

## DECISION AND ORDER

**Decision Issue Date**      **Friday, April 09, 2021**

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): JAGDIP BARMİ

Applicant(s): JS BARMİ ARCHITECT

Property Address/Description: 57 FLORENCE AVE

Committee of Adjustment File

Number(s): 20 168639 NNY 18 MV (A0364/20NY)

**TLAB Case File Number(s): 20 209874 S45 18 TLAB**

**Hearing date: March 26, 2021**

**DECISION DELIVERED BY S. MAKUCH**

## **REGISTERED PARTIES AND PARTICIPANTS**

Applicant	JS BARMİ ARCHITECT
Appellant	JAGDIP BARMİ
Appellant's Legal Rep.	IAN FLETT
Party	CITY OF TORONTO
Party's Legal Rep.	ADRIENNE DEBACKER
Party/Owner	ALEXANDRA BARMİ

## **INTRODUCTION**

This is an appeal respecting the refusal of two of five variances respecting a single family detached dwelling in the Lansing Neighbourhood of North York. The two variances both relate to height as determined by two different bylaws. Under City of Toronto Bylaw 569-2013, the height of the dwelling is 8.92 m, whereas 7.2 m is the permitted height. Under North York bylaw 7625 the permitted height is 8 m and the height is calculated to be 8.94 m. The proposed dwelling would have the same appearance and actual height regardless of which bylaw is applied, as the North York Bylaw measures height from the centre line of the road and the City Bylaw measures height from the surrounding grade of the building.

There is no dispute with respect to the remaining three variance. They are with respect to a rear deck projection of .62 m in excess of that permitted, a building depth of 1.14 m in excess of that permitted, and lot coverage 1.85% in excess of that permitted. The five variances are attached as Appendix 1.

## **BACKGROUND**

The City, the only party in opposition to the appeal, is willing to accept a height of 8.2 under the North York Bylaw and its equivalent height under the City of Toronto bylaw. The difference in height between what the City agreed to and appellant is seeking is .72 m. The Committee of Adjustment approved a height of 8.2 m. The other variances were approved by the Committee of Adjustment as requested and, as stated, are not opposed by the City on this appeal. They however must also be approved under this appeal.

## **MATTERS IN ISSUE**

The only matter in issue on the appeal is whether a variance for a height which is .72 m greater than the City agrees to and the Committee approved should be granted. The only issue is whether this increase meet the four tests of the *Planning Act*, as it was agreed that the other variances individually and cumulatively did meet the four tests.

## **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 was provided by two land use planners qualified to give planning evidence. Both gave detailed evidence regarding the heights and types of roofs of the buildings in the neighbourhood. Much of that evidence was not in significant dispute. It was clear that the proposed building was a flat roof building, and that there are very few flat roof buildings in the neighbourhood, either in its immediate context or its broader context, although flat roofs are permitted. The City Bylaw provides for pitched roof buildings to be taller by allowing higher main or side walls than that of flat roof buildings.

Moreover, the evidence was that many pitched roof buildings were taller than flat roof buildings and taller than the proposed building. Furthermore, if approved, the proposed building would be the tallest flat roof building in the neighbourhood; as currently, the tallest flat roof building is 8.2 m.

It was the City's evidence that pitched roof buildings are allowed to be taller because the impact of the height of such buildings is lessened by the pitched roof which breaks up the height and massing of the main front or side wall. The main walls of the proposed dwelling (as the building had a flat roof) was not broken by any roof extending down through them.

It was the City's evidence that this failure increased the appearance of the height and the increased massing of the building and since it would be the tallest flat roof

building in the neighbourhood it would set a precedent. As a result, the variance would create a building which did not fit harmoniously in the neighbourhood and would not respect and reinforce the character of the neighbourhood as required by policy 4.5.1 of the Official Plan. Basically this building would be out of keeping in massing and scale of other dwellings in the neighbourhood.

The appellant's witness on the other hand gave evidence that the proposal would respect and reinforce the physical character of the neighbourhood because it was not as tall as the main front wall of a number of pitched roof buildings. Moreover, while the main front walls of pitched roof buildings were broken up by roofs penetrating into them the proposed main front wall of the proposed dwelling was broken up because approximately 30% of it was indented. In his opinion, this reduced the overall massing and gave the appearance of a lower front wall for a portion of the facade. He noted that flat roof buildings are permitted, as are integral garages, and that the height of the building was, in part, the result of an integral garage. In addition, his evidence was that the proposed building did not require any variances respecting side yard, front yard, or FSI and that the variance respecting lot coverage was only 1.8%. His evidence was also that compliance with these zoning requirements indicates that the mass of the proposed building is not excessive. He also opined that his conclusion was reinforced by the failure of the City to demonstrate any negative impact from the additional height such as shadow, or overlook. In his opinion allowing a building height .72 m over the permitted height does not lead to the conclusion that the proposed dwelling would be excessive in massing and scale and that it would not relate to neighbouring buildings and would not respect and reinforce the character of the area. Its height and massing would not be dissimilar to buildings with higher main walls and pitched or mansard roofs. Indeed, in his opinion, the variances if granted would individually and cumulatively meet the four tests and the dwelling would fit harmoniously in the neighbourhood.

## **ANALYSIS, FINDINGS, REASONS**

I find that the variances should be granted. I understand the City's concern that the additional height to a flat roof building can result in an increase in the appearance of massing and scale so that the building might not fit in the neighbourhood and might not respect and reinforce its physical character of the neighbourhood required by the Official Plan. But an opinion that an increase in height of .72 m will result in an increase in massing and scale so that a building will not respect and reinforce the character of the neighbourhood is more than a planning opinion. It is a subjective judgement that is architectural or urban design in nature. It is one that must find that an indentation of 30% of the facade will not accomplish the same result as a pitched roof and that compliance with other requirements such as set backs and FSI are irrelevant as to whether the building fits harmoniously in the neighbourhood. The City called no architectural or urban design evidence to support the planner's opinion. It is the City planner's opinion but he was qualified to give land use planning evidence only and not architectural or urban design evidence.

I find that a single family dwelling which is not higher than the front walls of other buildings, that has no negative impact on surrounding properties, and that does not require any other significant variances, especially variances which would increase the buildings mass and scale, would respect and reinforce the physical character of the neighbourhood. It would therefore meet the requirements of the Official Plan, particularly policy 4.5.1, as the height would be below the prevailing main wall heights of numerous pitched roof buildings in the neighbourhood. I find that this variance meets all the requirements of the four tests of the Planning Act. Moreover, since all the variances meet the requirements of the Official Plan, which implements the Growth Plan and PPS, I find those documents are conformed with.

The City requested that should the appeal be granted, that conditions requested by Urban Forestry be imposed and a condition requiring that construction be substantially in accordance with plans on file also be imposed. The appellant agreed to those conditions and they will be imposed.

### **DECISION AND ORDER**

The appeal is allowed and all variances set out in Appendix 1 are approved subject to the condition that construction will be substantially in accordance with site plan and elevations in Appendix 2.

**X** 

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S. Makuch

Panel Chair, Toronto Local Appeal

## **APPENDIX 1**

### **Variances Approved**

1. Chapter 10.20.40.10.(1), By-law No. 569-2013 Platforms attached to or within 0.3 m of a rear main wall, which are greater than 1.2 m above the ground at any point below the platform, are limited to projecting 2.5 m from the rear wall and may be no higher than the level of the floor from which it gains. The proposed rear deck projects 3.12 m from the rear wall.
2. Chapter 10.20.40.10.(1)(A), By-law No. 569-2013 The permitted maximum height of the building is 7.2 m. The proposed height of the building is 8.92 m.
3. Chapter 10.20.40.20.(1), By-law No. 569-2013 The permitted maximum building length is 17.0 m. The proposed building length is 18.14 m.
4. Chapter 10.20.30.40.(1)(A), By-law No. 569-2013 The permitted maximum lot coverage is 30% of the lot area. The proposed lot coverage is 31.8% of the lot area.
5. Section 13.2.6, By-law No. 7625 The maximum permitted building height is 8.0 m. The proposed building height is 8.94 m.

PRIVATE RESIDENCE

57 FLORENCE AVENUE  
TORONTO, ONTARIO M2N 1G1

RECEIVED  
By Jenny at 5:24 pm, Sep 16, 2020



PROJECT NAME:		PRIVATE RESIDENCE	
MUNICIPAL ADDRESS:		57 FLORENCE AVENUE	
LEGAL ADDRESS:		LOT 475 & PT. LOT 474 AND 476, REG. PLAN 1743 CITY OF TORONTO	
SITE STATISTICS		EXISTING	PROPOSED
ZONING		RD/ R4	
LOT AREA		5,212.10 SF	484.26 SM
LOT DEPTH		130' 4-1/2"	39.73 M
LOT FRONTAGE:		40'-0"	12.19 M
LOT COVERAGE:		(1,656.7 SF/153.92SM) 31.78%	
BUILDING TYPE:		DETACHED	
GROSS FLOOR AREA (A-A1+B+C):		-	3,245.9 SF
GROUND FLOOR (A):		-	1,598.2 SF
SECOND FLOOR AREA (B):		-	1,656.7 SF
CLEAR INTERIOR GARAGE AREA (A1):		-	362 SF
FINISHED BASEMENT AREA(S):		-	1,349 SF
BUILDING HEIGHT (MAX. PERMITTED):		7.5M/ 8.0M	8.92/ 8.94M
NUMBER OF STORIES:		2	2 STORIES
FRONTYARD SETBACK		4.66 M	5.22 M
REAR YARD SETBACK		7.5 M	22.06 M
EAST SIDE YARD SETBACK		1.20 M	2.91 M
WEST SIDE YARD SETBACK		0.90 M	0.50 M
FRONTYARD AREA:		63.68 SM	
DRIVEWAY AREA:		25.46 SM	
SOFT LANDSCAPING AREA:		33.40 SM	
HARD LANDSCAPING AREA:		4.82 SM	
TOTAL FRONTYARD LANDSCAPING:		60.01%	

GENERAL NOTES/MATERIAL KEYING

DRAWINGS MUST NOT BE SCALED AND TO BE READ IN CONJUNCTION WITH GENERAL NOTES AND O.B.C.

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PRIVATE RESIDENCE  
57 FLORENCE AVENUE  
TORONTO, ON  
PROJECT: 1715-01

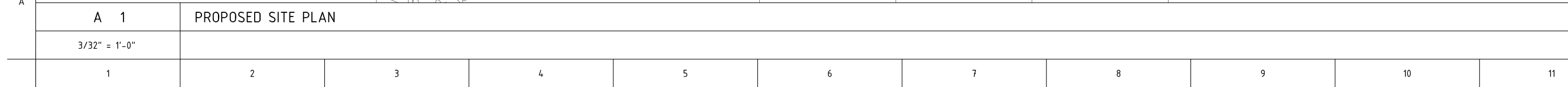
JS BARMi ARCHITECT

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SITE DATA

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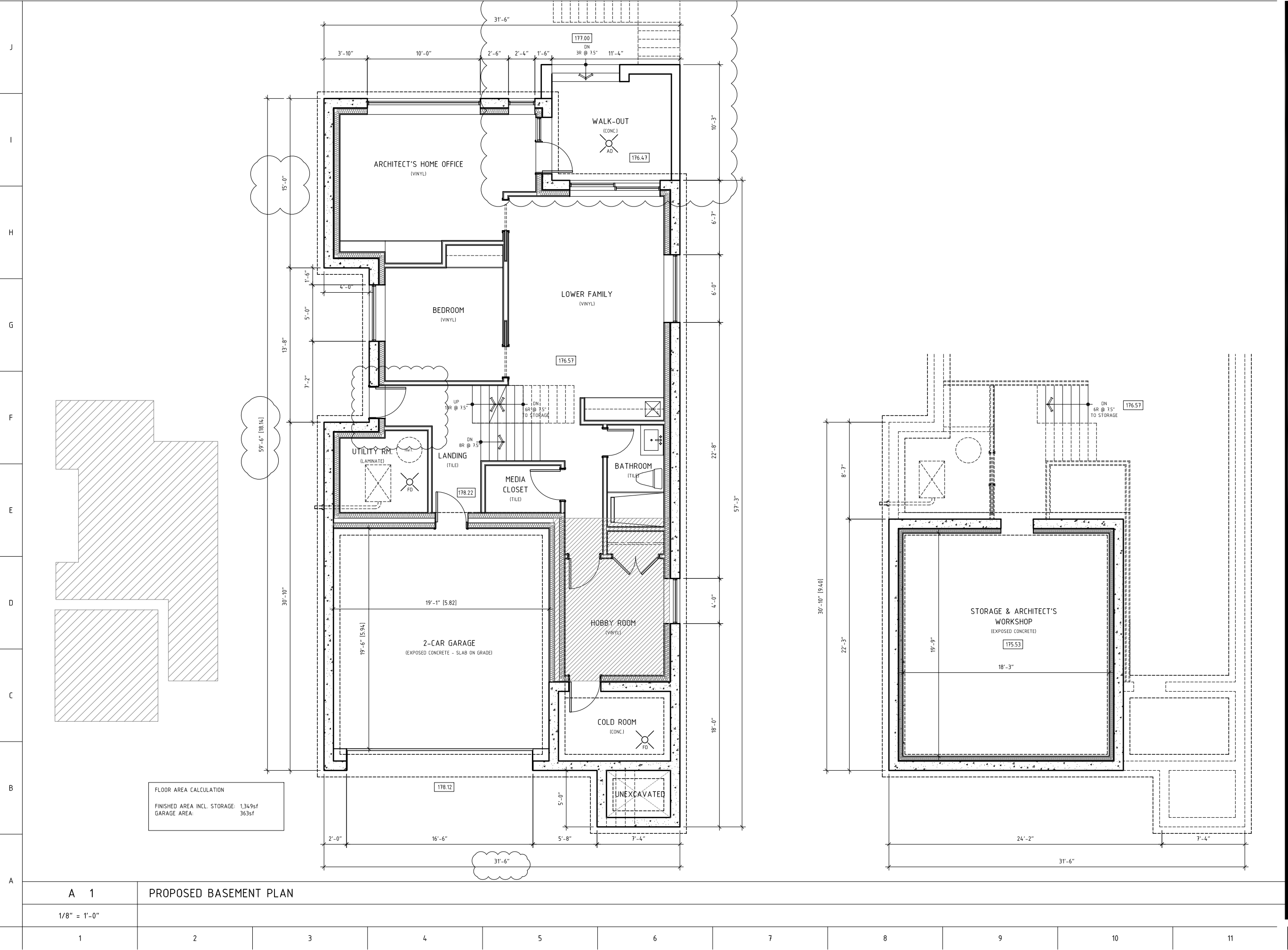
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JS BARMİ ARCHITECT

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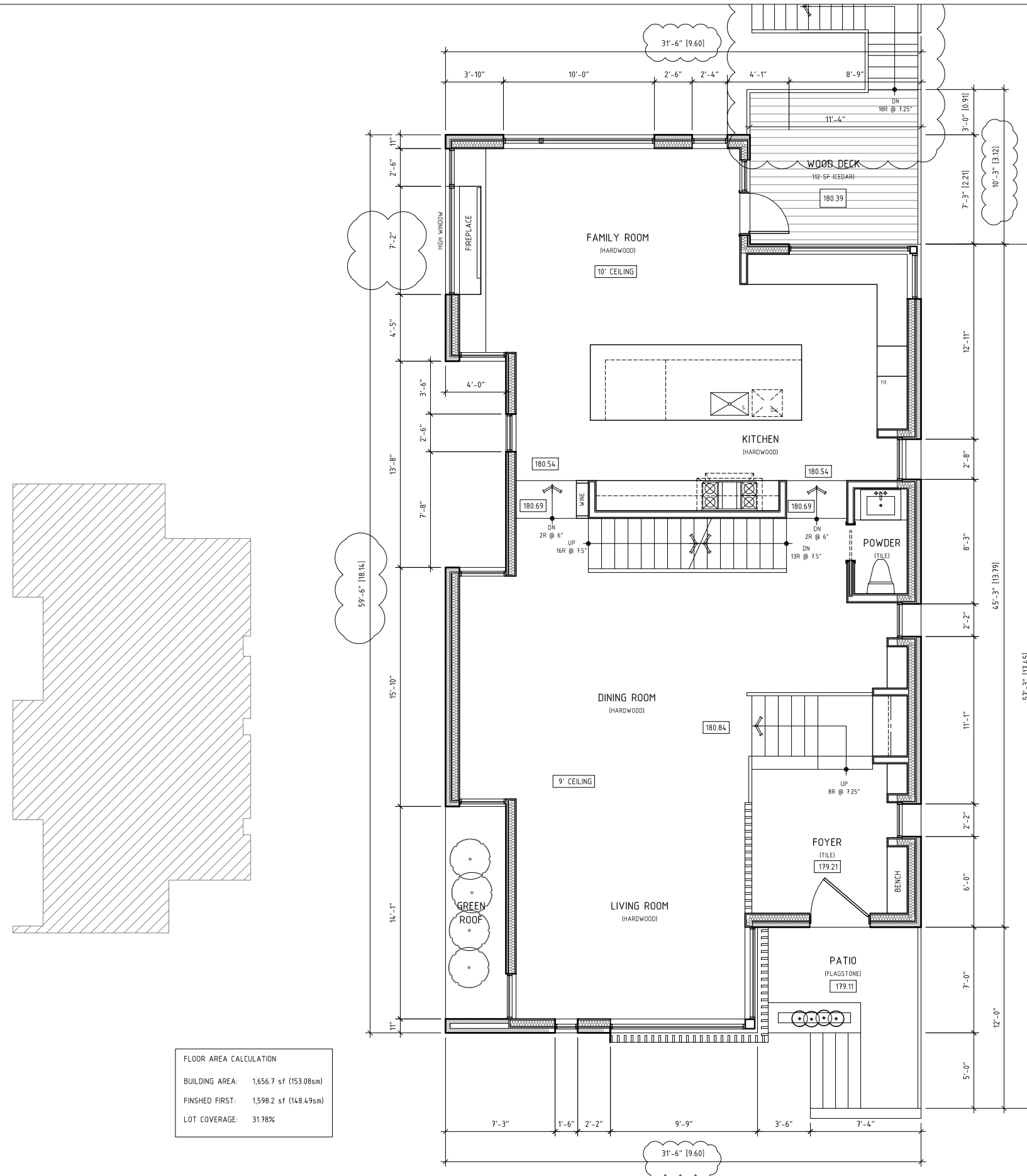
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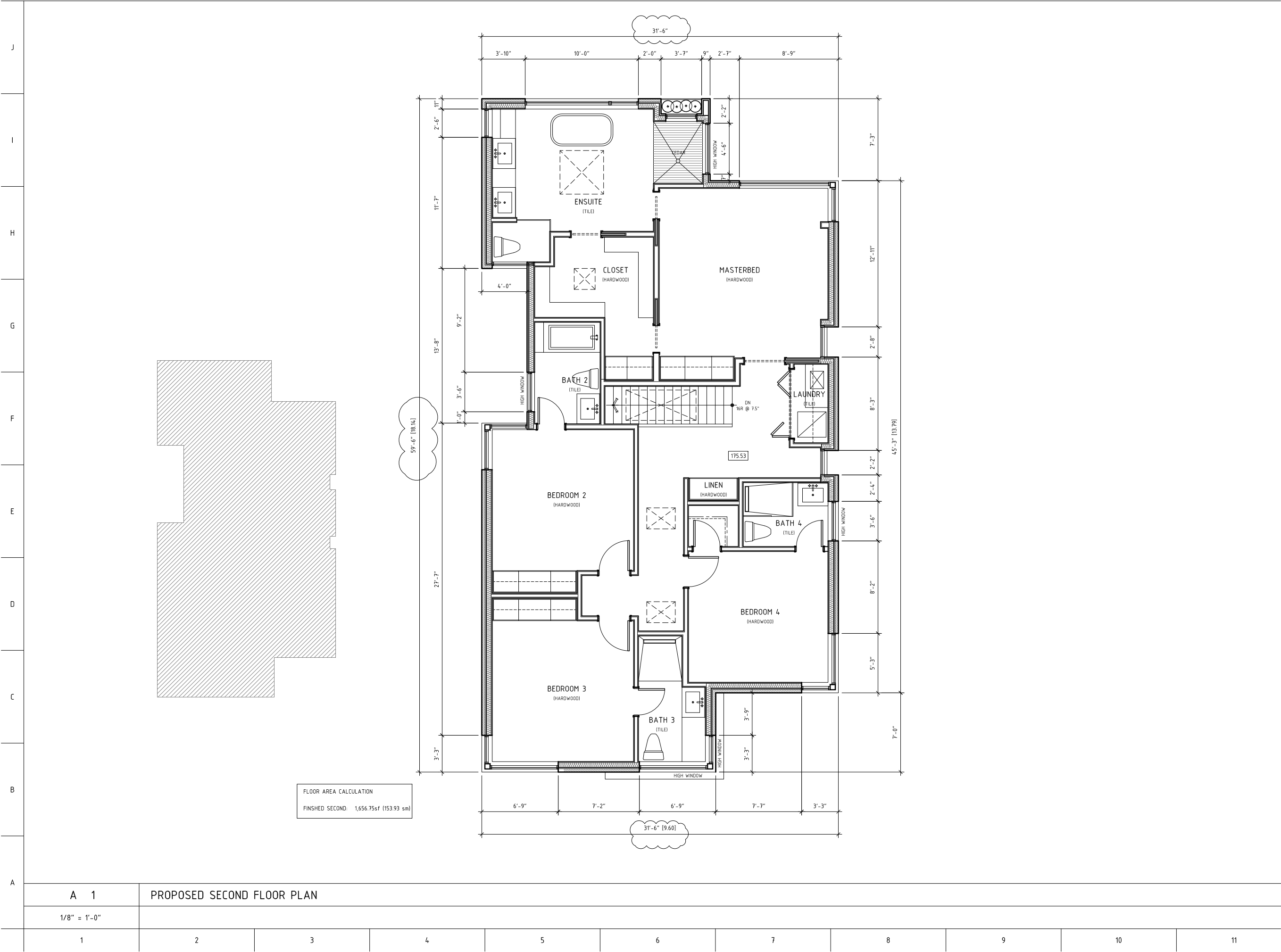
ONTARIO ASSOCIATION  
OF  
ARCHITECTS  
JAGDIP SINGH BARM  
LICENCE  
6173

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PROPOSED FIRST FLOOR PLAN

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FLOOR AREA CALCULATION	
BUILDING AREA:	1,656.7 sf (153.08sm)
FINISHED FIRST:	1,598.2 sf (148.49sm)
LOT COVERAGE:	31.78%



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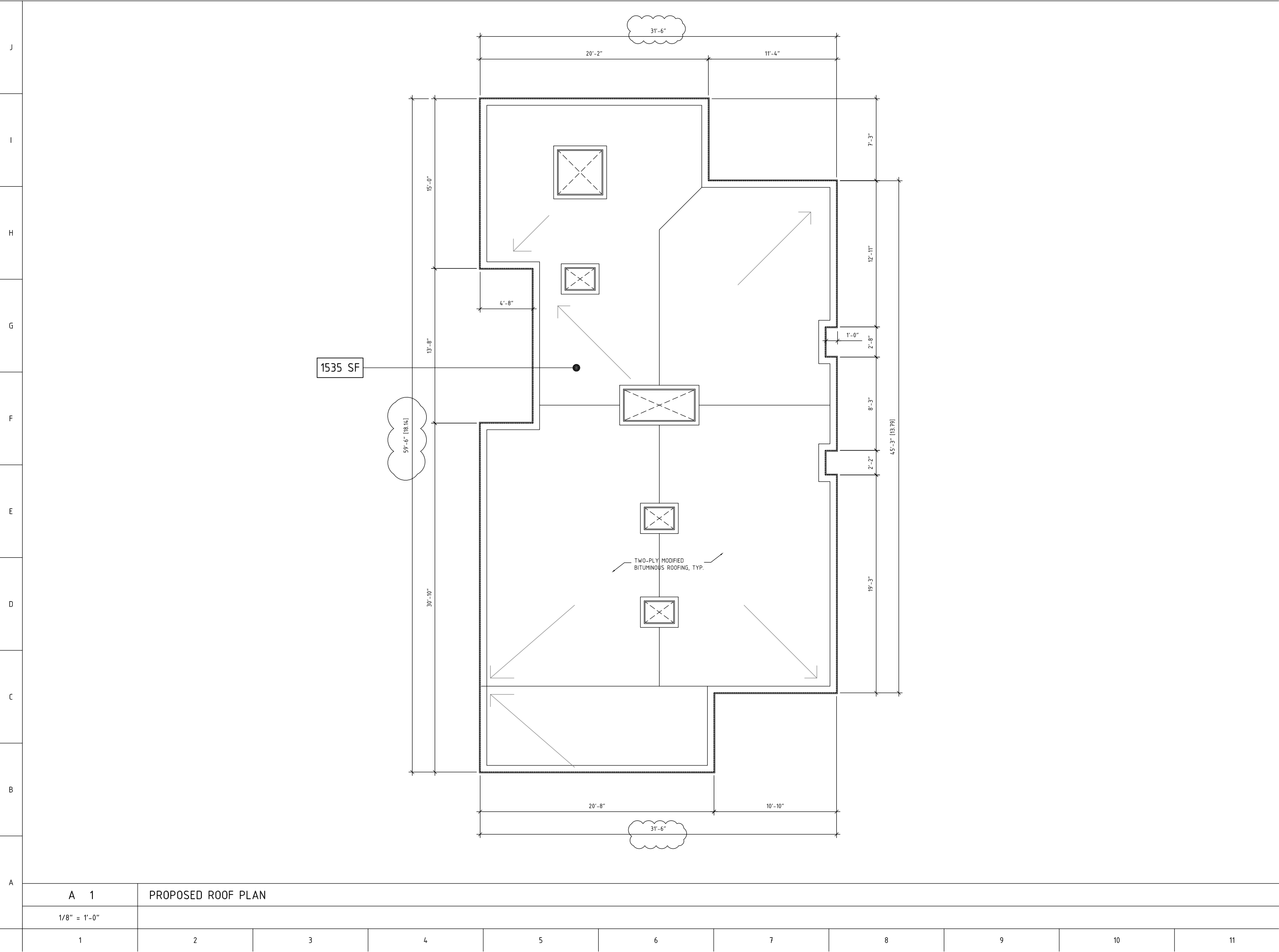


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57 FLORENCE AVENUE  
TORONTO, ON  
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JS BARMi ARCHITECT

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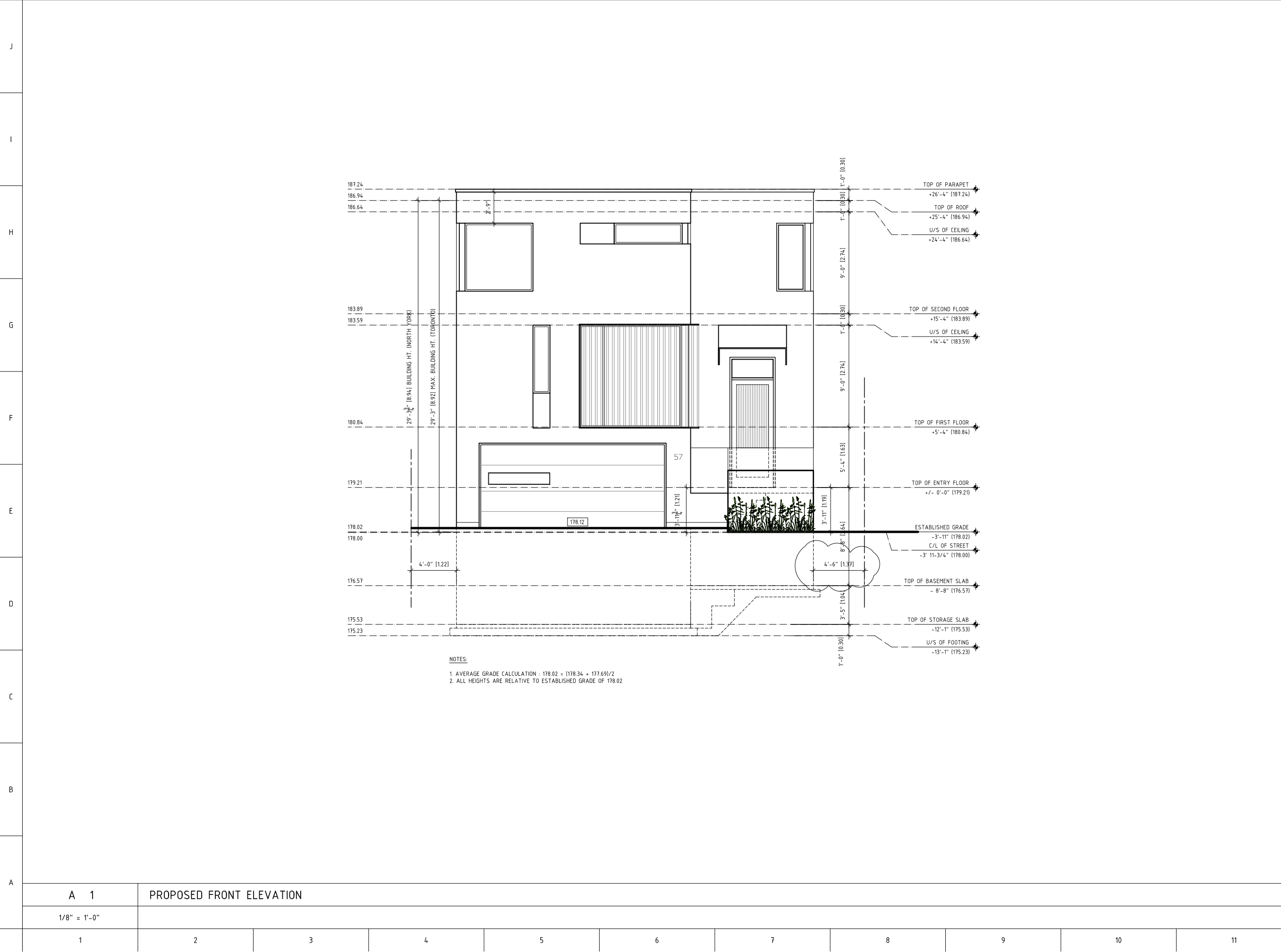


PROJECT TITLE  
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PROJECT: 1715-01

JS BARMi ARCHITECT

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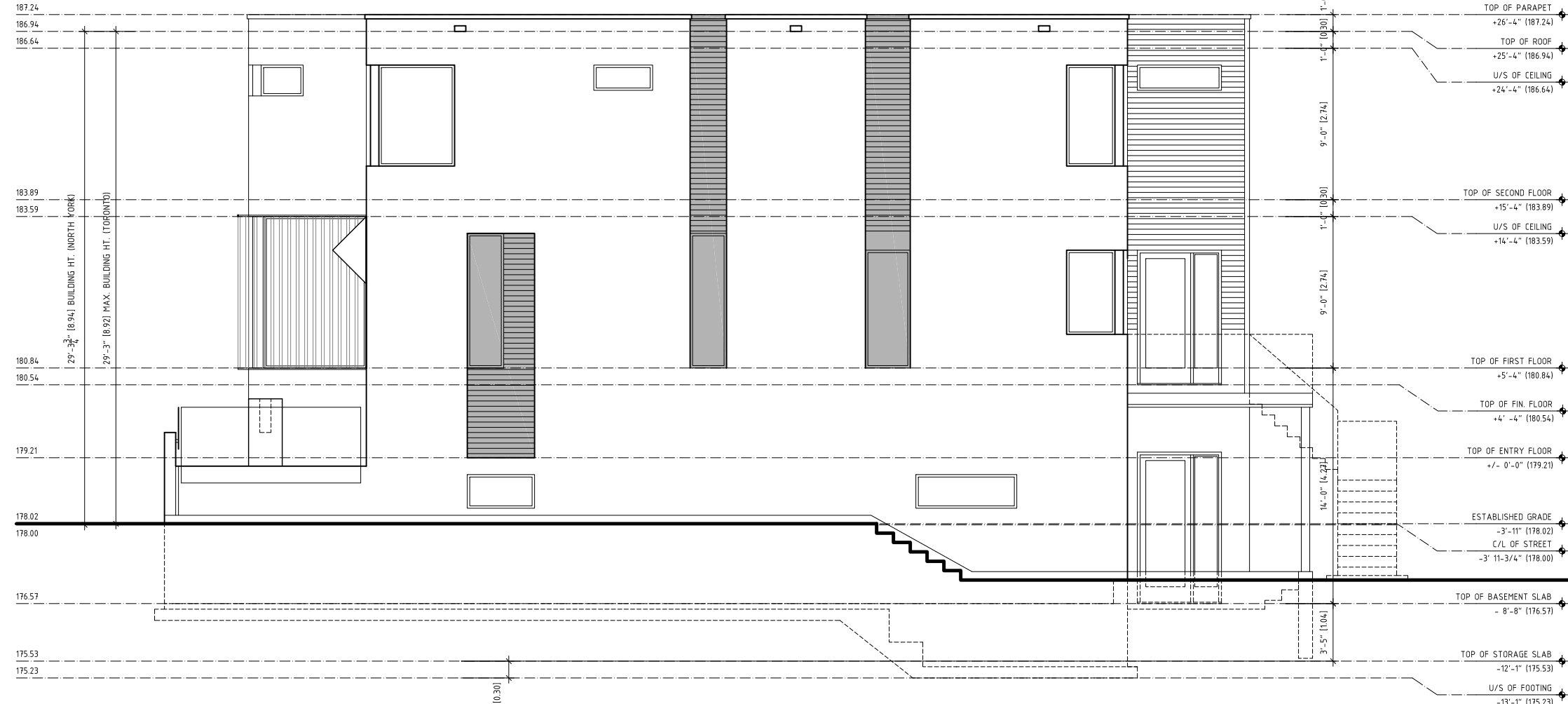
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TORONTO, ON  
PROJECT: 1715-01

JS BARMi ARCHITECT

A 2 0 0  
PROPOSED FRONT ELEVATION

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$$1/8'' = 1'-0''$$

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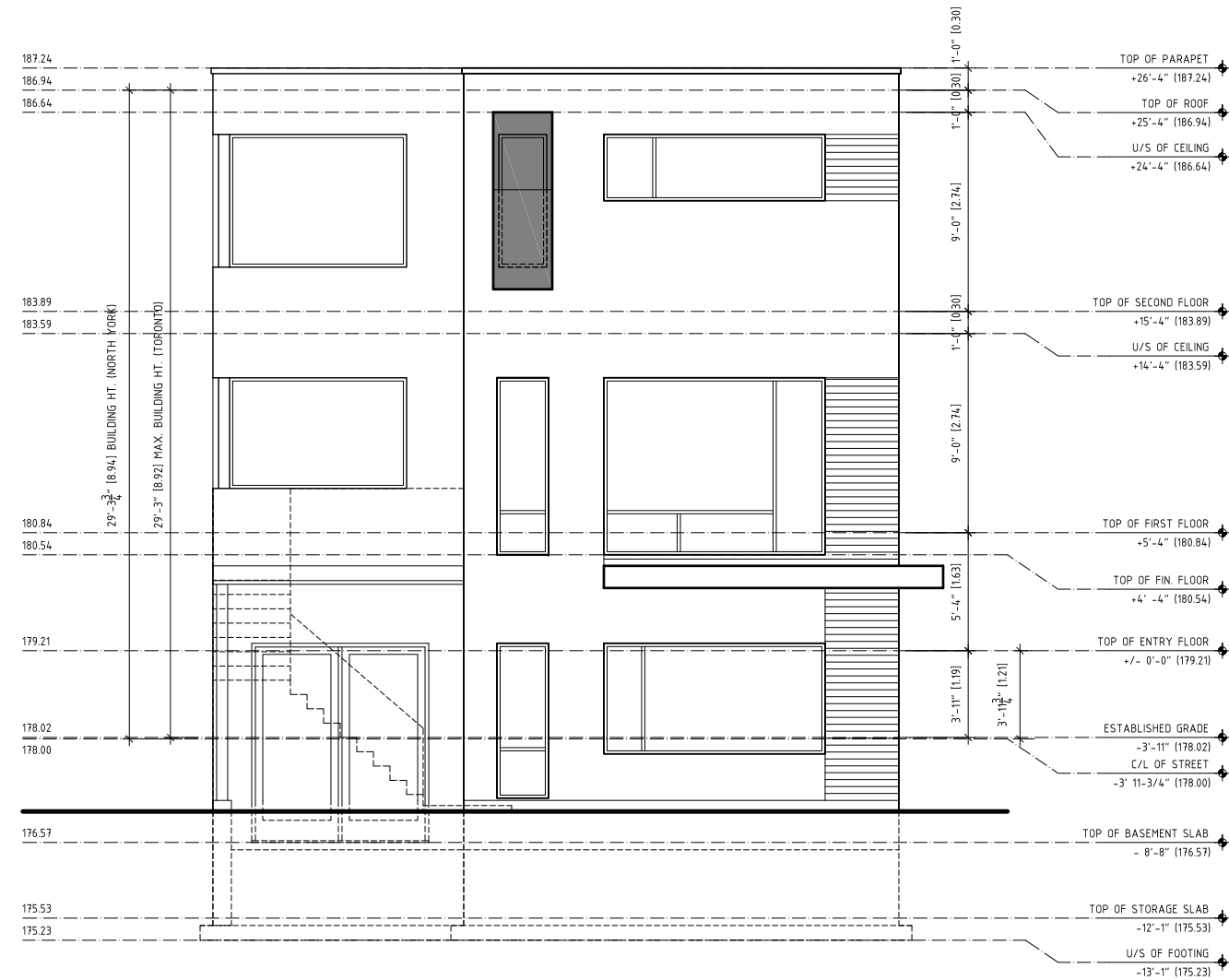


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57 FLORENCE AVENUE  
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JS BARM I ARCHITECT

A 202  
PROPOSED SOUTH ELEVATION

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T: +1. 416. 745. 0765  
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PROPOSED SOUTH ELEVATION (REAR)

A 1

$$1/8'' = 1'-0''$$

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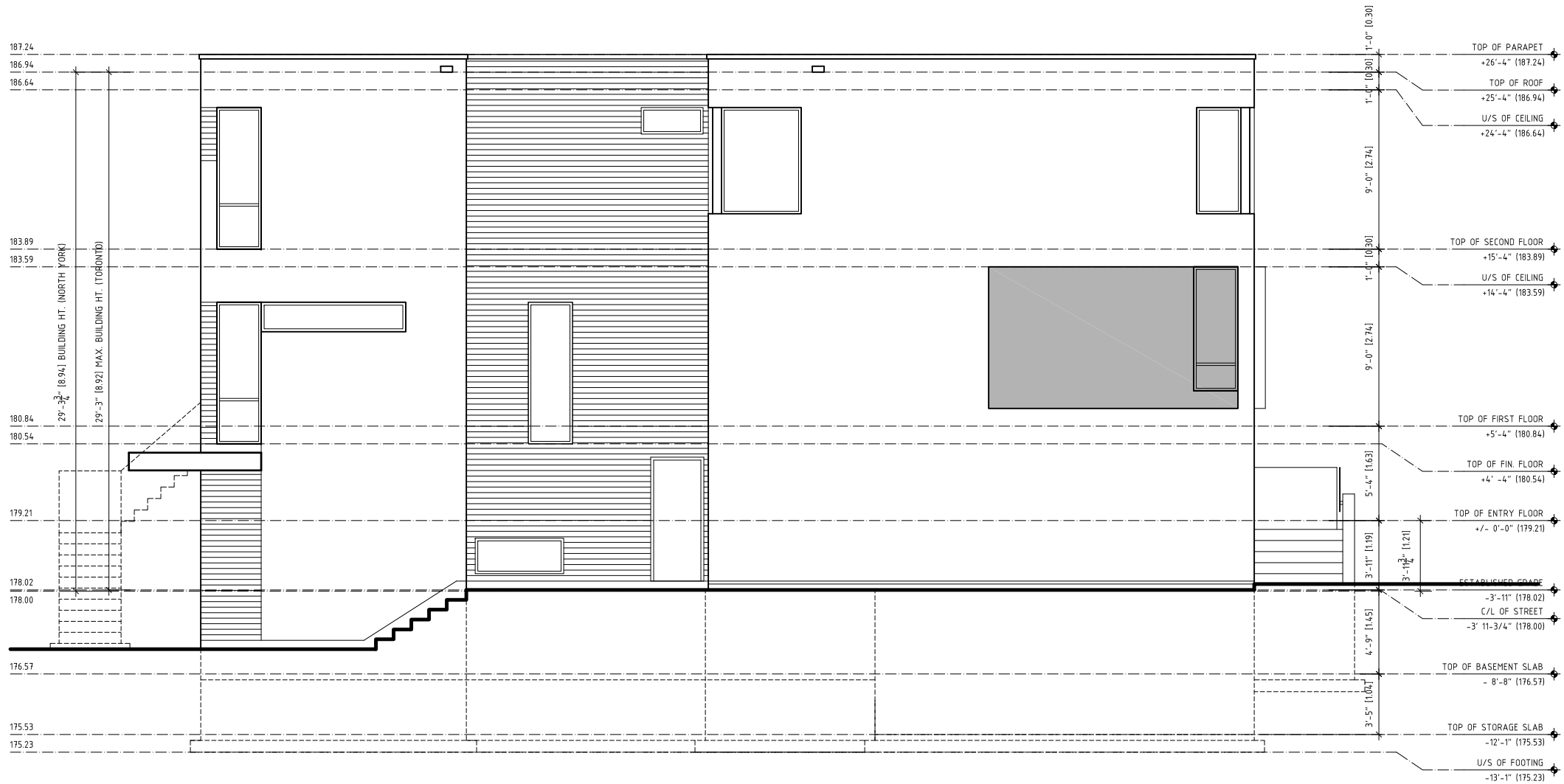


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JS BARM I ARCHITECT

A 203  
PROPOSED EAST ELEVATION

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A 1

PROPOSED EAST ELEVATION

$$1/8'' = 1'-0''$$

1	2	3	4	5	6	7	8	9	10	11
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