

DECISION AND ORDER

Decision Issue Date Friday, July 31, 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): ALEXANDRA MURPHY

Applicant: FRANCO ROMANO

Property Address/Description: 59 KINGSWAY CRES

Committee of Adjustment Case File: 20 109608 WET 03 MV (A0037/20EYK)

TLAB Case File Number: 20 127505 S45 03 TLAB

Hearing date: Wednesday, July 29, 2020

DECISION DELIVERED BY Ian James Lord

REGISTERED PARTIES AND PARTICIPANTS

Applicant	FRANCO ROMANO
Owner	MAHIN BAQI
Primary Owner	RAJIV GUPTA
Appellant	ALEXANDRA MURPHY
Appellant's Legal Rep.	ALEX LUSTY

INTRODUCTION

This matter comes forward as a proposed Settlement Hearing under Rule 19 of the Rules of Practice and Procedure (Rules) of the Toronto Local Appeal Body (TLAB).

The matter arises by way of an appeal from an approval for variances by the Etobicoke Panel of the City of Toronto (City) Committee of Adjustment (COA) related to 59 Kingsway Crescent (subject property).

The Applicant proposes to construct, on existing foundations, a new dwelling unit with attached garage. The Appellant is a neighbour to the west.

In addition to the above list, Mr. Ron Kanter represented the Applicants. Mr. Kanter, Mr. Lusty and Mr. Romano were the only persons who appeared and participated in the WEBEX Hearing.

BACKGROUND

The COA approved some eight variances subject to conditions, on March 20, 2020. The Parties immediately engaged in settlement considerations and through posting on July 23, 2020 filed comprehensive Minutes of Settlement and Party disclosure.

The intervening period involved, from March 16, 2020 onward, the closure of TLAB matters from processing by Provincial, City and orders of the TLAB arising from COVID – 19 restrictions based on public health and safety.

The Applicant owners on or about July 10, 2020, served and filed a Motion under Rule 19 requesting a Settlement Hearing to be expedited and held virtually, arising from the Party's Minutes of Settlement provided on the Motion. The TLAB agreed, provided service instructions, and heard the matter on July 29, 2020. No other persons emerged.

By way of opening remarks, Mr. Lusty reviewed the progress of discussions, their resolution by the March 27, 2020 Minutes of Settlement and the notable elements, including:

- a. Revised Plans
- b. An increased west side yard setback (Variance 3 approved by the COA from 0.05 m to 0.91m)
- c. Revised 'Conditions' of approval to require construction in accordance with the revised plans and the demolition of an existing shed at or on the common property line.

Both counsels acknowledged these terms as acceptable and were to be addressed by the planning witness for the Applicant, Mr. Romano.

Counsel also agreed to represent the changes as minor and falling within the intent of section 45 (18.1.1) of the *Planning Act*, permitting application revisions without further notice.

Neither counsel requested that the Minutes of Settlement themselves, despite being served and filed, required the Tribunal's endorsement or attachment, apart from the foregoing.

MATTERS IN ISSUE

The appeal put in issue the eight variances and conditions imposed by the COA.

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

Evidence in this matter was provided by Mr. Franco Romano, a land use planner identified and sworn to give expert opinion evidence on the matters in issue.

He spoke in support of the variances, conditions, and plans as proposed to be revised through the filed Minutes of Settlement.

Mr. Romano's viva voce evidence is fully canvassed and contained in his Affidavit in support of the Motion, Exhibit 1 to the Hearing. The Affidavit consists of 16 pages of text and has multiple attachments of relevance, including area character descriptions, the Revised Plans, commentaries from public agencies, the revised variances and conditions, and related policy and statutory considerations.

His was the only evidence in the proceeding and was uncontested. Following a thorough review, it is only briefly summarized here; namely, Mr. Romano affirmed and adopted his affidavit and made the following salient points:

- a) The area is characterized by stately homes of two and three storeys in a ravine setting;
- b) The proposal is to rebuild a three storey home on existing foundations enclosing third storey space within the roof line, a design feature common in the vicinity; an existing deck is to be retained and refurbished.
- c) The plans approved by the COA are modified in areas shown as 'bubbled' to reflect shed location settlement discussions and Hazard Land protection by emphasizing the location of Top of Bank, as agreed with the Toronto and Region Conservation Authority (TRCA). The Revised Plans, excluding internal space floor arrangements, are set out on **Attachment A** hereto.
- d) Most variances sought recognize existing conditions; Variance 3 is requested to be modified to set a west side lot line setback sufficient to locate a new garden structure following the agreed demolition of an existing shed at or near the common lot line with the Appellant. The requested variances are set out on **Attachment B** hereto.
- e) The conditions imposed by Urban Forestry, the Planning Department and the Settlement are appropriate. The Conditions are set out on **Attachment B** hereto.
- f) The changes depicted on Attachments A and B from the approval of the COA are minor and additional Notice, in his opinion, is not warranted.
- g) In describing the Neighbourhoods designation and area in Official Plan terms, he was of the view that the incremental space from existing (some 73 square meters) was modest, consistent with area design examples and of a mass, scale, height, and lot deployment that is entirely consistent with the streetscape as well as the immediate and larger areas around.
- h) In his opinion, Provincial Policy, *Planning Act*, section 2 objectives were met with consistency in the Application, and Growth Plan conformity was implemented by consistent house form character reinvestment.
- i) In reviewing the Built Form, Housing, Natural Environment and Development Criteria policies of the Official Plan, he described conscientious compliance, the cooperation of the TRCA and the preservation of lot amenities in a manner that respected and reinforced the existing physical character of the area.
- j) He provided ample description of each variance in terms of finding compliance with the zoning intent and purpose; he identified those that are of existing conditions and provided ample support for the typology and scale of the Application relative to the calculation of net building area above the defined Top of Bank regulatory limit.
- k) He concluded that the replacement of the existing house, built circa 1940 with subsequent additions, to be desirable and minor without any undue adverse impacts or order of magnitude excesses evident. Its ravine lot configuration avoided transferable precedent considerations.

Both counsels encourage the Tribunal to apply Rule 19 and its support for Settlements reached especially in the face of no continuing opposition, noting service upon and the silence of the only other person on record, at 57 Kingsway Crescent.

ANALYSIS, FINDINGS, REASONS

The TLAB encourages settlement discussions. In this case, the Parties diligently responded to their respective interests and reached a timely accord that has met, on the evidence, the policy and statutory tests and application of good community planning principals.

Not only was this compliance evidenced by the obvious thorough preparation by counsel and Mr. Romano, but it was done so in a 'virtual' environment in an atmosphere of co-operation and responsiveness.

This is appreciated. The TLAB is pleased to offer as timely a resolution as circumstances permit.

I accept the uncontested and supporting evidence of Mr. Romano including the Revised Plans (Attachment E to the Affidavit, excepting the A2 series dealing with the internal layout of floors) and the revised variances and conditions (Attachment G to the Affidavit). This evidence, both in Exhibit 1 and as heard *viva-voce*, was compelling and I adopt the opinions and for the reasoning expressed.

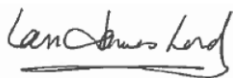
DECISION AND ORDER

The appeal is allowed in part and the decision of the Committee of Adjustment is confirmed but in accordance with the Revised Plans depicted in **Attachment A** hereto.

The variances sought and as set out in **Attachment B** hereto are approved subject to the Conditions set out, also in **Attachment B**.

If difficulties arise in the implementation of this decision, the TLAB may be spoken to.

X



Ian Lord

Panel Chair, Toronto Local Appeal Body

Signed by: Ian Lord

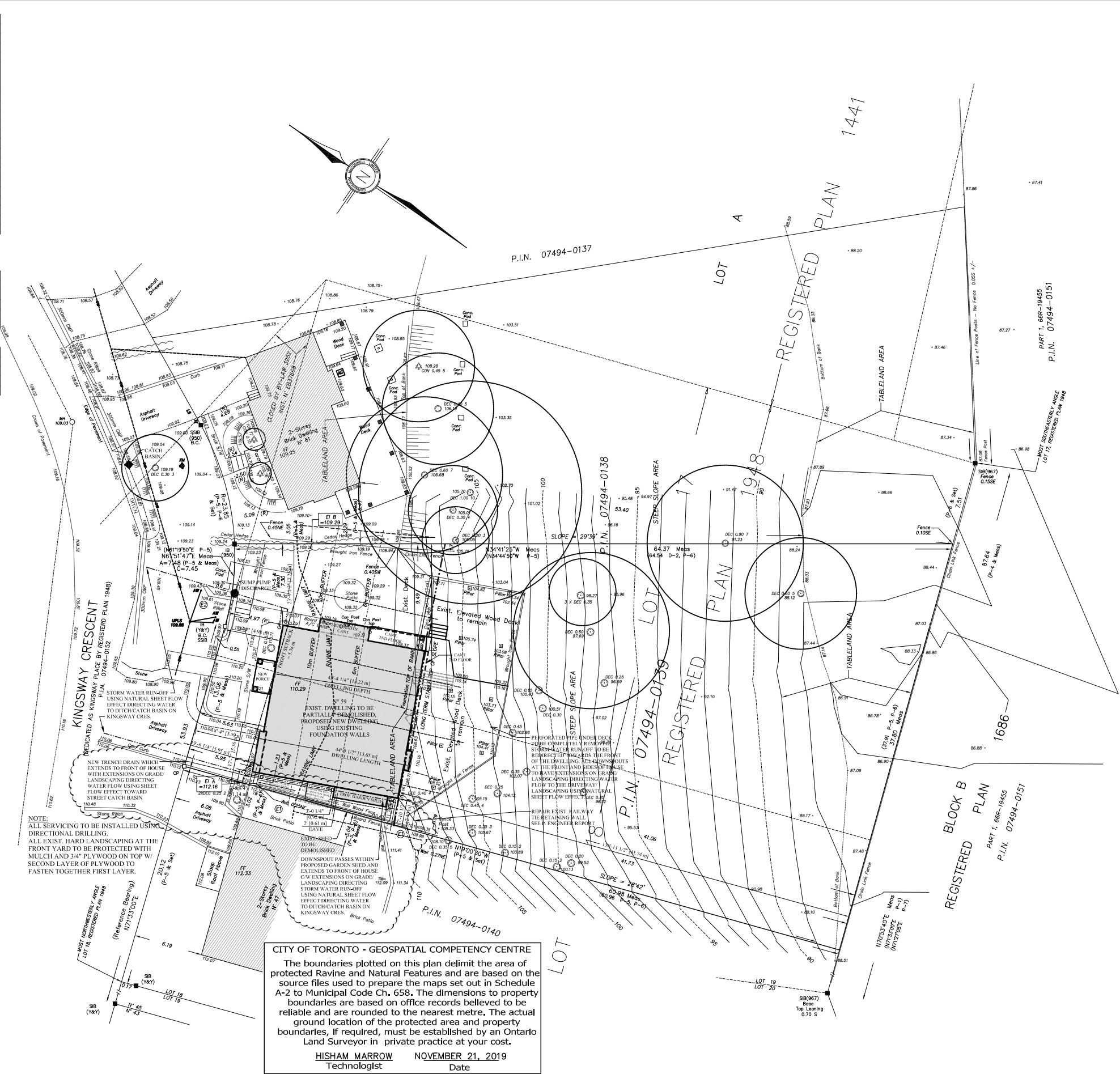
Attachment A

Revised Plans (Attachment E to the affidavit of Franco Romano)

ADDRESS: 59 KINGSWAY CRES., TORONTO		
PROJECT STATISTICS		
LOT AREA	ALLOWED	PROPOSED
TABLE LAND		1,785.4 m ²
COVERGE W/ REAR DECK		761.6 m ²
COVERGE W/O REAR DECK	33% = 251.33 m ²	50% = 366.22
GROSS FLOOR AREA (NEW BY LAW)	50% OF LOT 380.8 m ²	28% = 198.20
GROSS FLOOR AREA (OLD BY LAW)	125sq.m + 25% OF LOT =315.4 m ²	
	EXIST. = 410.73 m ²	466.37 m ²
FLOOR SPACE INDEX		0.61
DWELLING DEPTH	0.5	0.5
DWELLING LENGTH	MAX 19 m	13.22 m
MAX BUILDING HEIGHT	MAX 17 m	13.65 m
MAX EAVE HEIGHT	9.5 m	9.28 m
FRONT YARD SET BACK	main wall 7.0 m	5.78 m
REAR SET BACK	5.38 m	4.98 m
SIDE (EAST) SET BACK	7.5 m	41.74 m
AGGREGATE BOTH SIDE YARDS	1.2 m	7.25 m EXIST.
SIDE (WEST) SET BACK	2.1 m	8.17 m
PARKING SPACE 5.6m X 2.6 m		0.92 m
DRIVEWAY WIDTH	5.6m X 2.6 m	3.25 m X 6.91 m
EAVES ENCROACHMENT	3.2 m	5.25 m
GARAGE SET BACK (SIDE)	NA	0.61 m
GARAGE SET BACK (SIDE)	0.3 m	N/A
GARAGE SET BACK (SIDE)	NA	NA

TOTAL PARCEL AREA			
LOT FRONTAGE	22.60 m		
FRONT YARD SET BACK	5.38 m		
AVERAGE GRADE	110.73 m		
REMAING EXTERIOR WALLS TO STAY		50%	50%

LANDSCAPING		
FRONT YARD	REQUIRED	PROPOSED
LANDSCAPE OPEN SPACE(grass, shrubs , walkway , patio , stone)	A 100% of A	EXIST.
DRIVEWAY	B 60% of A	EXIST.
SOFT LANDSCAPE (VEGETATION ONLY)	C	EXIST.
	D 75% of A-C	EXIST.



DATE	NO.	DESCRIPTION
2020-03-20	1	COA/TLAB REVISIONS

PROJECT DESIGNER:

Ph.D. design
incorporated

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**NEW DWELLING ON EXIST.
FOUNDATIONS**
COA/TLAB REVISIONS
RAJIV GUPTA/MAHIN BAQI
59 KINGSWAY CRES.
TORONTO, ONTARIO

DRAWING TITLE:

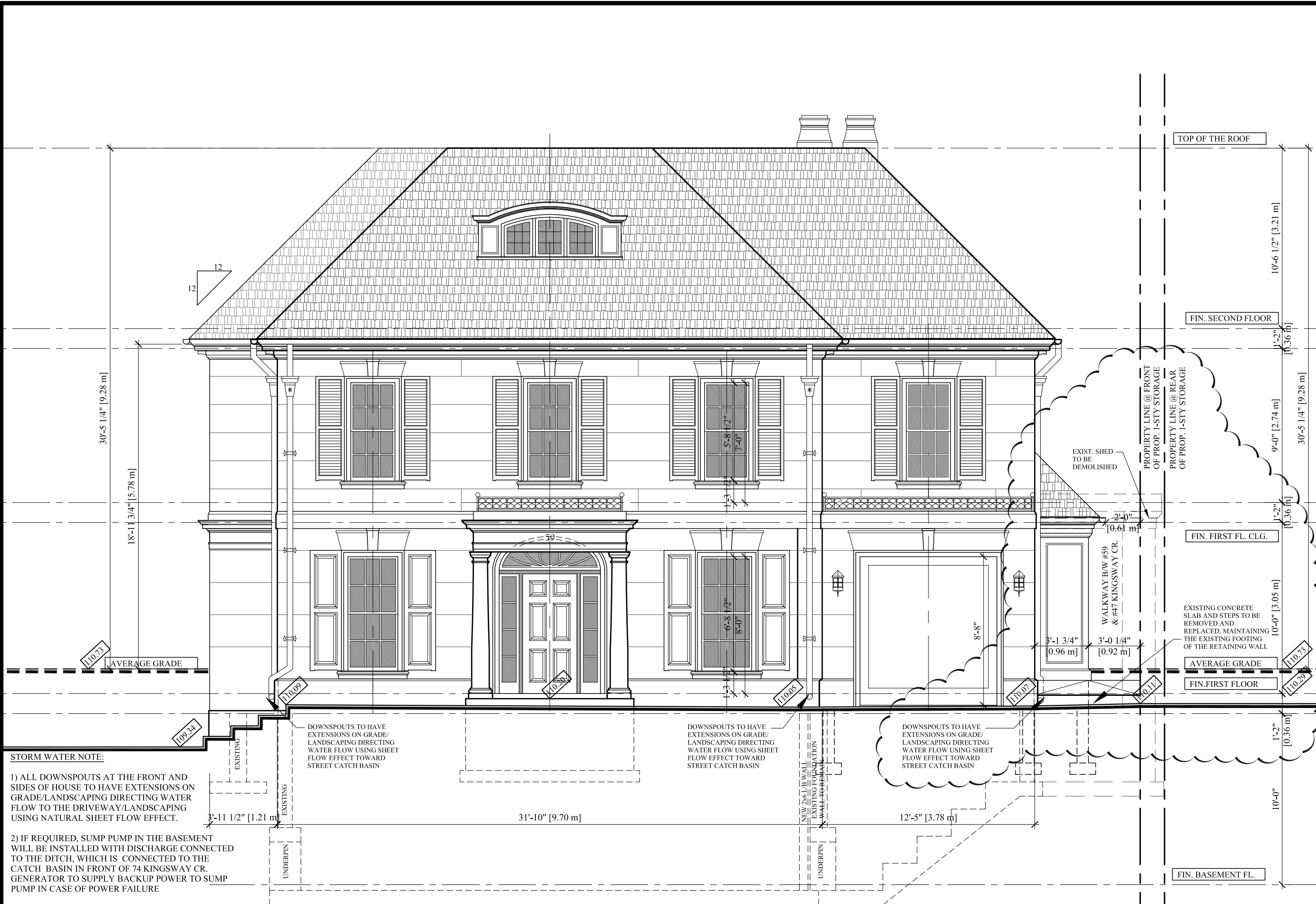
**STATISTICS
SITE PLAN
1/32" = 1'-0"**

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Date:	3/26/2020 9:52:16 AM

PROJECT NO.:

DRAWING NO.:

A1.1



STORM WATER NOTE:

1) ALL DOWNSPOUTS AT THE FRONT AND SIDES OF HOUSE TO HAVE EXTENSIONS ON GRADE/LANDSCAPING DIRECTING WATER FLOW TO THE DRIVEWAY/LANDSCAPING USING NATURAL SHEET FLOW EFFECT.

2) IF REQUIRED, SUMP PUMP IN THE BASEMENT WILL BE INSTALLED WITH DISCHARGE CONNECTED TO THE DITCH, WHICH IS CONNECTED TO THE CATCH BASIN IN FRONT OF 74 KINGSWAY CR. GENERATOR TO SUPPLY BACKUP POWER TO SUMP PUMP IN CASE OF POWER FAILURE

3) EXISTING PERFORATED PIPE OUTLET UNDER THE REAR DECK WILL BE COMPLETELY REMOVED. ALL STORM WATER RUN OFF WILL BE REDIRECTED AWAY FROM THE RAVINE SLOPE.

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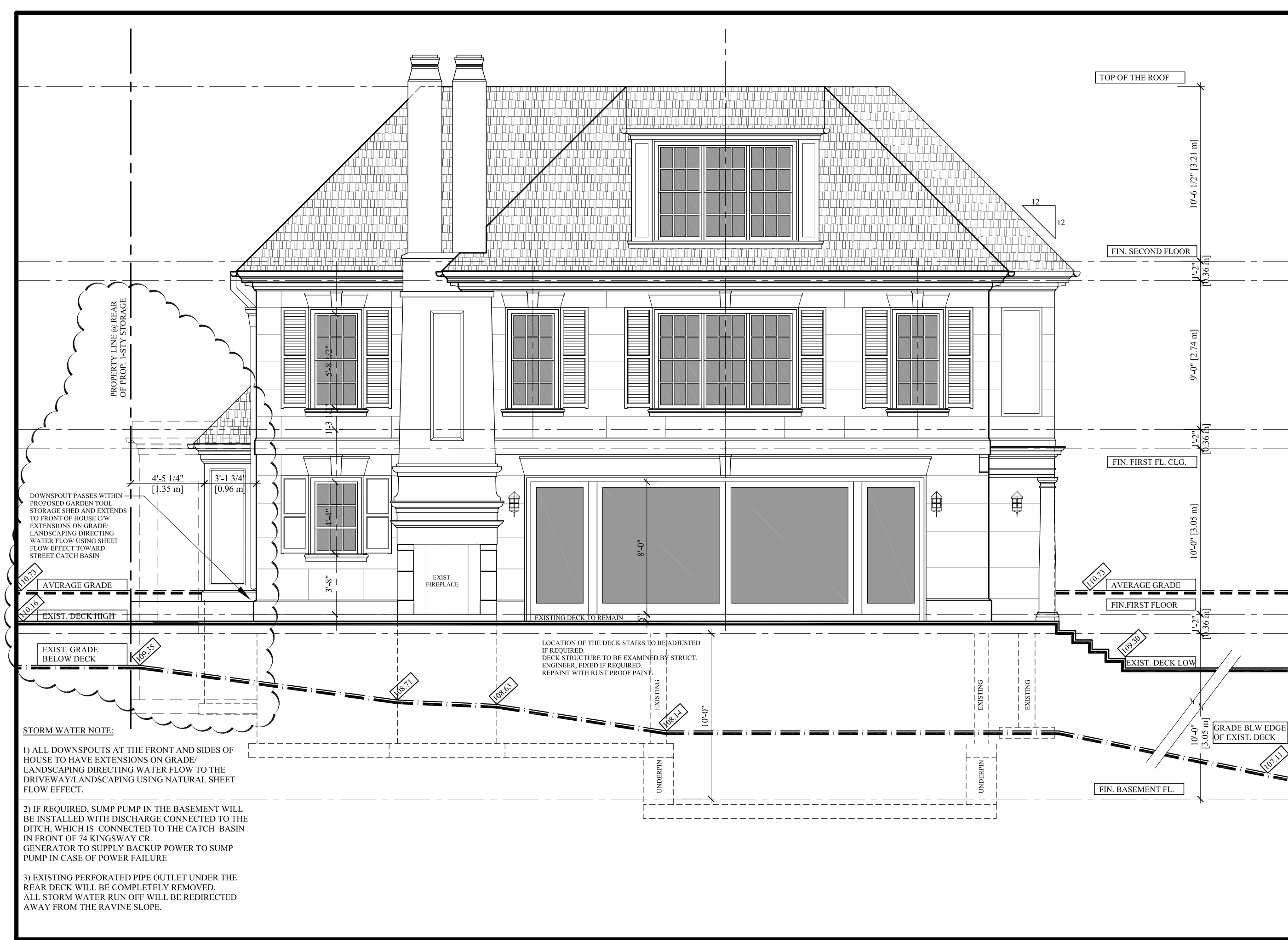
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DRAWING TITLE:
FRONT ELEVATION

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PROJECT No.: DRAWING No.: **A3.1**



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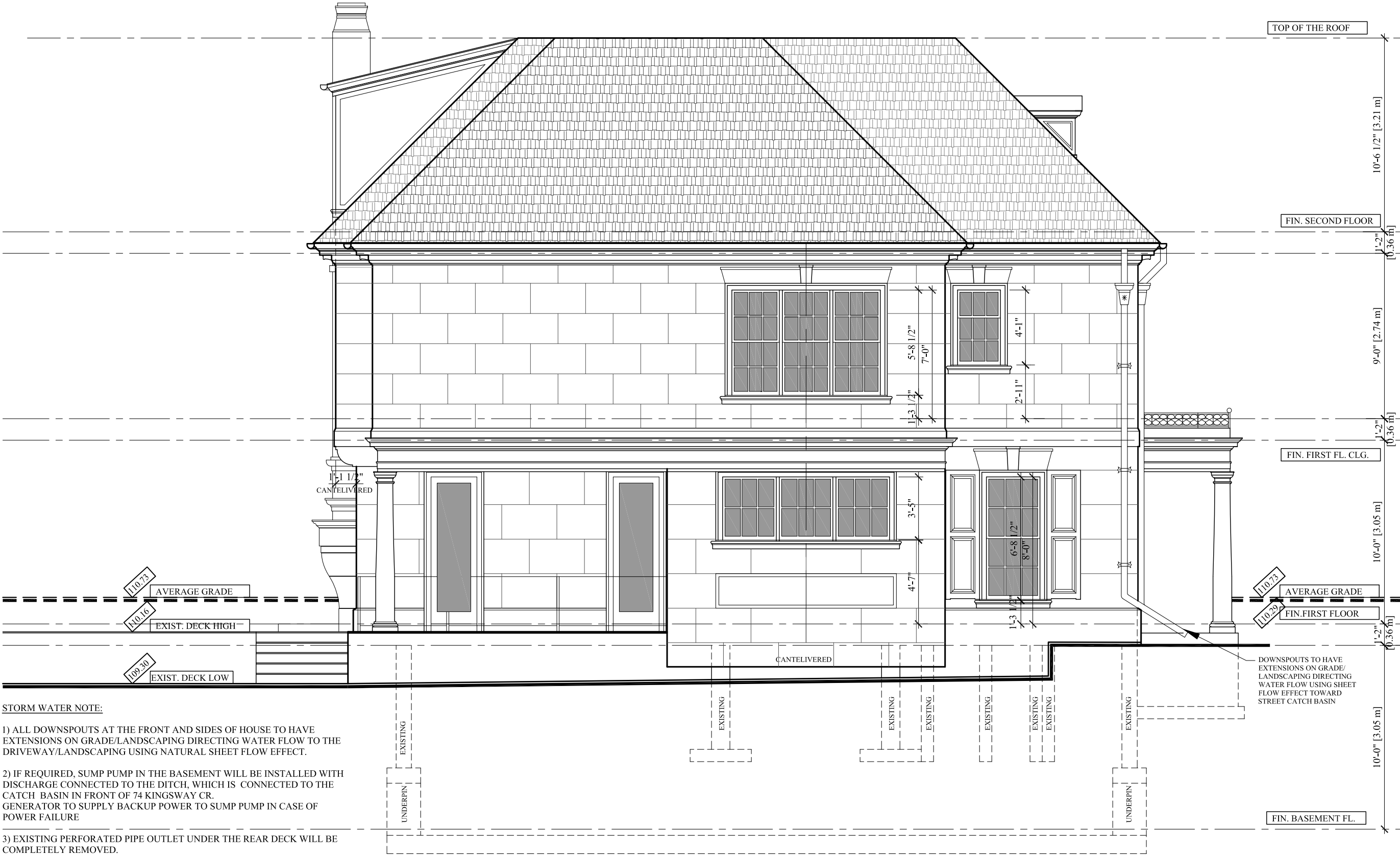
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DRAWING TITLE:
REAR ELEVATION

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Date: 3/26/2020 9:48:48 AM

PROJECT No.: DRAWING No.:
A3.2



STORM WATER NOTE:

- 1) ALL DOWNSPOUTS AT THE FRONT AND SIDES OF HOUSE TO HAVE EXTENSIONS ON GRADE/LANDSCAPING DIRECTING WATER FLOW TO THE DRIVEWAY/LANDSCAPING USING NATURAL SHEET FLOW EFFECT.
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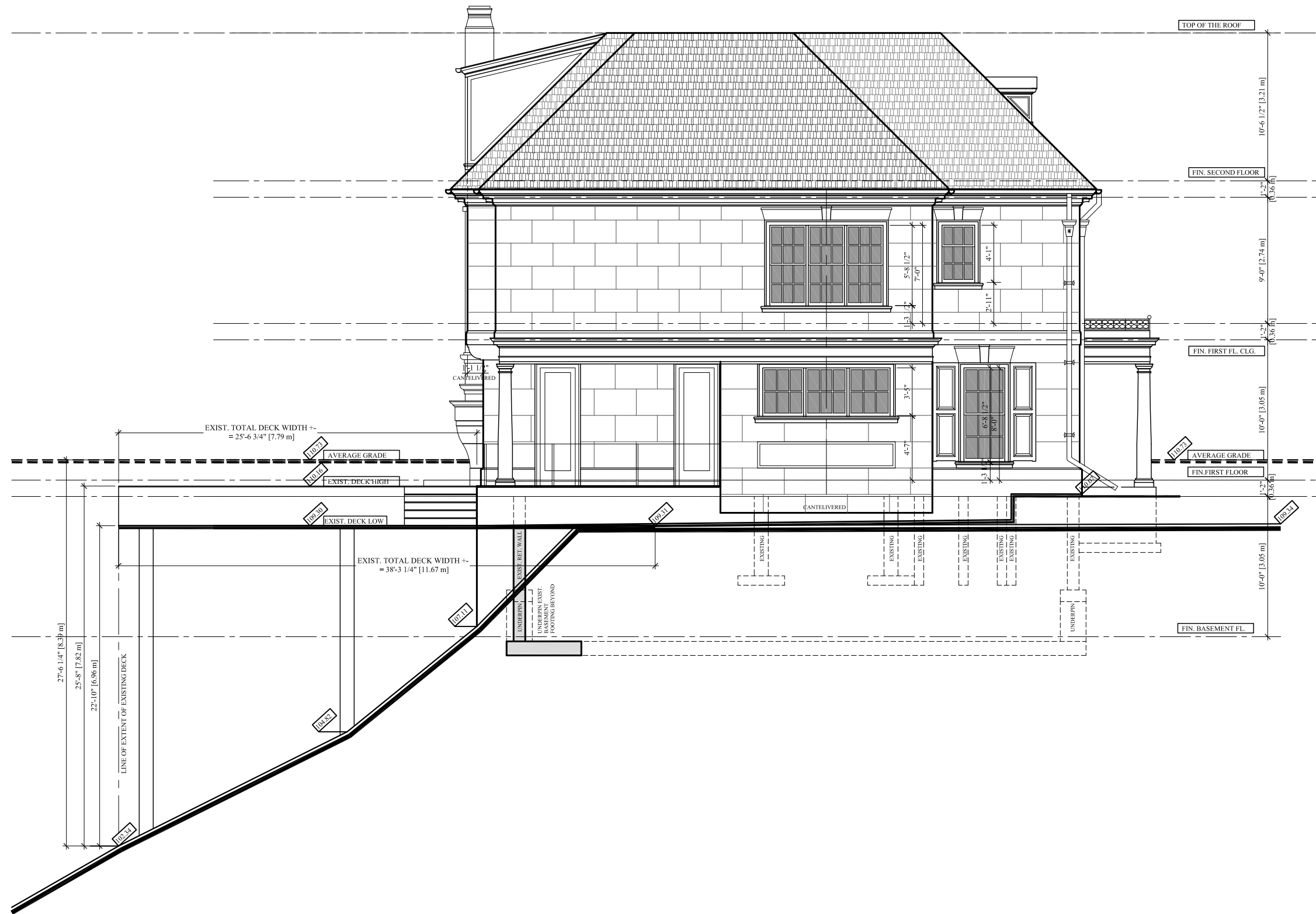
EAST SIDE ELEVATION

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A3.3



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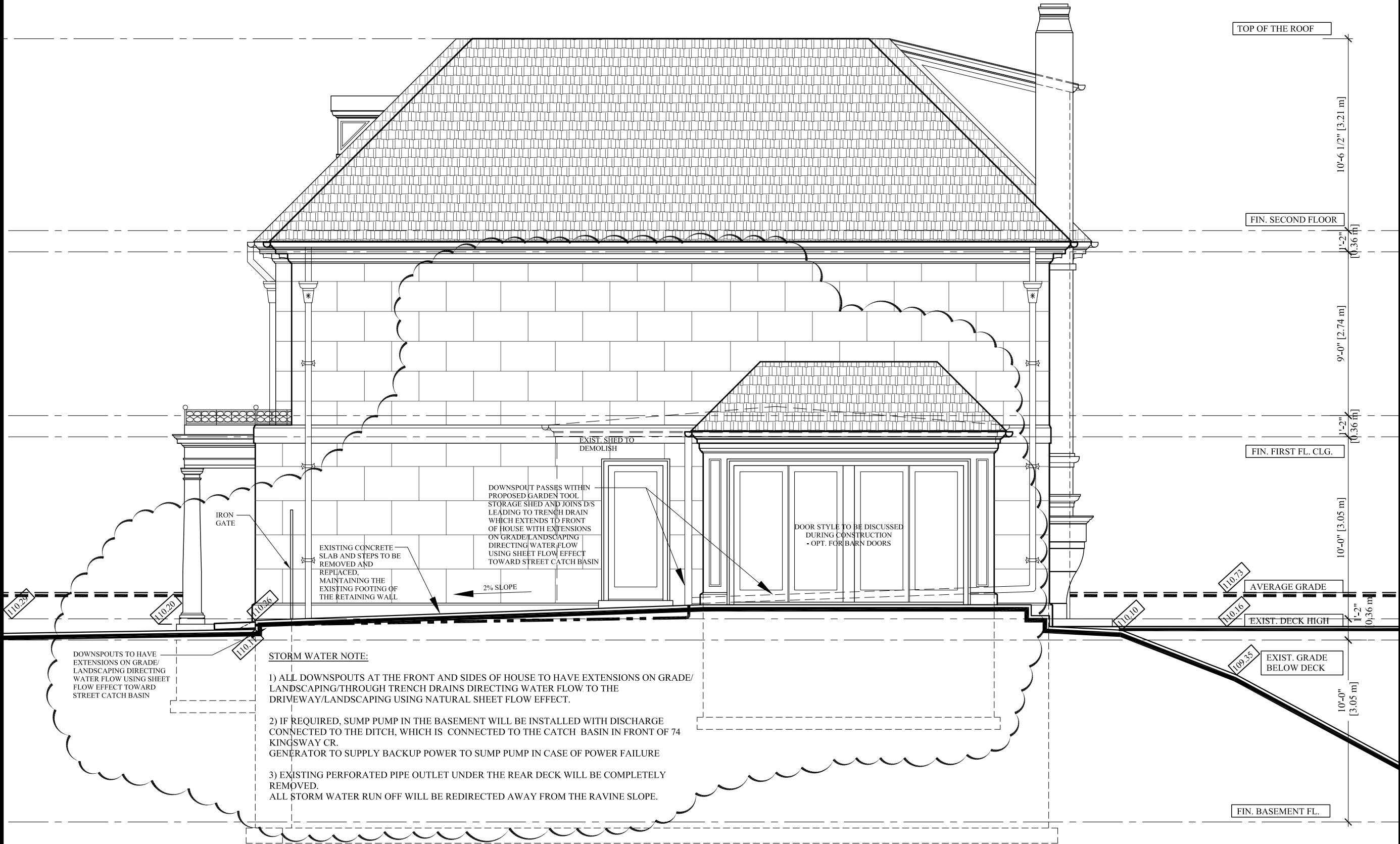
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DRAWING TITLE:
**EAST SIDE ELEVATION
DECK GRADING**

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PROJECT No.: DRAWING No.:

A3.3B



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FOUNDATIONS**
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RAJIV GUPTA/MAHIN BAQI
59 KINGSWAY CRES.
TORONTO, ONTARIO

DRAWING TITLE:
WEST SIDE ELEVATION

Scale: 3/16" = 1'-0"
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Date: 3/26/2020 9:48:48 AM

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A3.4

Attachment B

LIST OF VARIANCES TO THE ZONING BY-LAW:

1. Section 900.3.10.(35)(A), By-law 569-2013

The maximum permitted gross floor area, including an attached or detached garage, is 150 m² plus 25% of the lot area (253.15 m²), up to a maximum floor space index of 0.5 (206.3 m²). The new dwelling will have a gross floor area, including the attached garage of 150 m² plus 80% of the lot area (483.55 m²), with a floor space index of 1.17 (483.55 m²).

2. Section 10.20.40.70.(1), By-law 569-2013

The minimum required front yard setback is 5.38 m. The new dwelling will be located 4.89 m from the front lot line.

3. Section 10.20.40.70.(3)(E), By-law 569-2013

The minimum required side yard setback is 1.8 m. The new dwelling will be located at least 0.91 m from the west side lot line.

4. Section 10.5.40.50.(2), By-law 569-2013

A platform without main walls attached to or within 0.3 m of a building, must comply with the required minimum building setbacks (1.2 m). The existing rear platform will be located 0 m from the west side lot line and 0.39 m from the east side lot line.

5. Section 10.5.40.50.(4), By-law 569-2013

Where a platform is attached to the rear wall at or below the first storey, the portion of the platform beyond 2.5 m from the rear main wall may not be higher than 1.2m above the ground. The existing rear deck is 7.79 m beyond the rear main wall and is 7.82 m high.

6. Section 10.5.50.10.(1)(C), By-law 569-2013

A minimum of 75% of the front yard must be soft landscaping (82.8 m²). A total of 59% of the front yard will be provided as soft landscaping (65 m²).

7. Section 5.10.40.70.(6), By-law 569-2013

A shoreline hazard limit or a stable top-of-bank that crosses a lot, a building or structure shall be located a minimum of 10 m from that shoreline hazard or stable top-of-bank as identified by the Toronto and Region Conservation Authority. The proposed dwelling will be located 0 m from the stable top-of-bank.

8. Section 5.10.40.1.(3), By-law 569-2013

No building or structure shall be located on the portion of a lot located below a shoreline hazard limit or stable top-of-bank identified by the TRCA. The proposed dwelling will be located on the portion of the lot located below a shoreline hazard limit or stable top-of-bank identified by the TRCA.

LIST OF CONDITIONS TO VARIANCE APPROVAL

CONDITIONS:

1. Where there is no existing street tree, the owner shall provide payment in lieu of planting one street tree on the City road allowance abutting each of the sites involved in the application. The current cash-in-lieu payment is \$583/tree.

2. The following conditions shall be fulfilled to the satisfaction of the Director, Community Planning, Etobicoke York District:

2.1. All new windows shall be constructed with bird-friendly treatments;

2.2. New exterior light fixtures shall be dark sky compliant; and

2.3. New planting on the subject site and along the street frontage shall be of native species.

3. The proposed dwelling shall be constructed substantially in accordance with the site plan, building elevation and associated drawings (**'Revised Plans'**) prepared by Ph.D.design Incorporated, dated 3/26/2020, attached to this Decision.

4. The shed that exists as of the date of this decision in the west side yard shall be demolished prior to the commencement of construction of a new detached dwelling with an attached garage.