

DECISION AND ORDER

Decision Issue Date Thursday, January 20, 2022

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): JUSTUS BENSELER

Applicant(s): RUBINOFF DESIGN GROUP

Property Address/Description: 145 BRIAR HILL AVE

Committee of Adjustment File

Number(s): 21 130617 NNY 08 MV (A0213/21NY)

TLAB Case File Number(s): 21 170305 S45 08 TLAB

Hearing date: September 22, 2021 & October 26, 2021

DECISION DELIVERED BY S. MAKUCH

REGISTERED PARTIES AND PARTICIPANTS

Applicant	RUBINOFF DESIGN GROUP
Party (TLAB)/Owner	ISAAC YU HO QUAN
Party's Legal Rep.	ANDY MARGARITIS
Appellant	JUSTUS BENSELER
Participant	ROBERT FRANK RINKOFF
Participant	ANTHONY GORDON S CARELESS
Participant	JILL LESLIE CARTER
Participant	MELISSA PUGSLEY
Participant	WINNIE LEE
Participant	GIANNI TOFFOLETTO
Participant	MIEKO ISE
Participant	ANITA BENEDICT
Expert Witness	MARTIN RENDL
Expert Witness	MICHAEL BARTON

INTRODUCTION

This is an appeal from the Committee of Adjustment granting 10 variances for a proposal to demolish the existing house at 145 Briar Hill (the subject property) and construct a new two storey detached dwelling with an integral garage. The variances are listed in Appendix 1. They are related to: built form, lot line setbacks, driveway width, and front yard landscaping. That list includes an amendment to the original application by the addition of an eleventh variance requested by the owner/applicant at the TLAB hearing for the depth of the dwelling. The appeal, brought by the adjacent neighbour to the east at 141 Briar Hill Ave., is dismissed and all the variances listed in Appendix 1 are approved, subject to conditions set out in Appendix 2.

MATTERS IN ISSUE

There were two major issues at the hearings: (1) Whether new notice was required before the additional variance could be granted. (2) Whether the variances individually and cumulatively met the four tests of the Planning Act and should be granted. With respect to this latter issue the focus was on built form, i.e. the length and density of the proposed dwelling and how these affected the rear yard of 141 Briar Hill Ave.

JURISDICTION

The following are relevant to the making of a decision in this matter.

Decision of Toronto Local Appeal Body Panel Member: S. Makuch
TLAB Case File Number: 21 170305 S45 08 TLAB

(18) The Tribunal may dismiss the appeal and may make any decision that the Committee could have made on the original application. R.S.O. 1990, c. P.13, s. 45 (18); 2017, c. 23, Sched. 5, s. 80.

Amended application

(18.1) On an appeal, the Tribunal may make a decision on an application which has been amended from the original application if, before issuing its order, written notice is given to the persons and public bodies who received notice of the original application under subsection (5) and to other persons and agencies prescribed under that subsection. 1993, c. 26, s. 56; 1994, c. 23, s. 26 (7); 2017, c. 23, Sched. 5, s. 80.

Exception

(18.1.1) The Tribunal is not required to give notice under subsection (18.1) if, in its opinion, the amendment to the original application is minor. 2017, c. 23, Sched. 5, s. 98 (5).

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2020 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 presented by two qualified land use planners, Mr. Rendl for the owner/applicant and Mr. Barton for the appellant. The evidence of both was presented in

Decision of Toronto Local Appeal Body Panel Member: S. Makuch
TLAB Case File Number: 21 170305 S45 08 TLAB

witness statements filed with TLAB and need not be repeated here in detail. Mr. Rendl's oral evidence included his opinion that notice of the amendment of the additional variance was not necessary

Mr. Rendl's evidence that notice was not necessary was based on a number of factors: the location and thus the depth of the dwelling was clearly visible in the site plan and there was no change in the plan; the building depth was not changed; and the appellant was given notice of the change. Mr. Barton gave no evidence with respect to this issue.

Mr. Rendl's evidence regarding the variances was clear. In his opinion all the proposed variances met all four tests of the Planning Act. The variances as they were seen from the street respected and reinforced the character of the neighbourhood as the dwelling to be constructed was similar to other dwellings on the street in many ways including: height, side yard setbacks, integral garages and built form. Moreover he noted that City planning staff had no objections to the variances except one relatively minor concern respecting front yard, "soft landscaping". As their report stated: "Front yard landscaping is devised in part, to maintain a consistent pattern of landscaping along the street as well as to provide proper stormwater management on site. Staff are also concerned with the proposed hard surface area created by the proposed driveway. Should the Committee choose to approve this application, staff recommend that permeable materials are to be used for the driveway."

Mr. Rendl's evidence respecting the rear yard was also clear. He stated that the length and depth variances maintained ample rear yard amenity space because behind the rear wall would be a 16.86 m rear yard setback which is over double the minimum 7.5 m rear yard setback requirement. Moreover, he demonstrated that in the immediate context on Briar Hill Avenue there are many existing houses with rear walls that extend beyond the rear walls of adjacent and nearby houses in an uneven pattern. This is a common characteristic in the neighbourhood. As a result, the physical pattern in the rear yards of the neighbourhood reflects a variety of building lengths. The length and depth variances fit with that pattern

He also gave evidence that although there will be some increased shadowing from the proposed length of the new house, the shadows are adequately limited and are to be reasonably expected in an urban context, such as is found here, and that there would be no negative impact on privacy or overlook. To address these concerns he recommended a privacy screen on the first floor deck.

Tree preservation was not a significant issue as the site plan was prepared after an arborist report and Urban Forestry was satisfied that its proposed condition would provide adequate protection for a black walnut tree in the rear yard. In conclusion his opinion was also that the variances would have no undue adverse impact on adjacent properties.

Mr. Barton did not contradict much of the detail of Mr. Rendl's evidence. Rather his disagreement focused on the impact of the length, depth and FSI variances on the owner of 141 Briar Hill. His evidence was that the proposed length and depth variances would allow the proposed dwelling to extend approximately 4.5 meters beyond the rear wall of the adjacent

dwelling at 141 Briar Hill. In addition the excess FSI would allow that extended area to be occupied by the building. That protrusion itself, in his opinion, would constitute an adverse impact because the owner of 141 would face a three story wall blank beside in his rear yard. This would affect the character of his rear yard and cause additional shadowing and a loss of views and a sense of openness. This he stated was not in keeping with the character of the neighbourhood.

The purpose of the zoning bylaw provisions regarding length and depth are to ensure that neighbouring dwellings do not protrude into rear yards so as to prevent a loss of such amenities. He did also acknowledge that his client's dwelling currently protrudes in a similar manner beyond the rear wall of the existing dwelling on the subject property.

ANALYSIS, FINDINGS, REASONS

I agree with Mr. Barton's opinion regarding the purpose of the zoning bylaw in restricting length, depth and FSI. I note that this is at the basis for his opinion that the appeal should be granted. He had no other significant or clear reasons to support the appeal. I find that the purpose of the zoning bylaw provisions regarding length and depth and FSI, is in part, to ensure that neighbouring dwellings do not protrude into rear yards so as to prevent a loss of the amenities he referred to.

However, Mr. Barton gave no evidence of how his client used his rear yard and how these amenities were of benefit to him. For example, there was no evidence of a patio or garden from which views or light would be blocked. He gave no evidence as to how an existing wooden deck would be impacted. There was, indeed, no evidence whatsoever of how or if the tenant at 141 used or even entered the rear yard. Under cross examination Mr. Barton admitted he did not know. As a result in the absence of any evidence to the contrary I conclude that the purpose of these restrictions in the zoning bylaw are being maintained.

Moreover, I note as an aside, that the dwelling at 141 currently protrudes well past the existing dwelling on the subject property. Thus, the appellant appears to simply wish to maintain a benefit he currently enjoys. A benefit which may not meet the purpose of the bylaw. My final observation respecting the purpose of these variances respecting length, depth and FSI is that that there was no evidence to contradict Mr. Rendl's visual evidence that the character of the rear yards in this neighbourhood was one of irregular lengths, depths; that the shadow impact was not significant and that there is a mix of FSIs in the area.

Given the absence of this evidence and no significant evidence in response to the remainder of Mr. Rendl's evidence, I find that the variances meet the four tests of the Planning Act. In particular, the proposed variances cumulatively and individually; maintain the general purpose of the Official Plan in that they respect and reinforce the character of the area both from the street and in the rear; maintain the intent of the zoning bylaw in that there is no evidence they adversely impact on the rear yard; and as a result are appropriate development and are minor.

Decision of Toronto Local Appeal Body Panel Member: S. Makuch
TLAB Case File Number: 21 170305 S45 08 TLAB

The Official Plan implements relevant provincial policies. As a result of my finding that the variances conform with the Official Plan I find they conform with relevant provincial policies. I accept the uncontradicted evidence of Mr. Rendl that the variance relating to building depth should be permitted without notice.

DECISION AND ORDER

The variances requested are hereby amended to include variance 11 in Appendix 1 and all variances in Appendix 1 are approved subject to the conditions in Appendix 2 and 3. The appeal is hereby dismissed.



S. Makuch
Panel Chair, Toronto Local Appeal

APPENDIX 1

1. Chapter 900.2.10(949)(A), By-law No. 569-2013 The maximum permitted building length is 14m. The building length is 17.55m.
2. Chapter 10.5.100.1(1), By-law No. 569-2013 The maximum permitted driveway width is 3.2m. The driveway width is 4.38m.
3. Chapter 10.5.40.60.(7), By-law No. 569-2013 Roof eaves may project a maximum of 0.9m provided that they are no closer than 0.30m to a lot line. The eaves are 0.18m from the West lot line.
4. Chapter 10.10.40.40.(1), By-law No. 569-2013 The permitted maximum floor space index is 0.6 times the area of the lot. The floor space index is 0.69 times the area of the lot.
5. Chapter 10.10.40.10.(1), By-law No. 569-2013 The permitted maximum height of a building or structure is 9m. The height of the building or structure is 9.4m.
6. Chapter 0.10.40.10.(2), By-law No. 569-2013 The permitted maximum height of all side exterior main walls facing a side lot line is 7.0m. The height of the East side exterior main walls facing a side lot line is 8.31m.
7. Chapter 0.10.40.10.(2), By-law No. 569-2013 The permitted maximum height of all side exterior main walls facing a side lot line is 7.0m. The height of the West side exterior main walls facing a side lot line is 7.48m.

Decision of Toronto Local Appeal Body Panel Member: S. Makuch
TLAB Case File Number: 21 170305 S45 08 TLAB

8. Chapter 10.20.40.10.(6), By-law No. 569-2013 The permitted maximum height of the main pedestrian entrance is 1.2m above Established Grade. The height of the main pedestrian entrance is 1.37m above Established Grade.

9. Chapter 10.5.50.10.(1), By-law No. 569-2013

On a lot with a detached house, semi-detached house, duplex, triplex, fourplex or townhouse, with a lot frontage of 6.0m to less than 15.0m, or a townhouse dwelling unit at least 6.0m wide, a minimum of 50% of the front yard must be landscaping. The front yard landscaping area is 38.24%.

10. Chapter 10.5.50.10.(1), By-law No. 569-2013 On a lot with a detached house, semi-detached house, duplex, triplex, fourplex or townhouse, a minimum of 75% of the required front yard landscaping must be soft landscaping. The front yard soft landscaping area is 62.35%.

11. 17.0 m is the maximum permitted building depth; the dwelling will have a depth of 18.4 m.

APPENDIX 2

1. Construction will be in substantial accordance with the plans attached in Appendix 3.
2. (i) Submission of a complete application for a permit to injure or remove a privately owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article III Private Tree Protection.

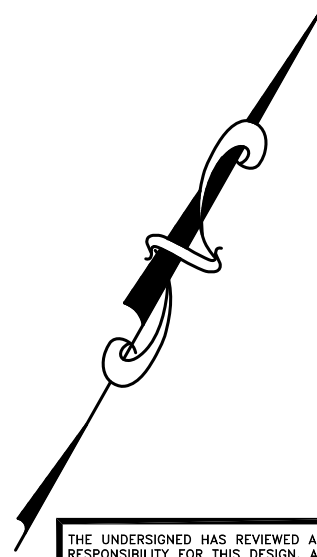
(ii) Where there is no existing street tree, the owner shall provide payment in lieu of planting of one street tree on the City road allowance abutting each of the sites involved in the application. The current cash-in-lieu payment is \$583/tree.
3. Permeable materials are to be used for the proposed driveway.
4. A 1.5m opaque privacy screen will be constructed on the east and west sides of the rear deck.

APPENDIX 3

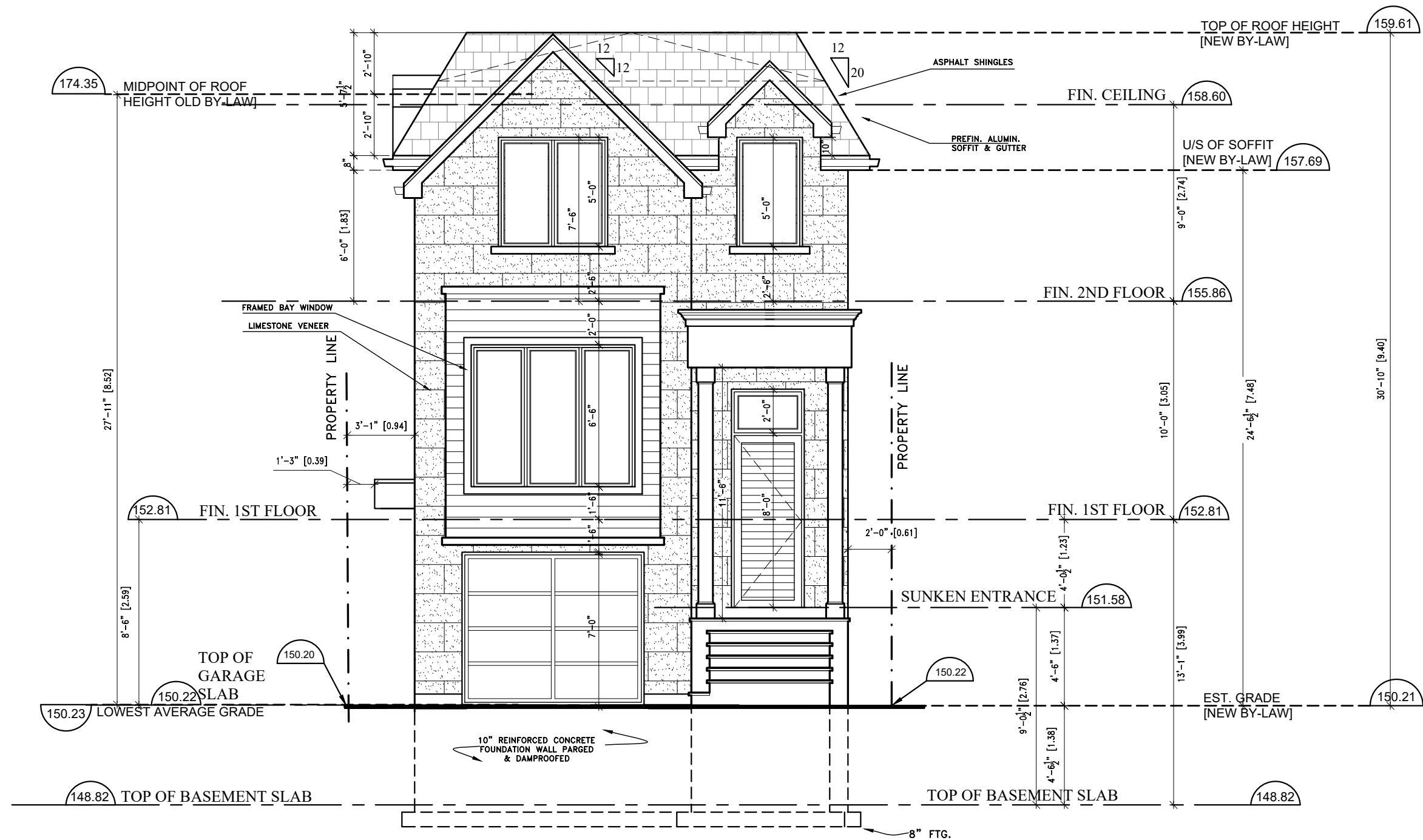
Attach CA Plans filed with TLAB March 23 202, Rubinoff Design Group: Plan A, Front Elevation, Left Side Elevation, Rear Elevation, and Right Side Elevation. (All plans except floor and roof plans)

M-25

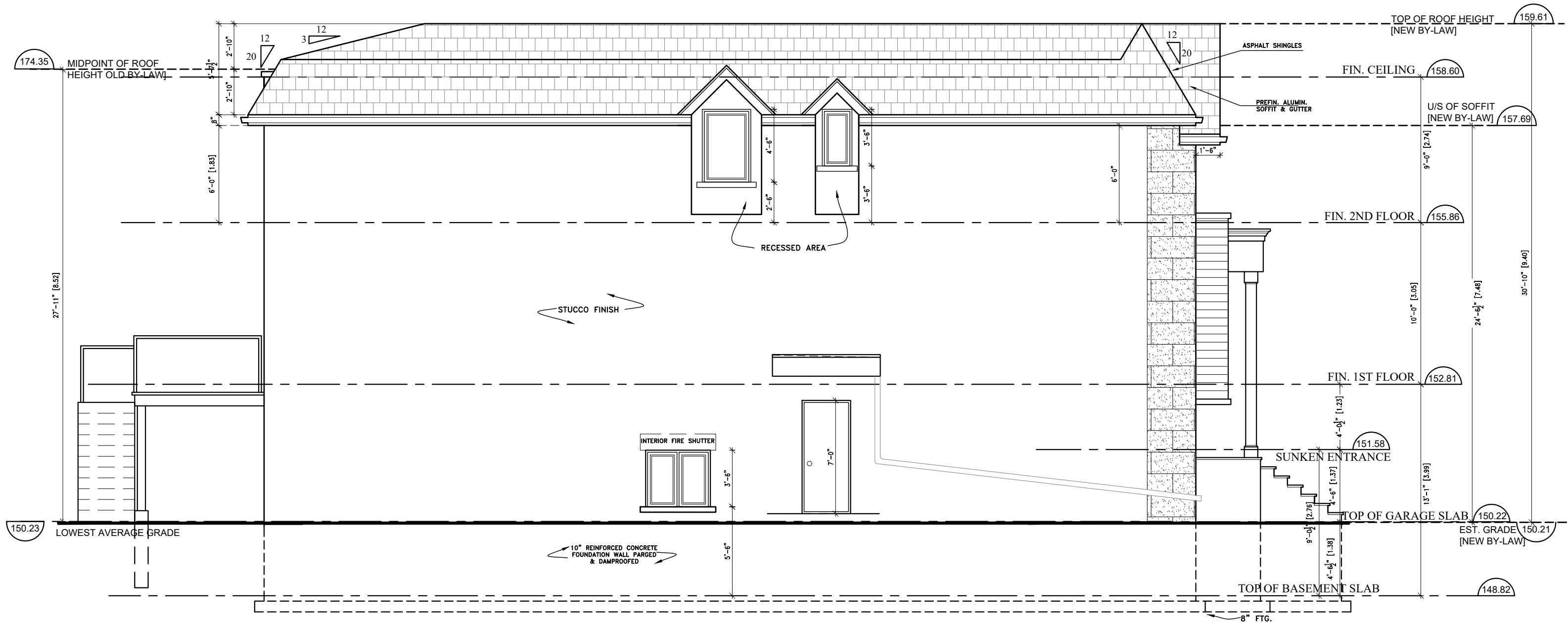
BRIAR HILL AVENUE



A

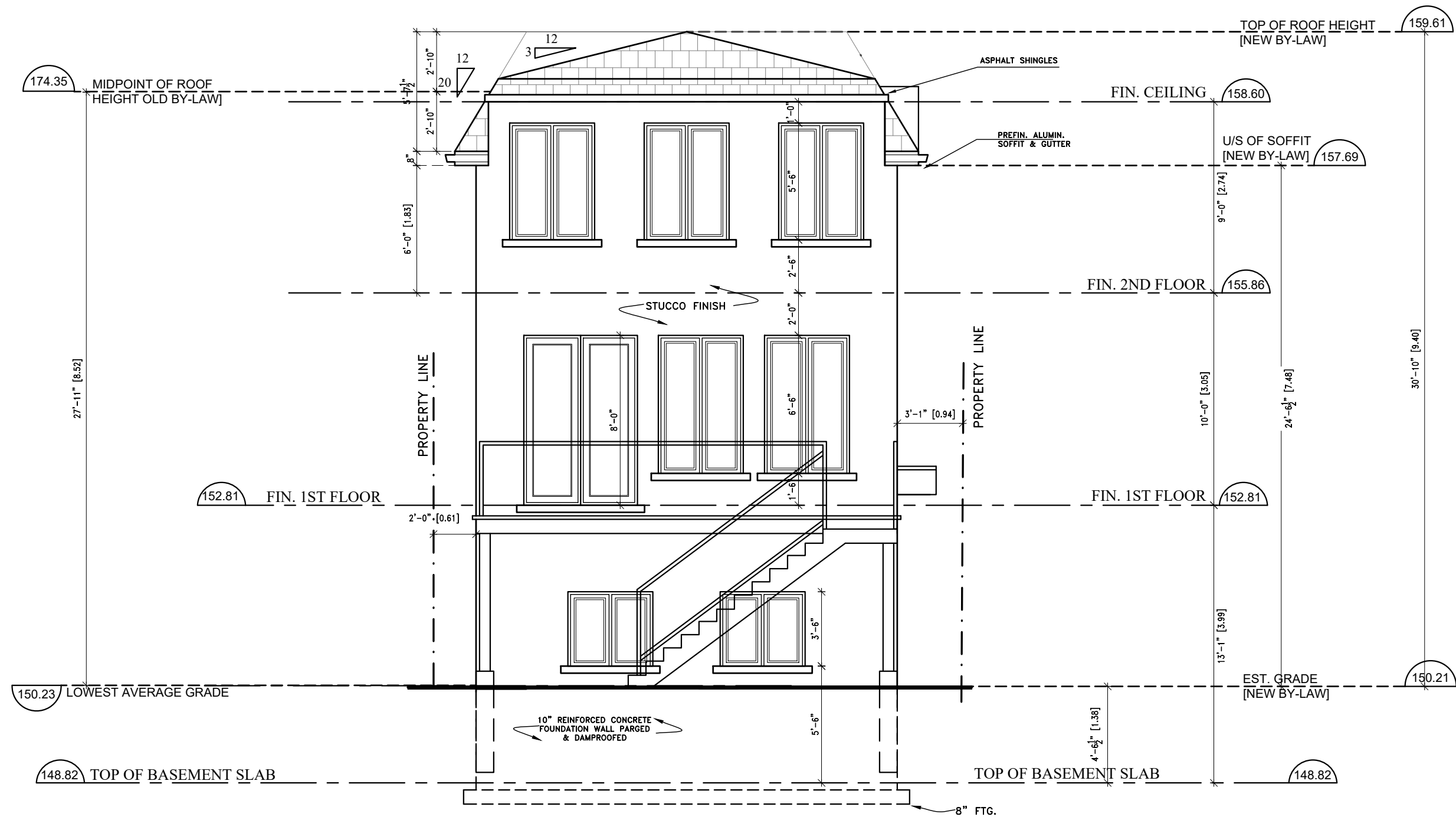


FRONT ELEVATION

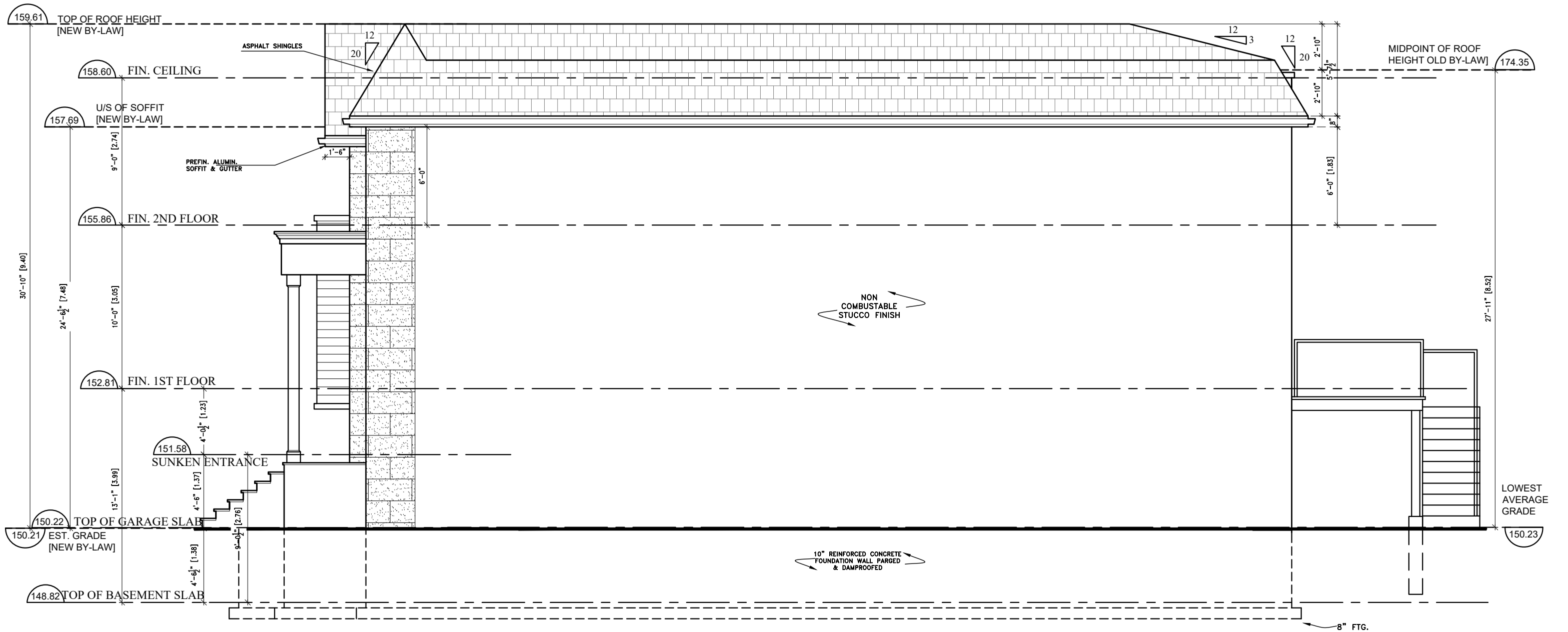


LEFT SIDE ELEVATION

N.T.S.



REAR ELEVATION



RIGHT SIDE ELEVATION

N.T.S.