

# DECISION AND ORDER

**Decision Issue Date** Monday, February 08, 2021

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), and Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): Minous Nani

Applicant: Glenn Rubinoff

Property Address/Description: 149 Highland Cres

Committee of Adjustment Case File: 19 145281 NNY 15 CO (B0017/19NY), 19 145299 NNY 15 MV (A0305/19NY), 19 145310 NNY 15 MV (A0306/19NY)

**TLAB Case File Number: 19 215373 S53 15 TLAB, 19 215376 S45 15 TLAB, 19 215378 S45 15 TLAB**

**Hearing date:** Tuesday, September 08, 2020

**DECISION DELIVERED BY S. Talukder**

## REGISTERED PARTIES AND PARTICIPANTS

Applicant	Glenn Rubinoff
Owner	Farrah Rahmati
Appellant	Minous Nani
Appellant's Legal Rep.	David Bronskill
Party	City of Toronto
Party's Legal Rep.	Lauren Pinder
Party	Raynald Brulotte
Party's Legal Rep.	Jonathan Wigley
Party	Helene David-Brulotte
Participant	Willian Jean

Participant	David Dana
Participant	Ady Dana
Participant	Lee Chan
Participant	Breena Holt
Participant	Firas Askari
Participant	Elizabeth Hynd Preston
Expert Witness	Janice Robinson

## **INTRODUCTION**

1. The Applicant appeals the decision of the Committee of Adjustment (CoA) for the property at 149 Highland Crescent (Subject Property). The Applicant planned to sever the Subject Property into two residential lots and construct two detached houses on these severed lots. The CoA refused the applications for consent to sever and the approval of associated variances.
2. The appeal is opposed by the City of Toronto (City) and neighbours, Raynald Brulotte and Helene David-Brulotte. The neighbours who filed for participant status at the hearing did not testify on the hearing day.
3. Prior to the Hearing, I had attended the site of the Subject Property and the neighbourhood to familiarize myself with the neighbourhood. However, it is the evidence to be heard that is of importance.

## **MATTERS IN ISSUE**

4. The matters at issue before the Toronto Local Appeal Body (TLAB) are the same as they were before the CoA:
  - a. whether the Applicants are permitted to sever the land into two lots as follows:

Part 1 with lot frontage of 17.22 m and lot area of 765.51 m<sup>2</sup>

Part 2 with lot frontage of 17.22 m and lot area of 767.58 m<sup>2</sup>

- b. whether the variances to construct a new detached dwelling on each of the lots created be allowed, with the requested variances attached to this decision as Schedule "A".<sup>1</sup>
5. Janice Robinson, the Applicant's witness, proposed the following conditions be attached to the consent application if approved by the TLAB:

Consent Conditions

Recommended by COMMUNITY PLANNING

1. Confirmation of payment of outstanding taxes to the satisfaction of the City's Revenue Services Division, Finance Department.
  2. A draft Certificate of Official, as prescribed in O.Reg. 197/96 as Form 2 or 4, and in a form satisfactory to the Deputy Secretary-Treasurer, that includes a completed and registerable description of the land that is the subject of the consent, shall be submitted to the Deputy Secretary-Treasurer within one year of the date of the giving of notice of this decision.
  3. Copies of a deposited Reference Plan of Survey, integrated with the Ontario Coordinate System, and clearly delineating the parcels of land approved by the Committee of Adjustment. A listing of the parts and their respective areas is required.
  4. A copy of a letter from the Chief Engineer and Executive Director of Engineering and Construction Services advising that the applicant has obtained the necessary adjustment to the municipal addressing of the land. Contact Survey and Mapping Services, Engineering and Construction Services at 416-392.7755. The application for municipal addressing shall be accompanied by a copy of the deposited Reference Plan of Survey, integrated with the Ontario Co-Ordinate System, and specify the part numbers that will comprise each of the new parcels.
  5. This decision shall become null and void within 12 months unless the Certificate of the Committee of Adjustment is affixed to the relevant documents.
6. Ms. Robinson further proposed the following conditions to be attached should the variances be approved:

Recommended by URBAN FORESTRY

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<sup>1</sup> Janice Robinson, witness for the Applicant testified that the side yard variances for the properties were not included in the CoA Decisions dated August 15, 2019, even though the Public Hearing Notices included these variances. I reviewed the Zoning By-law Notices dated April 15, 2019 and note that the side-yard setbacks are included in these notices. Removal of these side yard setback variances from the CoA Decisions may have been an error.

1. 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.

**PART 1**

2. The proposed dwelling shall be built substantially in accordance with the East Elevation, prepared by Rubinoff Design Group and dated July 2019.

**PART 2**

3. The proposed dwelling shall be built substantially in accordance with the West Elevation, prepared by Rubinoff Design Group and dated July 2019.

7. I compared the requested conditions with the standard TLAB conditions for consent applications and note that some of the conditions requested by the Applicant are worded similarly to the standard consent conditions. With respect to the Urban Forestry recommended condition, Ms. Robinson requested that this condition be attached to the variance approvals instead of the consent. This is standard since this condition cannot be fulfilled at the consent stage. With respect to the attachment of east and west elevations for Part 1 and Part 2, I note that it is TLAB's practice to include the full package of the site plans and elevations to be attached as a condition for variance approval. As such, the conditions attached to approval of variances are amended accordingly, and a full list of the conditions are set out in Schedule "B".

## **JURISDICTION**

### **Provincial Policy – S. 3**

8. 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).

### **Consent – S. 53**

9. The TLAB must be satisfied that a plan of subdivision is not necessary for the orderly development of the municipality pursuant to s. 53(1) of the Act and that the application for consent to sever meets the criteria set out in s. 51(24) of the Act. These criteria require that "regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,
- (a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2 of the *Planning Act*;
  - (b) whether the proposed subdivision is premature or in the public interest;

- (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- (d) the suitability of the land for the purposes for which it is to be subdivided;
- (d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;
- (e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;
- (f) the dimensions and shapes of the proposed lots;
- (g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;
- (h) conservation of natural resources and flood control;
- (i) the adequacy of utilities and municipal services;
- (j) the adequacy of school sites;
- (k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;
- (l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and
- (m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act or subsection 114 (2) of the *City of Toronto Act, 2006*."

**Variance – S. 45(1)**

10. In considering the applications for variances from the Zoning By-laws, the TLAB 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:

- a) maintain the general intent and purpose of the Official Plan;
- b) maintain the general intent and purpose of the Zoning By-laws;
- c) are desirable for the appropriate development or use of the land; and
- d) are minor.

## **EVIDENCE AND ANALYSIS**

11. Ms. Robinson was the Applicant's sole expert witness. She was qualified to provide expert opinion evidence in the area of land use planning. The City did not call any witnesses. Mr. Brulotte testified at the Hearing as well.
12. Below I outline the summary of the evidence that I have considered to make my decision. However, at the outset of this section, I will address the following matters summarily:
  - a. Mr. Brulotte stated in his Witness Statement that the Subject Property was subject to a Restrictive Covenant bearing the Instrument Number TB596660Z registered on April 21, 1989. I reviewed the parcel register of the Subject Property provided by Ms. Robinson in her reply Witness Statement (Exhibit 2) and note that this Instrument was deleted from the title of the Subject Property on November 13, 2018. As such, the issue of the easement/restrictive covenant is not relevant.
  - b. Based on Ms. Robinson's testimony about the neighbourhood and the Subject Property as summarized below, I conclude that the proposal is consistent with the PPS and conforms to the Growth Plan, as both these high-level provincial policy instruments encourage growth and intensification.

### The Neighbourhood

13. Ms. Robinson described her neighbourhood study area as shown in Figure 1. This figure shows Ms. Robinson's lot frontage map and the study area is demarcated by the blue dashed line. Ms. Robinson noted that the Subject Property is the 5<sup>th</sup> house from the west of Bayview Avenue, which is the west boundary of the study area. Valley Road is the south boundary of the study area. She noted that south of Valley Road, the properties are larger and the road pattern is curvilinear, which is different from the rectangular lot shapes within the study area. York Mills Road forms the north boundary and Birchwood Avenue forms the west boundary.
14. Ms. Robinson noted that only 6 lots out of the 173 lots in the study area have lot frontages larger than 30 m. She testified that the Subject Property with a lot frontage of 34.44 m is oversized for the study area and not prevalent in the neighbourhood.
15. Ms. Robinson noted that the neighbourhood is stable, comprising of bungalows and two storeys with a variety of architecture. There are several custom-built homes in the neighbourhood. The study area is undergoing significant regeneration through redevelopment and replacement houses. There is a variety of lot frontages, lot areas, dwelling sizes, and architectural built form styles.

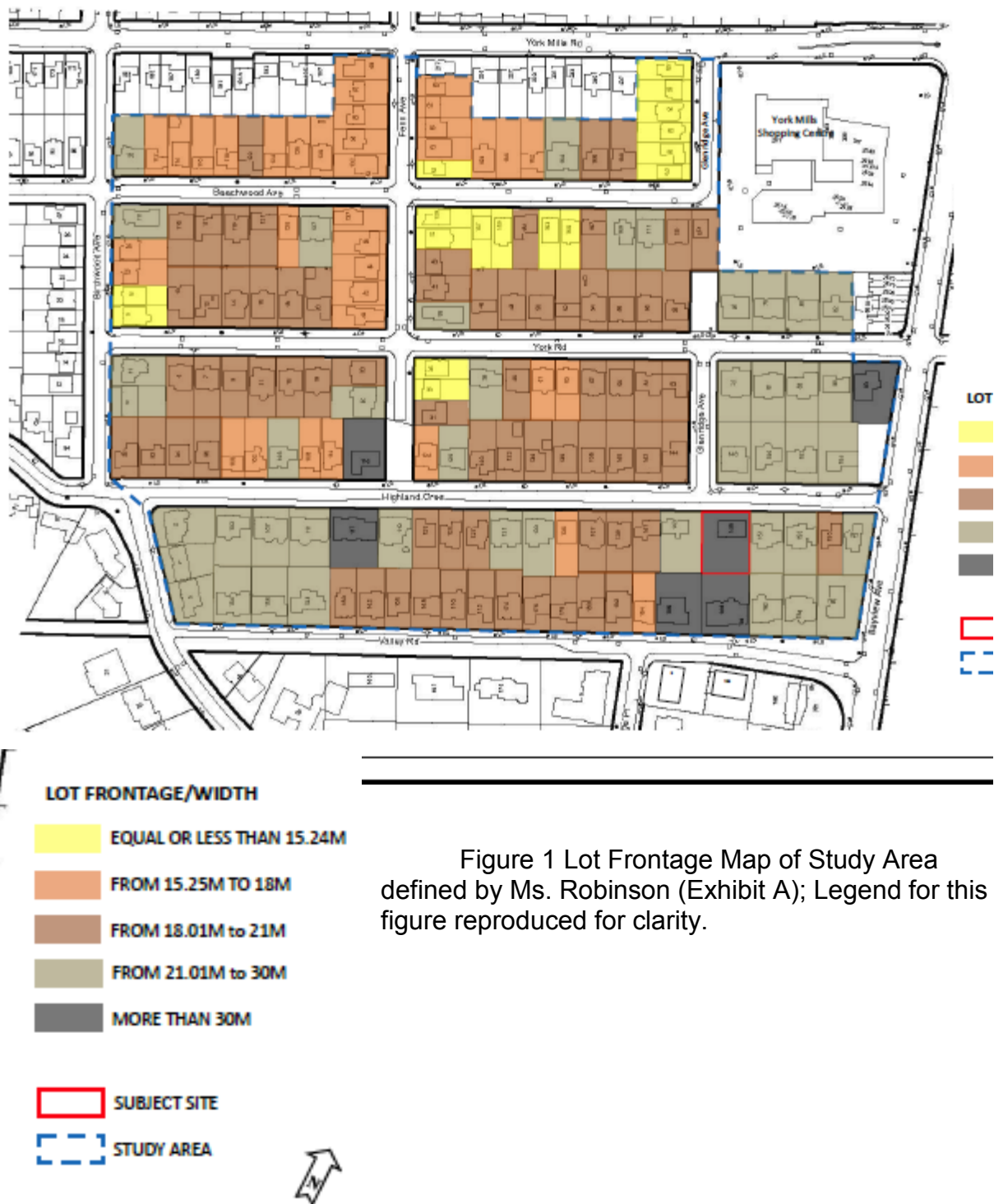


Figure 1 Lot Frontage Map of Study Area defined by Ms. Robinson (Exhibit A); Legend for this figure reproduced for clarity.

16. Ms. Robinson was challenged by the opposing parties for her study area delineation and her photographic evidence of the properties in the study area.
17. With respect to the study area, the City submitted that Mr. Robinson erred in not including the south side of the Valley Road, as residents would experience both sides of Valley Road. Mr. Brulotte referred to the property at 30 Bayview Ridge

where the Ontario Municipal Board (OMB) approved the applications for consent and variance.<sup>2</sup> Ms. Robinson was the applicant's land use planner and witness for this property as well. That property is a corner lot, situated at the corner of Bayview Ridge and Valley Road, and therefore, south of and outside of the Subject Property's study area. In that matter, Ms. Robinson's approach "used walking and driving routes used to access major streets, schools and local commercial areas as rationale to include three-and-a-half blocks north of Valley Road as part of the neighbourhood."<sup>3</sup> This meant that Ms. Robinson included the Subject Property in the study area for 30 Bayview Ridge. The OMB decision stated that "Ms. Robinson's area may over-represent the number of smaller lots in the study area."<sup>4</sup>

18. Ms. Robinson was challenged for being over inclusive in the hearing related to 30 Bayview Ridge and in this Hearing, she is challenged for being under inclusive – with the implication that she changed her study area to suit the needs for the specific applications.

19. I do not agree that this is the case. In 30 Bayview Ridge, the Member in that OMB decision wrote as follows:

[21] The Board will rely on the City's neighbourhood boundary but with minor expansions from Ms. Robinson's area to include lots fronting both sides of Bayview Ridge to the north of the property, and to include lots fronting Bayview Ridge and Valley Road at the entrances to the neighbourhood (not including the lots under redevelopment fronting Bayview Avenue).

[22] This hybrid neighbourhood area is selected because its limited size cannot be criticized for over-representing the smaller lots to the north of Valley Road, thus establishing a more difficult or conservative threshold to meet for the applications. Also, Ms. Robinson, while disagreeing with the smaller area, provided evidence that the proposed lots and dwellings met the requisite tests related to character of the neighbourhood even with the smaller reference area.

20. The OMB chose a neighbourhood study area for 30 Bayview Ridge that excluded the smaller lots to the north of Valley Road. Further, in describing the location of 30 Bayview Ridge, the OMB decision states:

[18] The property abuts the south side of Valley Road and this street separates two very different street and lot patterns. To the south of Valley Road (the "south area") is a curved street pattern with spacious irregularly shaped lots and large executive-style homes. To the north of Valley Road (the "north area") is a grid street pattern with smaller but still generously sized lots and smaller but still sizeable executive-style homes. The lot size is the most striking difference, with a typical lot south of Valley Road being twice the size of a typical lot north of Valley Road.

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<sup>2</sup> *Almasian v. Toronto (City)*, OMB Case No. PL170450 (30 Bayview Ridge Decision)

<sup>3</sup> 30 Bayview Ridge Decision, para 19.

<sup>4</sup> 30 Bayview Ridge Decision, para 20.



21. I find that Ms. Robinson's study area to be suitable for the purposes of this Hearing. Ms. Robinson's current study area for the Subject Property aligns with the OBM's decision on the difference between the lots north and south of Valley Road. An alternate study area was not provided for consideration other than the City's submission that the few large lots on the south Valley Road should also be included, although no evidence was provided for this submission.
22. With respect to the photographic evidence of the neighbourhood, the City submitted that Ms. Robinson only provided photos of properties that supported the Applications and did not represent the whole neighbourhood. Ms. Robinson stated that her intention was to show that there are examples of buildings or lots similar to the proposal in the neighbourhood. I do not find any issues with Ms. Robinson's photograph evidence. The neighbourhood has 173 lots and Ms. Robinson showed photographs of approximately 13 properties – the relevance of these photographs is clearly stated in the photograph captions (such as examples of frontages similar to the proposed severed lots).
23. The Subject Property and the entire study area are designated as *Neighbourhoods* under the City's OP. Two zoning by-laws are applicable to this property – the City wide By-law 569-2013 and the North York By-law 7625.

#### The Proposal

24. Ms. Robinson testified that the Applicant proposes to sever the Subject Property into two lots. The Subject Property is a generously proportioned lot with a small existing bungalow dwelling with one garage. This bungalow has an FSI of 0.08 and 8.2% lot coverage. Ms. Robinson noted that the Subject Property is considerably underutilized and a small dwelling such as this bungalow is not consistent with what is existing in the neighbourhood. She noted that older vintage dwellings, such as this bungalow, are not as common in the neighbourhood.
25. She further noted that there are no other physical constraints for this property as there are no city trees at the front and that the trees at the rear of the lot will remain. When I asked about the site plans indicating that one tree will be removed, she confirmed that the tree is not a protected tree and if it exceeds in size such that it will become a protected tree. She referred to the Urban Forestry memorandum dated April 6, 2019 (Exhibit 3), which recommended the condition regarding the payment in lieu of planting for properties with no existing street tree. She proposed that this Urban Forestry recommended condition be a condition for the approval of variance.
26. Mr. Brulotte disagreed with Ms. Robinson's testimony regarding the tree. He believes the tree to be a large, mature approximately 70 ft in height. He submitted that if one house was built, then the tree would not require removal. I will address the issue of tree removal when addressing the relevant OP policies.
27. Ms. Robinson stated that the bungalow will be demolished and each proposed lot will include a new three-storey dwelling with an integral two-car garage. The severed

lots would not require any variance for lot area, but would require variance for lot frontages. Although the dwellings are proposed as three-storeys, Ms. Robinson opined that each proposed dwelling would present as a typical two storey house. This is because each dwelling will have a theater room below the basement, which resulted in the basement being considered the first floor. From the street, the building will appear as a two-storey building as the theater room and the basement will be below ground.

28. Each dwelling will have a lot coverage of 30.8% and will be by-law compliant with respect to front yard and rear yard setbacks and landscaping. The side yard setback with adjacent neighbouring dwellings will be 1.81 m, which is also by-law compliant. However, the side yard setbacks between the two proposed dwellings will be 1.5 m where the minimum under the zoning by-law is 1.8 m.
29. Variances for building height and first floor height are required under By-law 7625 which measures the building height from the crown of the road, which is about 0.5 m below the dwelling grade. Therefore, the height calculated for the purpose of the zoning by-law is 0.5 m higher than what would be viewed from the street. As such, Ms. Robinson considered the variances for building height and the first-floor height to be technical in nature. During cross examination, she noted that she could not get any information about the heights of the other existing dwellings in the immediate context to the Subject Property. She also noted that there are 4 approvals for variances for building height in the neighbourhood.
30. The proposed buildings also require a side exterior main wall height variance under By-law 569-2013. Ms. Robinson testified that the height of the side exterior main wall is measured to the top of the window. The windows are higher than the permitted height. Based on recommendation from the City's Planning Staff, the Applicant lowered the height of the side wall height but did not change the position of the windows. The Planning Staff Report dated August 6, 2019 recommended that the approval of the variances should be subject to the condition that the proposal be constructed in substantial conformation with the east and west elevations. This condition will restrict the number of windows that are above the height limit as well as their location on the side walls.
31. The proposed dwelling on Part 2 also requires a variance for stair width.

### Consent Criteria

32. This proposal must satisfy the consent criteria set out in section 51(24) of the *Planning Act*. I will first discuss the OP policies as these policies are relevant to both the consent and variance approvals.
33. Ms. Robinson's testimony touched on various OP policies, including 2.3, 2.3.1.1, 3.1.2.1, 3.2.1, 4.1.5 and 4.1.8. I will focus on policy 4.1.5, as this policy was important to the opposing parties' submissions.

34. OP policy 4.1.5 states that:

While prevailing will mean most frequently occurring for purposes of this policy, this Plan recognizes that some geographic neighbourhoods contain a mix of physical characters. In such cases, the direction to respect and reinforce the prevailing physical character will not preclude development whose physical characteristics are not the most frequently occurring but do exist in substantial numbers within the geographic neighbourhood, provided that the physical characteristics of the proposed development are materially consistent with the physical character of the geographic neighbourhood and already have a significant presence on properties located in the immediate context or abutting the same street in the immediately adjacent block(s) within the geographic neighbourhood. Proposed development within a Neighbourhood will be materially consistent with the prevailing physical character of properties in both the broader and immediate contexts. In instances of significant difference between these two contexts, the immediate context will be considered to be of greater relevance.

35. In the same policy, “immediate context” is defined as:

The physical character of the geographic neighbourhood includes both the physical characteristics of the entire geographic area in proximity to the proposed development (the broader context) and the physical characteristics of the properties that face the same street as the proposed development in the same block and the block opposite the proposed development (the immediate context).

36. The above policy and definitions direct me to consider whether the proposed lot size is prevailing in the immediate context and in the broader context of the neighbourhood. However, if the proposed lot size is not prevailing, such lot size can still be permitted if (1) it occurs in substantial numbers in the neighbourhood, (2) the physical character (for example, lot size) is materially consistent with the physical character of the geographic neighbourhood, and (3) it has a significant presence amongst the properties in the immediate context.

37. In this neighbourhood, there is no significant difference between the immediate and broader context. Further, lot sizes below 18 m are not prevailing. Based on Ms. Robinson’s lot study diagram (Figure 1), the prevailing lot frontage in the neighbourhood is between 18 m to 30 m (two categories/colours in Figure 1). Ms. Robinson, during cross-examination, testified that the numerically prevalent lot frontage size is in the range of 18 m – 21 m.

38. Based on OP policy 4.1.5, I now look at whether the lot frontage size of 17.22 m occurs in substantial numbers and is materially consistent with the physical

character of the geographic neighbourhood. I find that it does as there are substantial numbers of lot sizes in the range of 15.25 m to 18 m, and these lots accommodate detached houses, similar to the rest of the larger lots. The question at this point is whether lots with frontages of 17.22 m have a significant presence in the immediate context. The City submits that the immediate context does not have such narrow lots.

39. The immediate context includes the block opposite the street, Highland Crescent, on which the Subject Property is located. This block of Highland Crescent accommodates three blocks opposite the street. When taking a narrow approach of only considering the block across from the Subject Property, there is only one property with lot frontage within the range of 15.25 m to 18 m, situated on Highland Crescent. When taking a broader approach of considering all three blocks, the number increases to six. This is a rigid analysis based on ranges of lot frontages. The proposal envisions two lots of 17.22 m width. From a physical and visual perspective, it is unlikely a resident would be able to differentiate these lots from lots that are 18 m or similar in width, given the physical context of the neighbourhood, which consists of many lots with lot frontage in the 15.25 m to 18 m range. The immediate context itself has lots in the range of 18.01 m to 21 m, and when taking these together along with the lots with frontages less than 18 m, I find that lot sizes of 17.22 m width are not out of the ordinary of what can be expected in this neighbourhood. This lot frontage is within the variety of lot sizes in the immediate context.
40. With respect to height of the proposed dwellings, I agree with Ms. Robinson that the proposed height variances (building height and side exterior main walls height) are in keeping with the prevailing height of dwellings in the neighbourhood. The neighbourhood has custom built homes, and some of these buildings have height similar to the proposed dwellings. I have reviewed the CoA Decision Analysis (part of Ms. Robinson's witness statement) and her photographs of the neighbourhood and I agree with Ms. Robinson that the building height of the dwellings being proposed are reflective of the physical character evident in this neighbourhood.
41. With respect to the side yard setbacks, I agree that the proposal maintains appropriate rear yard setbacks as well as the side yard setback between the neighbouring properties. The proposed side yards between the two properties is 1.5 m, which is a small reduction from the zoning by-law minimum requirement of 1.8 m. This side yard setback taken in context with the fact that these are internal to the two dwellings and other side yard and backyard setbacks are maintained, are in keeping with the neighbourhood that has a variety of custom-built homes.
42. I now turn to a policy that Ms. Robinson did not address directly, which is policy 3.4 – The Natural Environment. Mr. Brulotte, a neighbour living directly across the Subject Property expressed a concern about the removal of the tree at the rear of the Subject Property in order to accommodate the proposal. It would have been appropriate and reasonable for Ms. Robinson to address the relevant policies in this OP chapter, even if summarily. OP 3.4(d) refers to preserving and enhancing the urban forest by regulating the injury and destruction of trees. This policy is satisfied

because the proposal plans to protect trees at the rear, except one tree, which will not require a permit to remove.

43. Based on the foregoing analysis, I am satisfied that the proposal for severance conforms with the OP.
44. Ms. Robinson explained in her Witness Statement how the proposal satisfies the rest of the consent criteria. I note that the proposed lots are conventional rectangular lots with lot areas compliant with the by-law standard and with lot frontages similar to those in the neighbourhood. There are adequate utilities and municipal services, and the houses will be built in a mature neighbourhood with access to public transit and school.
45. Based on the foregoing analysis, I am satisfied that the proposal satisfies the consent criteria.

#### General Intent and Purpose of the OP

46. My discussion of the OP policies detailed above include reference to the policies that are also relevant to the test of whether the variances requested satisfy the general intent and purpose of the OP. Based on my analysis above, I conclude that the variances satisfy the test for general intent and purpose of the OP.

#### General Intent and Purpose of the Zoning By-Laws

47. In her witness statement, Ms. Robinson detailed the general intent and purpose of the zoning by-laws as well as the intent of the individual by-law performance standards. Ms. Robinson opined that the general intent and purpose of the zoning by-laws are to

“...identify permitted uses, together with performance standards which, once applied to a building or property, will result in a development which:

- Implements the Official Plan;
- Will not bring rise to adverse planning impacts on the immediate or broader neighbourhood; and
- Results in development that is suitable for the subject land and compatible with neighbouring developments.<sup>5</sup>”

48. With respect to the specific performance standards, Mr. Robinson noted the following:

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<sup>5</sup> Ms. Robinson’s Witness Statement, para. 10.2.1

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- a. Lot frontage: the lot frontage of 17.22 m of the proposed lots will not be discernable from lots with 18 m lot frontage;
  - b. Building height: Emphasized that the height of the proposed dwellings complies with By-law 569-2013, but variances are required under By-law 7625. The variance is primarily attributed to the height of the measured crown of the road being about 0.5 m below the established grade. The requested variances will maintain the intent of the standard for height by being compatible with height of other dwellings in the neighbourhood.
  - c. Side main wall height: This variance is restricted to the wall height above the side of bathroom windows. The Planning Staff Report dated August 6, 2019 recommended that the approval of the variances should be subject to the condition that the proposal be constructed in substantial conformation with the east and west elevations. This condition will restrict the number of windows that are above the height limit as well as their location on the side walls.
  - d. First floor height: this variance is technical in nature as it is required because the crown of the road is about 0.5 m lower than the established grade of the proposed dwellings.
  - e. setback is to achieve spatial separation between dwellings and facilitate access to the rear yard. The side yard setback requirement is met for the side yards adjacent to the neighbouring properties. The variance requested is for a reduction in the side yard setbacks between the two proposed dwellings which is appropriate.
  - f. Number of storeys: when viewed from the street, the proposed buildings will appear as two storey dwellings, with the theatre room and basement below ground.
  - g. Width of porch stairs (for Part 2): the 2.84 m wide stairs is proportionate to the width of the lot.
49. Based on the evidence provided by Ms. Robinson, I am satisfied that the proposed variances meet the general intent and purpose of the zoning by-laws. The proposed dwellings will be constructed on lots which are by-law compliant with respect to lot area and has frontages similar to the minimum zoning by-law requirement. The proposed houses do not require any front or backyard setbacks and will appear as two-storey houses from the streetscape. They will be side yard compliant with respect to the adjacent properties and the requested side yard variance will be between the proposed houses and still have sufficient space for access to the backyards of the properties.

Are the proposed dwellings desirable for the appropriate development or use of the land?

50. The Applicant proposes to sever a large lot into two undersized lots. I agree that the proposed severed lots each with a lot frontage of 17.22 m are appropriate and will fit in the neighbourhood where lot sizes include 18 m and lower lots. The proposed dwellings will be in a neighbourhood with access to schools and public transit. I find that the proposal desirable for the appropriate development or use of the land.

Are the variances minor?

51. I find that the variances requested do not impose any adverse impact on the neighbourhood, the neighbours, or the public in general. I do not find any concerns surrounding privacy and overlook.

52. Based on the foregoing findings, I conclude that the consent to sever is appropriate for the Subject Property and the variances requested individually and cumulatively satisfy the four tests for variance approval.

## **DECISION AND ORDER**

53. The appeal is granted, and the Committee of Adjustment decision is set aside.

54. The consent to sever is approved subject to the conditions set out in Schedule "B".

55. The variances for the severed lots, Part 1 and Part 2, as set out in Schedule "A" are approved subject to the conditions set out in Schedule "B".



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S. Talukder  
Panel Chair, Toronto Local Appeal Body

**Schedule “A”  
Variances**

Part 1:

**1. Chapter 10.20.30.20.(1), By-law 569-2013**

The minimum required lot frontage is 18.0 m.

The proposed lot frontage is 17.22 m.

**2. Chapter 10.20.40.70.(3), By-law 569-2013**

The minimum required side yard setback is 1.8 m.

The proposed east side yard setback is 1.5 m.

**3. Chapter 10.20.40.10.(2), by-law 569-2013**

The maximum permitted height of exterior main walls facing a side lot line is 7.5 m.

The proposed height of the side exterior main walls facing a side lot line is 8.64 m.

**4. Section 12.7, By-law 7625**

The maximum permitted building height is 8.8 m.

The proposed building height (the midpoint of the centre gable) is 9.73 m.

**5. Section 12.7, By-law 7625**

The maximum permitted number of storeys is 2.

The proposed number of storeys is 3.

**6. Section 6(30)a, By-law 7625**

The maximum permitted finished first floor height is 1.5 m.

The proposed finished first floor height is 1.69 m.

Part 2:

**1. Chapter 10.20.30.20.(1), By-law 569-2013**

The minimum required lot frontage is 18.0 m.

The proposed lot frontage is 17.22 m.

**2. Chapter 10.20.40.70.(3), By-law 569-2013**

The minimum required side yard setback is 1.8 m.

The proposed west side yard setback is 1.5 m.

**3. Chapter 10.20.40.10.(2), by-law 569-2013**

The maximum permitted height of exterior main walls facing a side lot line is 7.5 m.



The proposed height of the side exterior main walls facing a side lot line is 8.69 m.

**4. Chapter 10.5.40.60.(3), By-law 569-2013**

Exterior stairs providing pedestrian access to a building may encroach into a required building setback if the stairs are no wider than 2.0 m.

The proposed width of the front porch stairs is 2.84 m.

**5. Section 12.7, By-law 7625**

The maximum permitted building height is 8.8 m.

The proposed building height (the midpoint of the centre hip on front main wall) is 9.84 m.

**6. Section 12.7, By-law 7625**

The maximum permitted number of storeys is 2.

The proposed number of storeys is 3.

**7. Section 6(30)a, By-law 7625**

The maximum permitted finished first floor height is 1.5 m.

The proposed finished first floor height is 1.69 m.

**Schedule “B”  
Conditions**

Consent Conditions

*Standard Conditions (include some conditions requested by the Applicant)*

- (1) Confirmation of payment of outstanding taxes to the satisfaction of Revenue Services Division, Finance Department.
- (2) Municipal numbers for the subject lots indicated on the applicable Registered Plan of Survey shall be assigned to the satisfaction of Survey and Mapping Services, Technical Services.
- (3) Prior to the issuance of a building permit, the applicant shall satisfy all conditions concerning City owned trees, to the satisfaction of the Director, Parks, Forestry & Recreation, Urban Forestry Services.
- (4) Two copies of the registered reference plan of survey integrated with the Ontario Coordinate System and listing the Parts and their respective areas, shall be filed with City Surveyor, Survey & Mapping, and Technical Services.
- (5) Three copies of the registered reference plan of survey satisfying the requirements of the City Surveyor, shall be filed with the Committee of Adjustment.
- (6) Within ONE YEAR of the date of the giving of this notice of decision, the applicant shall comply with the above-noted conditions and prepare for electronic submission to the Deputy Secretary-Treasurer, the Certificate of Official, Form 2 or 4, O. Reg. 197/96, referencing either subsection 50(3) or (5) or subsection 53(42) of the Planning Act, as it pertains to the conveyed land and/or consent transaction.

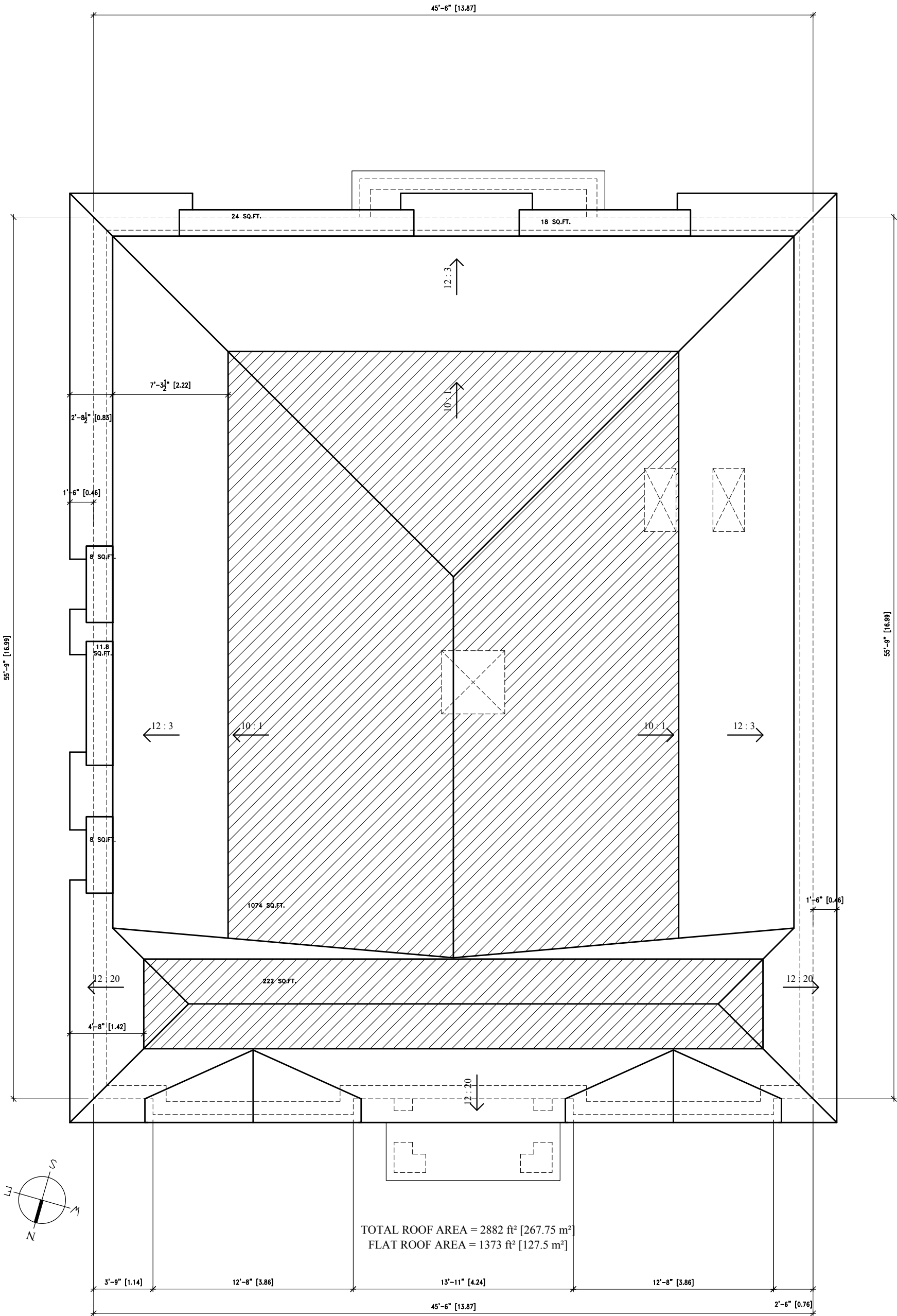
*Additional Conditions (requested by the Applicant)*

- (7) A copy of a letter from the Chief Engineer and Executive Director of Engineering and Construction Services advising that the applicant has obtained the necessary adjustment to the municipal addressing of the land. Contact Survey and Mapping Services, Engineering and Construction Services at 416-392.7755. The application for municipal addressing shall be accompanied by a copy of the deposited Reference Plan of Survey, integrated with the Ontario Co-Ordinate System, and specify the part numbers that will comprise each of the new parcels.
- (8) This decision shall become null and void within 12 months unless the Certificate of the Committee of Adjustment is affixed to the relevant documents.

Variance Conditions

1. 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.
2. For both Part 1 and Part 2, each dwelling shall be built substantially in accordance with the site plans and elevations prepared by Rubinoff Design Group and dated March 19, 2019; with amendments to the East Elevation for Part 1, prepared by Rubinoff Design Group and dated July 2019, and with amendments to the West Elevation for Part 2, prepared by Rubinoff Design Group and dated July 2019. These site plans and elevations are attached to this decision as Schedule "C".





**ROOF FRAMING PLAN**

- 149 A HIGHLAND CRES. -  
PART 1

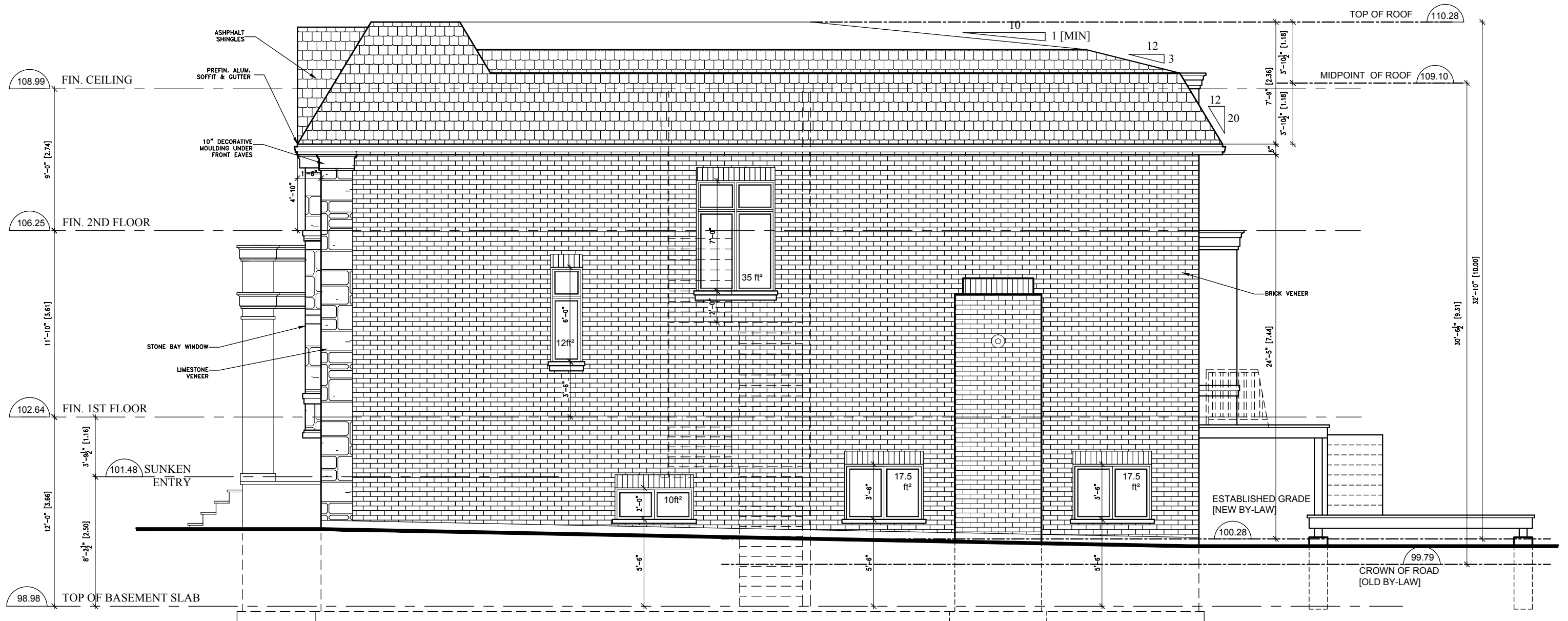


**Rubinfoff Design Group**

697 Mount Pleasant Rd.,  
Toronto, Ontario M4S 2N4

TEL. 416.667-0322 FAX.416.667.0751 EMAIL. info@rubinfoffdesign.com

SCALE= 1:75 MARCH 2019



## WEST ELEVATION

- 149 B HIGHLAND CRES. -  
PART 1

WALL AREA = 1592.8 ft²  
7% ALLOWABLE OPENINGS = 111.496 ft²  
PROPOSED OPENINGS = 92 ft²  
90% GLAZING = 82.8 ft²

**R**ubinoﬀ Design Group

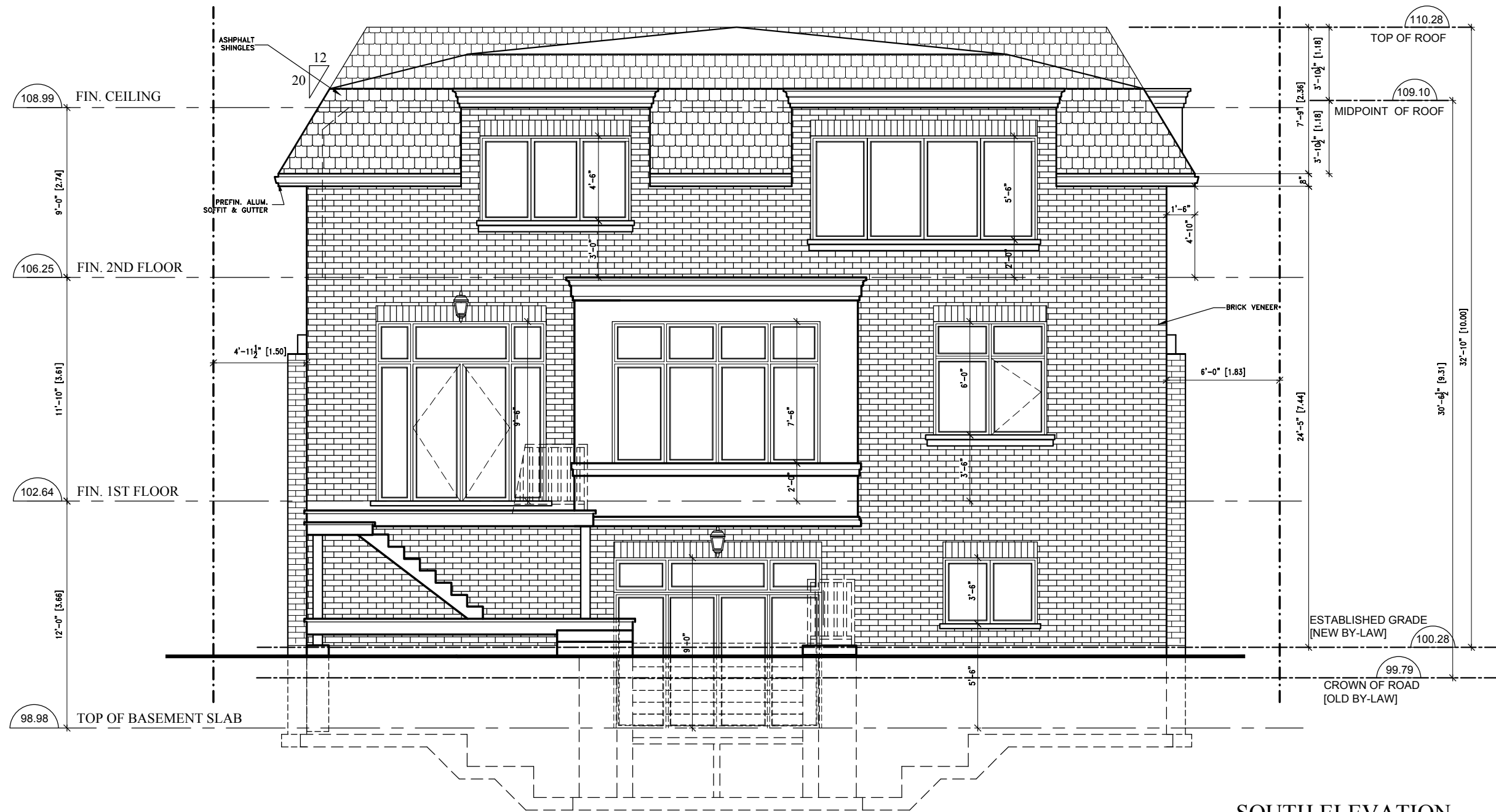
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## SOUTH ELEVATION

- 149 B HIGHLAND CRES. -  
PART 1

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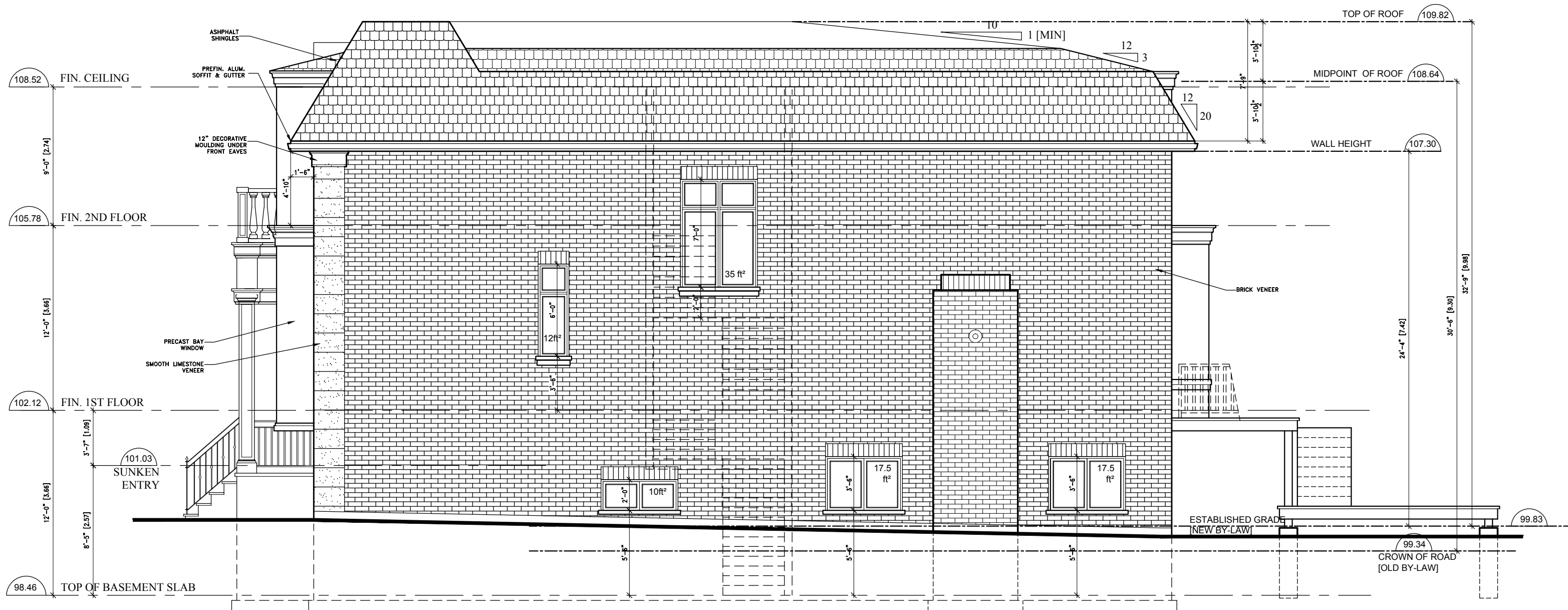
**Rubinoff Design Group**

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## WEST ELEVATION

- 149 B HIGHLAND CRES. -  
PART 2

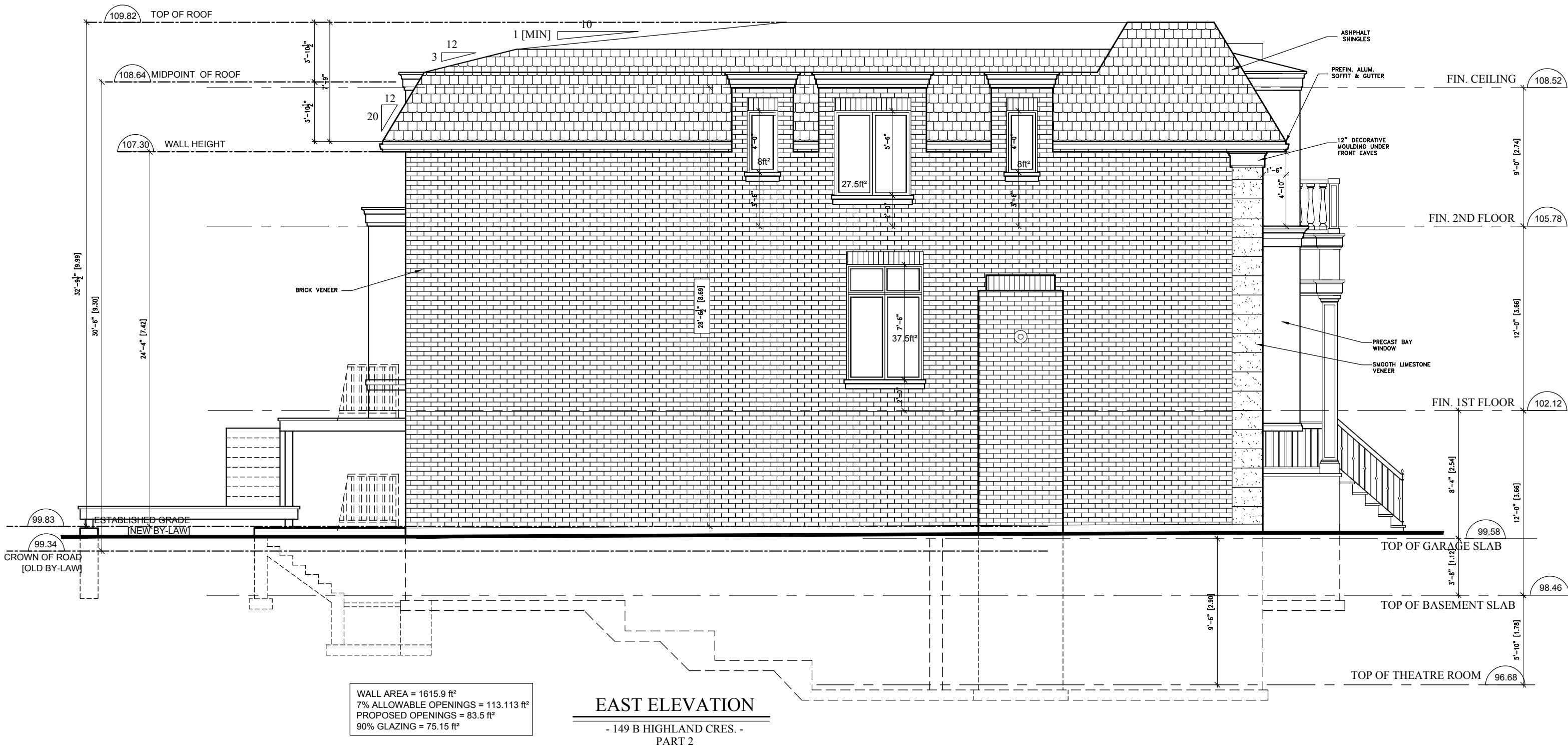
WALL AREA = 1592.8 ft²  
7% ALLOWABLE OPENINGS = 111.496 ft²  
PROPOSED OPENINGS = 92 ft²  
90% GLAZING = 82.8 ft²

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## SOUTH ELEVATION

- 149 B HIGHLAND CRES. -  
PART 2

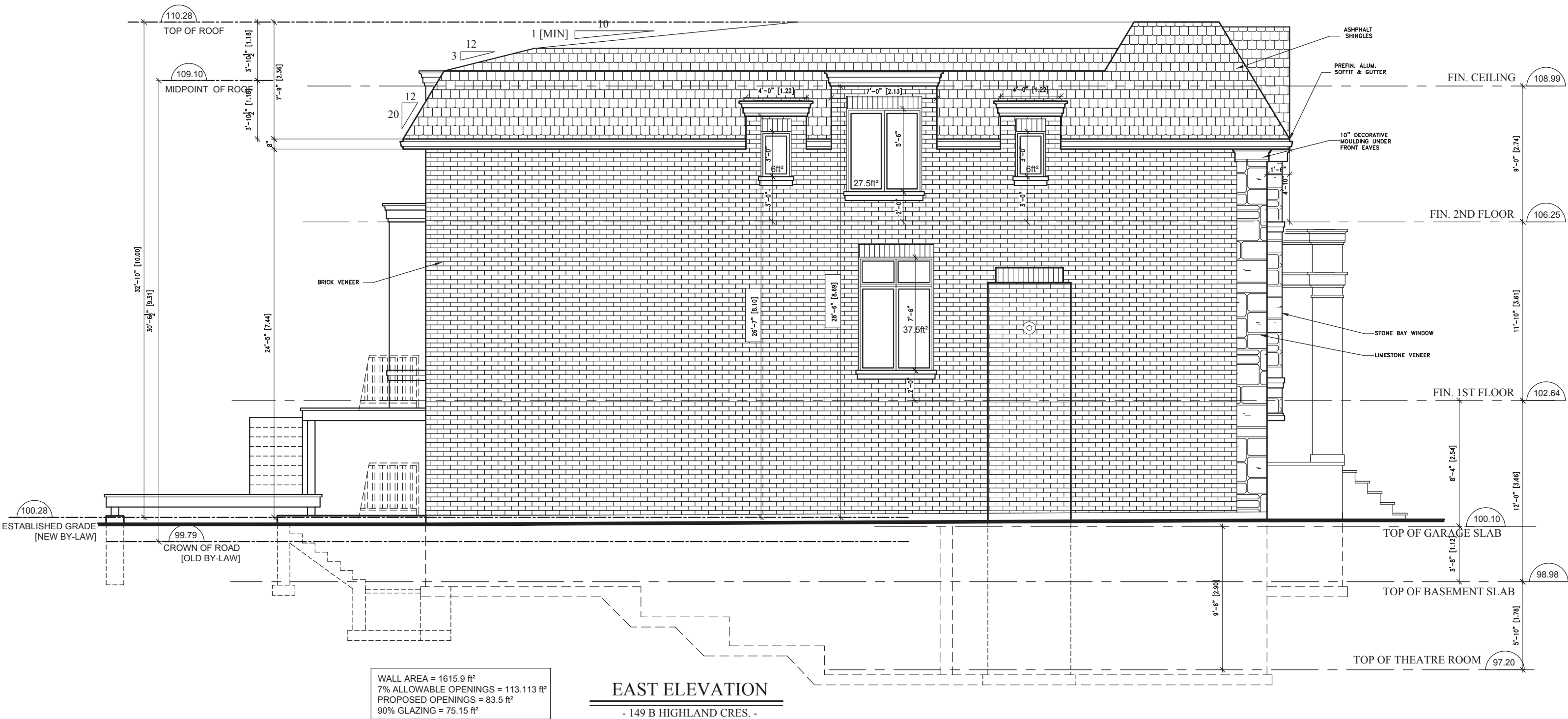
**R**ubinoff Design Group

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By Jenny at 12:43 pm, Aug 12, 2019



### EAST ELEVATION

- 149 B HIGHLAND CRES. -  
PART 1

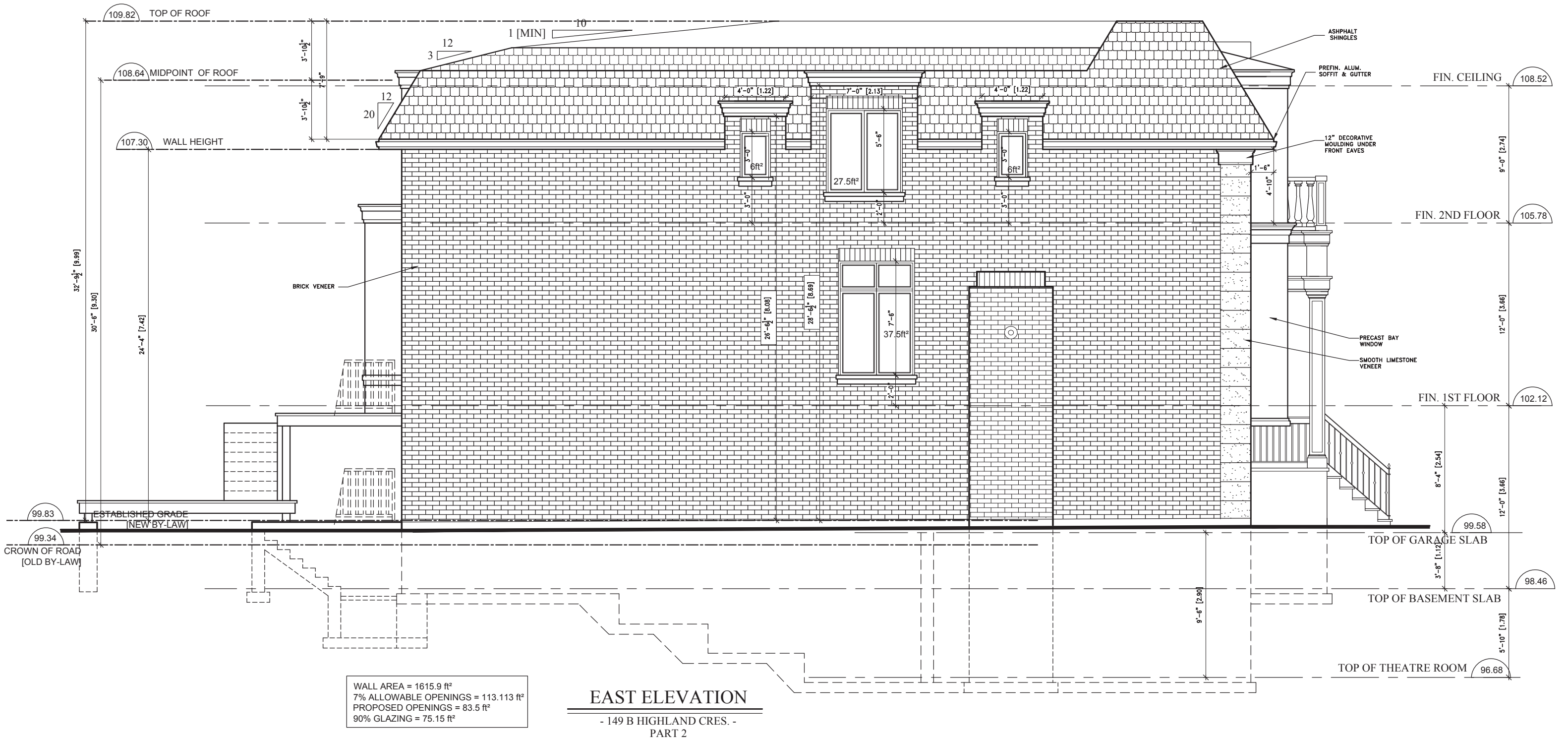
**Rubioff Design Group**

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