

# DECISION AND ORDER

**Decision Issue Date**      Friday, May 01, 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): DAVID JAMES CAMPANELLA

Applicant: LIEN THOO

Property Address/Description: 17 VICTOR AVE

Committee of Adjustment Case File: 19 176773 STE 14 MV

**TLAB Case File Number: 19 265579 S45 14 TLAB**

**Hearing date:**      Wednesday, April 22, 2020

**DECISION DELIVERED BY** Ian James Lord

## APPEARANCES

NAME	ROLE	REPRESENTATIVE
LIEN THOO	APPLICANT	
DAVID JAMES CAMPANELLA	OWNER/APPELLANT	
CATHERINE RACHEL AHRENS	OWNER	
JONATHAN BENCZKOWSKI	EXPERT WITNESS	

## INTRODUCTION

This matter arises by way of a Written Motion requesting a Written Hearing.

On December 17, 2019, the Toronto and East York District Panel of the City of Toronto (City) Committee of Adjustment (COA) issued its decision refusing variances sought applicable to 17 Victor Avenue. The variances were sought to facilitate expansion of an existing semi-detached dwelling to accommodate a secondary suite.

Despite the COA disposition, there was no opposition to the request from City Staff, any member of the public or the City itself. The COA record filed reveals no concerns or comments being raised by City Planning, Urban Forestry of Heritage Preservation Services. Letters of support were received, by the COA, purportedly from owners or occupants of 12, 15, 21, 38, 57, 59 and 60 Victor Avenue.

To date, no person has taken a position in opposition to the requested variances, now on appeal.

## **BACKGROUND**

Pursuant to the appeal herein, the Toronto Local Appeal Body (TLAB) issued a Notice of Hearing on January 6, 2020 for a Hearing scheduled on April 22, 2020. By that Notice, expressions of intention to be a Party or Participant were due to be filed with the TLAB by February 5, 2020. Document disclosure, Expert Witness Statements and Participant Statements were due on or before March 6, 2020.

By that later date, only the Applicant/Appellant had had filed, on its behalf, the requisite disclosure and Expert Witness Statement of Mr. Jonathon Benczkowski, a Registered Professional Planner.

Subsequently, in March, Mr. David Campanella, the Owner/Appellant sought a Motion date from TLAB Staff, supported by an affidavit of Mr. Benczkowski sworn March 23, 2020, for the consideration of a written Motion for a Written Hearing, presumably to expedite the consideration of an uncontested appeal Hearing.

Staff provided directions for service of the Motion and its consideration on April 9, 2020. Service was perfected on only those identified on the TLAB's 'Persons List', consisting of the Owner/Appellant, the Applicant Mr. Lien Thoo (whom Mr. Campanella states is related and is in like interest), and Mr. Benczkowski.

Effective March 16, 2020, the TLAB ordered the cessation of all Hearing events, with limited exceptions, until May 28, 2020 pursuant to Ontario Regulation 73/20. This interval, in effect a 'Suspension Period' reflected the widespread concern for the 'COVID-19' virus, evident across the world and in the City.

The effect of the TLAB Order was to provide a without prejudice period during which the majority of TLAB files would be considered in abeyance. The Order enabled social distancing measures to be effective; only a minimum of TLAB Staff remained in service; all attendances and appearances were cancelled during the Suspension Period.

Certain exceptions applied during the Suspension Period to file matters that could be dealt with in writing, by electronic means (primarily teleconferencing) and consent and settlement dispositions, where feasible. Decision writing by the Members also continued as did the administrative measures of completed Decision review and issuance.

## MATTERS IN ISSUE

In respect of the subject property, a number of issues arose:

1. Is the Motion capable of being considered despite elements of it falling within the Suspension Period?
2. If so, is it appropriate that the matter be considered in writing?
3. Are the proposed revisions to the Application within the spirit of s. 45 (18.1.) of the *Planning Act*, such that they can be entertained if the matter proceeds?
4. Is the requested relief capable of being resolved without an attendance?
5. Is there an adequate basis to grant the relief requested, being the approval of revised variances?

## 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

The TLAB has a Motion Record and a supporting affidavit of Jonathan Benczkowski, RPP.

The Motion Grounds cite the COA refusal, the absence of adverse comment from any source, and the actions of the owner to revise the application on advice and perceived concerns. Notably, these changes reflect: an elimination of a request to permit a

second front door to the secondary suite, prohibited on a semi-detached dwelling of the subject property's width; and, an increased provision of front yard soft landscaping.

No change is proposed to the floor space index (FSI) sought, despite a modest expansion of the front porch and subgrade basement.

A revised set of plan drawings and a second Examiner's Notice dated February 25, 2020 confirmed these changes.

In citing Rule 17.5 respecting Motions being held in writing and the factors of relevance under Rule 24.6, the Motion effectively requests that it be heard in writing and that the matter proceed by way of Written Hearing. It invites clarification requests through written correspondence or a telephone conference call.

In support, the Motion Record recites in respect of Rule 24.6 support for:

- a) convenience;
- b) efficient, cost effective consideration;
- c) fairness to the sole Party;
- d) no public engagement;
- e) expert opinion evidence in support of the Motion and the Appeal;
- f) unlikelihood to challenges of credibility or any facts being in issue; and
- g) absence of Parties or Participants who could be prejudiced.

For his part, the Affiant attests to support for the Motion and the ultimate relief sought of revised variance approvals, all as supported by his Expert Witness Statement filed March 6, 2020, prior to the COVID 19 crisis.

The Affidavit, dated March 23, 2020, goes on to recite similar attestations as are contained in the pre-file disclosure and Expert Witness Statement documentation related to the merits of the relief sought by way of the residual variances. These aspects relate to the merits of the substantive relief sought, and not so much to the basis for a written Motion or Written Hearing.

Mr. Benczkowski confirms that it was his suggestions to create an internal vestibule, eliminate the presence of a second front door to service the secondary suite, and add soft landscaping to the front yard – to the standard of 40% whereas the zoning by-law requires 75%. He expressed the opinion that both changes are minor and appropriate to be considered “by way of a Written Hearing” (affidavit, para.8,9).

The Motion Record and the Affidavit incorporate reference to the pre-filed materials. I have reviewed these, conducted a virtual site attendance.

I accept and enter for consideration the following Exhibits:

1. Expert Witness Statement, Curriculum Vitae description and Attestation affidavit of Jonathan Benczkowski as a qualified Registered Professional Planner capable of providing planning opinion evidence applicable to the subject property;

2. Document Disclosure record of the Applicant filed January 27, 2020;
3. Revised Site Plan and elevation drawings prepared by Constant Shape Design Studio dated (wrongly) 2019-01-26, being drawings A100 through A113;
4. City Zoning Notice dated February 25, 2020.

Both of the latter documents demonstrate the removal of a second front facing entrance door (Drawing A105) and associated variance, and a revision to accommodate front yard soft landscaping to the 40% standard Drawing A101 and A109. The fsi variance remains unaltered.

I have read the Expert Witness Statement and Document references of Mr. Benczkowski which are fully in support of the revised variances and which are somewhat further duplicated in his affidavit sworn in support of the Motion.

He provides full and succinct attestations as to consistency in the Application to the Provincial Policy Statements and conformity to the Growth Plan for the Greater Golden Horseshoe.

He has provided Official Plan policy reference and zoning opinion support for the two remaining variances and advice that they are desirable for the introduction of a permitted second suite on the subject property in a manner that is minor and without undue adverse impact.

He notes that proposed balconies are adequately constrained in scale and location, all as shown on the revised plans.

He reaches these conclusions, advice and recommendations for approval both on an individual and cumulative assessment basis.

There is no contrary opinion advice, lay, Staff or expert.

## **ANALYSIS, FINDINGS, REASONS**

1. Is the Motion capable of being considered despite elements of it falling within the Suspension Period?

The Motion cites Rule 2 in support of a Member's authority to consider remedies in a manner that facilitates a just, fair and timely disposition of matters. While there are elements in the timing of the relief sought – response date, a Motion Hearing return date, a Hearing date that falls within the suspension period – the matter was well advanced and perfected before the March 16, 2020 invocation of Ontario Regulation 73/20 and its aftermath.

I recall as well of the words of Ontario Municipal Board member Michael Melling often recited since his 1994 decision *Darling v. Brockville (City) Committee of Adjustment*, 31 [1994] O.M.B.D. No. 1938, O.M.B.R. 285:

“It is useful to remember that the purpose of this Board is to solve problems, not create them. Furthermore, this is to be done in an expeditious and inexpensive manner, with a view to keeping the planning process within the reach of ordinary citizens. In this Member’s view, those goals are best served by reducing duplication and multiplicity of proceedings and by getting to - and making decisions on – the substance of the cases that reach the Board.”

I adopt those sentiments as applicable to the TLAB, where circumstances warrant.

In my view it would be a counsel of perfection that is not warranted to hold this matter over to the end of the Suspension Period for a trial of the issues.

The matter is one that is determinable by way of written Motion and I am prepared to allow that threshold request and its consideration.

2. If so, is it appropriate that the matter be considered in writing?

Written Motions require care in their consideration in circumstances where matters are in dispute, conflicting evidence needs to be weighed and potential observations on credibility and authenticity may be required.

None of these and other factors are present in the circumstances. There are no other persons, Parties or Participants who declared an interest in the main appeal as required long before the Motion request was conceived. There is no evidence of dissatisfaction with the Application, the appeal or the variance revisions.

In my view, in these circumstances it is appropriate to consider not just the written Motion, but also the substance of the relief requested in this circumstance.

3. Are the proposed revisions to the Application within the spirit of s. 45 (18.1.) of the *Planning Act*, such that they can be entertained if the matter proceeds?

An Applicant is allowed, even encouraged in the TLAB production Rules, to reconsider their Application following the decision of the COA with a view as to whether revisions might better affect its consideration and approval, not just by the TLAB but by Parties and Participants who project an interest.

In the subject Application, the disclosure indicated that the Applicant had responded to the advice of the planner Benczkowski who had observed the deliberations of the COA.

A variance was removed by the redesign of the entrance to permit occupant distribution via a recessed vestibule.

A redesign of the front driveway and front yard yielded some modest additional soft landscaping, including the use of materials. The increase from 0% proposed to 40% is an improvement toward the by-law standard of 75%.

I find both changes to be minor and improvements. They do not warrant additional notice and I am prepared to grant exemption from any such requirement under s. 45 (18.1.1) of the *Planning Act*.

4. Is the requested relief capable of being resolved without an attendance?

There are two main requests of the Motion: a 'Hearing' based on written submissions and an approval so as to permit improvements to proceed.

As with Issue 2, similar circumstances are reviewable and are to be considered to ensure that justice is done without prejudice to any person, interest or property. In this regard, the public interest supersedes the private interests of the Applicant or any single aspirant.

Here, the variances sought are straightforward, there is no expression of opposition or even concern, the decision of the COA can be considered in light of the revisions and the matter rests entirely within the home statute of the TLAB.

In like circumstances to a settlement hearing, consideration of the matter can occur in a manner appropriate to the fair, expeditious and cost effective consideration of the evidence. The TLAB has often said that such approaches are to be encouraged where circumstances warrant.

In my view, this is such a circumstance; an oral Hearing is not required. There are no substantive questions required to be answered.

5. Is there an adequate basis to grant the relief requested, being the approval of revised variances?

In this regard, the TLAB has the uncontested professional and expert opinion advice on the revised variances of Mr. Benczkowski.

I have read this advice for completeness and the import and application of relevant considerations. I was particularly interested in the degree of justification support for the density variance as it appeared to remain the greatest requested relief, of the variances sought. I am satisfied the planner supplied adequate support rational for this excess.

I accept the opinion advice of the planner in support of the soft landscaping variances sought, despite the increased size of the front yard porch. The lots are narrow, the front yards are shallow and exhibit competing space demands; a front yard parking pad permission on the boulevard makes compliance constrained.

No basis has been supplied to challenge any aspect of the planner's advice and none has arisen out of the experience of the TLAB applicable to the law and policy considerations applied.

I find the two variances identified and requested to be within the intent and purpose of the City Official Plan and zoning by-laws, and to be desirable and minor, without undue adverse impacts.

## **DECISION AND ORDER**

The decision of the Committee of Adjustment is set aside.

The variances identified in **Attachment A** are approved subject to the conditions expressed in **Attachment B**.

## **ATTACHMENT A**

### **REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:**

- 1. Chapter 10.10.40.40.(1)(A), By-law 569-2013**  
The maximum permitted floor space index of a semi-detached building is 0.6 times the area of the lot (119.4 m<sup>2</sup>).  
The altered semi-detached building will have a floor space index equal to 0.99 times the area of the lot (197.63 m<sup>2</sup>).
- 2. Chapter 10.5.50.10.(1)(D)By-law 569-2013**  
A minimum of 75% (6.6 m<sup>2</sup>) of the front yard is required to be soft landscaping. In this case, 40% (3.41 m<sup>2</sup>) of the front yard will be maintained as soft landscaping.

## **ATTACHMENT B**

Construction is to proceed in substantial compliance with the plans identified as A100 through A113 prepared by Constant Shape Design Studio dated 2019-01-26 in respect of the site plan and elevations but excepting, for flexibility, internal layout arrangements. For greater certainty, balconies front and rear as dimensioned thereon are approved as shown.

Any City boulevard tree affected is to be subject to the satisfaction of City Urban Forestry conditions prior to building permit issuance.

If problems arise in the implementation of this Decision and Order, the TLAB may be spoken to.



X

A handwritten signature in black ink that reads "Ian Lord". The signature is written in a cursive style and is underlined with a single horizontal line.

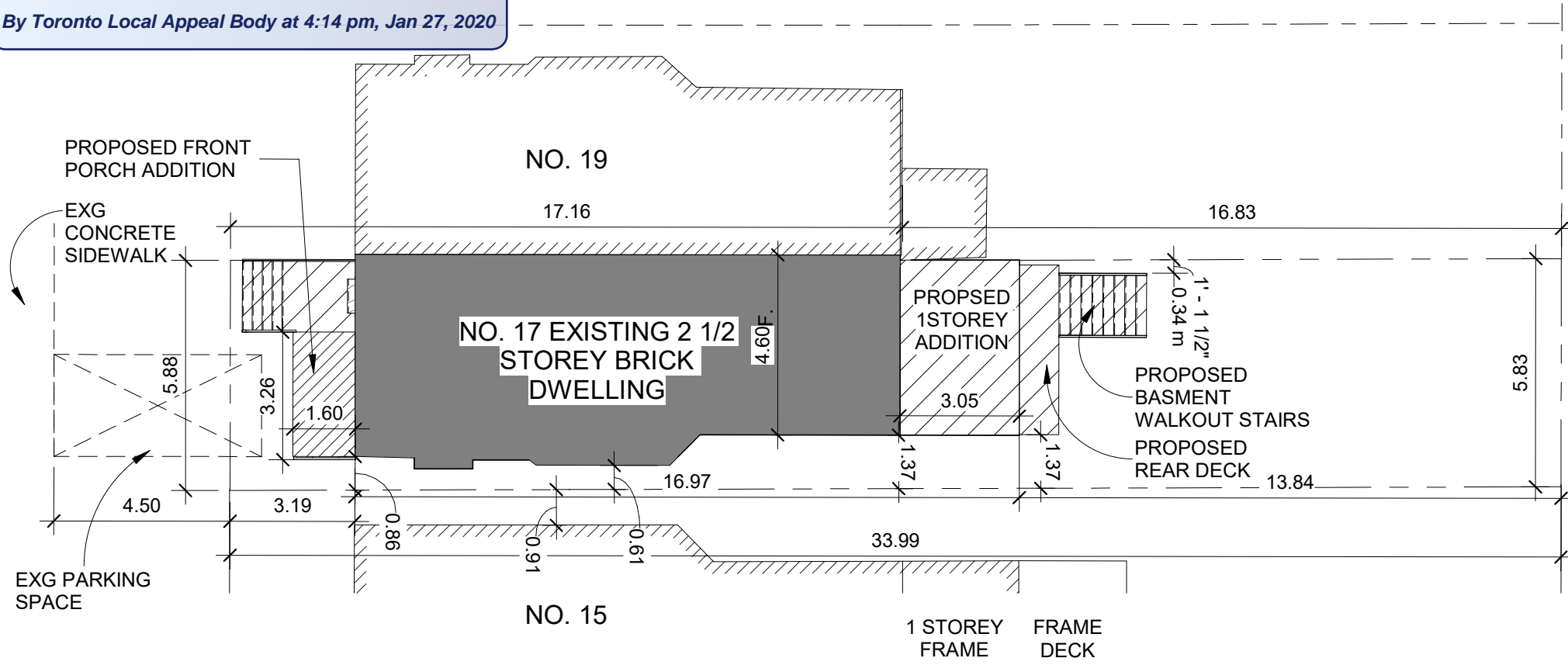
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Ian Lord

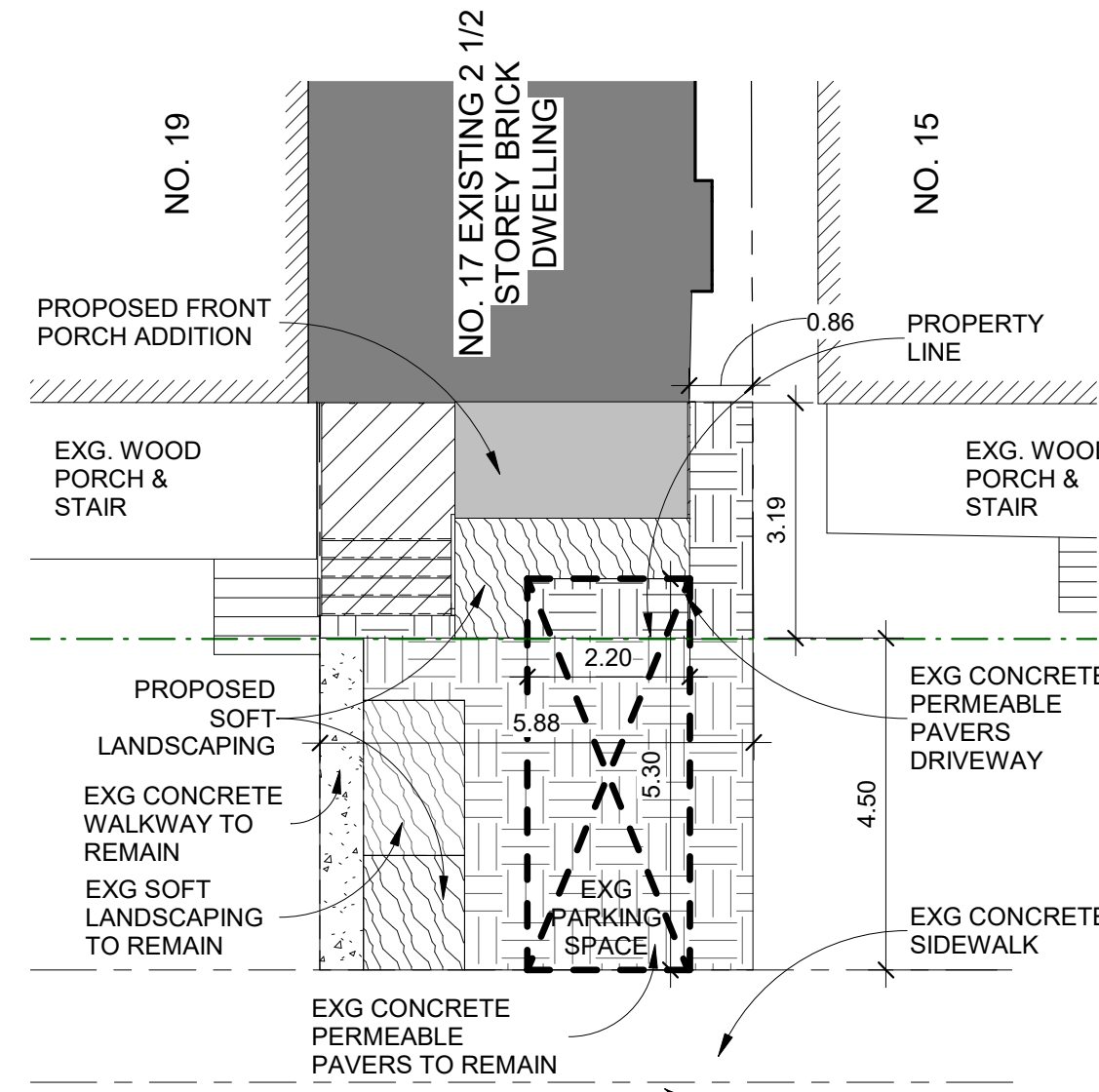
Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord

VICTOR AVE.



1 Site Plan  
1 : 150







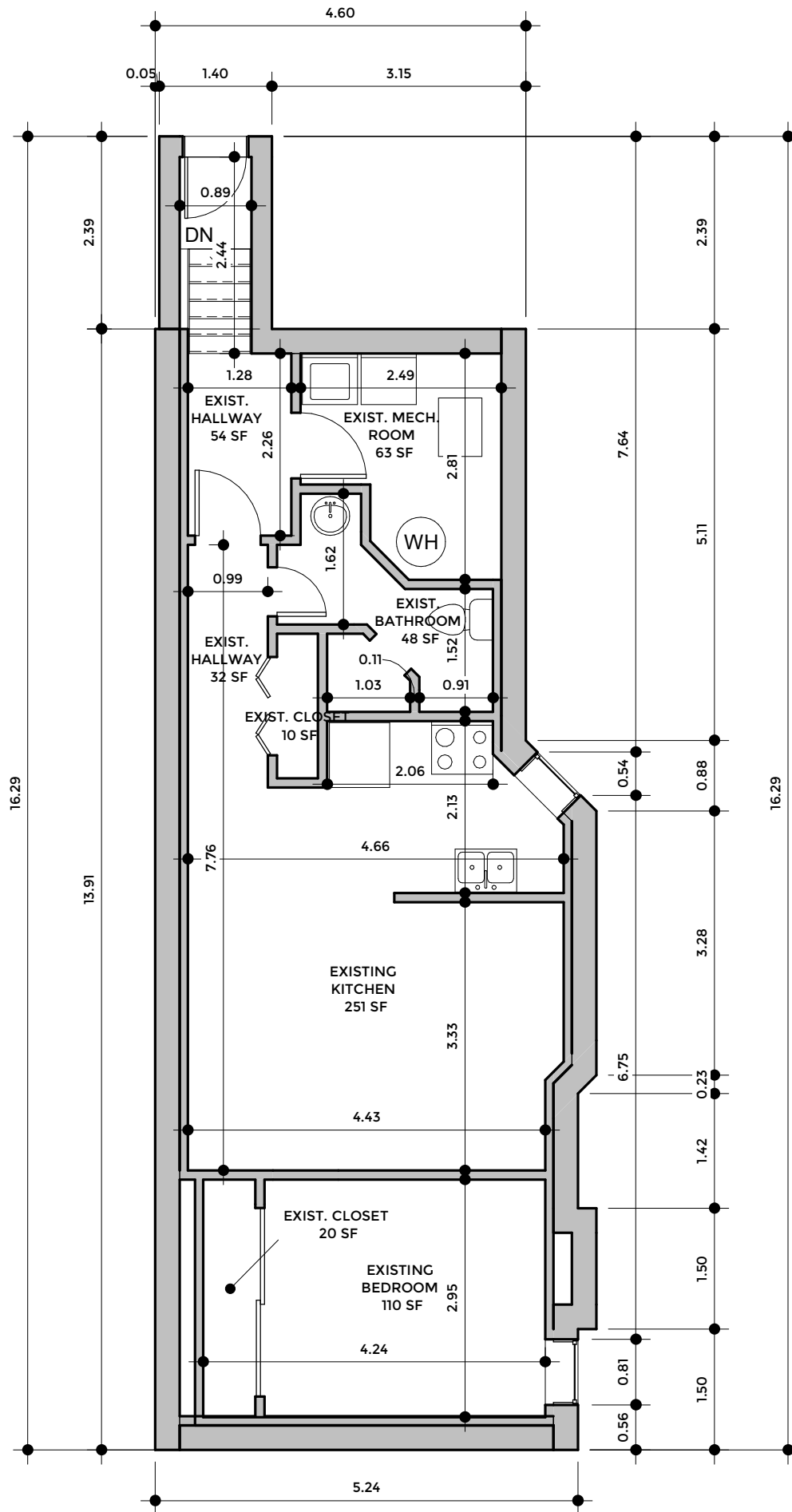
3 Front Yard Landscaping Scheme  
1 : 100

Site Data				
City of Toronto Zoning By-law 569-2013/ R (d0.6) (x736)				
LOT AREA	198.46 m <sup>2</sup>			
GROSS FLOOR AREA		PROPOSED		
EXISTING GROUND FLOOR	70.55 m <sup>2</sup>	PROPOSED GROUND FLOOR	84.18 m <sup>2</sup> (13.63 m <sup>2</sup> EXTENSION)	
EXISTING SECOND FLOOR	71.35 m <sup>2</sup>	EXISTING SECOND FLOOR TO REMAIN	71.35 m <sup>2</sup>	
EXISTING THIRD FLOOR	42.1 m <sup>2</sup>	EXISTING THIRD FLOOR TO REMAIN	42.1 m <sup>2</sup>	
EXISTING SUM	184 m <sup>2</sup>	PROPOSED SUM	197.63 m <sup>2</sup>	
SETBACKS	PERMITTED	EXISTING	PROPOSED	
FRONT YARD	6.0 m	3.19 m	EXISTING TO REMAIN	
EASTSIDE YARD	0.9 m	0.86 m	EXISTING TO REMAIN	
WESTSIDE YARD	N/A(PARTYWALL)	N/A(PARTYWALL)	PROPOSED WEST SIDE YARD SETBACK	0.0 m
BACKYARD	7.5 m	16.83 m	PROPOSED BACKYARD SETBACK	13.9 m
MAX LENGHT	17 m	13.95 m	PROPOSED MAX LENGHT	16.97 m
MAX HEIGHT	10 m	9.73 m	EXISTING TO REMAIN	
MAX FIN. 1ST FLOOR HEIGHT	1.2 m	1.1 m	EXISTING TO REMAIN	1.1 m
ROOF EAVE DIMENSION			EXISTING TO REMAIN	
DISTANCE FROM PROPERTY LINE			EXISTING TO REMAIN	
FLOOR SPACE INDEX (d)	PERMITTED 0.6 (119.076)	EXISTING 0.927 (184 m <sup>2</sup> )	0.996 (197.63 m <sup>2</sup> )	

Front Yard Landscaping Data					
BYLAW 10.5.50.10					
Item	EXISTING	EXG %	PROPOSED	TOTAL	TOTAL %
FRONT YARD AREA:	18.76 m <sup>2</sup>		0.00 m <sup>2</sup>	18.76 m <sup>2</sup>	
PORCH AREA	3.40 m <sup>2</sup>		5.06 m <sup>2</sup>	8.46 m <sup>2</sup>	
PERMITTED DRIVEWAY AREA	4.55 m <sup>2</sup>		-2.77 m <sup>2</sup>	1.78 m <sup>2</sup>	
FRONT YARD LANDSCAPING AREA	10.81 m <sup>2</sup>		-2.29 m <sup>2</sup>	8.52 m <sup>2</sup>	
FRONT YARD SOFT LANDSCAPING AREA	4.14 m <sup>2</sup>	38.3	-0.73 m <sup>2</sup>	3.41 m <sup>2</sup>	40
FRONT YARD HARD LANDSCAPING AREA	6.67 m <sup>2</sup>		-1.56 m <sup>2</sup>	5.11 m <sup>2</sup>	

Rear Yard Landscaping Data		
BYLAW 10.5.50.10		
	PROPOSED	EXISTING
REAR YARD AREA (excludngs deck and stairs)	72.56 m <sup>2</sup>	77.15 m <sup>2</sup>
STAIRS AND DECK AREA	8.05 m <sup>2</sup>	18.28 m <sup>2</sup>
REAR YARD SOFT LANDSCAPING AREA	23 m <sup>2</sup>	23 m <sup>2</sup>
SOFT LANDSCAPING PERCENTAGE FROM REAR YARD AREA	31.7%	29.8%
REAR YARD HARD LANDSCAPING AREA	49.56 m <sup>2</sup>	54.15 m <sup>2</sup>

-  WALLS TO REMAIN
-  WALLS TO BE REMOVED
-  NEW WALLS
-  NEW FOUNDATION WALL



① EXIST. BASEMENT  
1 : 75



Constant Shape  
Design Studio




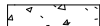
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Burlington, On

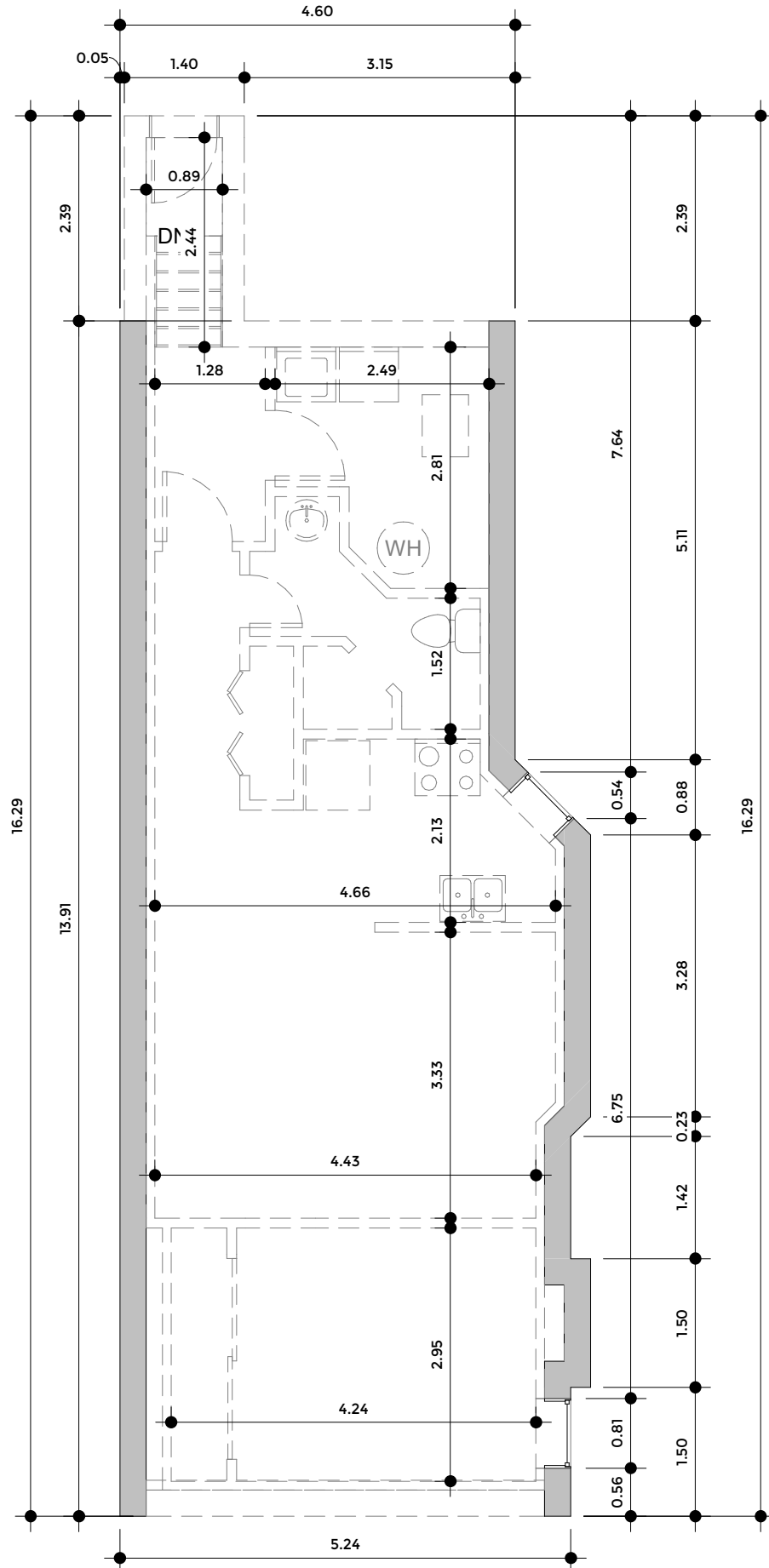
# A101 Existing Basement Plan

17 Victor Ave, Toronto

2019-01-26

Scale: As indicated

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-  WALLS TO BE REMOVED
-  NEW WALLS
-  NEW FOUNDATION WALL


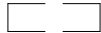
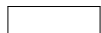
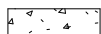


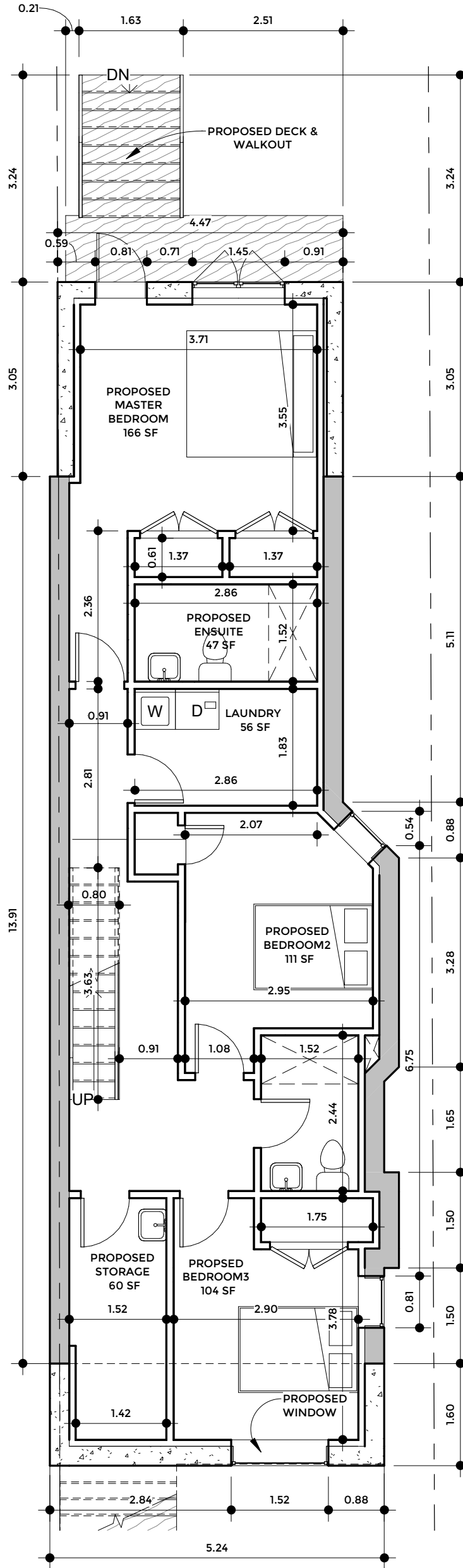
① BASEMENT DEMOLITION  
1 : 75



Constant Shape  
Design Studio  
48-2185 Fairchild Blvd,  
Burlington, On

**A102** **Basement Demolition**  
17 Victor Ave, Toronto  
2019-01-26  
**Plan**  
Scale: As indicated

-  WALLS TO REMAIN
-  WALLS TO BE REMOVED
-  NEW WALLS
-  NEW FOUNDATION WALL



① PROPOSED BASEMENT  
1 : 75



Constant Shape  
Design Studio


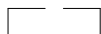

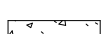
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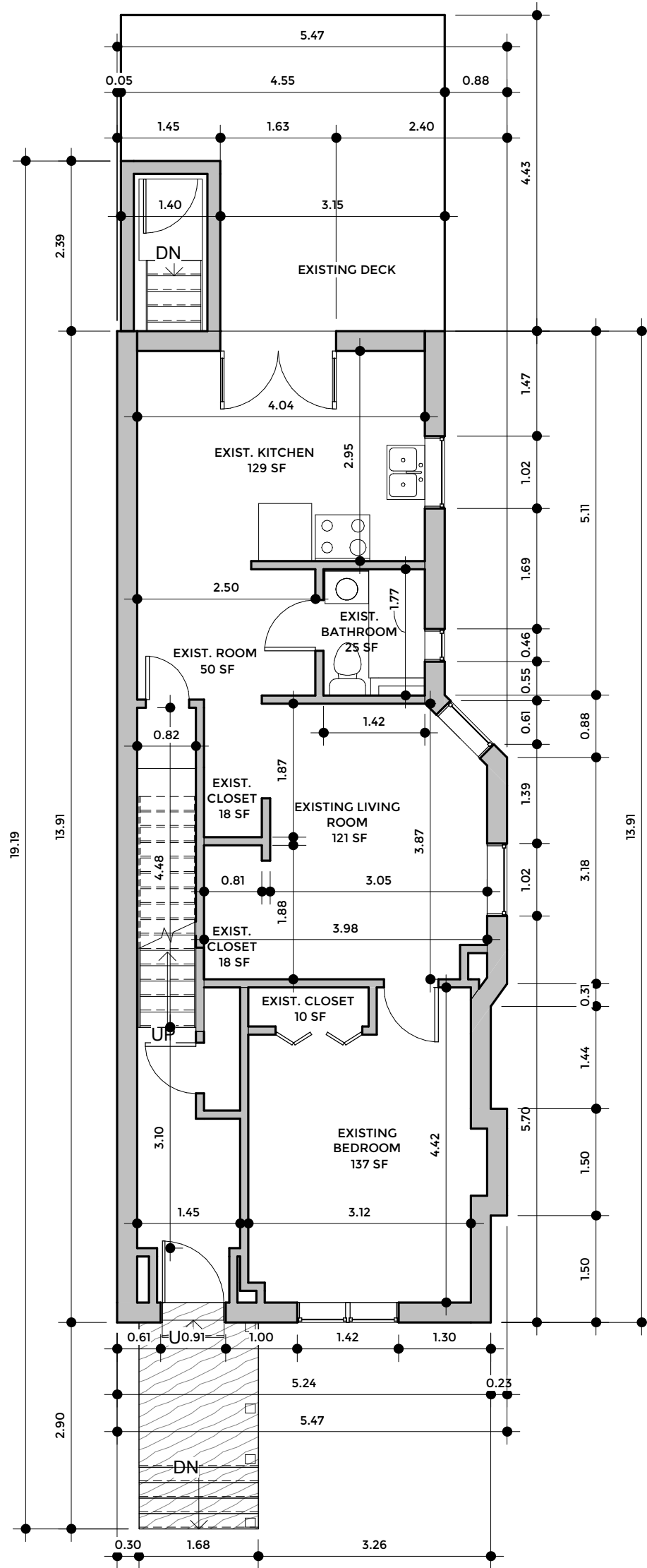
# A103 Proposed Basement Plan

17 Victor Ave, Toronto

2019-01-26

Scale: As indicated

-  WALLS TO REMAIN
-  WALLS TO BE REMOVED
-  NEW WALLS
-  NEW FOUNDATION WALL



① MAIN FLOOR EXISTING  
1 : 75



Constant Shape  
Design Studio




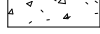
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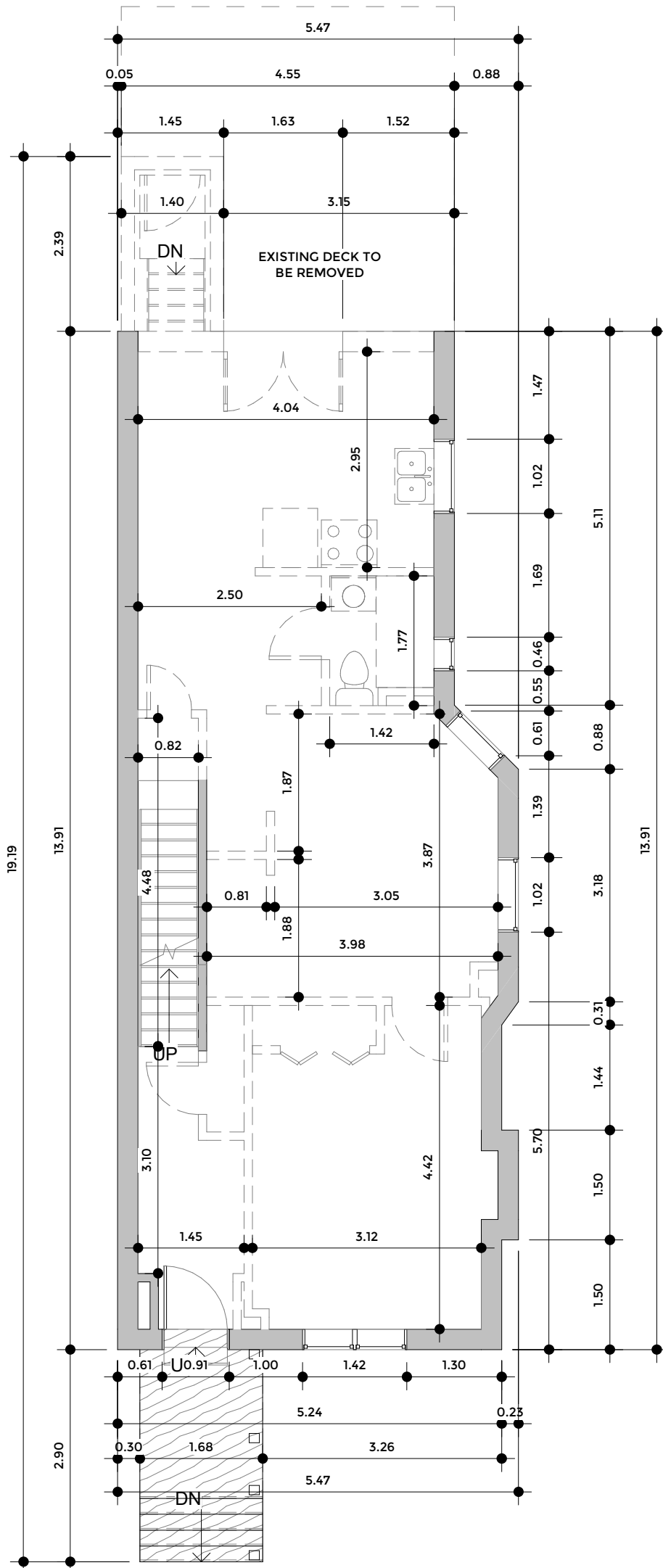
# A104 Existing Main Floor Plan

17 Victor Ave, Toronto

2019-01-26

Scale: As indicated

-  WALLS TO REMAIN
-  WALLS TO BE REMOVED
-  NEW WALLS
-  NEW FOUNDATION WALL



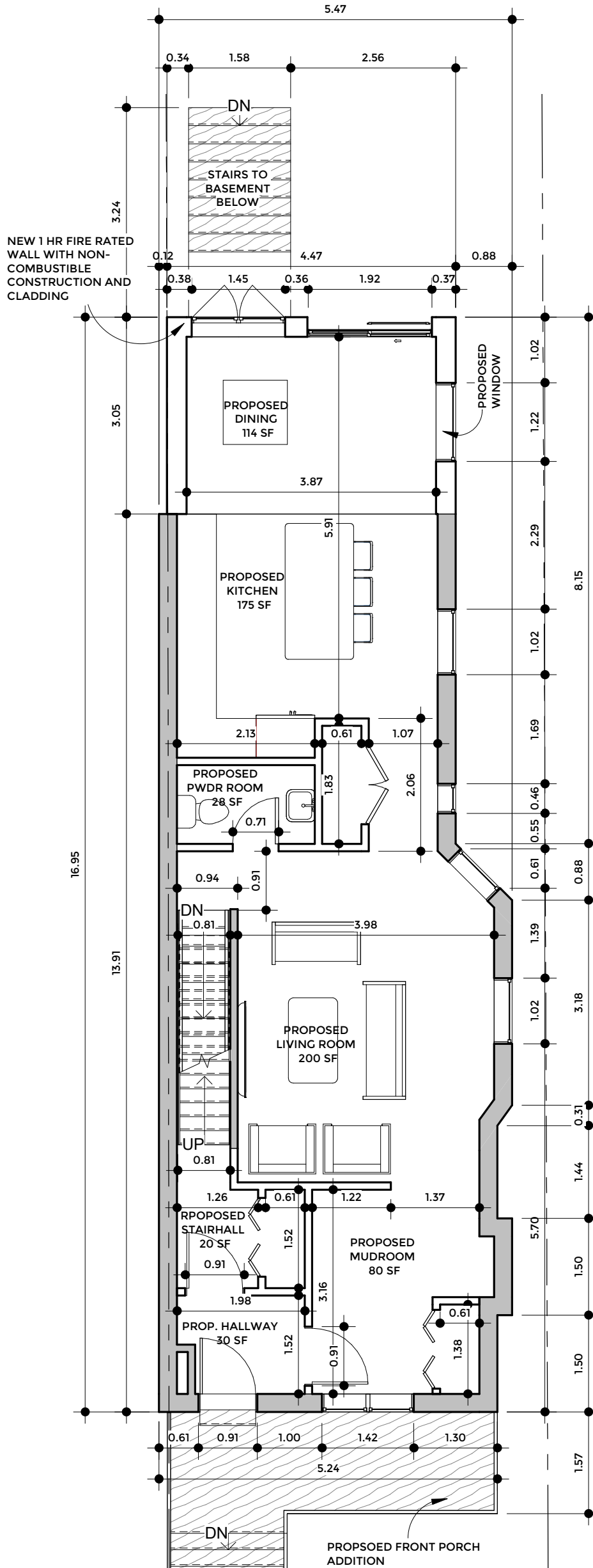
① MAIN FLOOR DEMOLITION  
1 : 75



Constant Shape  
Design Studio  
48-2185 Fairchild Blvd.  
Burlington, On

**A104-B Main Floor Demolition**  
17 Victor Ave, Toronto  
2019-01-26  
**Plan**  
Scale: As indicated

- WALLS TO REMAIN
- WALLS TO BE REMOVED
- NEW WALLS
- NEW FOUNDATION WALL



① MAIN FLOOR PROPOSED  
1 : 75

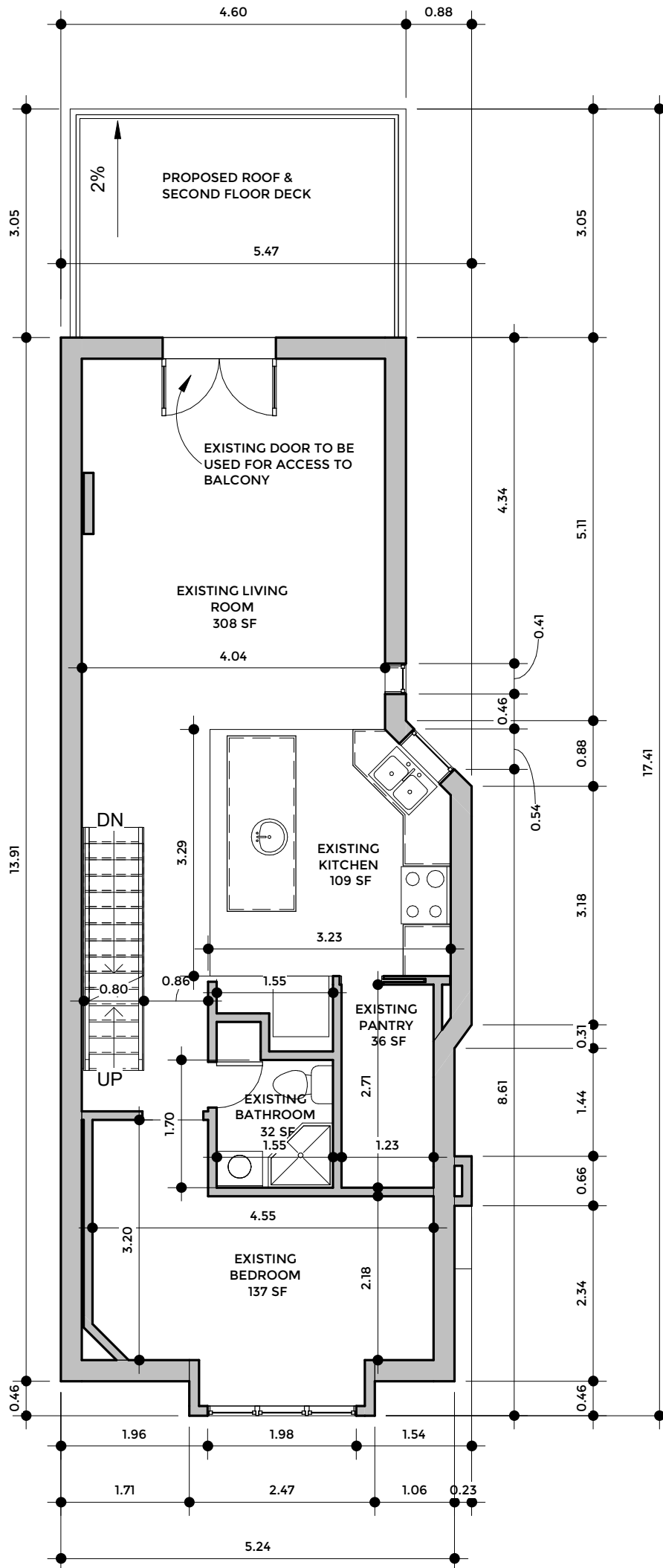


Constant Shape  
Design Studio  
48-2185 Fairchild Blvd,  
Burlington, On

**A105 Proposed Main Floor Plan**  
17 Victor Ave, Toronto  
2019-01-26  
Scale: As indicated



- WALLS TO REMAIN
- WALLS TO BE REMOVED
- NEW WALLS
- NEW FOUNDATION WALL



① SECOND FLOOR PLAN  
1 : 75



Constant Shape  
Design Studio




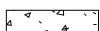
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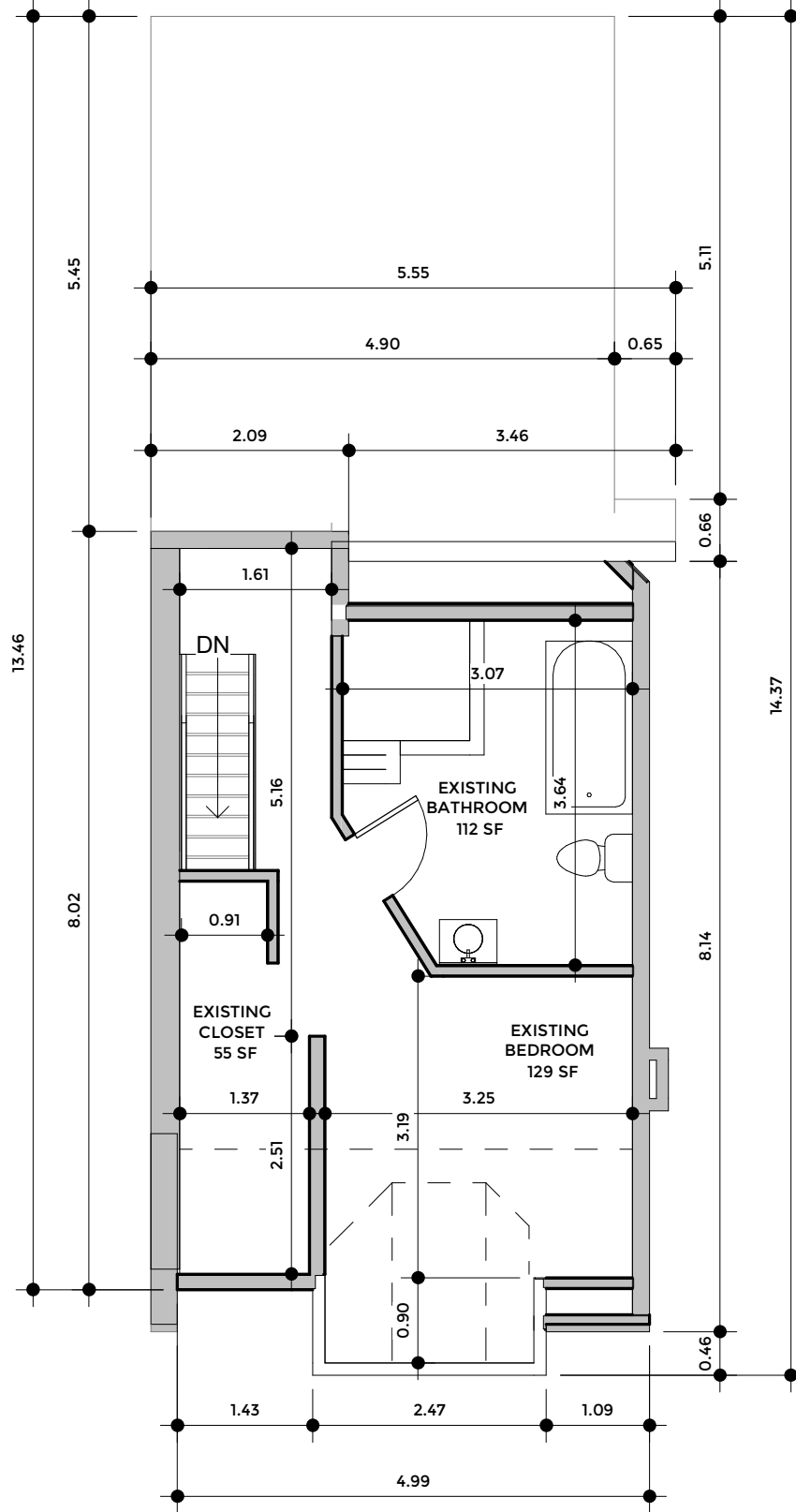
## A106 Second Floor Plan

17 Victor Ave, Toronto

2019-01-26

Scale: As indicated

-  WALLS TO REMAIN
-  WALLS TO BE REMOVED
-  NEW WALLS
-  NEW FOUNDATION WALL



① Existing Attic Plan  
1 : 75



Constant Shape  
Design Studio

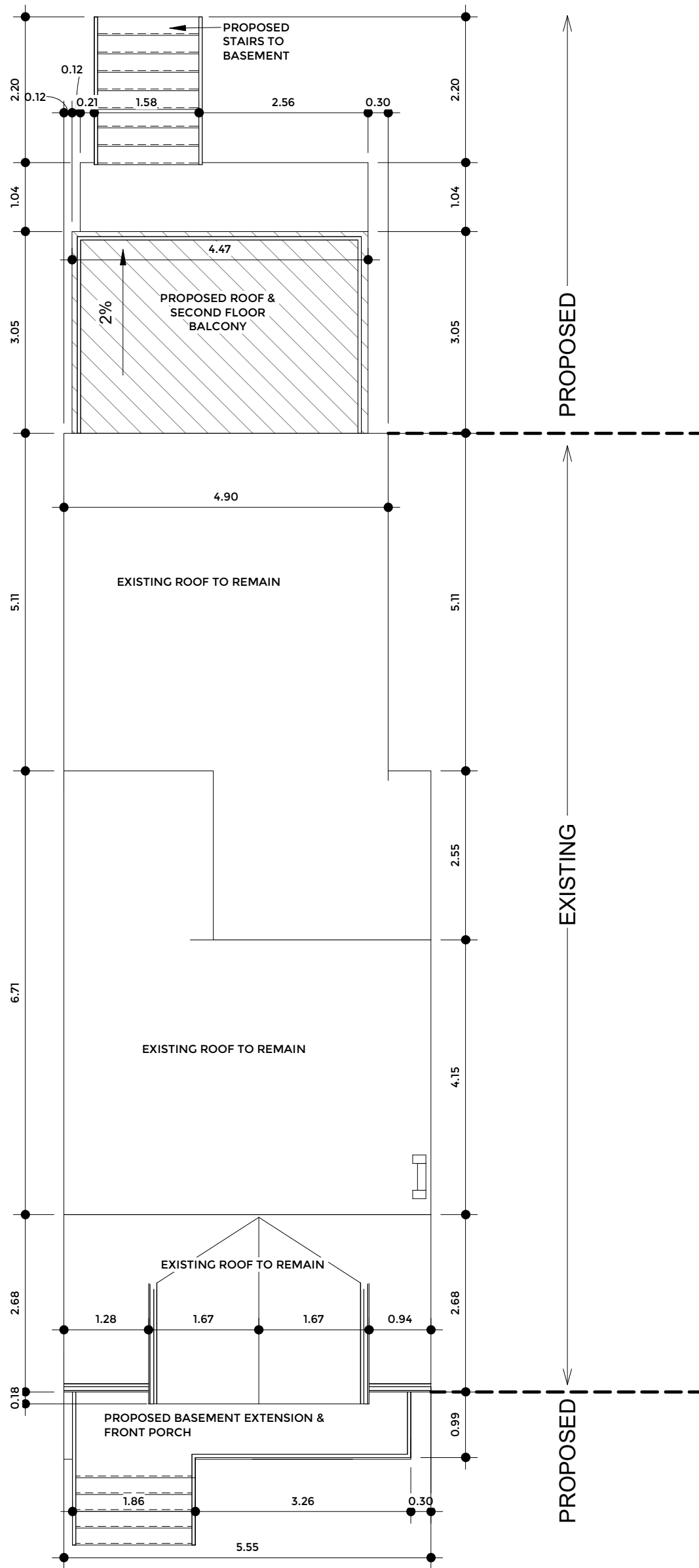
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Burlington, On

## **A107** Existing Attic Plan

17 Victor Ave, Toronto

2019-01-26

Scale: As indicated



① Roof Plan  
1 : 75



Constant Shape  
Design Studio

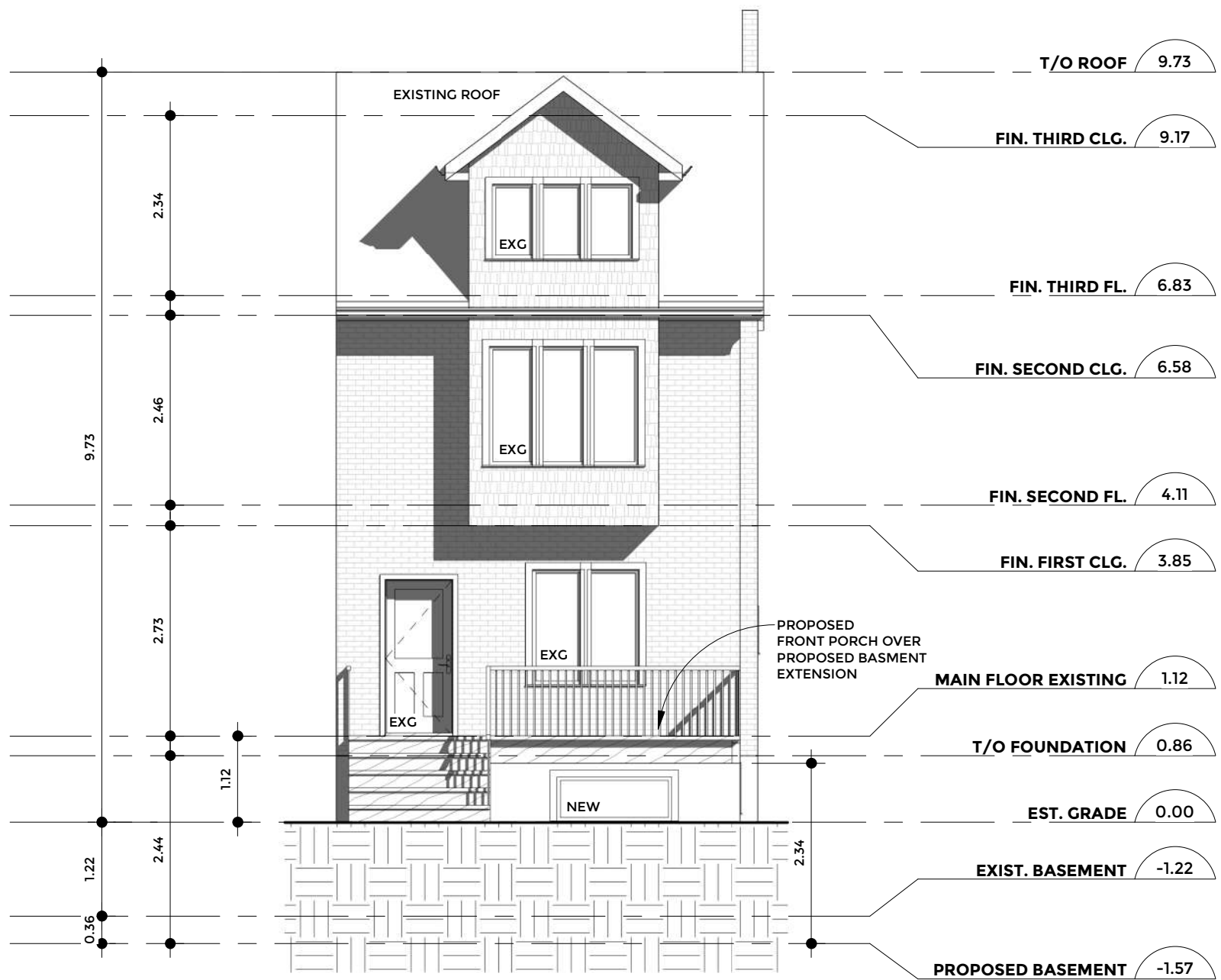
48-2185 Fairchild Blvd,  
Burlington, On

**A108** Roof Plan

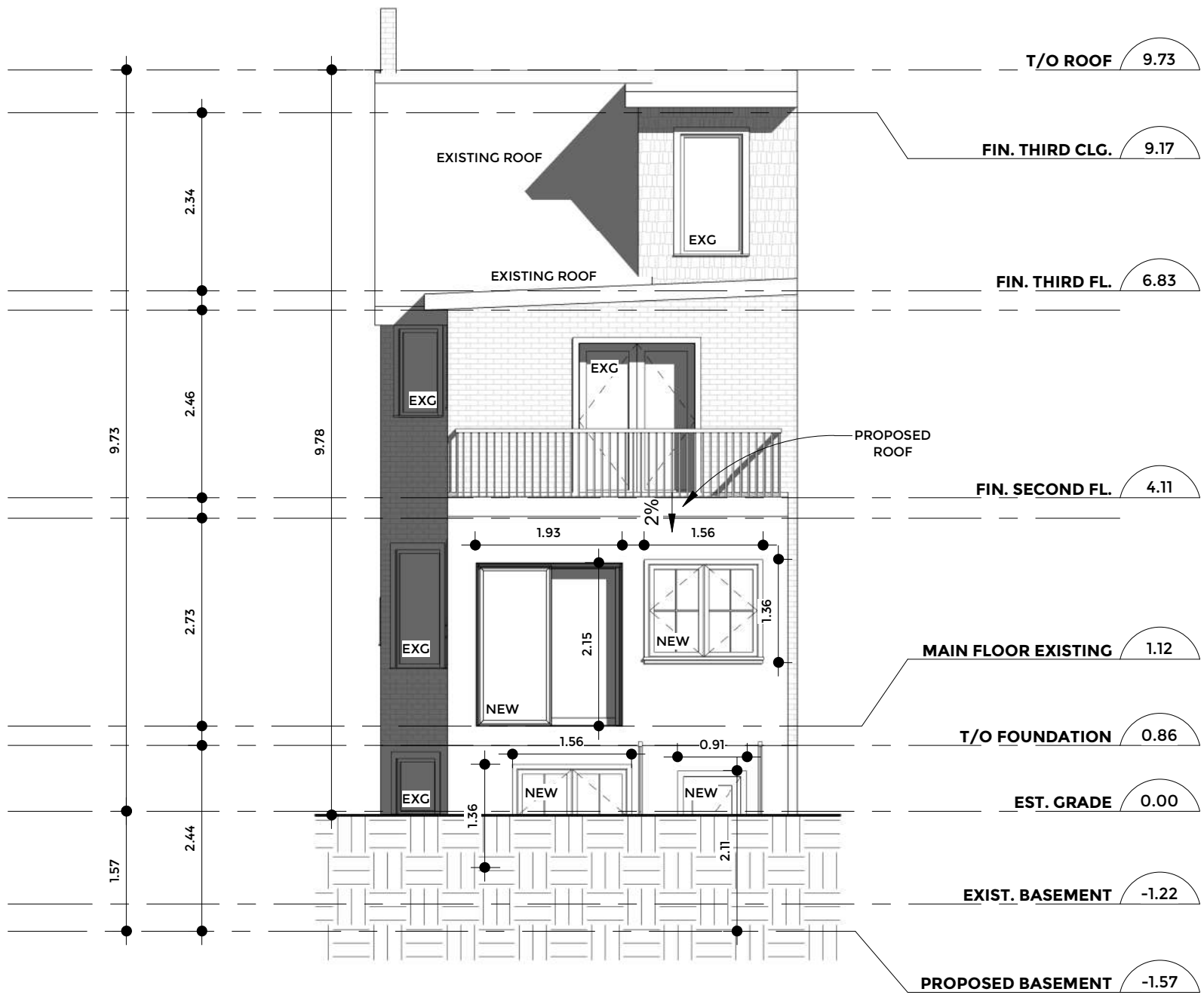
17 Victor Ave, Toronto

2019-01-26

Scale: 1 : 75



① South  
1 : 75



① North  
1 : 75



Constant Shape  
Design Studio

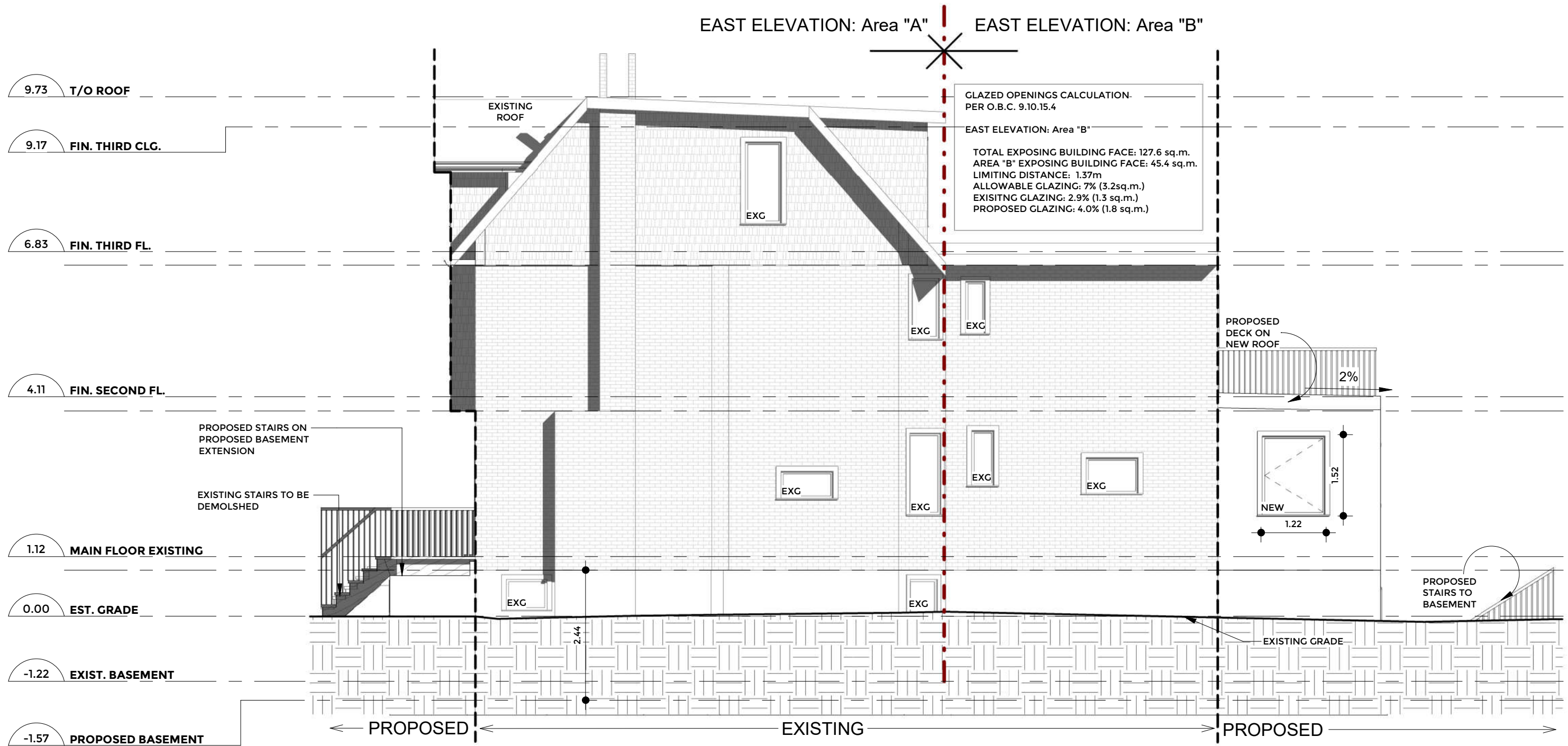
48-2185 Fairchild Blvd.  
Burlington, On

## A110 North Elevation Proposed

17 Victor Ave, Toronto

2019-01-26

Scale: 1 : 75

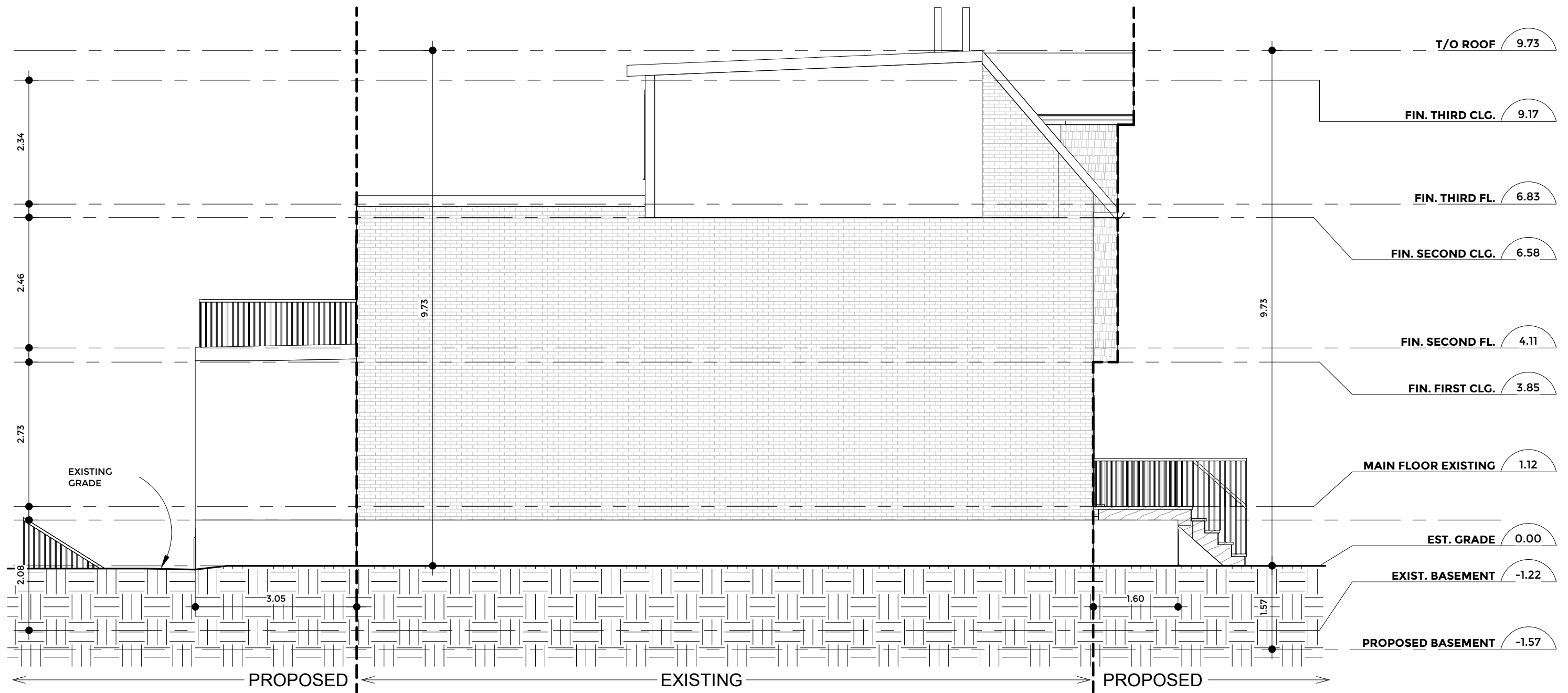


① East Elevation  
1 : 75



Constant Shape  
Design Studio  
48-2185 Fairchild Blvd,  
Burlington, On

**A111 East Elevation Proposed**  
17 Victor Ave, Toronto  
2019-01-26  
Scale: 1 : 75



① West  
1 : 75



Constant Shape  
Design Studio  
48-2185 Fairchild Blvd,  
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**A112 West Elevation Proposed**  
17 Victor Ave, Toronto  
2019-01-26  
Scale: 1 : 75



① Section 1  
1 : 75



Constant Shape  
Design Studio

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**A113 Section 1**

17 Victor Ave, Toronto

2019-01-26

Scale: 1 : 75