

DECISION AND ORDER

Decision Issue Date Thursday, February 06, 2020

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): BRENDAN HOWE

Applicant: TREVOR GAIN & ASSOCIATES

Property Address/Description: 38 RYKERT CRESCENT

Committee of Adjustment Case File: 19 185171 NNY 15 MV (A0486/19NY)

TLAB Case File Number: 19 221916 S45 15 TLAB

Hearing date: Wednesday, January 15, 2020

DECISION DELIVERED BY JUSTIN LEUNG

APPEARANCES

NAME	ROLE	REPRESENTATIVE
TREVOR GAIN & ASSOCIATES	Applicant	
JESSICA HOWE	OWNER	
BRENDAN HOWE	Appellant	IAN FLETT
ROBERT WILSON	Party	
MICHAEL MANETT	Expert Witness	

INTRODUCTION

This is an appeal by the applicant from a decision of the North York Committee of Adjustment (COA) pertaining to a request to permit a series of 12 variances for 38 Ryker Crescent (subject property).

The variances, if allowed by the Toronto Local Appeal Body (TLAB), would permit the construction of a new detached dwelling.

This property is located in the Leaside-Bennington neighbourhood in the East York district of the City of Toronto (City) which is situated north of Eglinton Avenue East and bounded by Brentcliffe Road to the west and Leslie Street to the east. The property is located on Rykert Crescent, south of Sunnybrook Park and north of Eglinton Avenue East.

At the beginning of the hearing, I informed all parties in attendance that I had performed a site visit of the subject property and the immediate neighbourhood and had reviewed all materials related to this appeal.

BACKGROUND

The variances that had been requested are outlined as follows:

- 1. Chapter 10.20.40.10.(1), By-law No. 569-2013**
The maximum permitted building height is 8.50m. The proposed building height is 9.0m.
- 2. Chapter 10.20.40.20.(1), By-law No. 569-2013**
The maximum permitted building length is 17.00m. The proposed building length is 19.46m.
- 3. Chapter 10.20.40.30.(1), By-law No. 569-2013**
The maximum permitted building depth is 19.00m. The proposed building depth is 19.49m.
- 4. Chapter 10.20.40.40.(1), By-law No. 569-2013**
The maximum permitted floor space index is 0.60 times the lot area. The proposed floor space index is 0.69 times the lot area.
- 5. Chapter 10.20.40.70.(3), By-law No. 569-2013**
The minimum required side yard setback is 1.20m. The proposed west side yard setback is 0.91m.
- 6. Chapter 10.20.40.70.(3), By-law No. 569-2013**
The minimum required side yard setback is 1.20m. The proposed east side yard setback is 0.91m.
- 7. Chapter 10.5.30.40.(2), By-law No. 569-2013**
A platform without main walls, such as a deck, porch, balcony or similar structure, attached to or within 0.3 metres of a building, must comply with the required minimum building setbacks for the zone; the required side yard setback is 1.20m. The proposed west side yard setback for the deck is 0.91m.

8. Chapter 10.5.30.40.(2), By-law No. 569-2013

A platform without main walls, such as a deck, porch, balcony or similar structure, attached to or within 0.3 metres of a building, must comply with the required minimum building setbacks for the zone; the required side yard setback is 1.20m. The proposed west side yard setback for the front porch is 0.91m.

9. Chapter 5.10.40.70.(6), By-law No. 569-2013

If the Toronto and Region Conservation Authority determines that a shoreline hazard limit or a stable top-of-bank crosses a lot, a building or structure on that lot must be set back a minimum of 10m from that shoreline hazard limit or stable top of-bank. The proposed building set back is within the 10m requirement.

10. Chapter 5.10.40.70.(6), By-law No. 569-2013

No part of a building or structure may be in a required minimum building setback; the required side yard setback is 1.20m. The proposed west side yard setback for the canopy is 0.91m.

11. Chapter 5.10.40.80.(1), By-law No. 569-2013

On lands under the jurisdiction of the Toronto and Region Conservation Authority, a building or structure on a lot must be no closer than 10m from a shoreline hazard limit or a stable top-of-bank not on that lot. The proposed building or structure is within the 10 m requirement.

12. Section 6.3.3, By-law No. 1916

The maximum permitted building height is 8.50m. The proposed building height is 9.0m.

These variances were heard and with variances # 1, 4, 5, 7, 8, 9, 10, 11 and 12 approved at the August 29, 2019 North York COA meeting. Variances # 2, 3 and 6 were refused by the COA. Subsequently, an appeal was filed on September 16, 2019 by the property-owners of 38 Rykert Crescent within the 20 day appeal period as outlined by the *Planning Act*. The appeal was to request that the three refused variances to be re-considered by the tribunal. The TLAB received the appeal and scheduled a hearing on January 15, 2020 for all relevant parties to attend.

MATTERS IN ISSUE

The appellant/applicant contends that the COA erred in their refusal of the three variance requests. They believe that that all twelve variance requests, cumulatively, should have been approved in consideration of the site context. The subject property is also located within a Toronto and Region Conservation Authority (TRCA) regulated area. The TLAB must assess this appeal to determine if the potential approval of the

overall proposal would be consistent with establishing planning and environmental regulations. The tribunal would also, in a *de novo* or new hearing setting, re-examine proposal to further determine if it does meet the requirements stipulated by the *Planning Act*.

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').

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

Ian Flett, legal counsel for the appellant/property-owner Brendan Howe, commenced by outlining that the opposing party Robert Wilson was not in attendance at the hearing. TLAB staff also indicated that Mr. Wilson had not contacted them prior to the hearing.

Mr. Flett outlined that the appeal is to request that that the TLAB approve the three variances which the previous COA had refused. He indicated the intention to call an expert witness, Michael Manett, to provide evidence in relation to this matter. Mr. Flett further stated that they had submitted late drawings to provide further clarification on the proposal and its potential impact to the neighbouring properties. There is also provided aerial photography as compiled by Mr. Manett.

Upon review of Mr. Manett's credentials, I qualified him in the field of land use planning. Mr. Manett opined that the development proposal relates primarily to the 'top of bank' lands which are not constrained by environmental regulations, as stipulated by the TRCA. He also had compiled photographs of other houses in the area to provide a comparison in size and scale to the proposal at hand. With this evidentiary material, Mr. Manett opines that the proposed house will be consistent with the built type in the area.

As this is a regulated area, the TRCA was consulted on this matter and did provide comments on the proposal.

Mr. Manett described that the proposed home is situated as shown in the drawings to comply with front yard setback. The floor space index (FSI) relates to the size of the home. The increase in FSI of 0.69 times is a minor increase to what is allowed by the Zoning requirements. The proposed house is, in his opinion, an improvement in terms of its siting as it is further setback from the regulated area. This is a ravine property whereby development on the slope must be done properly. The architect as retained has taken into account the site context in the design proposed. The deck and porch as part of the proposal do not cumulatively result in an actual change in property setbacks as is measured and determined by the zoning examiners. Mr. Manett commented that the proposal being shown is consistent with the continued regeneration of the housing stock in the area. Mr. Flett inquired as to how the proposed house compares to the property to the west (which is the opposing parties' house). Mr. Mannett responded that the neighbouring house is of a larger size.

With respect to the City's Official Plan (OP), the proposal entails a detached dwelling which is permitted for this area's designation. In terms of Official Plan Amendment 320 (OPA 320), Mr. Manett opined that the neighbourhood study which he undertook and presented to the tribunal illustrates that the proposal at hand is compatible and similar to other existing houses of the area. In terms of building height, he further outlined that there are four other recent COA approved proposals which are similar to the proposal. Mr. Manett contended that the proposed house size is consistent with the housing stock of this area and would not be 'overbearing' in its appearance. The side yard setbacks would be an improvement from the original house on the site. With regards to the variance pertaining to TRCA regulations, the property's siting has been done in manner to avoid environmentally sensitive portions of the property. Moreover, TRCA was consulted and did not oppose this proposal. He ~~suggested~~ that the COA had not properly considered the overall proposal and site context in reaching its decision; hence, the appeal to the TLAB.

Mr. Manett's testimony was not cross-examined upon as there were no other parties in attendance. It is noted that the owner, Brendan Howe, the Applicant and owner's architect Trevor Gain were all in attendance at the hearing. As noted earlier, the opposing party, Robert Wilson, was not in attendance.

ANALYSIS, FINDINGS, REASONS

With the opposing party, Mr. Wilson, not in attendance, the tribunal was unable to further assess any potential concerns and issues he may have with the proposal. Cross examination of the appellant's expert witness was also not possible as Mr. Wilson was the sole party potentially adverse in interest to this matter. In my review of the submitted materials, Mr. Wilson also did not provide any additional materials (such as an affidavit) in addition to his election, for party status, form. As such, the TLAB did not have any

other materials from this party to assess prior to the hearing. Within such a context, the tribunal must continue with material submitted by the appellant only.

The expert witness, Michael Manett, made extensive use of aerial photography as part of his evidentiary submissions and illustrated the prevailing housing type for this area. This visual component demonstrated that the proposal being proffered to the TLAB is similar in its composition and orientation to other homes in the area. Furthermore, the site visit conducted also reinforced the notion that new house construction is occurring in this area. While the tribunal must conduct these proceedings as a *de novo* hearing, or a new hearing, the intent is that the TLAB must assess all materials with a fresh perspective. However, the *Planning Act* does delineate that the tribunal should also have consideration of previous decisions which relate to an appeal matter. Within this context, it is noted that the majority of variance requests being considered here had originally been approved by the COA. There were three variances which the Committee refused. These variances pertain to building depth, building length and side yard setback requirements. Mr. Manett did address this by providing an extensive analysis of these variances to demonstrate that the potential requested approval of these variances would be appropriate for the neighbourhood context. The photobook as provided by Mr. Manett does reinforce his argument that these variances, if approved, would not result in a building type which is dis-similar to the houses which are existing or have been built in this area.



Figure 1: Photobook excerpt from the Expert Witness Statement of Michael Manett, dated November 26, 2019

What is of further note is the relationship to the opposing party Mr. Wilson's property, at 40 Rykert Crescent. Mr. Wilson's property appears to be an in-fill home which is of larger scale and size to the current house on 38 Rykert Crescent. This is noteworthy as it demonstrates that the new house as proposed may not be as dominating onto this opposing party's property as may have initially been perceived.

This was shown during Mr. Manett's testimony where he showed images compared Mr. Wilson's house in relation to the adjacent properties and also in relation to 38 Rykert Crescent and the proposed house for this site.

With the evidence as provided to the TLAB, the tribunal accepts the evidence as presented by the Appellant. In terms of the significance of these lands being situated within the TRCA regulated area, the Appellant has been able to demonstrate that this property was 'grandfathered' or pre-existing the *Conservation Authority Act* regulations being imposed by the province. Furthermore, the appellant has engaged in comprehensive discussions with the TRCA to ensure the proposal is acceptable to that organization. Further control and oversight of this will be achieved through the TRCA permitting process. The tribunal does not believe, with the matter as presented and through a site visit that this proposal will result in any additional environmental degradation for this area. In addition, the house as posited by the appellant has been demonstrated to comply with OPA 320 by possessing a building type which is not atypical of this area.

The allowance of the three variance requests can be attributed to the site characteristics which the appellant's expert witness outlined in detail.

In reviewing other TLAB matters, there was a recent decision issued in relation to 85 Rykert Crescent. It is noted that in that instance, the TLAB Member Yao raised concerns regarding the floor space index (FSI) which was being requested. He subsequently did approve the appeal while excluding permission for the FSI request. However, the matter before us here does not relate to FSI. As such, there was an additional local impact which was to be considered for 85 Rykert Crescent which does not exist here. The tribunal finds that this proposal's overall impact and scale to be compatible with the ongoing neighbourhood development pattern. I am satisfied that the Application and appeal involved variances that individually and collectively meet the statutory tests and considerations in the manner detailed by the expert witness planner Mr. Manett.

DECISION AND ORDER

The appeal is allowed, and the variances in Appendix 1 are approved subject to the conditions therein and subject to the condition that the building must be constructed substantially in accordance with plans contained in the City staff report and include and attached in Appendix 2.

X



Justin Leung
Panel Chair, Toronto Local Appeal Body

Appendix 1

List of proposed variances

- 1. Chapter 10.20.40.10.(1), By-law No. 569-2013**
The maximum permitted building height is 8.50m. The proposed building height is 9.0m.
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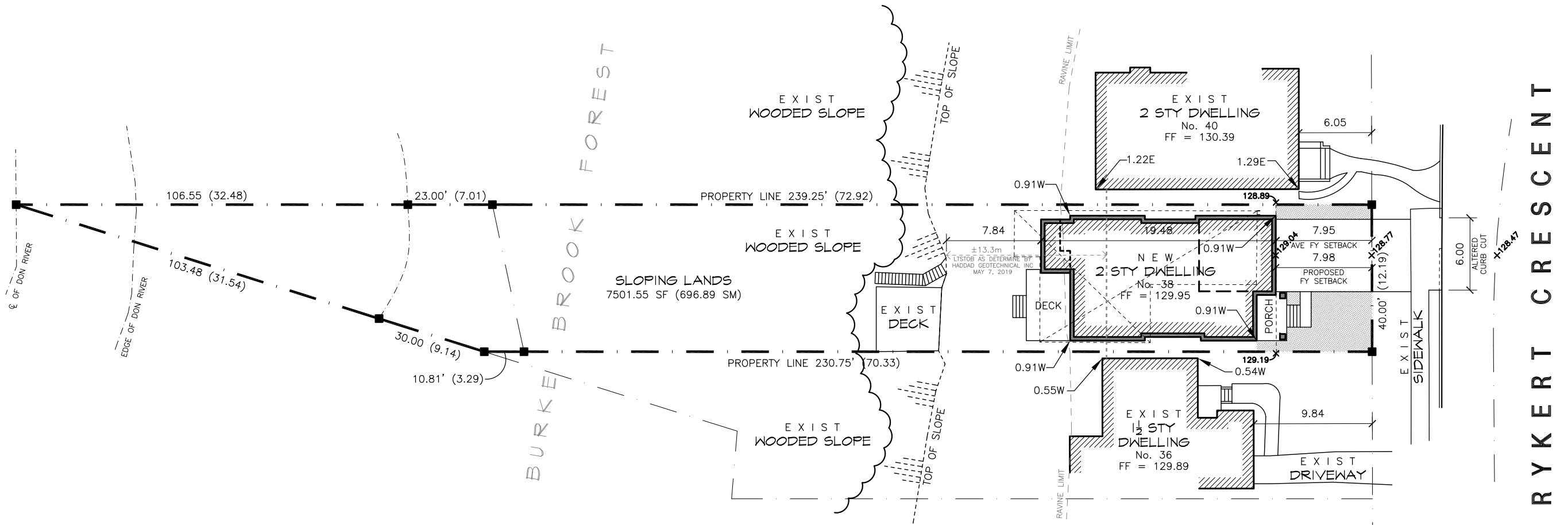
12. Section 6.3.3, By-law No. 1916

The maximum permitted building height is 8.50m. The proposed building height is 9.0m.

List of proposed conditions

1) That the proposed two storey detached dwelling be constructed substantially in accordance with the site plan, floor plan and elevations date stamped by City Planning on July 9, 2019, as prepared by Trevor Gain & Associates, dated July 1, 2019.

Appendix 2



DEVELOPMENT STATISTICS (BELOW LONG TERM STABLE TOP OF BANK)

	EXISTING	PROPOSED
WOOD DECK (AT TOP OF BANK)	28.14 sm	28.14 sm
WOOD STAIR TO RAVINE	5.46 sm	5.46 sm
WOOD DECK AT GRADE	27.45 sm	22.79 sm
PAVERS AT GRADE	31.85 sm	0.00 sm
2STY HABITABLE SPACE	68.51 sm	41.98 sm
TOTAL	161.41 sm	98.37 sm

LANDSCAPE STATISTICS

FRONT YARD AREA = 1127.41 SF (104.74 SM)
 LANDSCAPED AREA = 611.96 SF (56.85 SM)
 = 54%
 SOFT LANDSCAPING = 456.80 SF (42.44 SM)
 = 75%

= SOFT LANDSCAPING

SITE STATISTICS

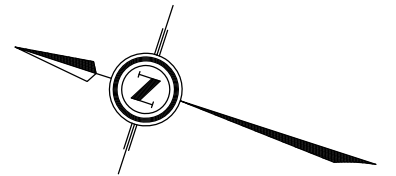
ZONING = RIB (BYLAW 1916)
 = RD (BYLAW 569-2013)

TOTAL SITE AREA = 12,207.23 SF (1134.05 SM)
 SLOPING LANDS BELOW TOP OF SLOPE = 7501.55 SF (696.89 SM)
 TABLE LAND BELOW LTSTOB = 1817.11 SF (168.82 SM)

CALCULATED SITE AREA ABOVE LTSTOB = 2888.57 SF (268.36 SM)

ALLOWED COVERAGE = 1646.99 SF (153.01 SM)	ALLOWED GFA = 2823.41 SF (262.29 SM)
= 35%	= 60%
ABOVE LTSTOB = 1011.00 SF (93.92 SM)	ABOVE LTSTOB = 1733.14 SF (161.01 SM)
= 35%	= 60%
PROPOSED COVERAGE = 1906.59 SF (177.12 SM)	PROPOSED GFA = 3234.46 SF (300.48 SM)
= 41%	= 69%
ABOVE LTSTOB = 66%	ABOVE LTSTOB = 120%

GROUND FLOOR = 1529.18 SF (142.06 SM)
 SECOND FLOOR = 1705.28 SF (158.42 SM)
 TOTAL GFA = 3234.46 SF (300.48 SM)



SITE PLAN SCALE: 1:250



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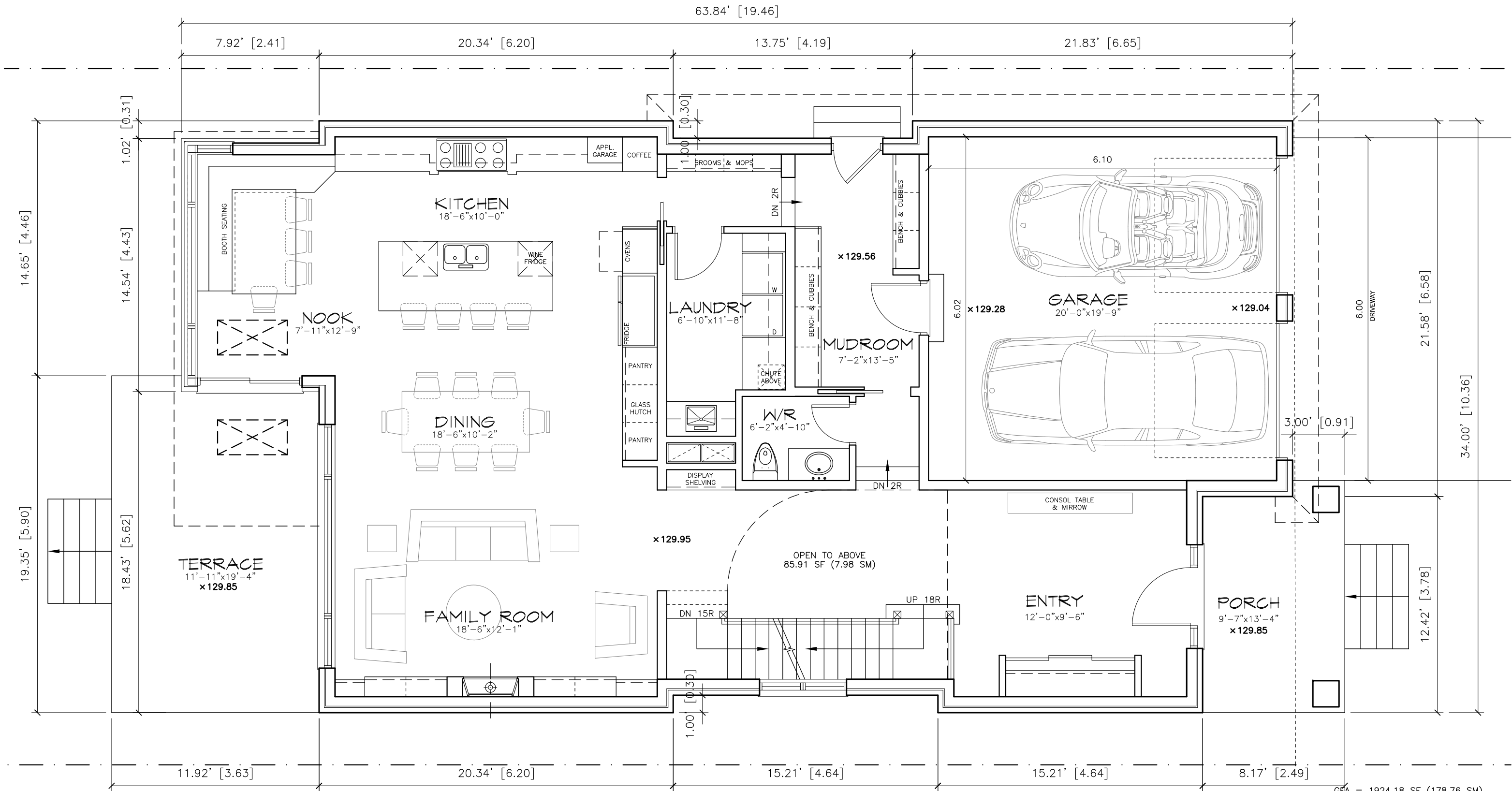
NEW SFD DWELLING AT:
38 RYKERT CRESCENT

TORONTO, ONTARIO

SITE PLAN

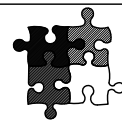
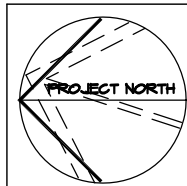
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GFA = 1924.18 SF (178.76 SM)
 DEDUCTED GARAGE = -[395.00 SF (36.70 SM)]
 TOTAL GFA = 1529.18 SF (142.06 SM)

GROUND FLOOR PLAN
 SCALE: 1:75



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 trevor.gain@rogers.com

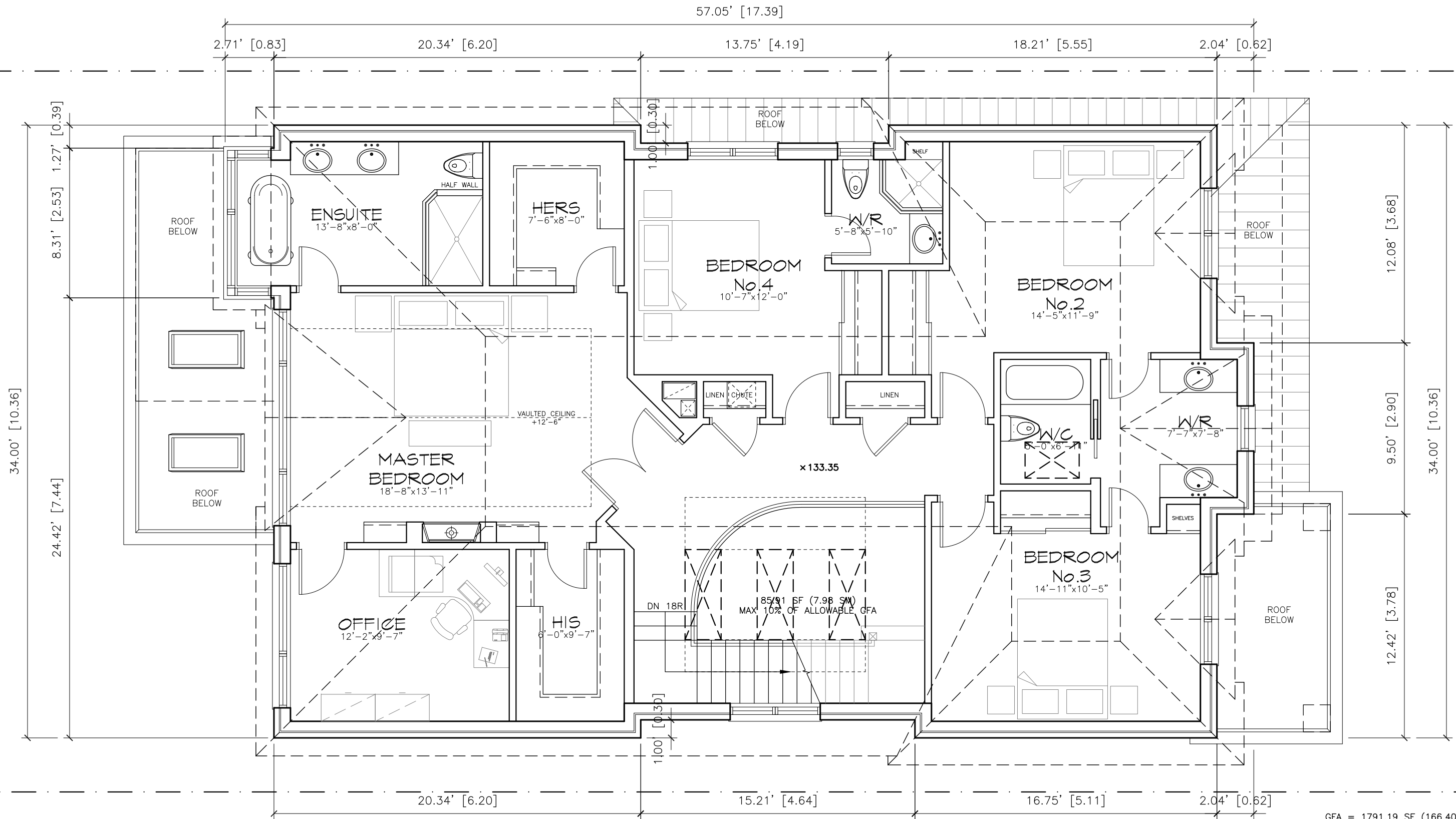
NEW SFD DWELLING AT:
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FLOOR PLANS

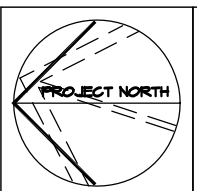
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GFA = 1791.19 SF (166.40 SM)
 DEDUCTED VOID = -[85.91 SF (7.98 SM)]
 TOTAL GFA = 1705.28 SF (158.42 SM)

SECOND FLOOR PLAN
 SCALE: 1:75

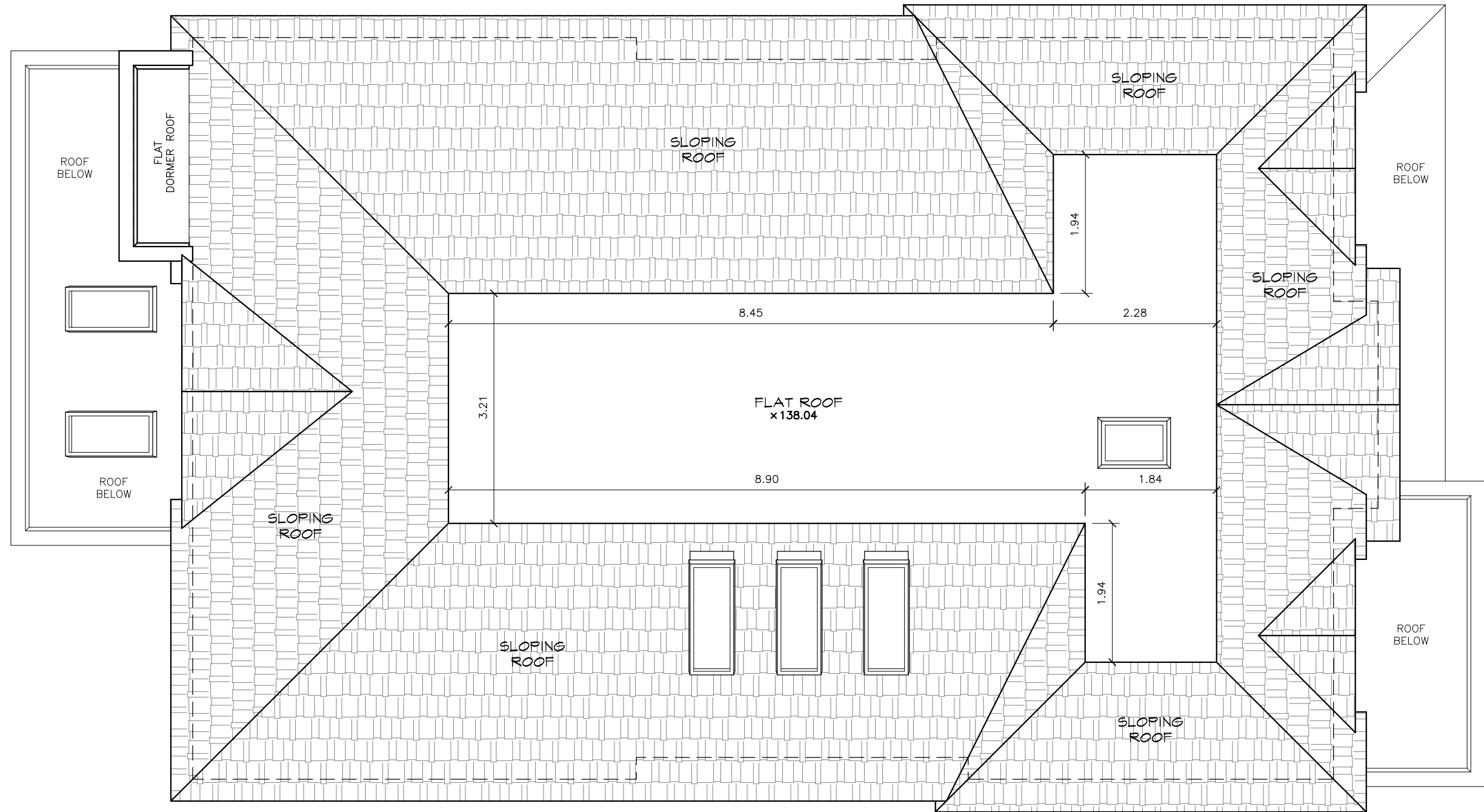


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FLOOR PLANS

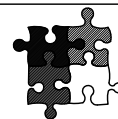
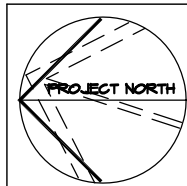
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ROOF AREA:

TOTAL ROOF AREA = 2023.55 SF (187.99 SM)
 ALLOWABLE FLAT ROOF AREA = 1011.78 SF (93.99 SM)
 = 50%
 PROPOSED FLAT ROOF AREA = 457.30 SF (42.48 SM)
 = 23%

ROOF PLAN
 SCALE: 1:75



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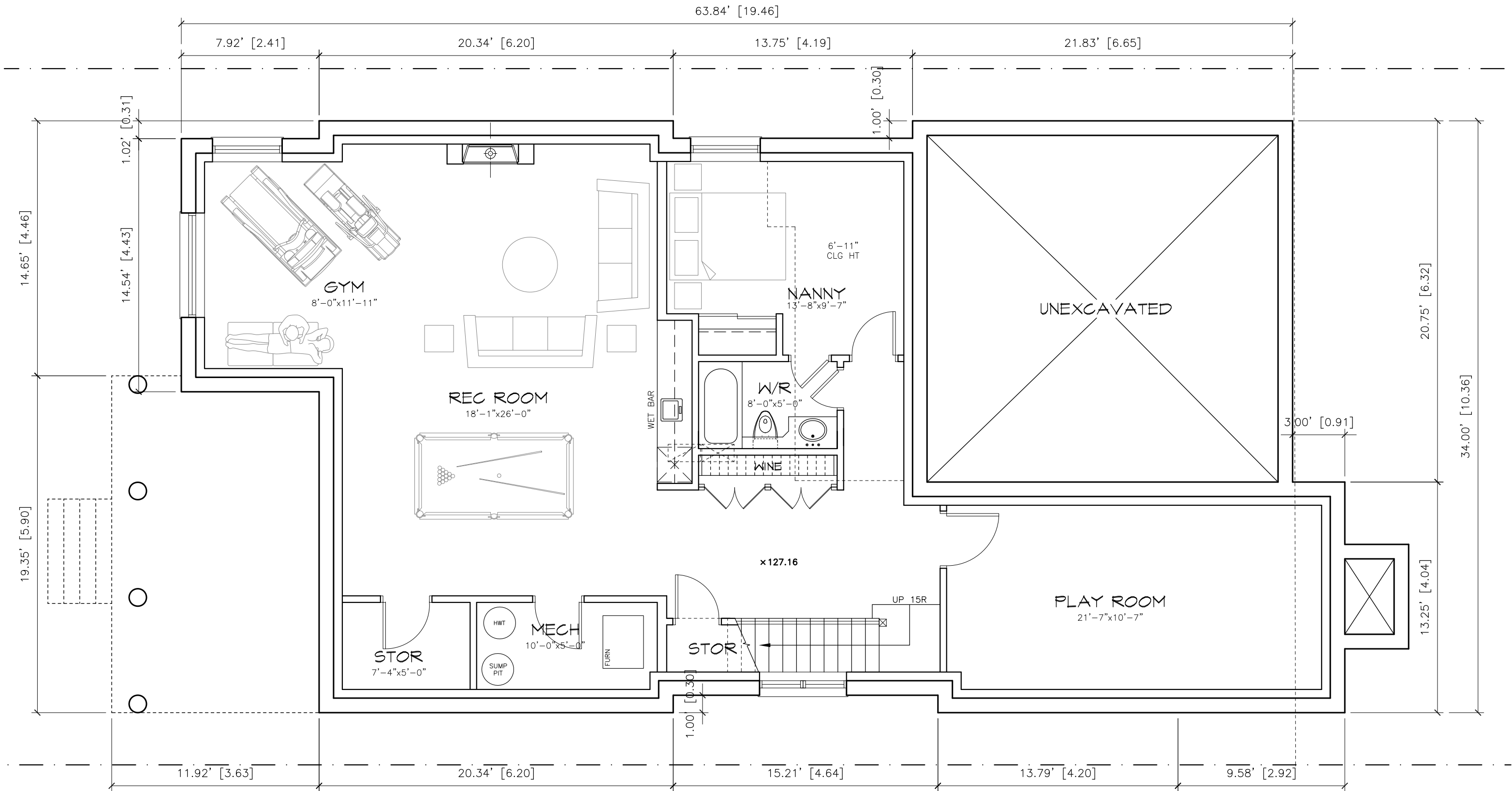
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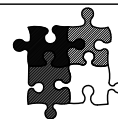
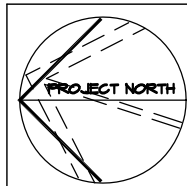
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FINISHED AREA = 1423.86 SF (132.28 SM)

BASEMENT PLAN
SCALE: 1:75



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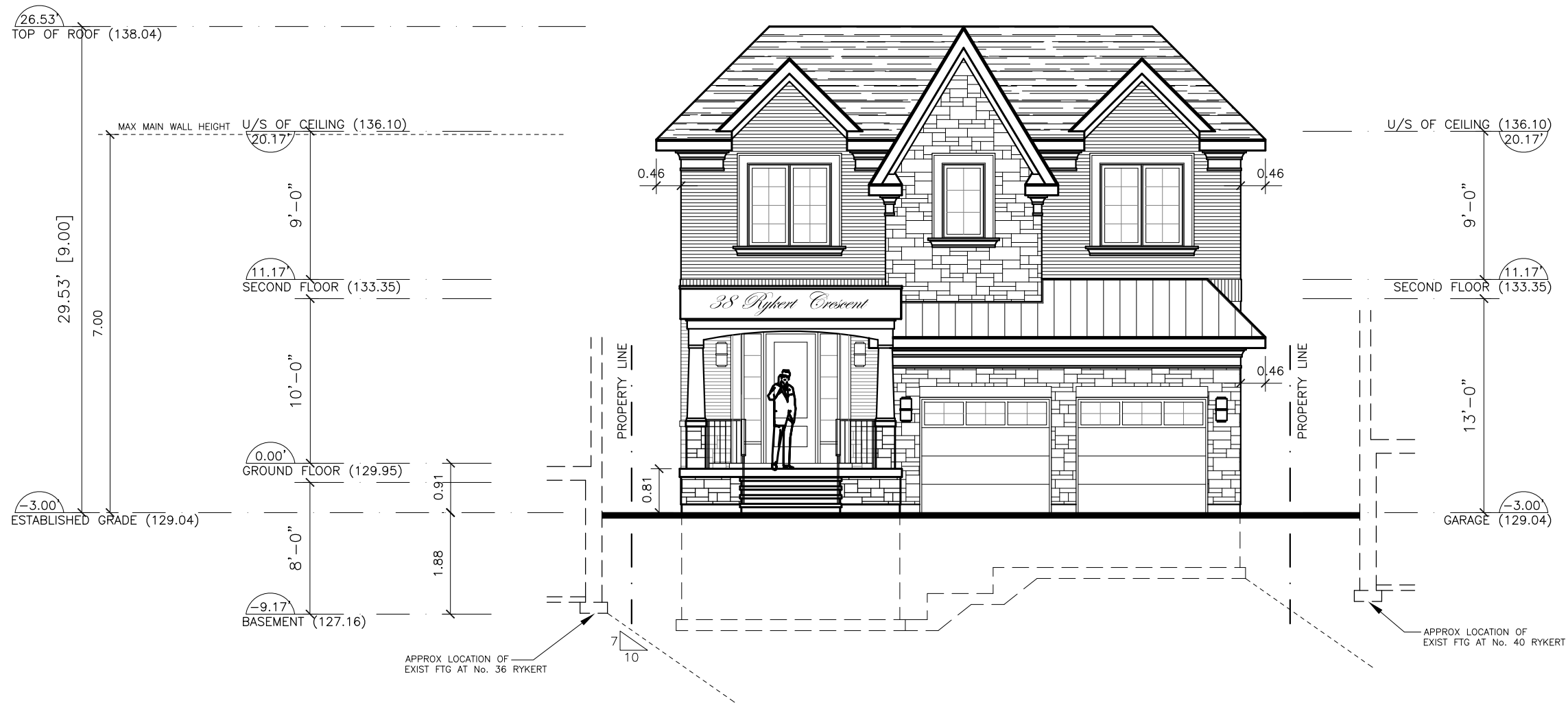
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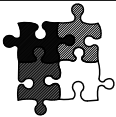
FLOOR PLANS

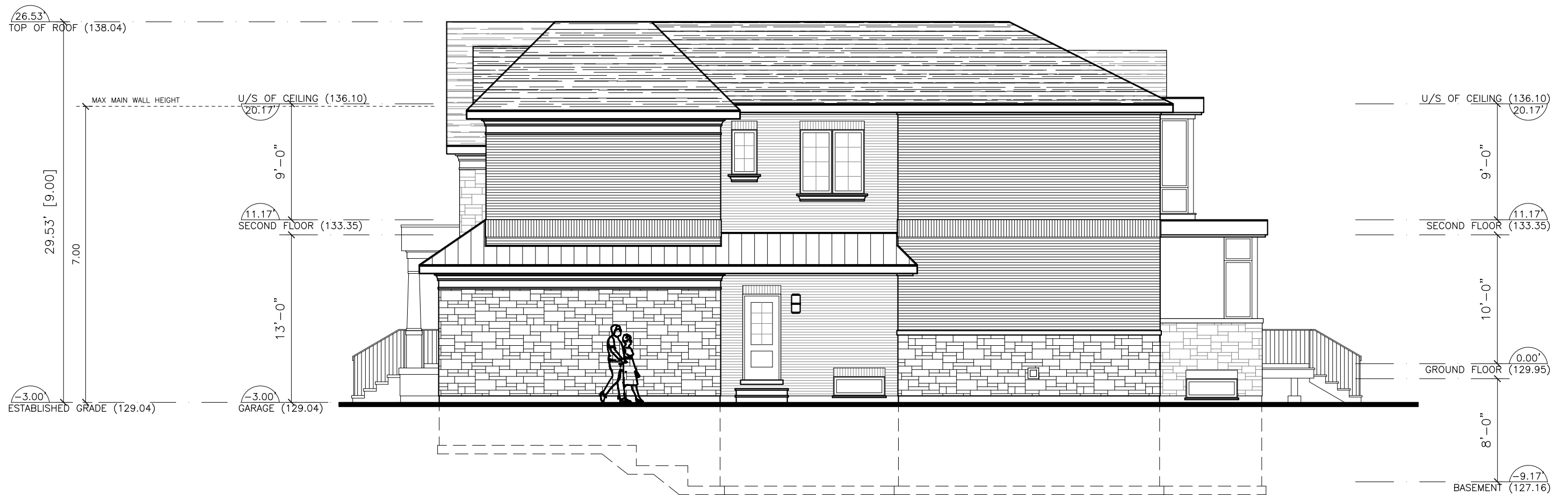
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SOUTH ELEVATION
SCALE: 1:100

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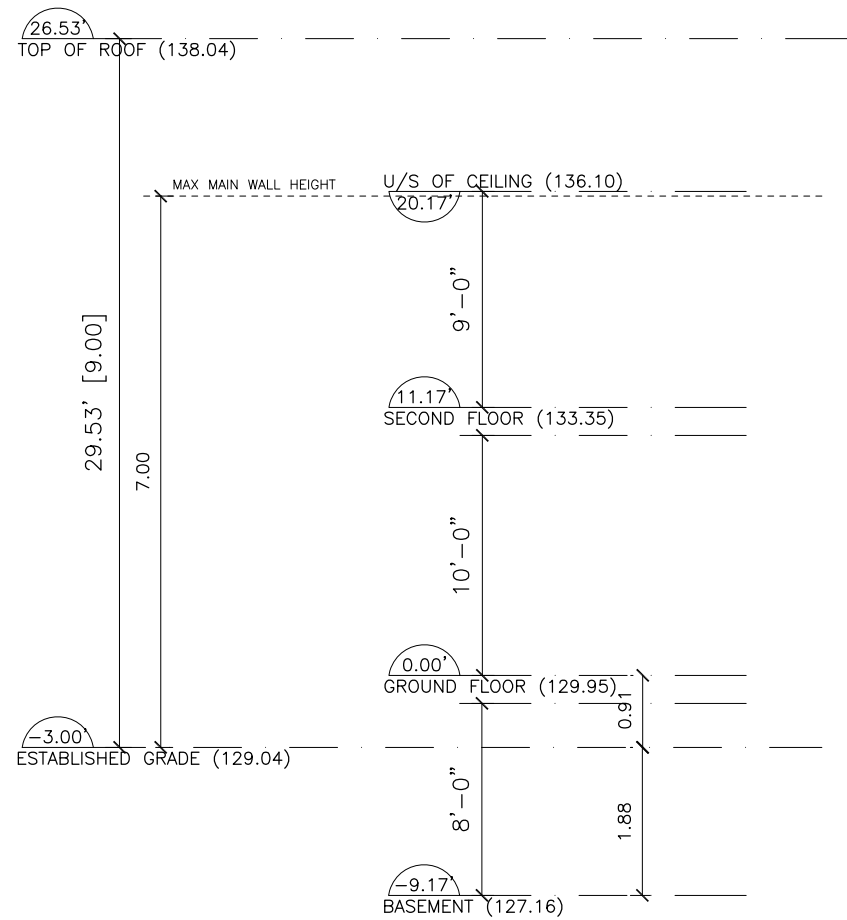


% OF UNPROTECTED OPENING:
(LIMITING DISTANCE 1.20m)


FACADE AREA	=	1345.17 SF (124.97 SM)
ALLOWED	=	94.16 SF (8.75 SM)
	=	7%
PROPOSED	=	80.00 SF (7.43 SM)
	=	6.6%

EAST ELEVATION
SCALE: 1:100

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NORTH ELEVATION
SCALE: 1:100

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% OF UNPROTECTED OPENING:
(LIMITING DISTANCE 1.20m)

FACADE AREA	=	1216.15 SF (112.98 SM)
ALLOWED	=	85.13 SF (7.91 SM)
	=	7%
PROPOSED	=	80.00 SF (7.43 SM)
	=	6.6%

WEST ELEVATION
SCALE: 1:100

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