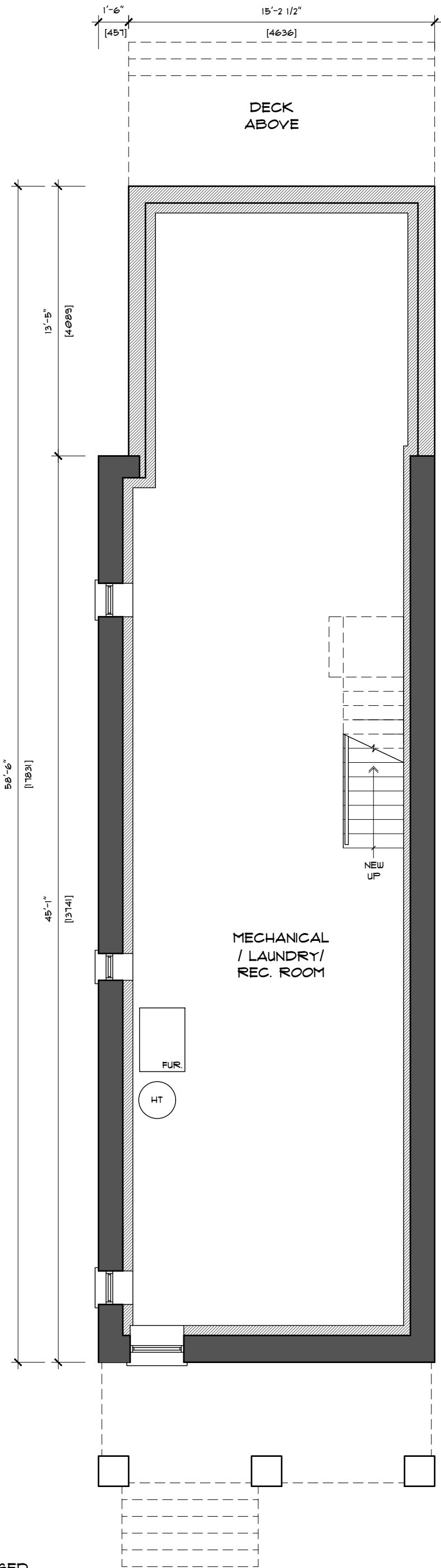
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**Z3**





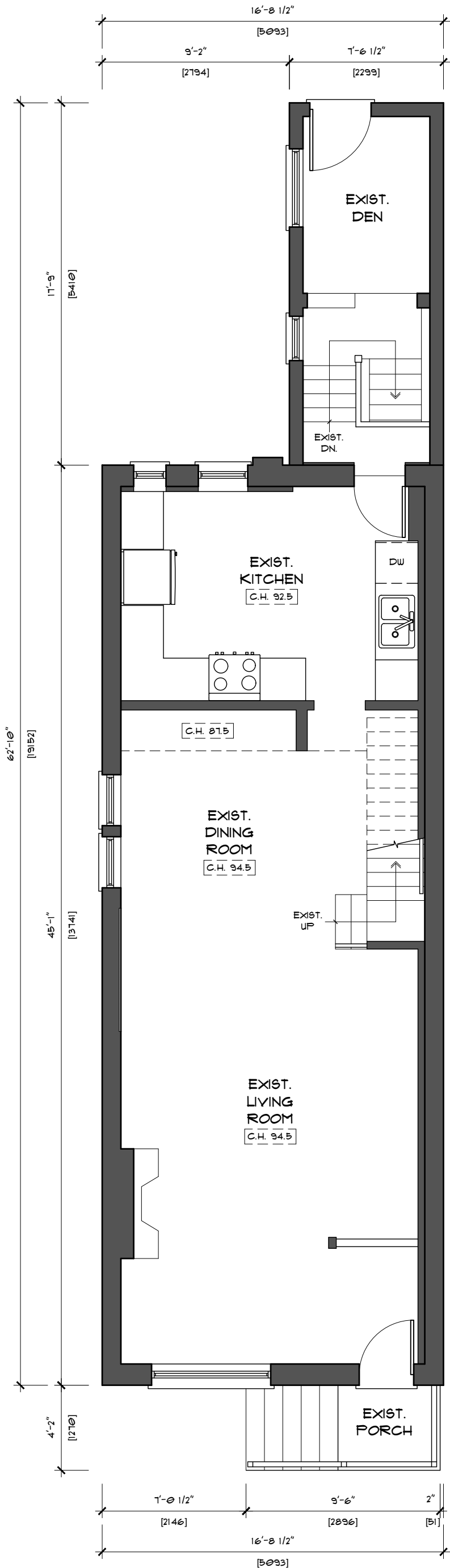
1 BASEMENT FLOOR PLAN - PROPOSED  
Z4 SCALE: 3/16"=1'-0"

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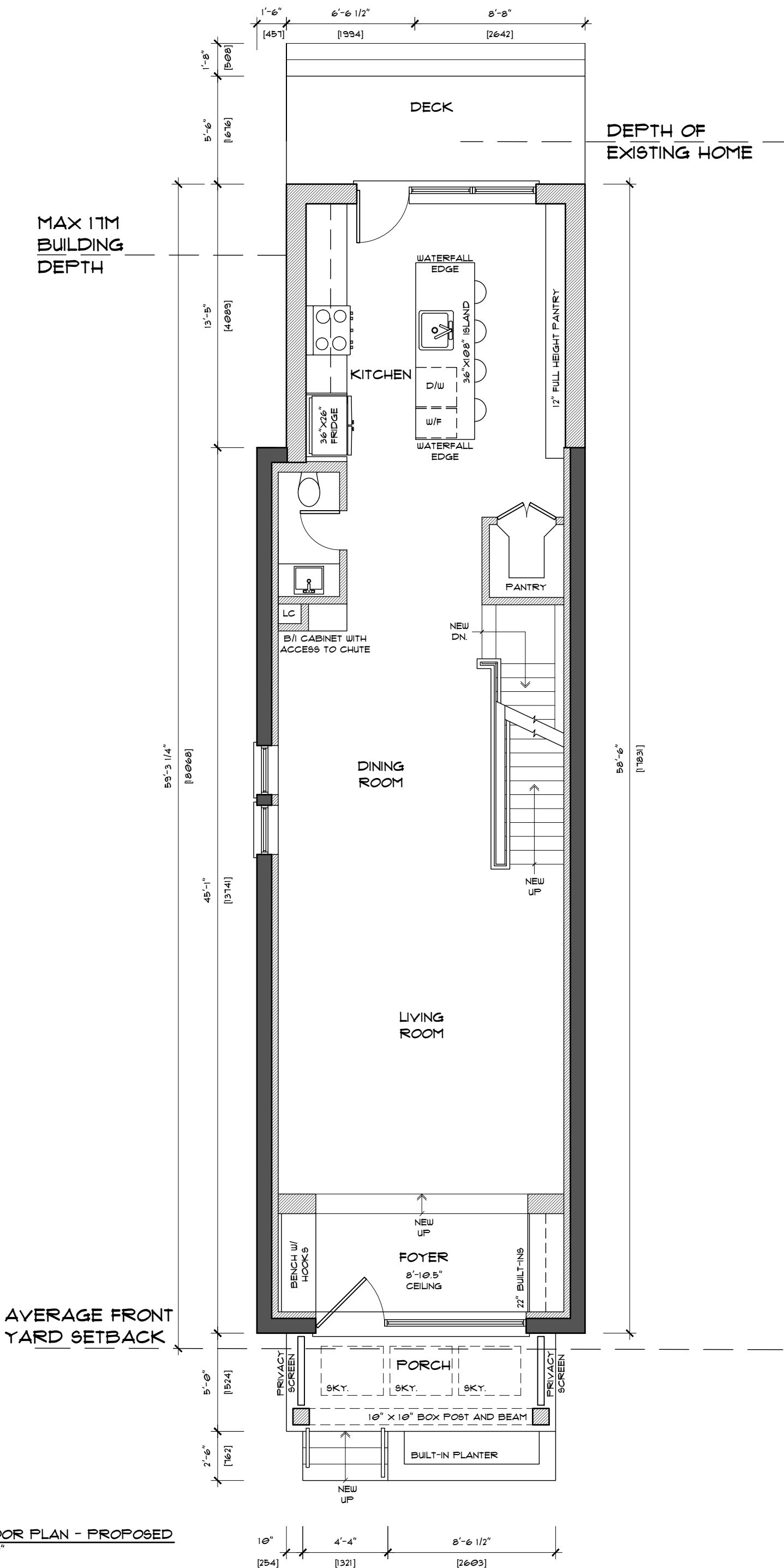
1 GROUND FLOOR PLAN - EXISTING  
Z5 SCALE: 3/16"=1'-0"

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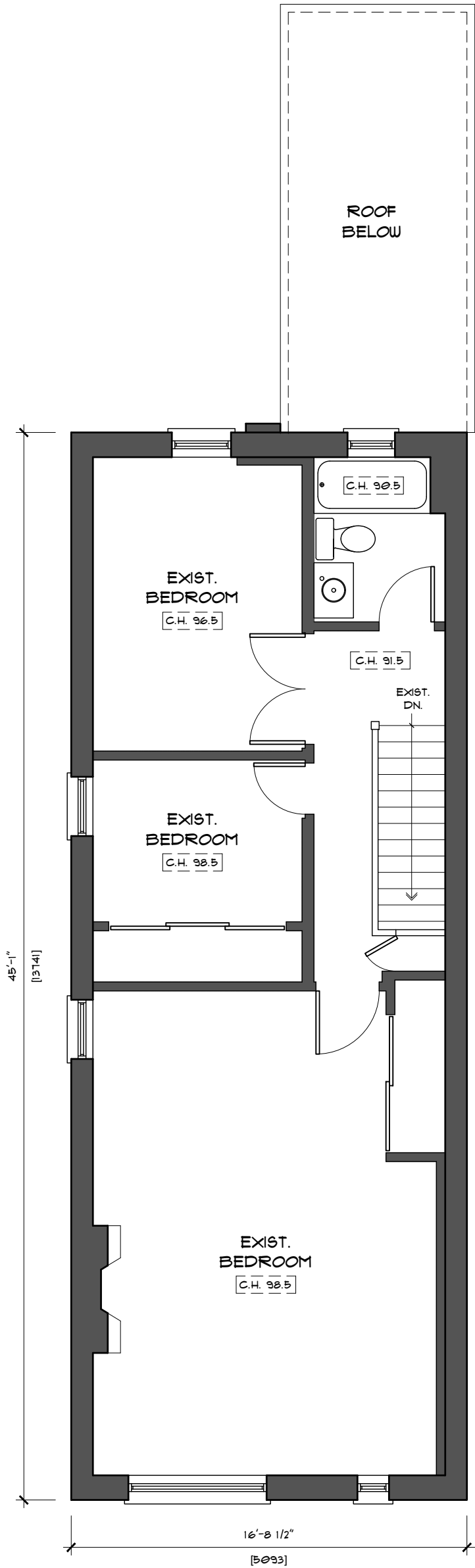
1 GROUND FLOOR PLAN - PROPOSED  
Z6 SCALE: 3/16"=1'-0"

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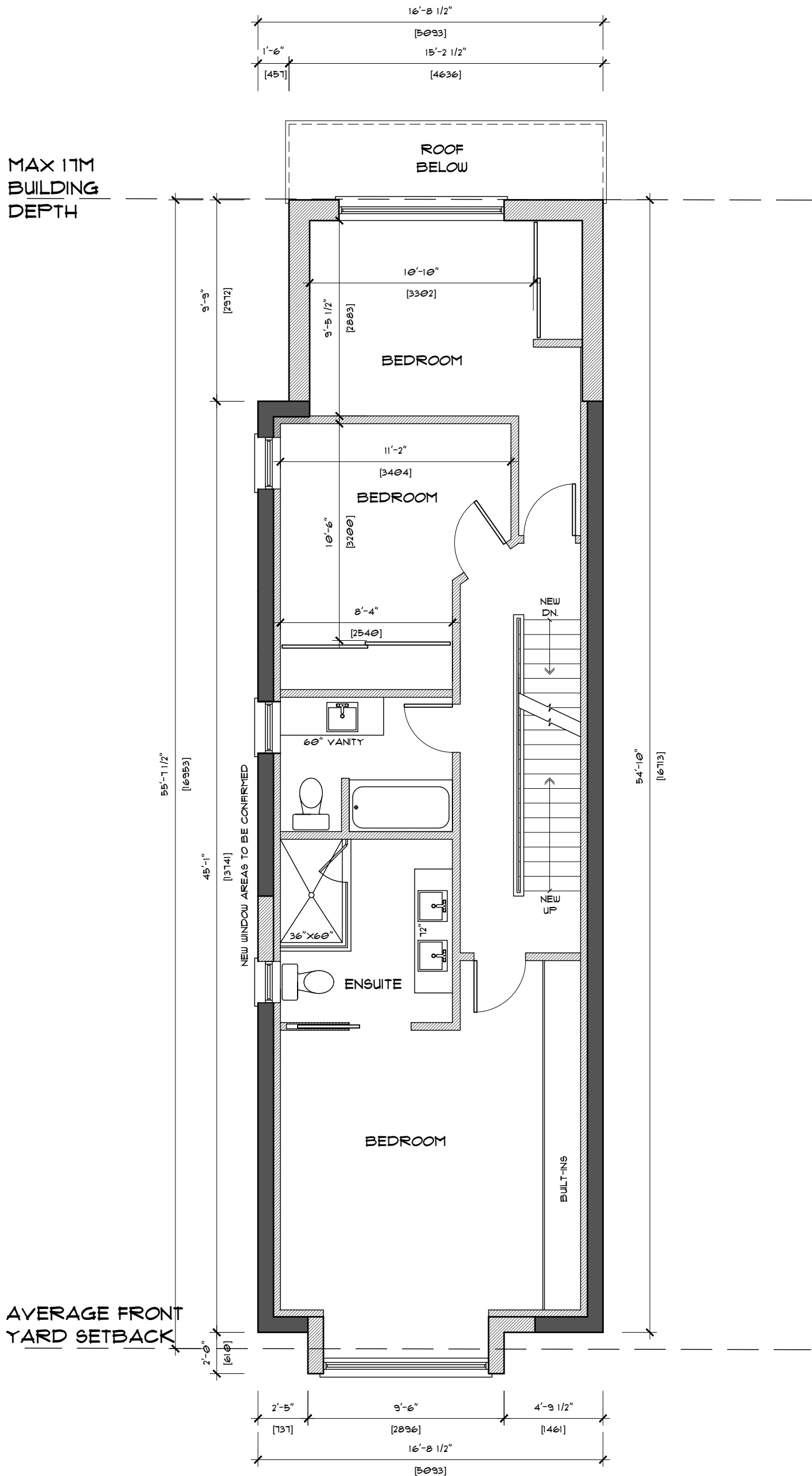
1 SECOND FLOOR PLAN - EXISTING  
Z1 SCALE: 3/16"=1'-0"

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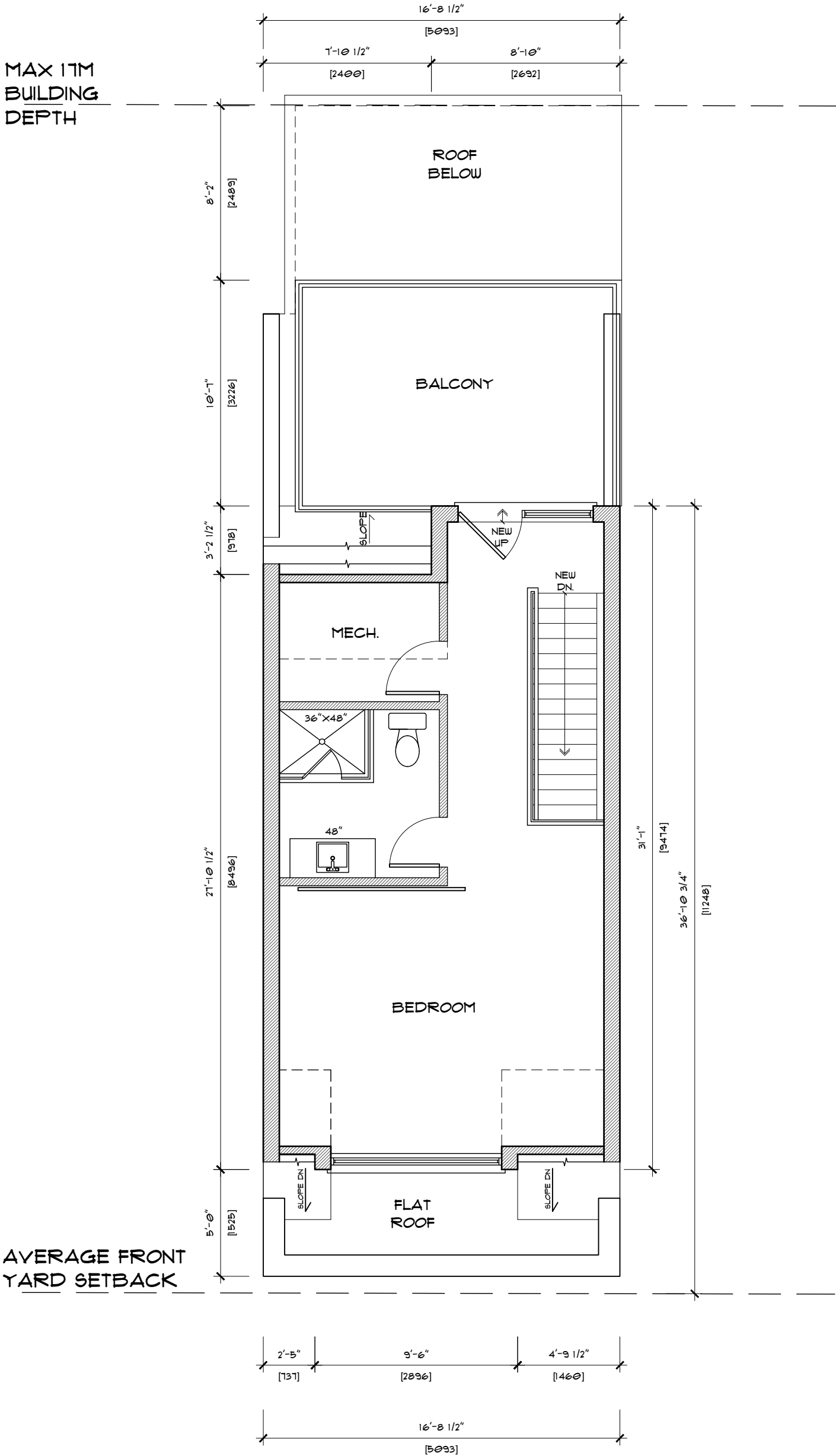
1 SECOND FLOOR PLAN - PROPOSED  
Z8 SCALE: 3/16"=1'-0"

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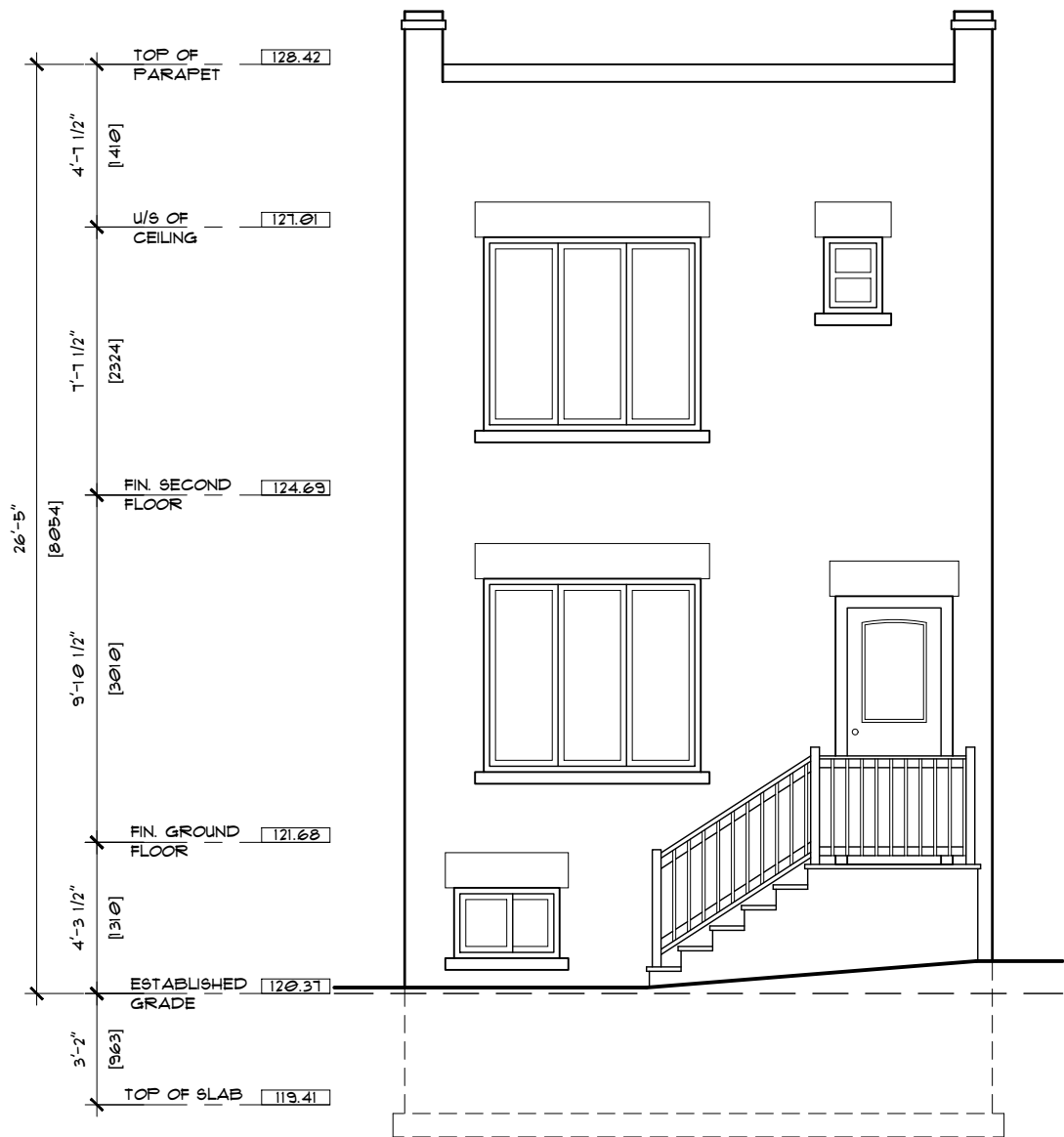
1 THIRD FLOOR PLAN - PROPOSED  
Z9 SCALE: 3/16"=1'-0"

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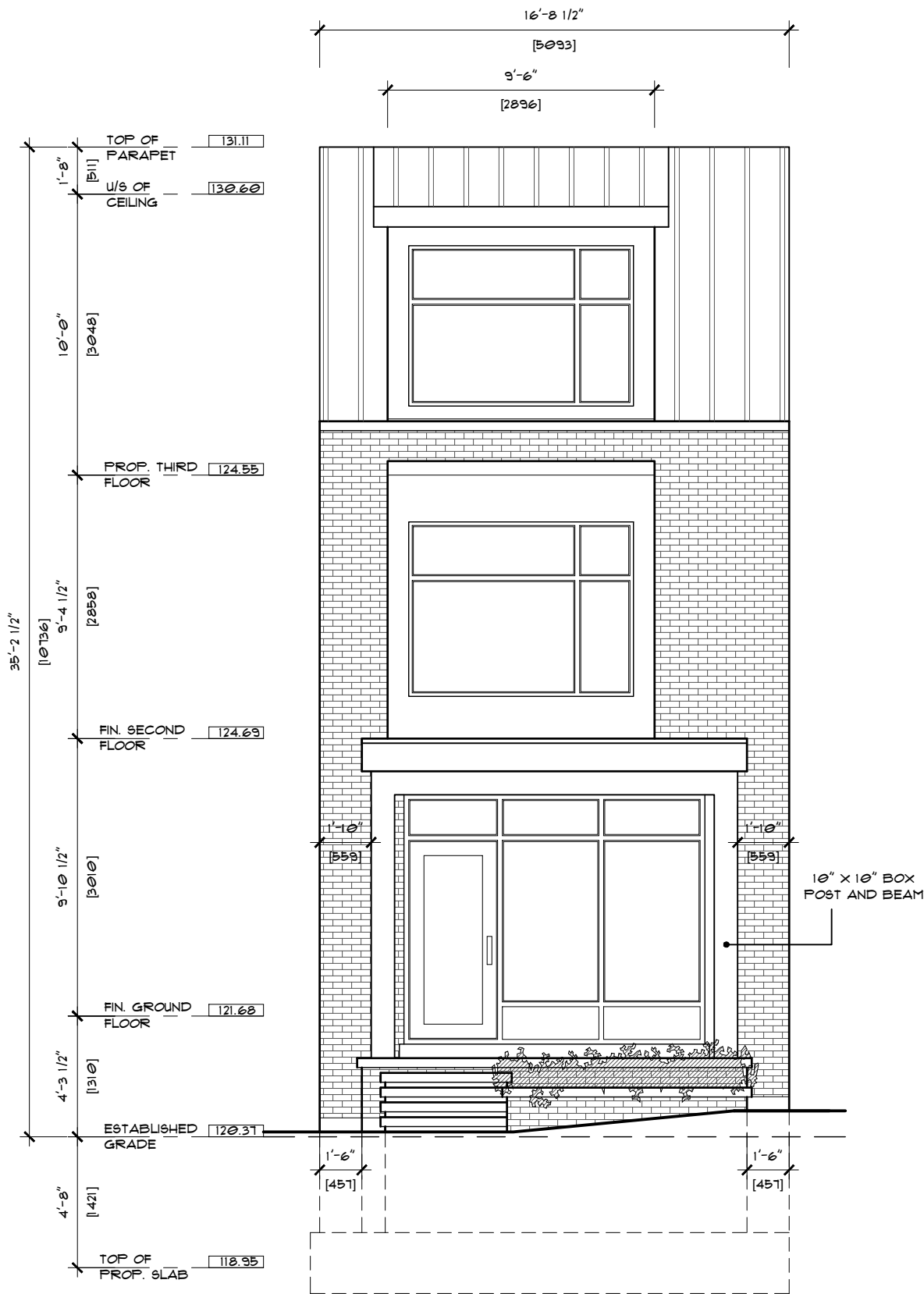
1 SOUTH ELEVATION - EXISTING  
Z10 SCALE: 3/16"=1'-0"

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1 SOUTH ELEVATION - PROPOSED  
Z11 SCALE: 3/16"=1'-0"

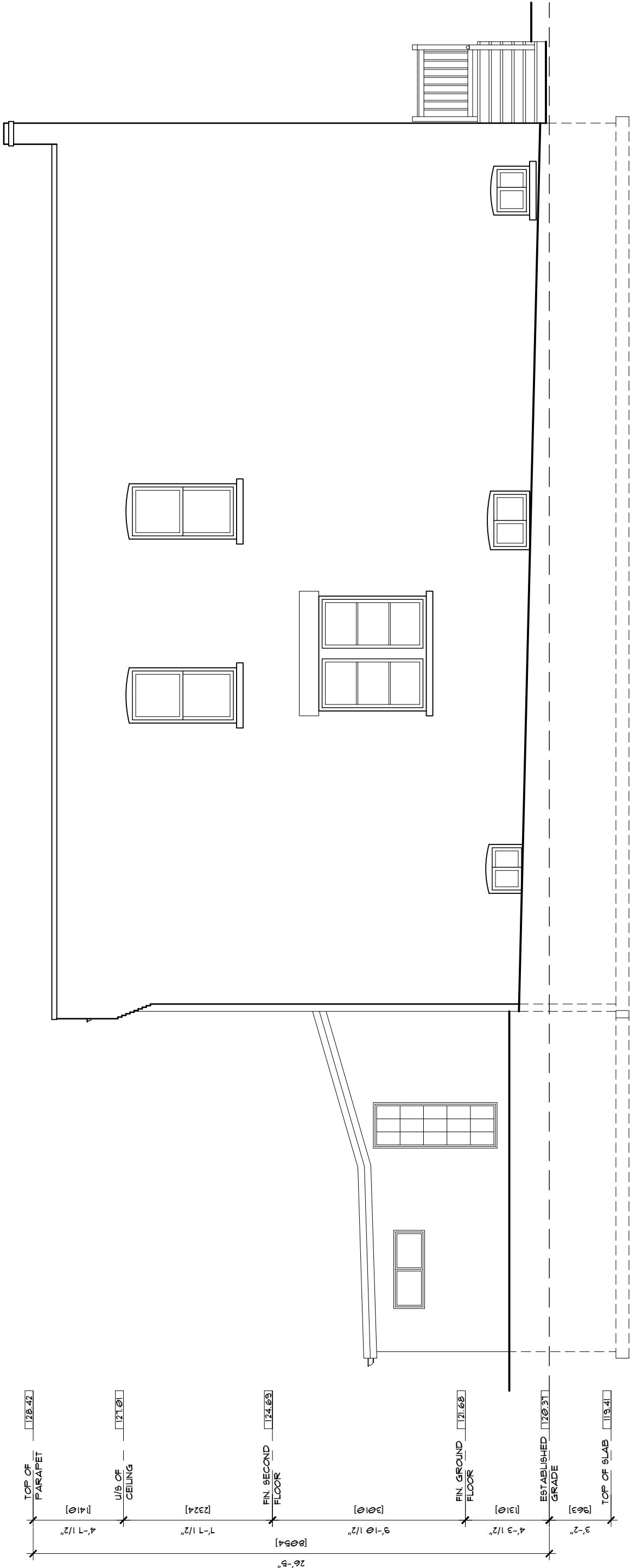
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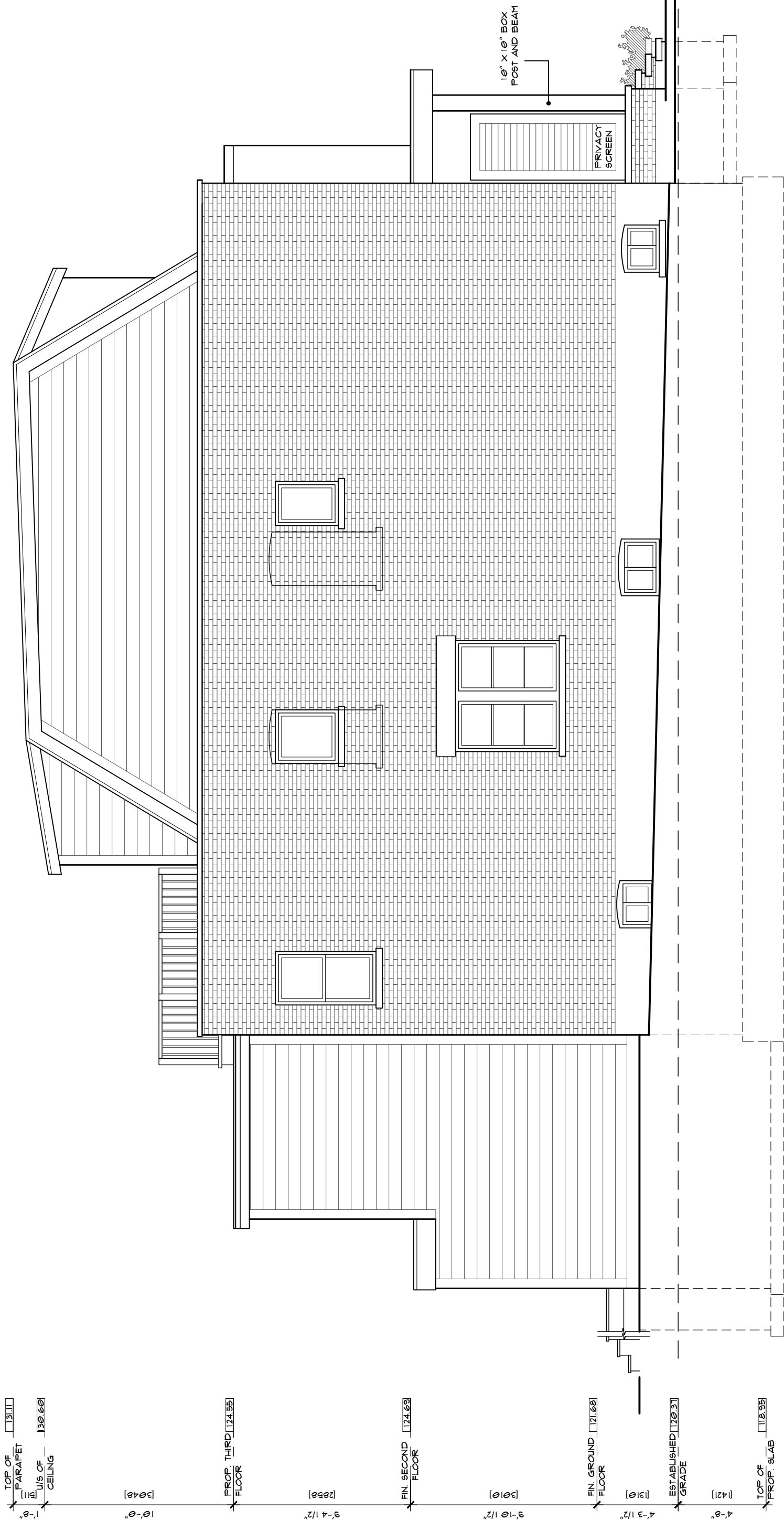
1 WEST ELEVATION - EXISTING  
Z12 SCALE: 3/16"=1'-0"

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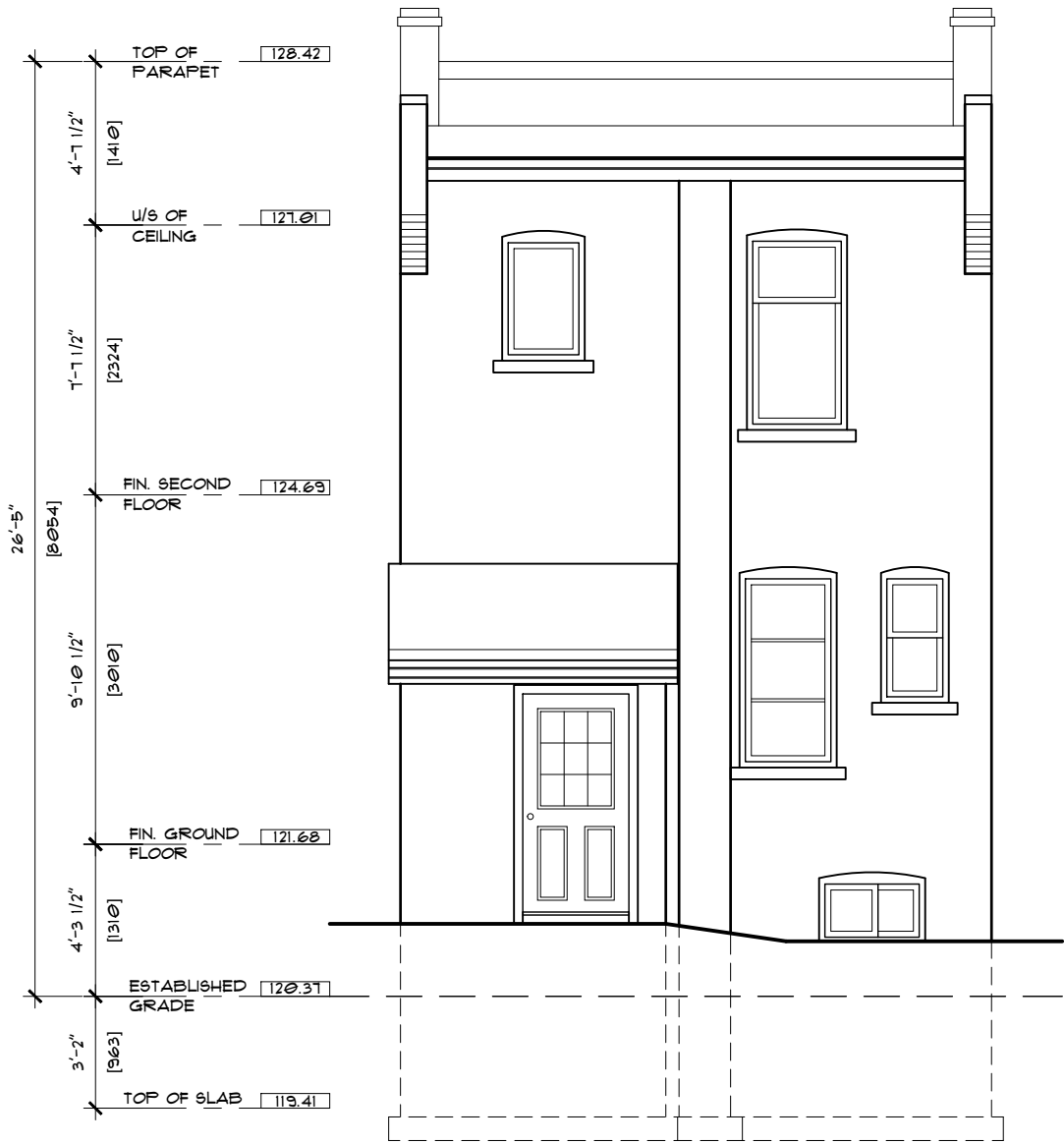
1 WEST ELEVATION - PROPOSED  
Z13 SCALE: 3/16"=1'-0"

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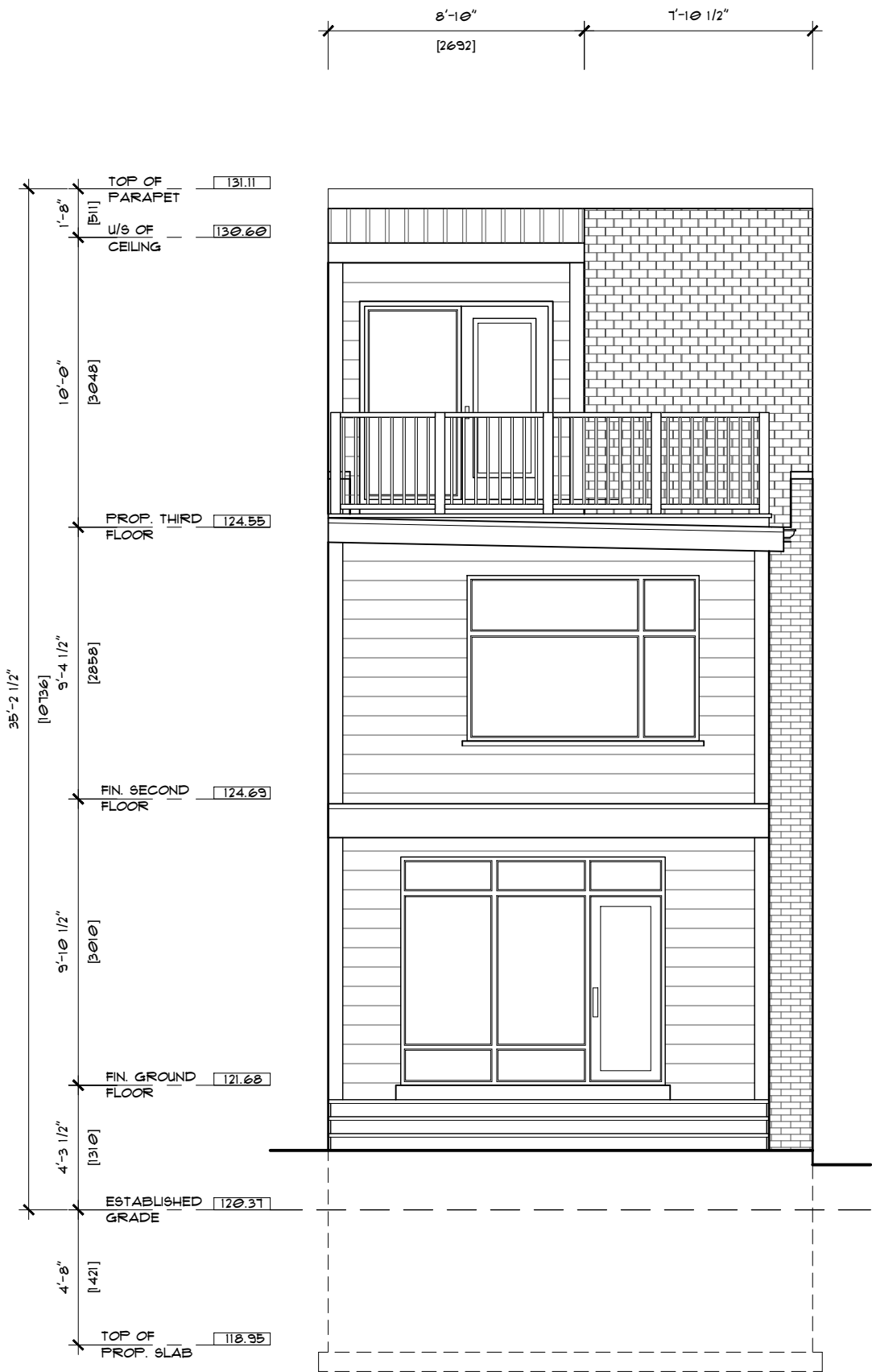
1 NORTH ELEVATION - PROPOSED  
Z14 SCALE: 3/16"=1'-0"

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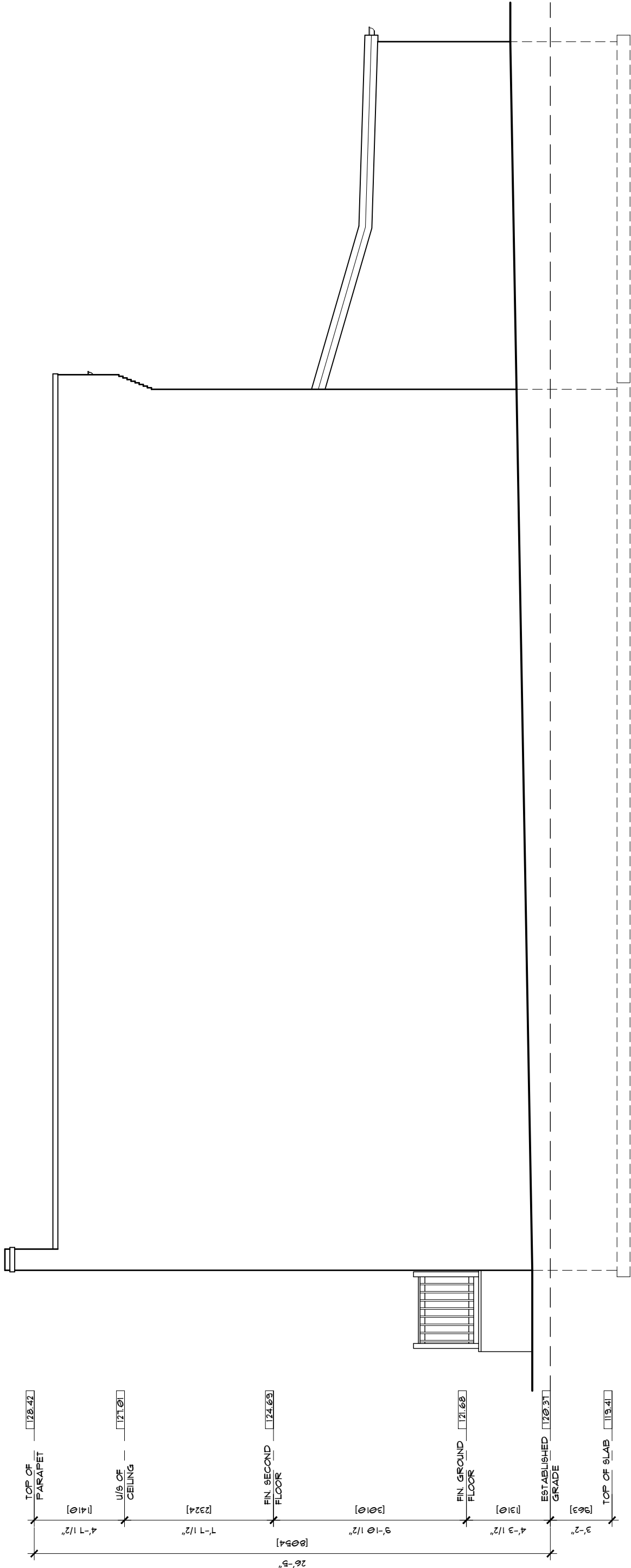
1 NORTH ELEVATION - PROPOSED  
Z15 SCALE: 3/16"=1'-0"

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**Z15**



1 EAST ELEVATION - EXISTING  
Z16 SCALE: 3/16"=1'-0"

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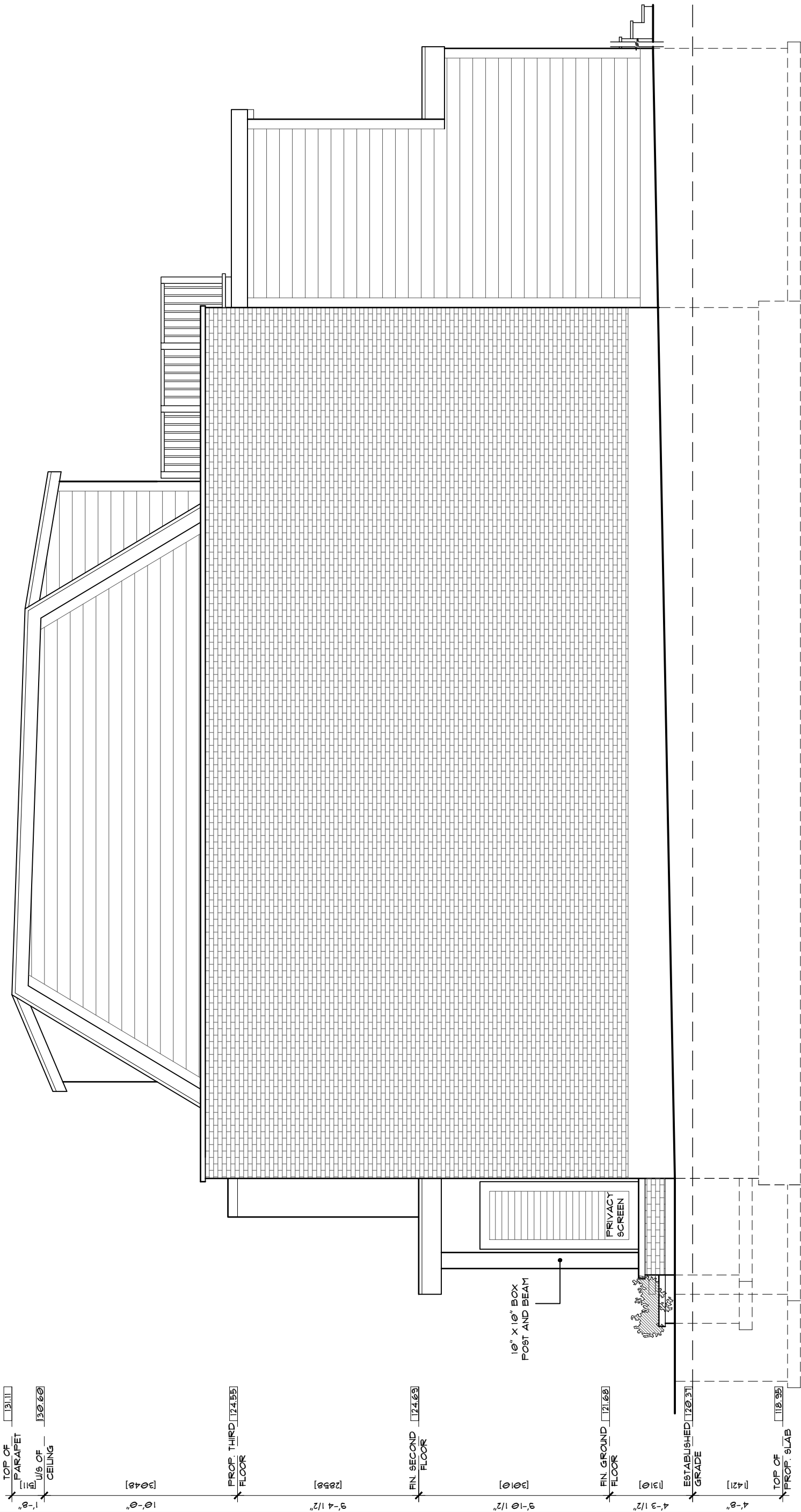
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1 EAST ELEVATION - PROPOSED  
21 SCALE: 3/16"=1'-0"

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