

DECISION AND ORDER

Decision Issue Date: Friday, December 10, 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): GREGORY MICHAEL JOFFE

Applicant(s): RICHARD WENGLE ARCHITECT INC

Property Address/Description: 10 GLEN CEDAR RD

Committee of Adjustment File

Number(s): 19 255509 STE 12 MV

TLAB Case File Number(s): 20 124713 S45 12 TLAB

Hearing date: January 29, 2021

April 19, 2021

May 31, 2021

September 20 2021

Deadline Date for Closing Submissions/Undertakings:

DECISION DELIVERED BY STANLEY MAKUCH

REGISTERED PARTIES AND PARTICIPANTS

Name	Role	Representative
Richard Wengle Architect Inc.	Applicant	
Robin Elizabeth Joffe	Owner	
Gregory Michael Joffe	Appellant	Aaron Platt
Michael Epstein	Party	Matthew Helfand
Andrew Ferancik	Expert Witness	

Amy Shepherd	Expert Witness	
Nicholas Trevisan	Expert Witness	
Name	Role	Representative
Gerard Mercer	Participant	
Andrew Levy	Participant	

INTRODUCTION

This is an appeal of the refusal of two variances for the construction of a new house three story house on 10 Glen Cedar (the property). The existing smaller house is to be demolished. One variance relates to the floor space index (FSI). The maximum FSI is 0.4 which permits a house of 223.05 square metres on the property. The variance would permit a house of 472.83 square metres at an FSI of 0.848. The other variance relates to the length of the proposed house to be constructed. The bylaw permits a length of 17 metres and the variance would permit a length of 18.7 metres. Based on the analysis and the reasons set out below, I find the appeal should be allowed and the variances approved.

BACKGROUND

While there was significant opposition to the variances at the Committee of Adjustment, before and during the TLAB hearing a number of persons withdrew from the proceedings. This meant that the abutting neighbours to the south end north were not opposed to the variances and that there remained two opposing participants in the proceedings - one who was the neighbour immediately across the street, and another, neighbour whose property abutted to the rear.

MATTERS IN ISSUE

There were two major issues respecting the proposed house:

(1) Was it too big given that it was over twice the permitted FSI and thus was it out of keeping with the character of the street and the neighbourhood?

(2) Was it too long and thus would it interfere with the privacy of abutting property to the rear?

In addition, the variances, as in all minor variance appeals must meet the four tests of the Planning Act, and provincial policy requirements set out below.

JURISDICTION

Provincial Policy – S. 3

A decision of the 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 evidence was provided by two professional planners and the two participants in opposition.

The two planners, Mr. Ferancik and Ms. Shepherd, filed witness statements setting out their evidence and it is not necessary to repeat them here. Mr Ferancik's evidence addressed the immediate neighbourhood and the broader area and supported the variances. Ms. Shepherd's evidence covered a wider area and was in opposition to the variances. While they had opposite opinions on whether the proposed home fit in the neighbourhood, and whether it would respect and reinforce the character of the area, there was significant compatibility in the evidence of both planners once oral testimony was heard as Ms. Shepherd provided little evidence in reply and conceded a number of points on cross examination.

It was clear that there are some houses in the area with FSI's in the range of 0.7 and that a number of new houses had been constructed that were larger than the already existing homes in the neighbourhood. Mr. Ferancik's evidence that the third floor could be removed from the proposed house and the house would look exactly the same but have an FSI of 0.74 was not contradicted. As well it became clear from the planners' evidence that there would not be significant adverse impacts on adjacent properties and that proposed house met all bylaw requirements respecting height, number of stories and side and rear yard setbacks. Their evidence also demonstrated that the variance regarding building only a small portion of one corner of a one-story portion of the house would exceed the length provision that required a variance. Moreover, that portion abutted a neighbour's wide driveway.

The evidence of the two remaining participants addressed the question of whether the building would “fit” on the street and be out of character because of its size. Mr. Mercer, the property owner across the street, believed the FSI at double the permitted amount was not minor and would result in a house that would be obtrusive on this block of Glen Cedar which is “defined by a beautiful mature tree canopy, properly spaced homes, landscaped gardens and a charming natural environment.”

Dr. Levy the property owner to the rear who supported a similar development in the neighbourhood had a particular concern about privacy as there would be views from a third floor rear balcony.

ANALYSIS, FINDINGS, REASONS

The evidence that I refer to above and in the witness statements leads me to conclude that the appeal should be allowed and at the variances granted. It is clear on the evidence that buildings of a similar massing and height exist now in the neighbourhood or have been approved. An FSI in the range of 0.7 appears to fit the character of the area as houses of that massing currently exist and that FSI is similar to the massing of the proposed house, without the third floor inside it. The front elevation demonstrates the third floor will not be visible from the street. Moreover, the proposed house meets all other bylaw provisions related to height and setback except for one. respecting one rear corner, Given the appearance of similar massing and conformity to height restrictions, I find the proposed house will fit in the neighbourhood, will not be out of character and will not destroy the characteristics of the block so eloquently described by Mr. Mercer. The evidence does not lead me to find that the proposal is too big.

With respect to Dr. Levy's concerns the evidence shows the length variance is with respect to a corner of a one story portion of the house at the rear and does not relate to the third story balcony which conforms with the bylaw. Given the yard size, the existence of trees in the backyard and the urban setting, I find there is no reason to refuse any variance on the basis of privacy concerns.

I have considered: (1) the front facade of the proposed house which shows no third floor, and (2) the absence of variances, except for FSI and the 1.7 metre excess length of a one story corner at the rear of the proposed house. I conclude the proposed home maintains the general intent of the Official Plan as it respects and reinforces the character of the neighbourhood with an apparent FSI which is not uncommon in the neighbourhood. Its conformity with all other bylaw provisions demonstrates the maintenance of the general intent with the zoning bylaw. The proposed home is therefore appropriate in this neighbourhood. The increase in FSI and the additional length cause no adverse impacts. There are no significant shadow or privacy concerns. Thus, the variances are minor. They are also consistent with provincial policy requirements since the Official Plan is the instrument which effectively implements all provincial policy and the variances, as I have stated, maintain the general intent of the City's Official Plan.

Decision of Toronto Local Appeal Body Panel Member: S. MAKUCH
TLAB Case File Number: 20 124713 S45 12 TLAB

Finally, I note that there was a concern raised about the tree in the front yard. The impact of variances on trees is a serious concern but I find in this case, there is no variance which affects the tree which is unhealthy.

DECISION AND ORDER

The appeal is allowed and the variance in Appendix 1 are approved subject to the conditions in Appendix 2.

X 

S. Makuch

Panel Chair, Toronto Local Appeal

APPENDIX 1

VARIANCES

1. [10.10.40.40.(1) Floor Space Index]

The permitted maximum floor space index is 0.4 times the area of the lot:

223.05 square metres.

The proposed floor space index is 0.848: 472.83 square metres.

2. [10.20.40.20.(1) Maximum Building Length if Required Lot Frontage is in Specified Range]

In the RD zone with a minimum required lot frontage of 18.0 metres or less, the permitted maximum building length for a detached house is 17.0 metres.

The proposed building length is 18.7 metres.

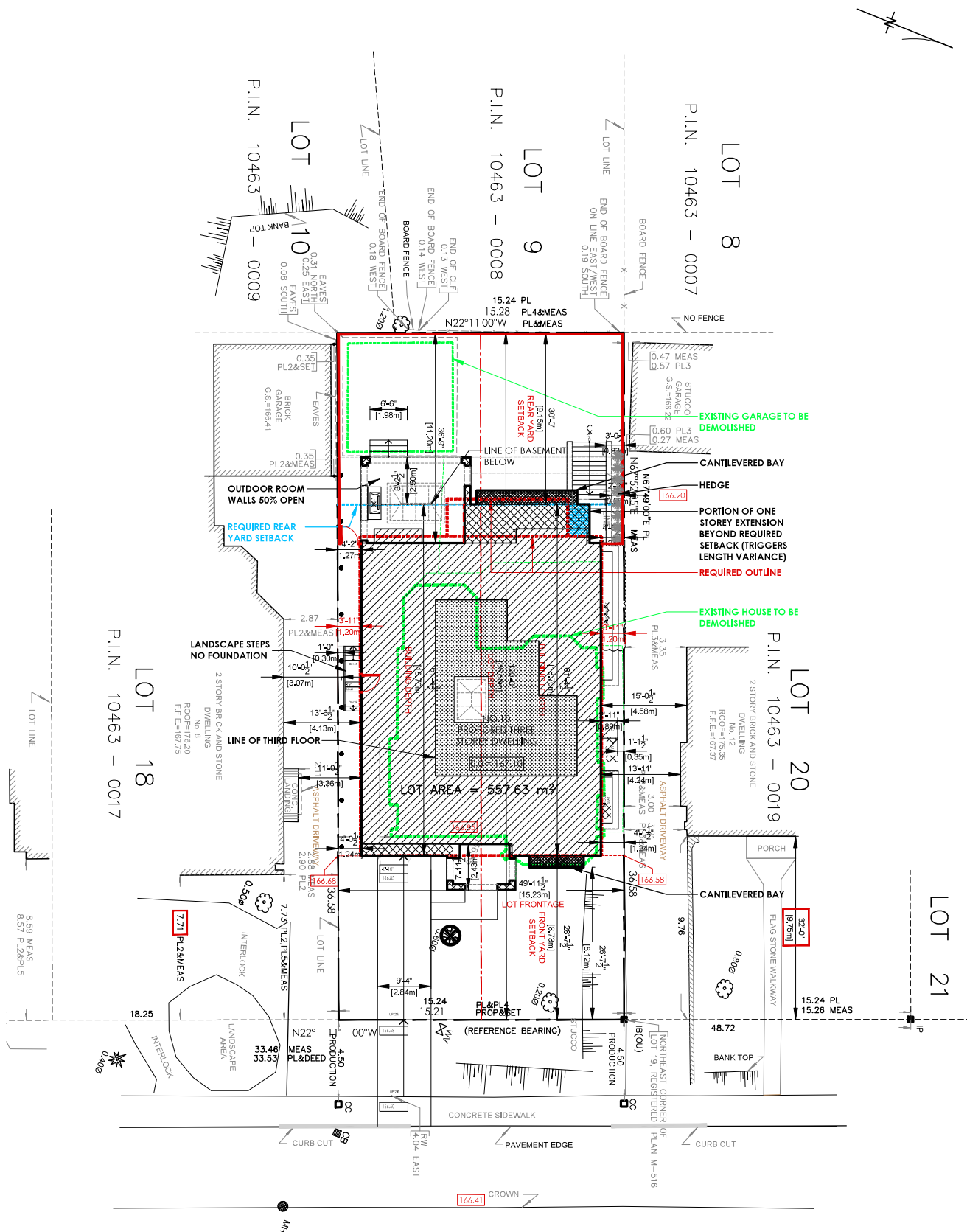
APPENDIX 2

CONDITIONS

1. The building to be constructed in accordance with plans below.
2. Prior to the issuance of a building permit, the applicant/owner shall submit a complete application for permit to injure or remove privately owned tree(s) under Municipal Code Chapter 813, Trees Article III, Private Tree Protection, to the satisfaction of the Supervisor, Urban Forestry, which are appended to the witness statement Tree Protection and Plan Review, Toronto and East York District. The Owner acknowledges that specific attention will be given to the manner by which the rear garage will be removed in order to avoid damage to the tree located towards the south-easterly corner of 52 Strathearn Road.

APPENDIX D

Architectural Plans, prepared by Richard Wengle Architect Inc. and dated November 2, 2020



GLEN CEDAR ROAD
(BY REGISTERED PLAN M-516)
P.I.N. 10463-0117

JOFFE RESIDENCE

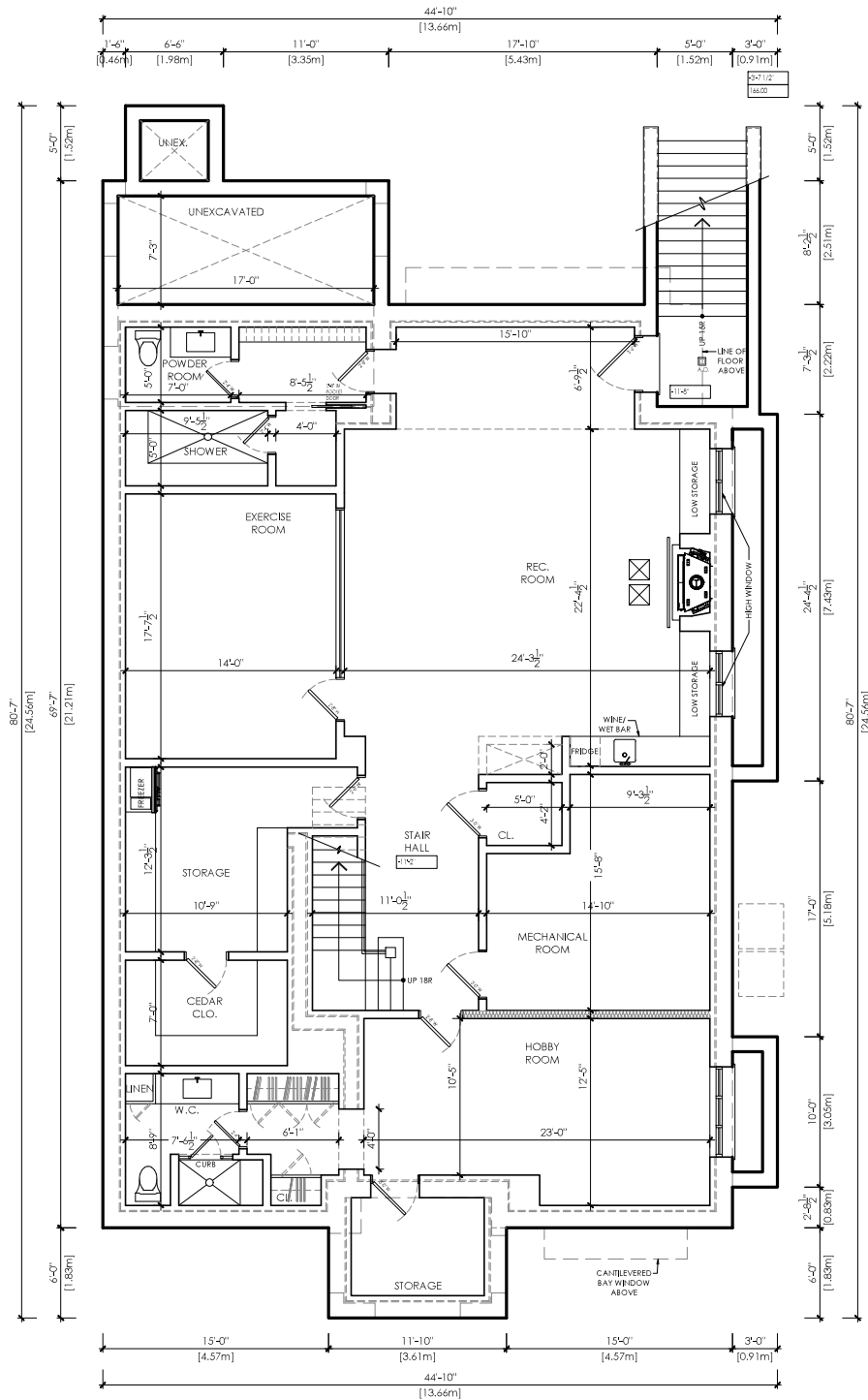
10 GLEN CEDAR ROAD
TORONTO, ONTARIO
NOVEMBER 02, 2020

1928



SITE PLAN

SCALE: 1/16" = 1'-0"



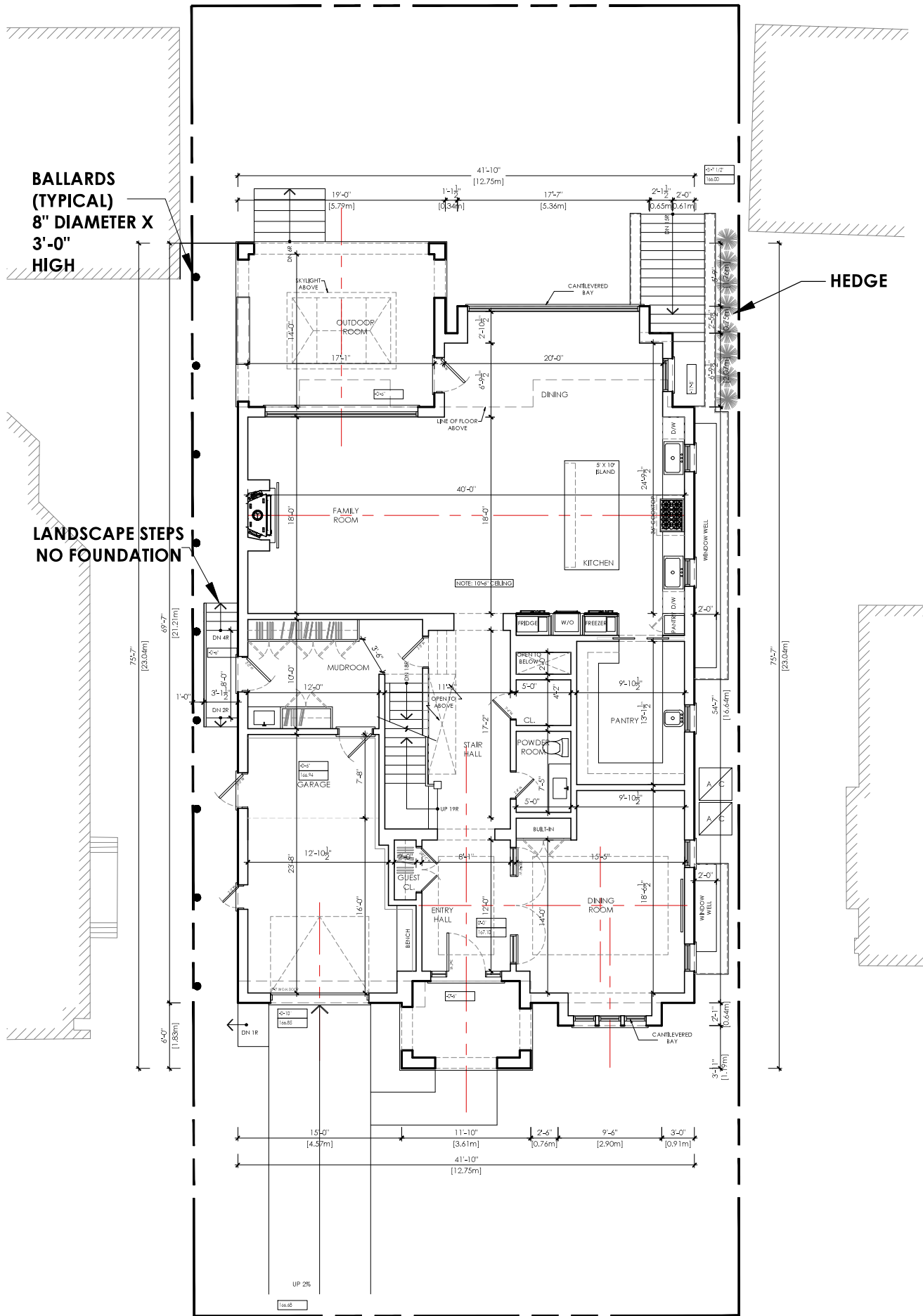
RICHARD WENGLE
ARCHITECT INC.

JOFFE RESIDENCE

10 GLEN CEDAR ROAD
TORONTO, ONTARIO
NOVEMBER 02, 2020
1928



BASEMENT FLOOR PLAN
SCALE: 1/8" = 1'-0"



RICHARD WENGLE
ARCHITECT INC.

JOFFE RESIDENCE

10 GLEN CEDAR ROAD
TORONTO, ONTARIO
NOVEMBER 02, 2020

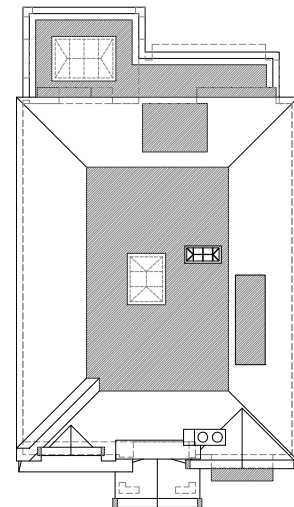
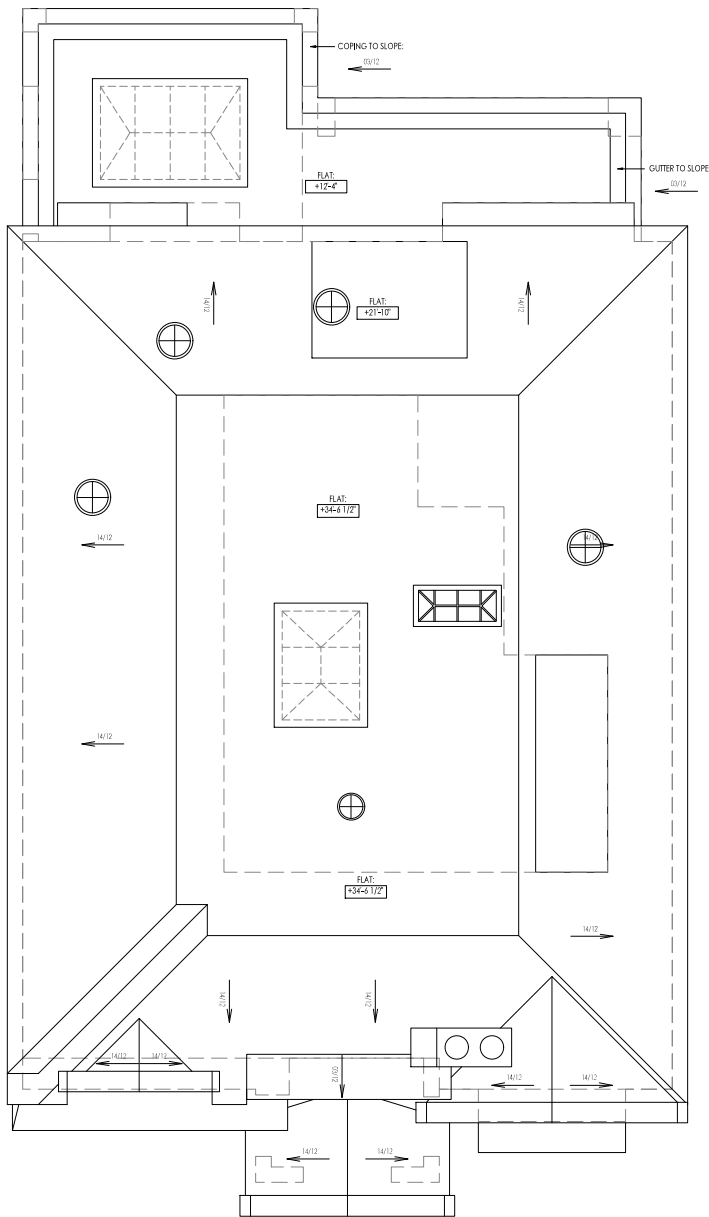
1928



GROUND FLOOR PLAN
SCALE: 1/8" = 1'-0"

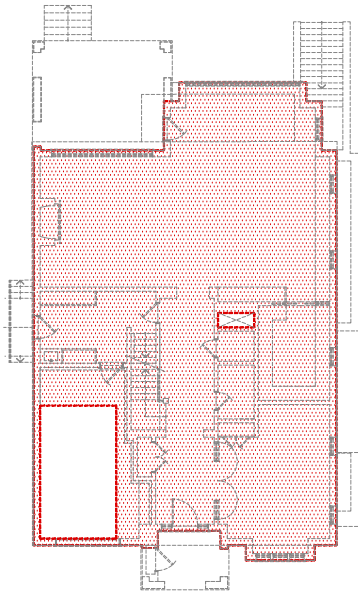


SCALE: $1/8" = 1'-0"$

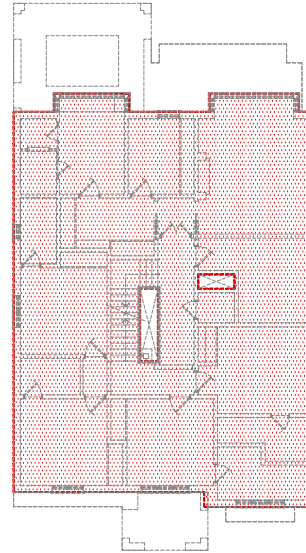


TOTAL ROOF AREA = 3032.00 S.F. (281.68 S.M.)
 FLAT ROOF AREA = 1079.10 S.F. (100.24 S.M.)

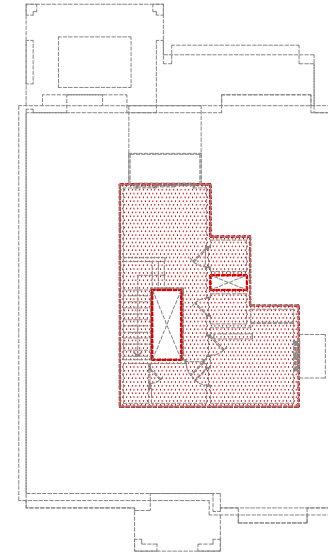
35.59%



GROUND FLOOR AREA = 2278.10 S.F. (211.64 S.M.)



SECOND FLOOR AREA = 2252.20 S.F. (209.24 S.M.)



THIRD FLOOR AREA = 559.22 S.F. (51.95 S.M.)

TOTAL FLOOR AREA = 5089.52 S.F. (472.83 S.M.)
 LOT AREA = 6002.28 S.F. (557.63 S.M.)

84.80%



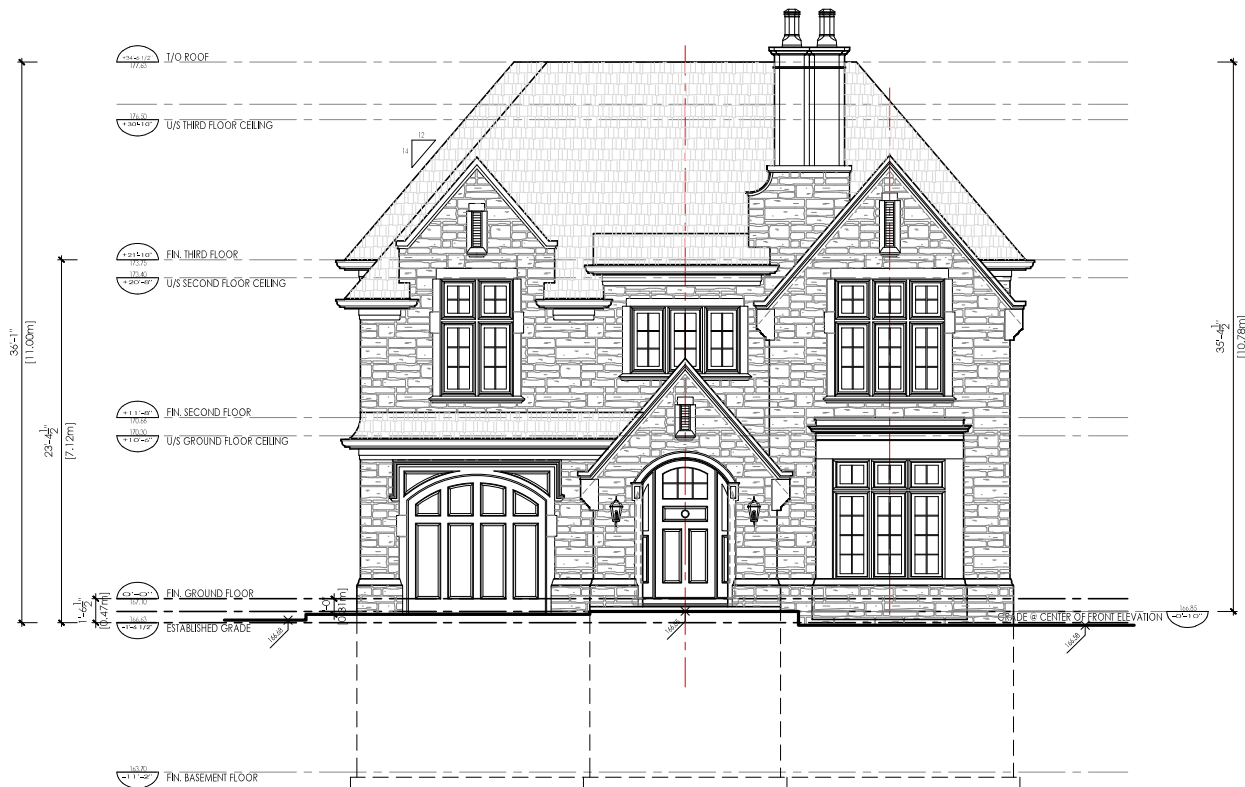
RICHARD WENGLE
 ARCHITECT INC.

JOFFE RESIDENCE

10 GLEN CEDAR ROAD
 TORONTO, ONTARIO
 NOVEMBER 02, 2020
 1928



AREA CALCULATION
 N.T.S.

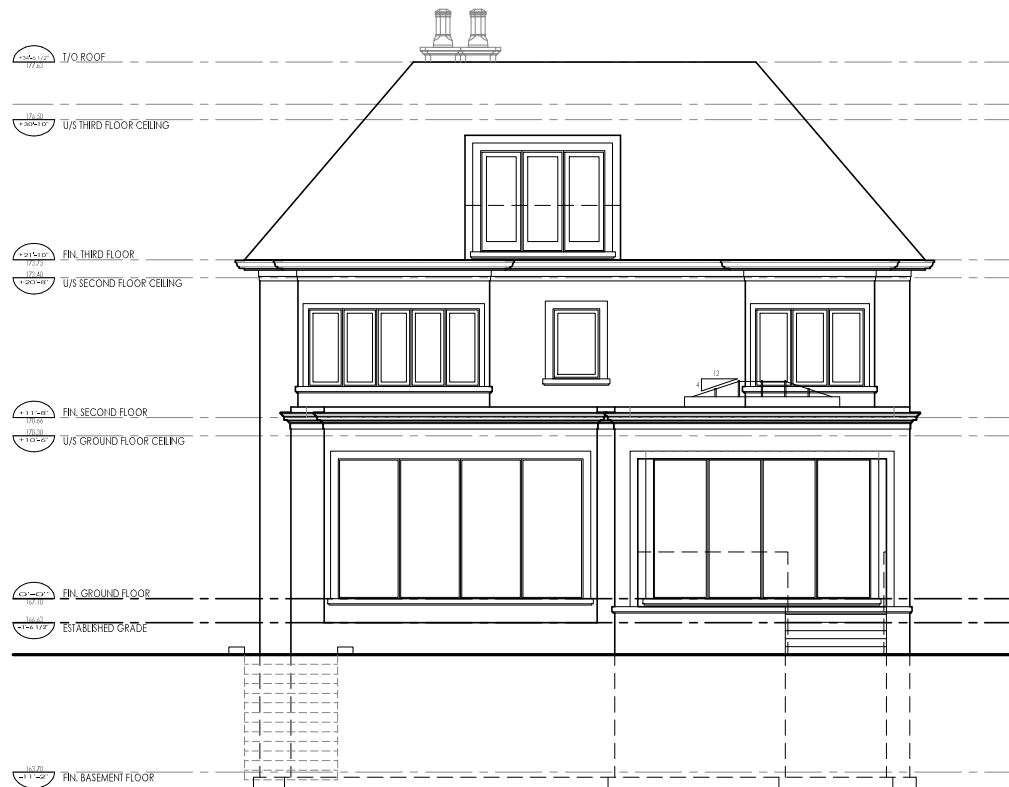


RICHARD WENGLE
ARCHITECT INC.

JOFFE RESIDENCE

10 GLEN CEDAR ROAD
TORONTO, ONTARIO
NOVEMBER 02, 2020
1928

FRONT ELEVATION
SCALE: 1/8" = 1'-0"

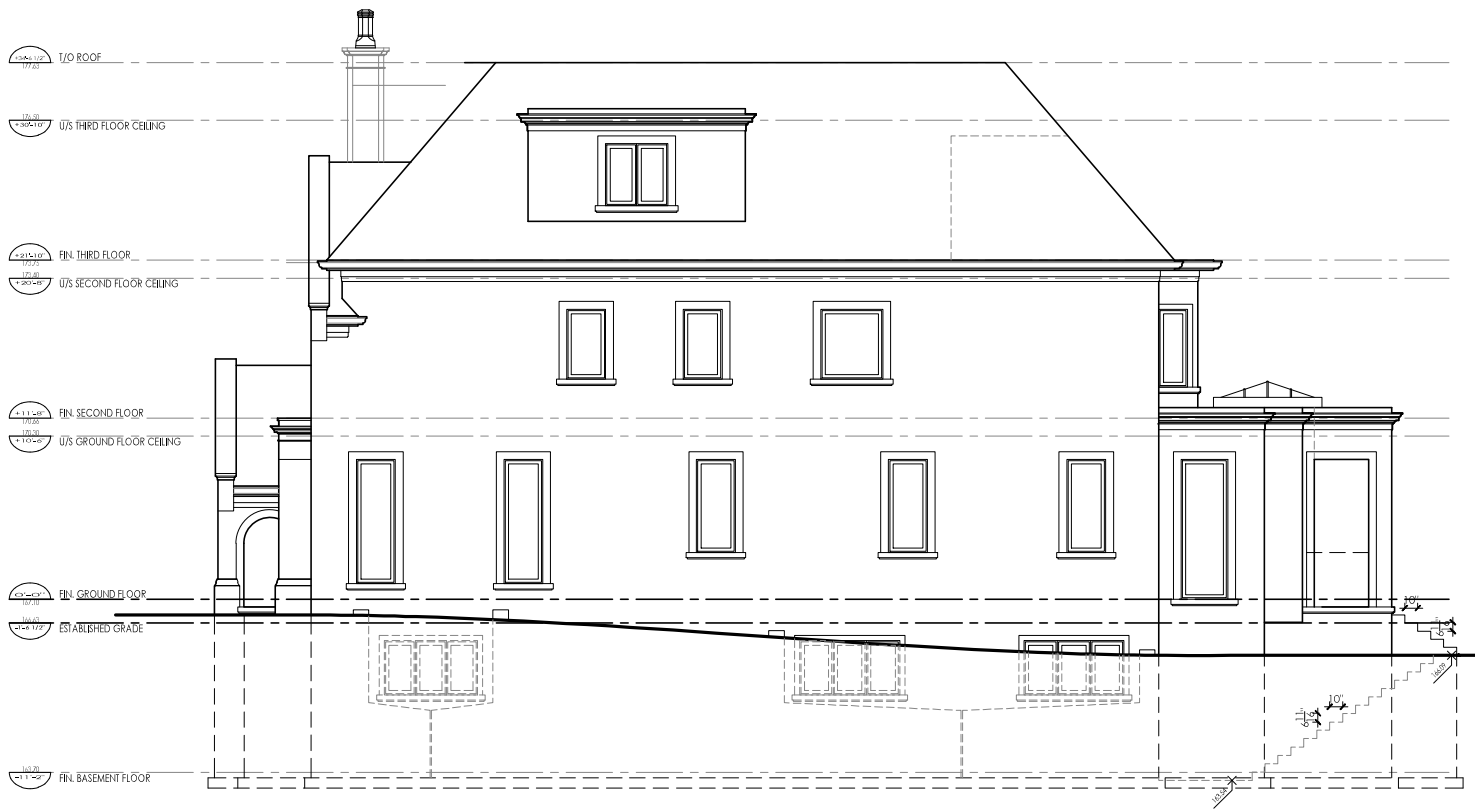


RICHARD WENGLE
ARCHITECT INC.

JOFFE RESIDENCE

10 GLEN CEDAR ROAD
TORONTO, ONTARIO
NOVEMBER 02, 2020
1928

REAR ELEVATION
SCALE: 1/8" = 1'-0"

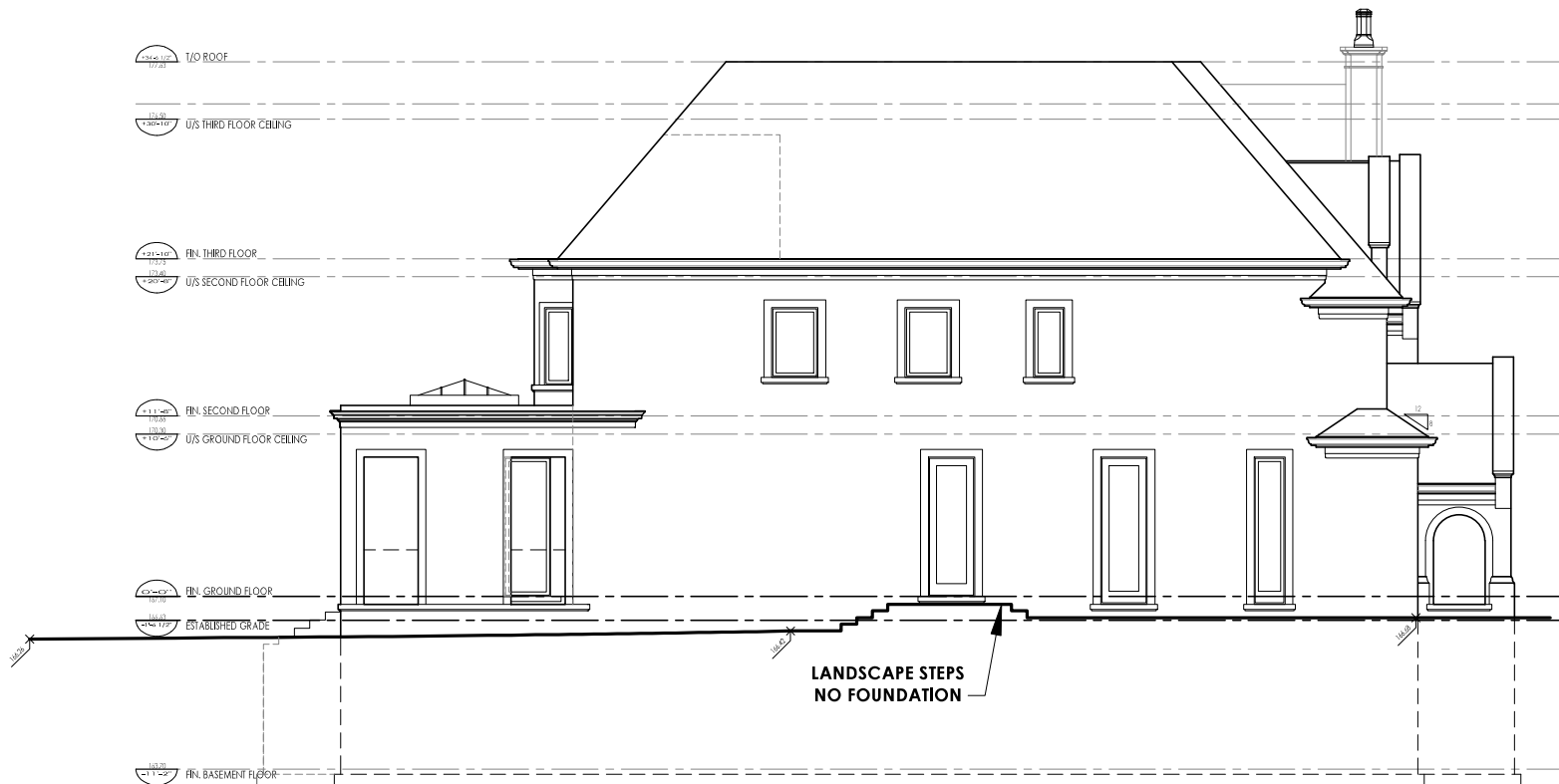


RICHARD WENGLE
ARCHITECT INC.

JOFFE RESIDENCE

10 GLEN CEDAR ROAD
TORONTO, ONTARIO
NOVEMBER 02, 2020
1928

 **NORTH ELEVATION**
SCALE: 1/8" = 1'-0"



RICHARD WENGLE
ARCHITECT INC.

JOFFE RESIDENCE

10 GLEN CEDAR ROAD
TORONTO, ONTARIO
NOVEMBER 02, 2020
1928

 SOUTH ELEVATION
SCALE: 1/8" = 1'-0"