

DECISION AND ORDER

Decision Issue Date **Friday, May 21, 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): GINA PODOLSKY

Applicant(s): MARIN ZABZUNI

Property Address/Description: 215 AVA RD

Committee of Adjustment File

Number(s): 20 146762 STE 12 MV

TLAB Case File Number(s): 20 221858 S45 12 TLAB

Hearing date: May 10, 2021

DECISION DELIVERED BY STANLEY MAKUCH

APPEARANCES

Name	Role	Representative
Marin Zabzuni	Applicant	
Gina Podolsky	Owner/Appellant	Dennis Wood
Tae Ryuck	Expert Witness	

INTRODUCTION

This is an appeal from a decision of the Committee of Adjustment refusing variances to construct a new three-storey detached dwelling with a front integral garage, rear basement walkout, rear ground floor deck, and rear third storey balcony at 215 Ava Road (subject property). The variances sought are set in Appendix 1.

BACKGROUND

The applicants revised their application and Notice of a new hearing date was given as a result of a motion brought before TLAB. The revised variances are set out in Appendix 1 and the revised plans in Appendix 2. At the hearing no one appeared in opposition to the revised application, although a number of letters, raising similar concerns, were emailed to TLAB the afternoon before the hearing. Those letters in opposition to the appeal were not sent by any parties or participants to the hearing but were from residents in proximity to the subject property.

MATTERS IN ISSUE

At the hearing the only in person evidence was presented was by T. Ryuck, a land use planner qualified to give expert evidence. The only issues, he stated, related to the massing of the building. This included concerns regarding the: Floor Space Index (FSI), and the height and number of stories of the dwelling. The letters which were emailed also raised the same issues and thus focused on the height, number stories and exterior size of the dwelling. Additionally, they also raised the issue of lack of consultation.

JURISDICTION

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

Mr. Ryuck gave evidence that the application met the four tests of the Planning Act for variances as well as evidence that the proposal met all provincial requirements. He adopted all the evidence in his witness statement filed by Mr. Wood with TLAB on March 15, 2021 and thus his evidence can be found there.

In his oral evidence he stated that the redesign of the third floor of the dwelling, whereby that floor is set back, resulted in the reduction in the actual FSI of the building to 1.14 from 1.16 and resulted in the appearance of the building as one that conformed to the bylaw maximum FSI of .8 times the area of the lot. In brief, he stated, that the setback and the reduction of windows on the third floor created the appearance of a two story building. He also gave evidence that an additional width of .13m permitted by a variance for an exterior staircase would not be noticeable. The only evidence to contradict Mr. Ryuck's evidence, was in the form of letters, which were filed late and were from persons who had no status at the hearing. They were largely repetitious; and did not appear to take into account the reduced FSI and the reduced visibility of the third floor.

ANALYSIS, FINDINGS, REASONS

I find that the appeal should be allowed, and the variances approved, because the expert evidence of Mr. Ryuck is persuasive and affirmed to be truthful and impartial. His evidence is compelling. In contrast, the letters in opposition are not subject to any affirmation and were submitted by persons who were neither parties nor participants in the matter.

In addition, the letters were submitted late and without reason and, therefore, I find that it would be unfair to rely on them. Moreover, it is not clear that the authors properly reviewed the revised plans. Nevertheless, I find that Mr. Ryuck's evidence addressed the concerns raised in the letters.

DECISION AND ORDER

The appeal is allowed, and the Committee of Adjustment decision is set aside. The variances set out in Appendix 1 are approved on condition that construction is substantially in accordance with the plans in Appendix 2.

X 

S. Makuch
Panel Chair, Toronto Local Appeal

APPENDIX 1

REVISED LIST OF VARIANCES 215 Ava Road TLAB Case No. 20 221858 S45 12 TLAB REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:

- 1. Chapter 10.5.40.50.(2) By-law 569-2013** A platform without main walls, such as a deck, porch, balcony or similar structure, attached to or within 0.3 m of a building, must comply with the minimum required building setbacks for the zone (1.2 m). The front porch platform has a side yard setback of 0.75 m.
- 2. Chapter 10.80.40.70.(3)(A) By-law 569-2013** The minimum required side yard setback for a detached dwelling is 1.2 m. The new detached dwelling will have an east side yard setback of 0.6 m.
- 3. Chapter 10.80.40.20.(1) By-law 569-2013** In the RM zone, the maximum permitted building length for a detached dwelling is 17.0 m. The new detached dwelling will be 17.99 m in length
- 4. Chapter 10.80.40.40.(1)(A) By-law 569-2013** The maximum permitted floor space index is 0.8 times the area of the lot (246.12 m²). The new detached dwelling will have a floor space index of 1.14 times the area of the lot (351.05 m²).
- 5. Chapter 10.5.40.60.(1)(C) By-law 569-2013** A platform without main walls, attached to or less than 0.3 m from a building, with a floor no higher than the first floor of the building above established grade may encroach into the required rear yard setback 2.5 m if it is no closer to a side lot line than a distance equal to the vertical distance between the highest part of the floor of the platform and the average elevation of the ground at the side of the platform (1.0 m). The platform encroaches 2.9 m into the required rear yard setback and is 0.6 m from the east side lot line.
- 6. Chapter 10.5.40.60.(3)(A)(ii) By-law 569-2013** Exterior stairs providing pedestrian access to a building or structure may encroach into a required building setback if the stairs are no wider than 2.0 metres. The proposed front porch stairs are 2.13 metres wide.

APPENDIX 2

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NAME	BCIN
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CONTEMPO STUDIO	46972
FIRM NAME	BCIN

PROPOSED NEW 3 STOREY DWELLING
 AT
 215 AVA ROAD
 TORONTO

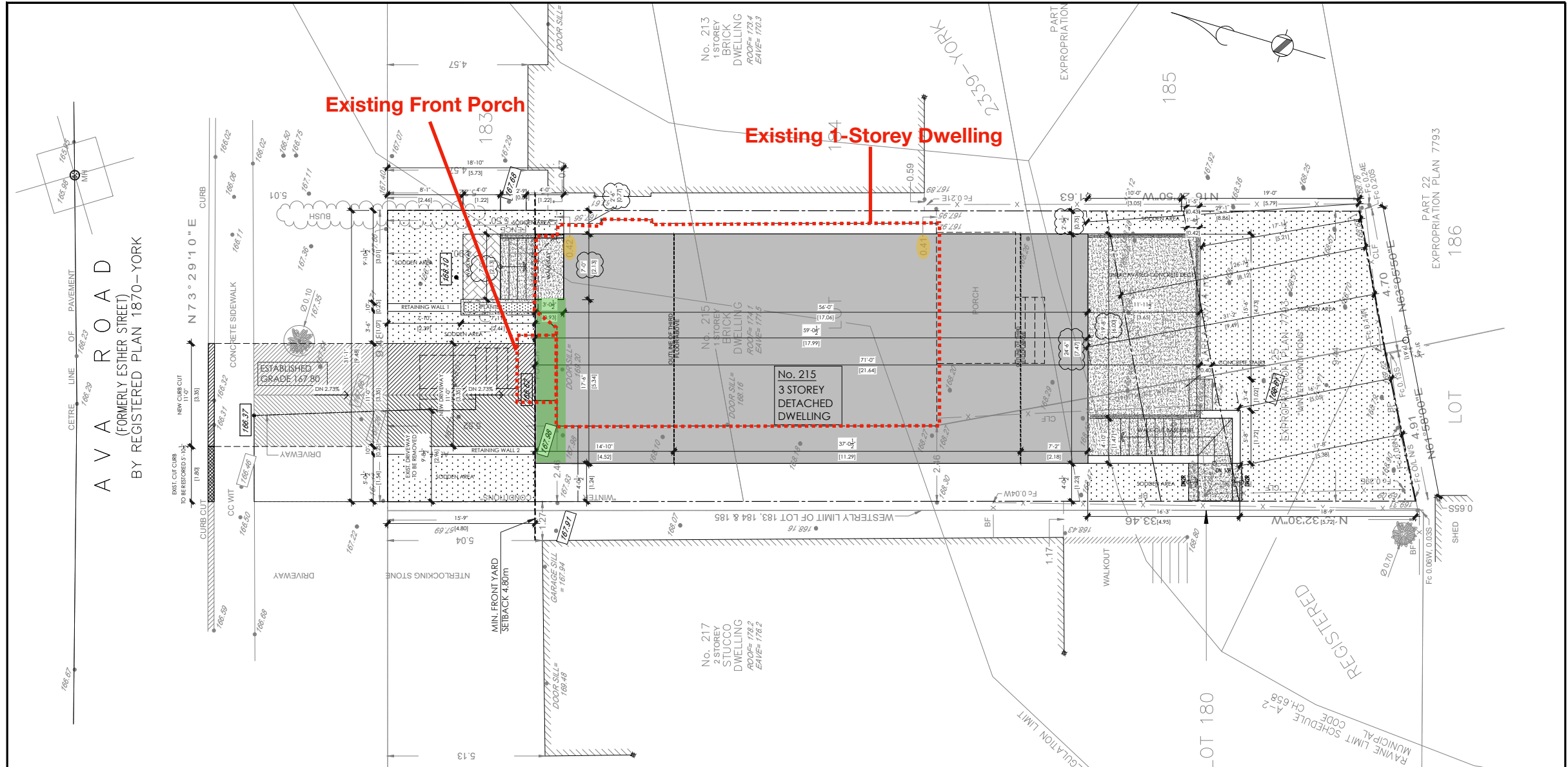
SITE PLAN



Project number:	2020-04
Rev. no.:	3
Scale:	AS NOTED
Date:	JAN.08.2021
Drawn by:	BM
Checked by:	MZ

Drawing number:

A1



SITE STATISTICS

ZONED AS:	RM (f12.0; U2;d0.8)(x252)
LOT AREA =	3,311.52ft² [307.65m²]
LOT FRONTAGE:	9.48m
ESTABLISHED GRADE:	167.80

PROPOSED GFA

FIRST FLOOR AREA	= 1,424.86 ft² [132.37m²]
SECOND FLOOR AREA	= 1,446.16 ft² [134.35m²]
THIRD FLOOR AREA	= 907.75 ft² [84.33m²]
TOTAL GFA	= 3,778.77 ft² [351.05m²] (114.10%)

PROPOSED REAR YARD LANDSCAPE

REAR YARD AREA	= 991.36ft² [92.10m²]
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[MIN. SOFT LANDSCAPE AREA REQ. 50% = 495.68ft² [46.05m²]

NEW CONCRETE DECK PROPOSED	= 246.02ft² [22.85m²]
NEW WALK-OUT BASEMENT PROPOSED	= 81.93ft² [7.61m²]
HARD SURFACE PROPOSED	= 327.95ft² [30.46m²] 33.07%

LANDSCAPING PROPOSED = 663.41ft² [61.64m²] 66.92%

PROPOSED FRONT YARD LANDSCAPE

FRONT YARD AREA	= 517.70ft² [48.09m²]
PORCH AREA	= (-) 27.97ft² [2.59m²]
STAIRS AREA	= (-) 19.23ft² [1.78m²]
ACTUAL FRONT YARD AREA	470.50ft² [43.72m²]

[MIN. 50% LANDSCAPE AREA REQUIRED = 235.25ft² [21.86m²] (50%)]

ACTUAL FRONT YARD AREA	= 470.50ft² [43.72m²]
NEW DRIVEWAY PROPOSED	= 173.42ft² [16.11m²] 36.85%
LANDSCAPING AREA	= 297.08ft² [27.60m²] 63.14%

[MIN. 75% SOFT LANDSCAPING AREA REQ. = 222.81ft² [20.69m²] (75%)]

NEW WALKWAY PROPOSED	= 27.97ft² [2.59m²] 9.41%
NEW PLANTER PROPOSED	= 13.19ft² [1.23m²] 4.44%
RETAINING WALLS	= 19.67ft² [1.82m²] 6.62%
HARD SURFACE PROPOSED	= 60.83ft² [5.64m²] (20.47%)

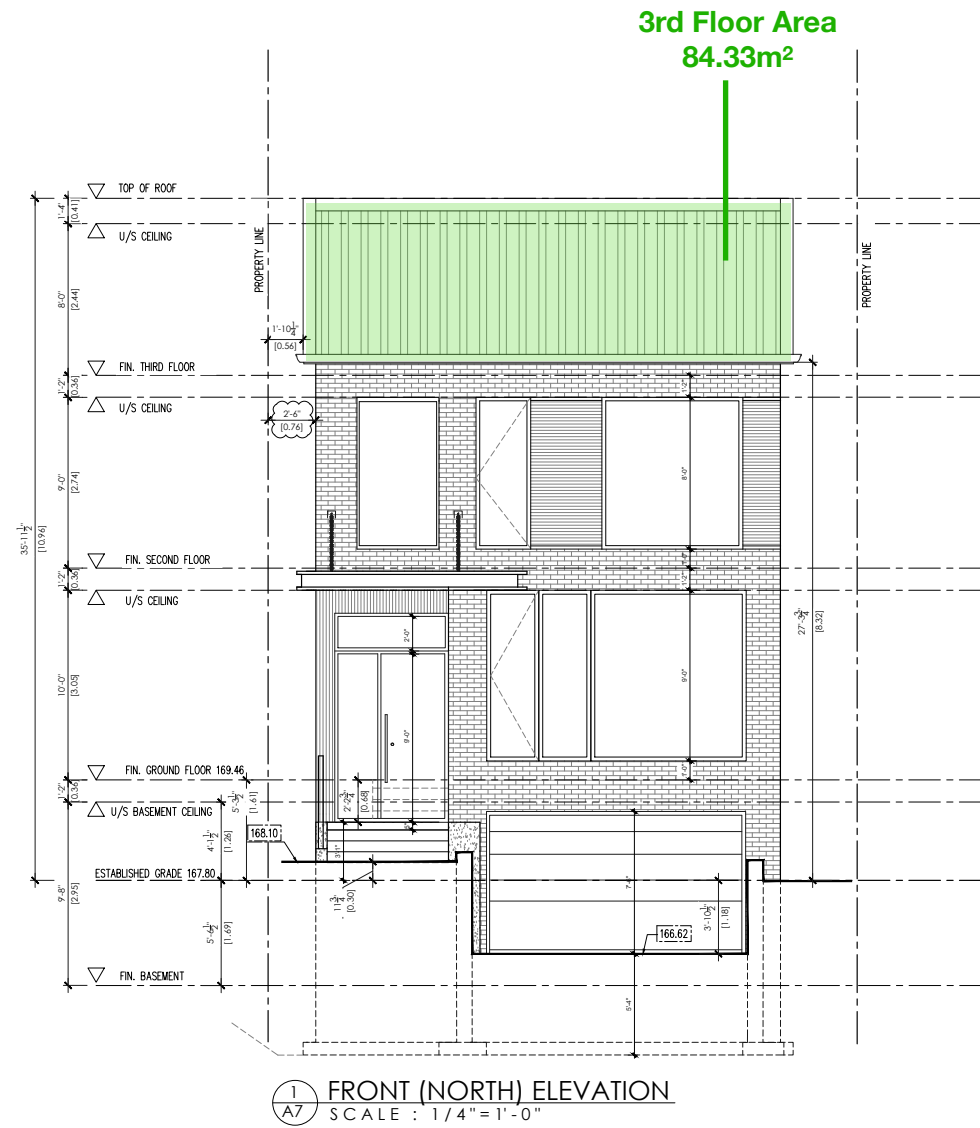
SOFT LANDSCAPING PROPOSED = 236.25ft² [21.94m²] (79.52%)

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3rd Floor Area
84.33m²

1 FRONT (NORTH) ELEVATION
A7 SCALE : 1/4" = 1'-0"

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NAME: MARIH ZABZUHI SIGNATURE: 45250 BCIN

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FIRM NAME: CONTEMPO STUDIO 46972 BCIN

PROPOSED NEW 3 STOREY DWELLING
AT
215 AVA ROAD
TORONTO

ELEVATIONS

Project number: 2020-04
Rev. no.: 0
Scale: AS NOTED
Date: JAN.08.2021
Drawn by: BM
Checked by: MZ

Drawing number:

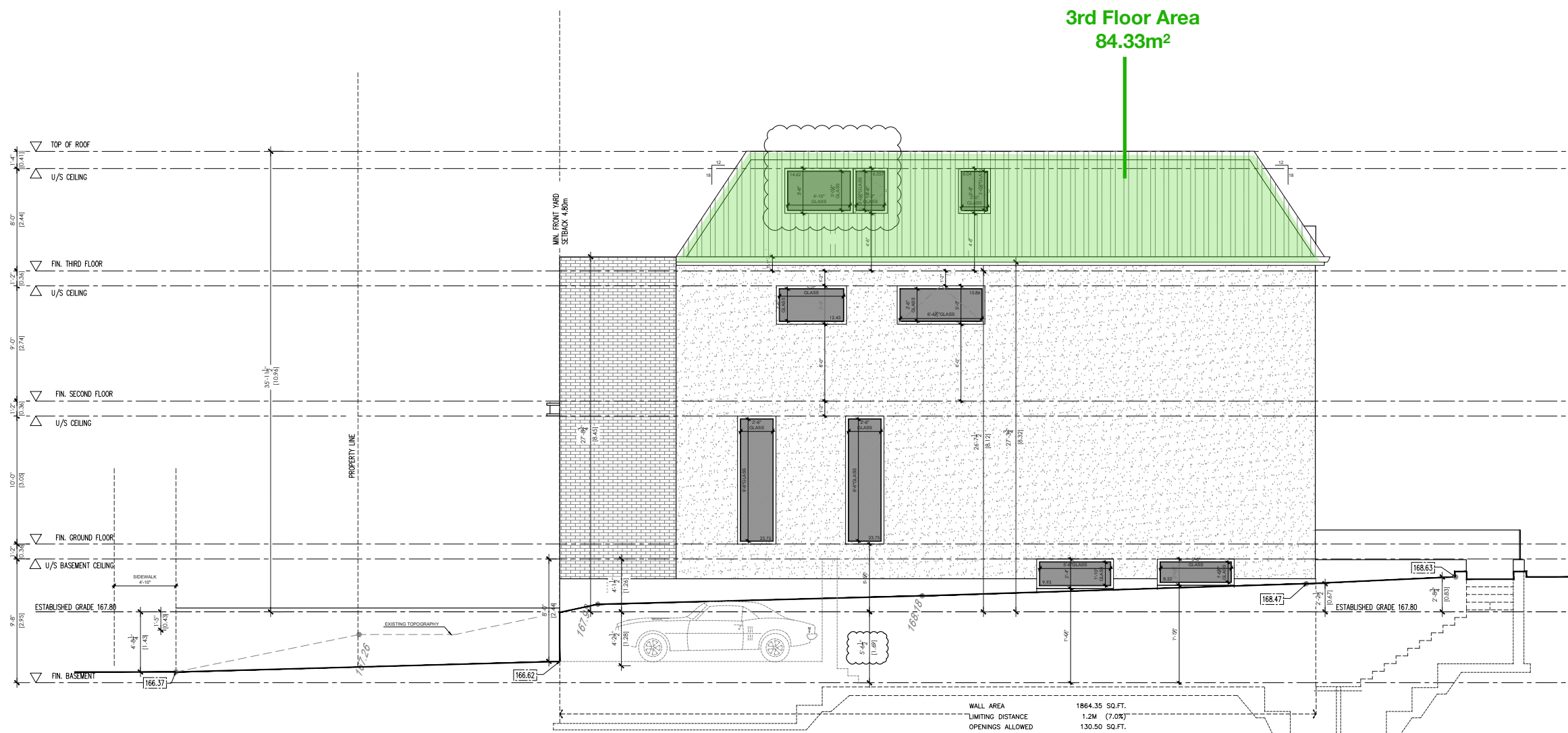
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1 SIDE WEST ELEVATION
SCALE : 1/4" = 1'-0"

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NAME SIGNATURE BCIN
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CONTEMPO STUDIO 46972
FIRM NAME BCIN

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TORONTO

ELEVATIONS

Project number: 2020-04
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Scale: AS NOTED
Date: JAN 08 2021
Drawn by: BM
Checked by: MZ

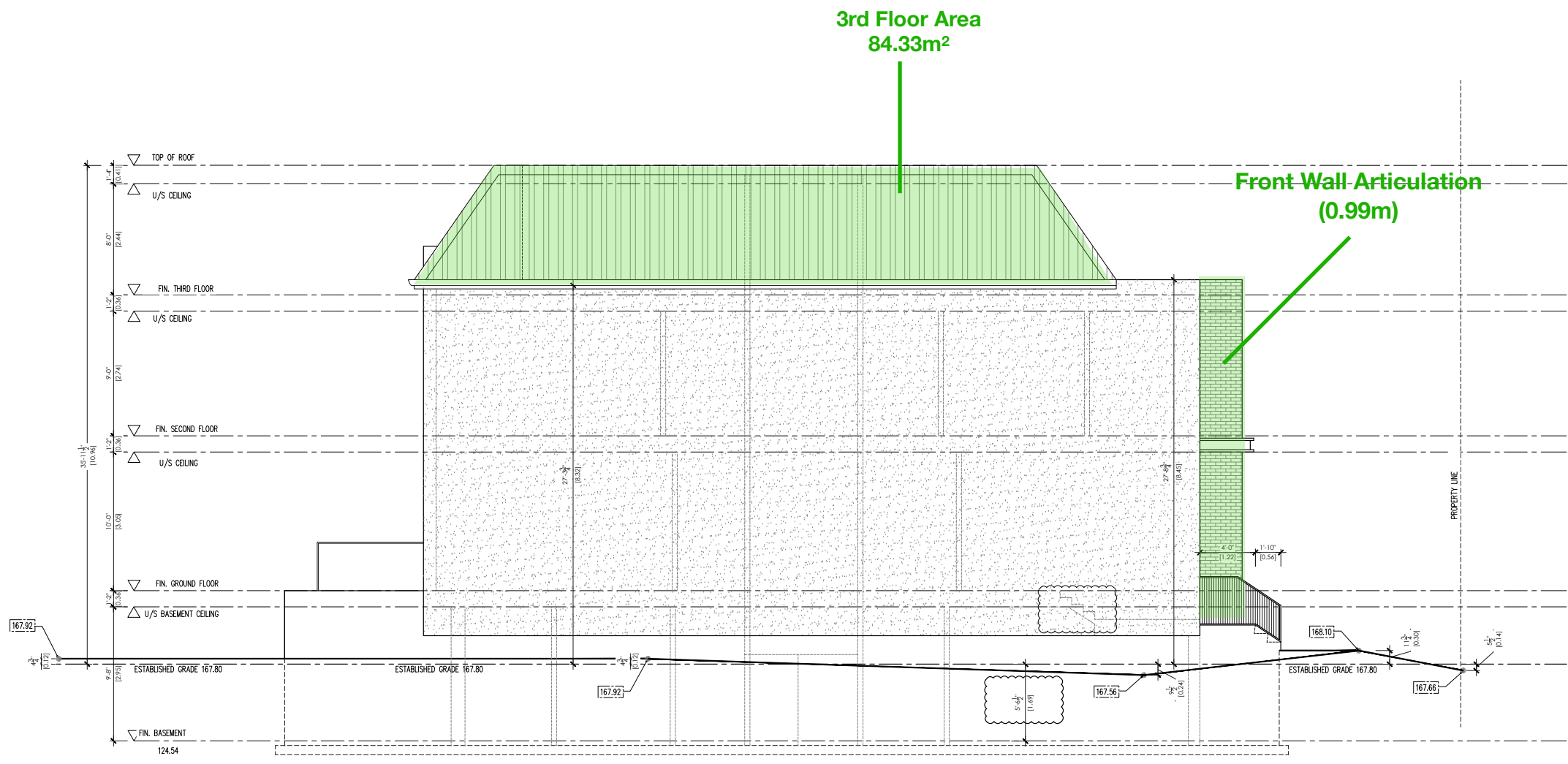
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1 SIDE EAST ELEVATION
A10 SCALE : 1/4" = 1'-0"

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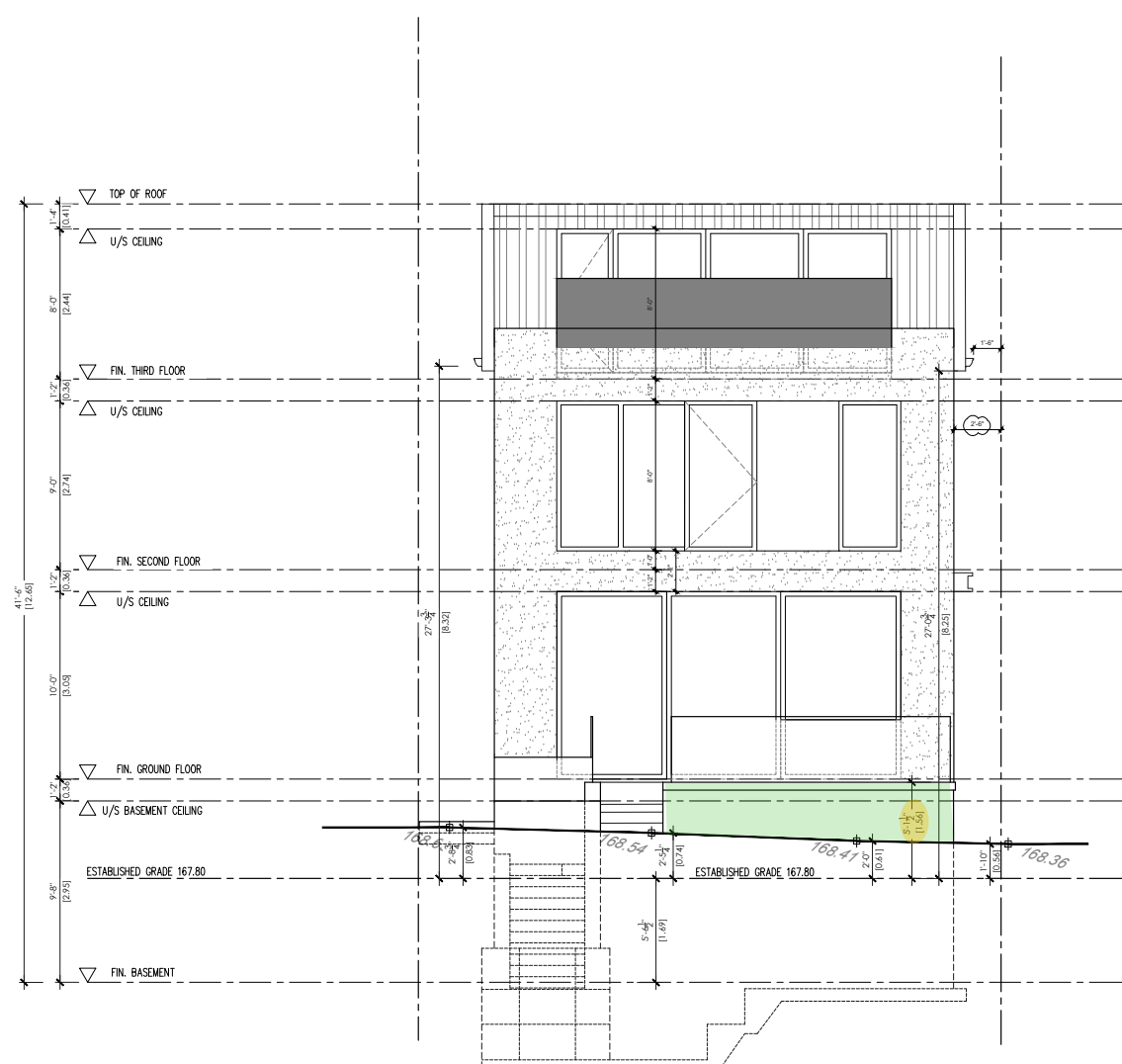
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1 SOUTH (REAR) ELEVATION
A9 SCALE : 1/4" = 1'-0"

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