

DECISION AND ORDER

Decision Issue Date Monday, June 29, 2020

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): RUI PEREIRA

Applicant: AMBIENT DESIGN LTD.

Property Address/Description: 431 Concord Avenue

Committee of Adjustment Case File: 19 171898 STE 09 MV

TLAB Case File Number: 19 259061 S45 09 TLAB

Virtual Hearing date: Thursday, June 04, 2020

DECISION DELIVERED BY Justin Leung

APPEARANCES

NAME	ROLE	REPRESENTATIVE
AMBIENT DEISNG LTD	Applicant	
MARIA DOS ANJOS PEREIRA	Owner	
RUI PEREIRA CHEESEMAN	Appellant/owner	RUSSELL D
DAVID RILEY	Expert witness	

INTRODUCTION

This is an appeal from a refusal decision of the Toronto-East York Committee of Adjustment (COA) pertaining to a request to permit a series of 7 variances for 431 Concord Avenue (subject property).

The variances had been applied for to the COA to permit the construction of a third storey addition which would result in a third secondary suite to the dwelling, second and third floor balconies, and to reconstruct the front and rear yard facing basement entrances.

This property is located in the Dovercourt-Wallace Emerson-Junction neighbourhood of the City of Toronto (City) which is situated south of Hallam Street and bounded by Delaware Avenue to the west and Ossington Avenue to the east. The property is located on Concord Avenue, south of Hallam Street and north of Northumberland Street.

At the beginning of the hearing, I informed all parties in attendance that I had performed a site visit of this subject property and the neighbourhood and had reviewed all materials related to this appeal.

BACKGROUND

The Application consists of the following requested variances:

1. Chapter 10.10.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index of a semi-detached house is 0.60 times the area of the lot (137.97 m²). The altered semi-detached house will have a floor space index equal to 1.18 times the area of the lot (271.63 m²).

2. Chapter 10.5.40.60.(3)(A)(iii), 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 closer to a lot line than 0.6 m. The front yard stairs will be located 0.18 m from the front west lot line.

3. Chapter 150.10.40.1.(3)(A), By-law 569-2013

A secondary suite is a permitted use provided that an exterior alteration to a building to accommodate a secondary suite does not alter a main wall or roof that faces a street. The third floor addition will alter the front main wall that faces the street.

4. Chapter 200.5.10.1.(1), By-law 569-2013

A minimum of three parking spaces is required for a semi-detached house containing three secondary suites. In this case, one parking space will be provided.

1.Section 6(3) Part II 3.C(I), By-law 438-86

The minimum required side lot line setback of a semi-detached house is 0.45m where the side wall contains no openings. The altered semi-detached house will be located 0.00 m from the north side lot line.

2. Section 6(3) Part II 3(I), By-law 438-86

The minimum required setback from the side wall of an adjacent building that does not contain any openings is 0.9 m.

The altered semi-detached house will be located 0.00 m from the side wall of the north adjacent building.

3. Section 12(2) 246(E), By-law 438-86

A minimum of three parking spaces is required for a semi-detached house containing four units. In this case, one parking space will be provided.

These variances were heard and refused at the November 20, 2019 Toronto COA meeting. Subsequently, an appeal was filed on December 9, 2019 by Russell Chessemann on behalf of Rui Pereira of 431 Concord Avenue within the 20-day appeal period as outlined by the *Planning Act*. The TLAB received the appeal, however, a postponement was declared due to the emergency period as stipulated by the Province of Ontario due to the COVID-19 situation. Toronto City Council then proceeded to a pass a resolution which permitted the holding of virtual Council and tribunal meetings/hearings. In adherence to this permission, TLAB staff reached out to the interested parties of this matter to assess whether they wished to pursue a virtual hearing. As the parties responded positively to this proposal, the TLAB proceeded to schedule a virtual hearing for June 4, 2020 in which all relevant parties were invited to participate.

MATTERS IN ISSUE

The appellant contends that revisions to the proposal have resulted in a slightly altered design and a reduction in variance requests for the addition to the existing structure. They further accentuate that these changes have resulted in the withdrawal of concerns that had previously been raised by neighbouring residents. It is noted that besides the participation of the appellant's representatives, no other parties or persons were involved, and no documents have been submitted to the tribunal by another other parties; the virtual hearing evidence as proffered by the appellant was uncontested. Within this context, the TLAB must assess whether the revised proposal is acceptable and in accordance with *Planning Act* requirements, and whether the prevailing public interest is upheld with the granting of this proposal.

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.

The authority for a Tribunal to introduce a new minor variance request is actually outlined within the *Planning Act*, described as follows:

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).

EVIDENCE

At the commencement of the hearing, Russell Cheeseman presented himself as legal counsel for the appellant Rui Pereira. He outlined that the other parties in attendance included his expert witness David Riley, of SGL Planning & Design Inc., and the owner/appellant Rui Pereira. I noted that Mr. Cheeseman and Mr. Riley had connected to the virtual hearing through electronic devices, while Mr. Pereira was using a telephone to access the hearing.

Mr. Cheeseman further advised that subsequent changes have been made to the proposal, resulting in a reduction in variances being requested. He stated that the tribunal should, on a proper assessment of the proposal, permit these changes in accordance with the powers and authority as prescribed in the *Planning Act*. In further describing these changes, Mr. Cheeseman explain that part of the reasoning for this is due to the approval of the new *City Zoning By-law 569-2013* which has resulted in some variances no longer being applicable. With this, and seeing that there are no parties (besides the owner) to the matter, Mr. Cheeseman requested that the expert witness take the stand be affirmed to present evidence on the appeal matter.

I acceded to this request. Furthermore, I indicated that I was able to qualify Mr. Riley in the field of land use planning. Mr. Riley began with outlining that he is familiar with the neighbourhood as the has done previous work in the area. He had initially been retained in December 2019 by the owner/appellant to provide testimony to the tribunal in support of the proposal.

With regards to the proposal, Mr. Riley described that the overall design that had been achieved was of a modern aesthetic with a flat roof. After presenting the proposal at a COA meeting where resident input was provided, the proposal was revised to provide a more sloped roof design and a more recessed third floor addition. In comparing this revised proposal, he showed that it was of a more comparable design typology to the adjacent existing houses. He further reiterated the comments as made by Mr. Cheeseman that two of the variance requests were no longer being sought as those provisions of By-law 438-86 were no longer necessary for this proposal to be brought to fruition. It is noted that one of the variances relating to a parking reduction which is continued to be sought by the appellants. As such, and as expressed in the Witness Statement as previously submitted to the TLAB, the revised proposal that the appellant has brought before the tribunal is as follows:

1. Chapter 10.10.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index of a semi-detached house is 0.60 times the area of the lot (137.97 m²). The altered semi-detached house will have a floor space index equal to 1.18 times the area of the lot (271.63 m²).

2. Chapter 10.5.40.60.(3)(A)(iii), By-law 569-2013

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1. Section 12(2) 246(E), By-law 438-86

A minimum of three parking spaces is required for a semi-detached house containing four units. In this case, one parking space will be provided.

It is noted with the remaining variance requests, no change to the quantitative nature of each of the requests were being requested. In furtherance of this, Mr. Riley contends that the proposal constitutes good planning and meets the four tests for variance approval as per the *Planning Act*.

Mr. Riley further describe this as a semi-detached dwelling with a rear garage which is accessible by a laneway. The photobook which he presented to the tribunal shows that the neighbourhood is comprised of mostly semi-detached dwellings. Most of the dwellings are of a second storey orientation. However, he does show that there are some three storey dwellings as well. The subject property has a courtyard which is typical of properties in this neighbourhood. There are existing front and rear facing entrances to the basement. The proposed addition will also include the rebuilding of these entrances to facilitate access to the two existing secondary suites and for the proposed third unit as well.

Within the perspective of provincial policies, Mr. Riley contends the inclusion of a third secondary suite could be consistent with the *Growth Plan for the Greater Golden Horseshoe* as it acts to permit for intensification of established urban areas. He further argues that the *Provincial Policy Statement* is also in conformance with this proposal. He does underscore that no variance for height is required for this proposal.

With respect to Official Plan (OP) policies, especially as they pertain to the built form, he accentuates that the OP does allow for the built form of a neighbourhood to evolve, to a certain extent, over time. As lot configuration will remain unaltered, as this is not a severance application, this OP provision is not pertinent here. The dwelling types, and as previously shown with the photobook, are opined to be varied in nature.

The proposed third storey addition would not act to disrupt the prevailing neighbourhood rhythm. The changes to the front design have been achieved to create a more harmonious housing style for the neighbourhood and further act to address resident comments/concerns for the proposal.

In relation to the Zoning requirements, as it relates to the variance for floor space index (FSI), he had conducted an analysis of building FSI in the area. What he found as part of his research is that the FSI request being outlined here is consistent with the prevailing FSI of the neighbourhood. He further opines that the FSI provisions as contained in the Zoning By-law are to enforce the built form and massing policies of the OP. Here, the proposal does not act to alter the existing building footprint and only affects the massing. While so, the massing has been contemplated to provide a complimentary scale for the neighbourhood context. The setback for the front facing basement entrance is being requested to achieve a more positive design aesthetic. He further outlines that the west property line setback is not being substantially impacted by this side yard setback variance as it would carry a similar setback to other adjacent properties. With respect to the parking reduction variance, this additional secondary suite, and potentially the existing two suites, would not have to rely as significantly on automobile use as the subject property is within walking distance of the Ossington Toronto Transit Commission (TTC) station. This would act to create units which are of a transit oriented development (TOD) as per provincial and municipal policy directions. Furthermore, he did recommend that if the appeal were permitted a condition requiring substantial conformity to the plans submitted with the appeal applied.

ANALYSIS, FINDINGS, REASONS

The submissions, both provided orally and written, have been presented comprehensively by the appellant to articulate that the provincial and municipal policies in effect that act to encourage intensification and increasing housing supply. Within this dynamic, this proposal to allow a third secondary suite is explained to be compatible with these policies and would assist the City in meeting its intensification policies.

Upon cursory review of both the disclosure documents and of the City's Application Information Centre (AIC), it is noted that there have been several COA applications for alterations to existing dwellings in this neighbourhood. Of note is 271 Delaware Avenue which was a variance proposal that was subsequently appealed to the TLAB involving a request for a secondary suite and for additions to both the secondary and third storey of the dwelling. This proposal encapsulated 7 variance requests which also had variances pertaining to FSI and to the construction of additional entrance to the secondary suite, similar in nature to what is being currently assessed in this appeal. It is noted that there is a variance for building height which is not being sought for 431 Concord Avenue. Although the overall quantitative amount of variances is greater there than the proposal at hand, 271 Delaware Avenue was for the allowance of 1 secondary suite whereas the subject property would, if approve, result in 3 secondary suites. While so, 217 Delaware Avenue does provide an example for assessing the development pattern which is unfolding in this area. In her TLAB Decision

and Order, Member Gillian Burton accentuates that her approval of this appeal is based on the following cogent rationale:

“The reduced variances are more appropriate for the neighbourhood. I find them all to have no adverse planning impact, and to essentially meet even the terms of OPA 320 respecting block conformity.

On the obligation in the Act to meet and satisfy essential terms of provincial policies, I find that the variances retain the existing residential use, and improve the accessibility of the dwelling. This will contribute to the mix and range of housing options in the area. As Mr. Galbraith stated, the proposal reinforces the promotion of compact urban form through the intensification of existing urban areas. The proposed variances are also compatible with adjacent uses and would appropriately utilize existing infrastructure.”¹

Contextually, the subject property is not dis-similar in that the overall building form, even with the inclusion of a third storey, would not be substantively divergent from the previously mentioned proposal. As such, it would continue to represent the building typology of this neighbourhood. Additional discussions which have occurred between the owner/appellant and neighbouring residents has also resulted in a design aesthetic which has facilitated a more adaptable built form that articulates the prevailing building character. This design, when compared to the photobook as displayed and explained by Mr. Riley in his testimony to the tribunal, further affirms this. The neighbourhood assessment as presented by Mr. Riley, coupled with the site visit as conducted by me, demonstrates that there is an established trend of regeneration of the housing stock which has begun taking hold in this area. Its proximity to Downtown Toronto with relatively superior rapid transit service, this area is a suitable candidate to accommodate more people.

Another consideration which the tribunal must also assess is the request by the appellant to accept the revision of the variance requests and to not provide further notification to the public as such. Although the *Planning Act*, and as outlined in the ‘Jurisdiction’ section, does permit the presiding member to make such a decision, it does require an assessment and analysis on my part to determine if it constitutes good planning and in the public interest to allow such changes to be adopted at this juncture. Here, the tribunal finds that the revised proposal is technical in nature as, and had been stated by Mr. Riley, is due to the implementation of *Zoning By-law 569-2013* resulting in 2 variance requests no longer being necessary. However, even if this technical revision were not necessary, the elimination of 2 variances as they relate to side yard setbacks can also be interpreted as reducing the overall impact of the Application. It is contended that neighbouring residents who had initially been concerned with the proposal, should, with a reduction in the magnitude or scale of the project, as logic would deduce, likely be more amenable to the revised Application. I am accepting of this revised proposal

¹ City of Toronto (2019, September 20). Decision and Order: 271 Delaware Avenue. Retrieved from https://www.toronto.ca/wp-content/uploads/2019/09/91da-TLAB_19-122116-S45-09-TLAB_271-Delaware-Ave-St_Decision_GBurton.pdf

and will allow it to form part of the record of this appeal moving forward, as afforded in S. 45(81) of the *Planning Act*.

With the material that have been presented, I have chosen to accept the evidence of the appellant, who is also the sole participant to this appeal, in arguing for the approval of these variances. The appellant, through their variance and appeal materials, has demonstrated that the variances as they pertain to FSI, reduction in property setbacks, alteration in front main wall and reduction in parking requirements to permit third floor addition, and alteration to the additional front and rear entrances to the dwelling (all as they relate to the construction of a 3 secondary suite) are representative of the continued development trend of the area. This neighbourhood is well-positioned to absorb an additional secondary suite, even if no increased parking spaces will be allocated to this dwelling. The close proximity of transit service and to Downtown Toronto are indicators that the potential future residents to such a dwelling do not need as strong a reliance on automobile use - in comparison to other more suburban locales within the city and in the broader Greater Toronto Area (GTA). In addition, the owner/appellants ability to address resident concerns prior to the TLAB hearing has also been afforded careful consideration by the tribunal in recognizing that these alterations to the existing dwelling may be more successfully assimilated by the neighbourhood contributing to positive resident dialogue and relations.

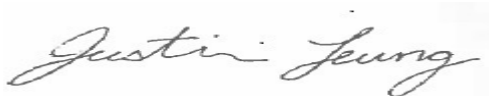
Although no City imposed conditions had been recommended here, the tribunal does accept the recommendation of the owner/appellant's legal counsel, Mr. Cheeseman, in imposing a substantial conformity construction condition here. This condition has been implemented independently in other TLAB decisions to ensure that the proposal is built in a manner which reflects that approved by the tribunal.

DECISION AND ORDER

The appeal is allowed, and the variances in Appendix 1 are approved subject to the condition that the building must be constructed substantially in accordance with the elevations and site plans contained in Appendix 2.

If difficulties arise in the implementation of this decision and order, the TLAB may be spoken to.

X



Justin Leung
Panel Chair, Toronto Local Appeal Body

Appendix 1

List of proposed variances

1. Chapter 10.10.40.40.(1)(A), By-law 569-2013

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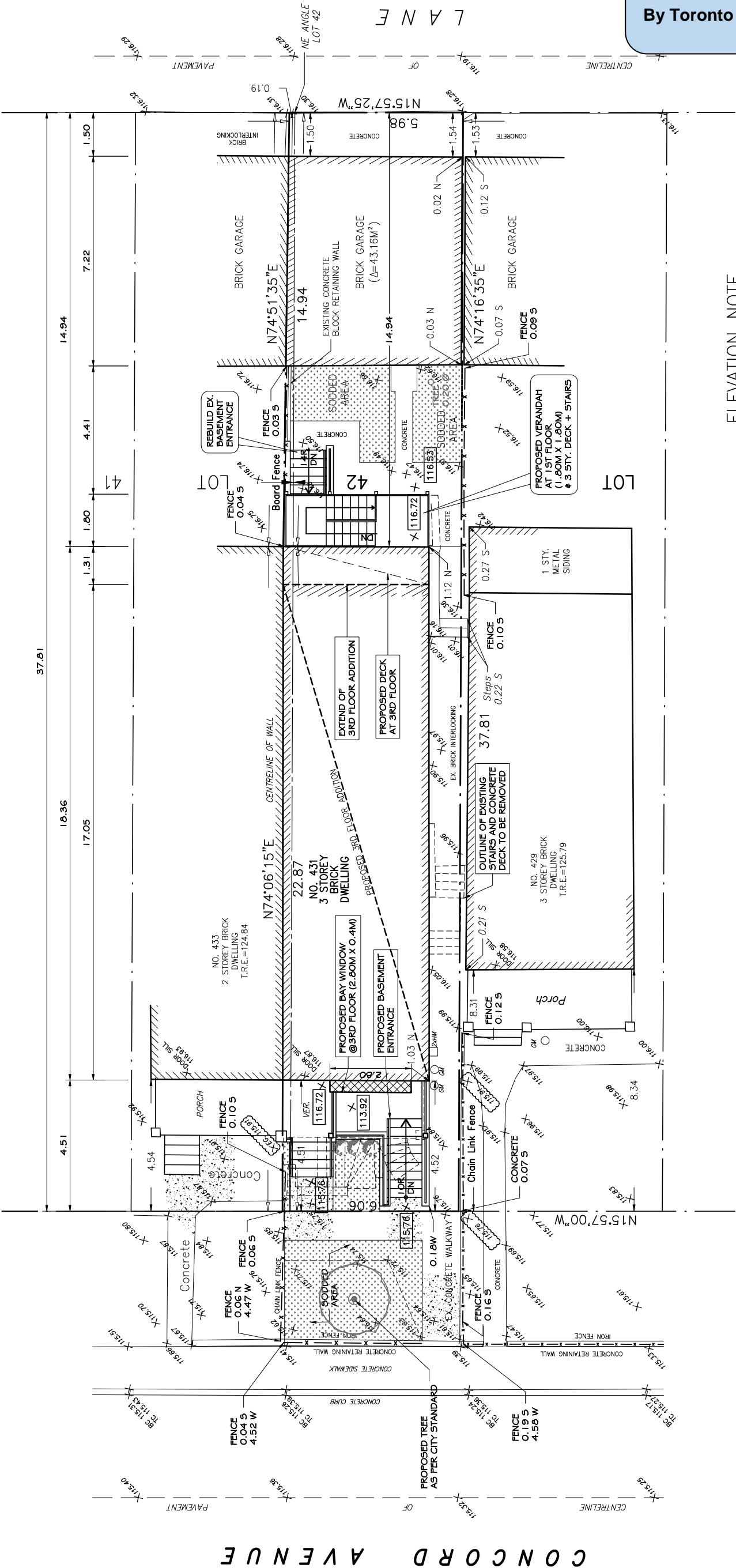
1. Section 12(2) 246(E), By-law 438-86

A minimum of three parking spaces is required for a semi-detached house containing four units. In this case, one parking space will be provided.

RECEIVED

February 16, 2020

By Toronto Local Appeal Body



ELEVATION NOTE

ELEVATIONS ARE GEODETIC AND ARE REFERRED TO THE CITY OF TORONTO BENCH MARK NUMBER 12219740615, HAVING A PUBLISHED ELEVATION OF 113.649 METRES.

BEARING NOTE

BEARINGS ARE ASTRONOMIC AND ARE REFERRED TO THE WEST LIMIT OF WESTMORELAND AVENUE NORTH, HAVING A BEARING OF N15°57'00"W ACCORDING TO PLAN M-60.

ESTABLISHED GRADE CALCULATION

AT 4.61 M - (115.91+115.91)/2 = 115.91

INDICATES EXISTING GRADE ELEVATION. TAKEN @ 0.01M INTO ADJACENT PROPERTY TO CALCULATE ESTABLISHED GRADE ELEVATION.

LEGEND

000.00 = EXISTING ELEVATION

000.00 = PROPOSED ELEVATION

INDICATES SLOPE DIRECTION

INDICATES TREE PROTECTION ZONE

EXISTING TREES

NEW TREES

DOWNSPOUTS

NOTE :

SEE SURVEY BY O.L.S. FOR VERIFICATION. SURVEY INFORMATION TAKEN FROM PLAN SHOWING PART LOT 41 & 42 REGISTERED PLAN M-60 CITY OF TORONTO

PREPARED BY : GTA SURVEYING INC. JACEK WALCZAK O.L.S.

DATED: DEC. 13TH, 2018

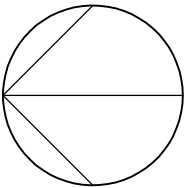


AMBIENT DESIGNS LTD.

DESIGN & BUILDING CONSULTANTS

1115 COLLEGE STREET TORONTO, ONTARIO M6H 1B5
T: (416) 537-8531 E: ambient@ambientdesigns.ca

BCIN: 29659



PROJECT NAME
431 CONCORD AVE.
CITY OF TORONTO

DRAWN BY:
D.N.

DATED:
JUNE 12TH 2019

1	ISSUED FOR TLAB	FEB. 13 '20	D.N.
PROJECT NO. A17154		SCALE: 1:150M	
DWG. NAME: SITE PLAN			
SHEET NO. SK1			

SITE STATISTICS

	EXISTING	PROPOSED	NEW TOTAL
BASEMENT	0.00 M²	0 M²	0.00 M²
FIRST FLOOR	92.35 M²	0 M²	92.35 M²
SECOND FLOOR	92.35 M²	1.12 M²	93.47 M²
THIRD FLOOR	0.00 M²	84.37 M²	84.37 M²
GROSS FLR. AREA	184.70 M²	85.49 M²	270.19 M²
	80.32 %	37.18 %	117.50 %

LOT AREA = 229.95 M²

ZONED: R2 Z0.6

MAP NO. : 49J-311
(BY-LAW) : 438-86

ZONED : R(d0.6)
BY-LAW : 569-2013

EXISTING FRONT YARD LANDSCAPING

FRONT YARD AREA	27.34 M²
MIN. LANDSCAPING REQ. (50%)	13.67 M²
PROVIDED LANDSCAPING (64.63%)	17.67 M²
MIN. REQUIRED SOFT LANDSCAPING (75%)	10.25 M²
PROVIDED SOFT LANDSCAPING (0.00%)	0.00 M²

BUILT-UP AREA @ FRONT	
VERANDAH	9.67 M²
BASEMENT ENTRANCE	6.23 M²
CONCRETE STAIR	1.27 M²
WALKWAY (CONC/INTERLOCKING)	10.17 M²
TOTAL	27.34 M²

EXISTING REAR YARD SOFT LANDSCAPING

REAR YARD AREA	90.50 M²
REQUIRED MIN. SOFT LANDSCAPING (50%)	45.25 M²
BUILT UP AREAS @ REAR	77.93 M²
PROVIDED SOFT LANDSCAPING (13.89 %)	12.57 M²

BUILT-UP AREA @ REAR	
GARAGE	43.16 M²
CONC. SKIRT	9.11 M²
BASEMENT ENTRANCE	10.04 M²
WALKWAY	15.62 M²
TOTAL	77.93 M²

UNIT AREA

UNIT NO.	FLOOR AREA (M²)	UNIT TYPE	LOCATION
1	76.84 M²	1 BEDROOM	BASEMENT
2	68.84 M²	1 BEDROOM	FIRST FL. (EXISTING)
3	67.11 M²	1 BEDROOM	SECOND FL. (EXISTING)
4	75.12 M²	1 BEDROOM	THIRD FL.

TOTAL NUMBER OF DWELLING UNITS = 4

TOTAL UNIT AREA = 287.91 M²

AVERAGE UNIT AREA = 71.98 M²

FRONT YARD LANDSCAPING

FRONT YARD AREA	27.34 M²
MIN. LANDSCAPING REQ. (50%)	13.67 M²
PROVIDED LANDSCAPING (86.03%)	23.52 M²
MIN. REQUIRED SOFT LANDSCAPING (75%)	10.25 M²
PROVIDED SOFT LANDSCAPING (34.60%)	4.73 M²


BUILT-UP AREA @ FRONT	
VERANDAH	3.82 M²
BASEMENT ENTRANCE	10.33 M²
STAIR	1.80 M²
CONCRETE WALKWAY	6.66 M²
TOTAL	22.61 M²

REAR YARD SOFT LANDSCAPING

REAR YARD AREA	90.50 M²
REQUIRED MIN. SOFT LANDSCAPING (50%)	45.25 M²
BUILT UP AREAS @ REAR	76.48 M²
PROVIDED SOFT LANDSCAPING (15.49 %)	14.02 M²

BUILT-UP AREA @ REAR	
GARAGE	43.16 M²
CONC. SKIRT	9.11 M²
BASEMENT ENTRANCE	10.04 M²
WALKWAY	14.17 M²
TOTAL	76.48 M²

1	ISSUED FOR TLAB	FEB. 13 '20	D.N.
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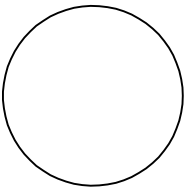
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A17154

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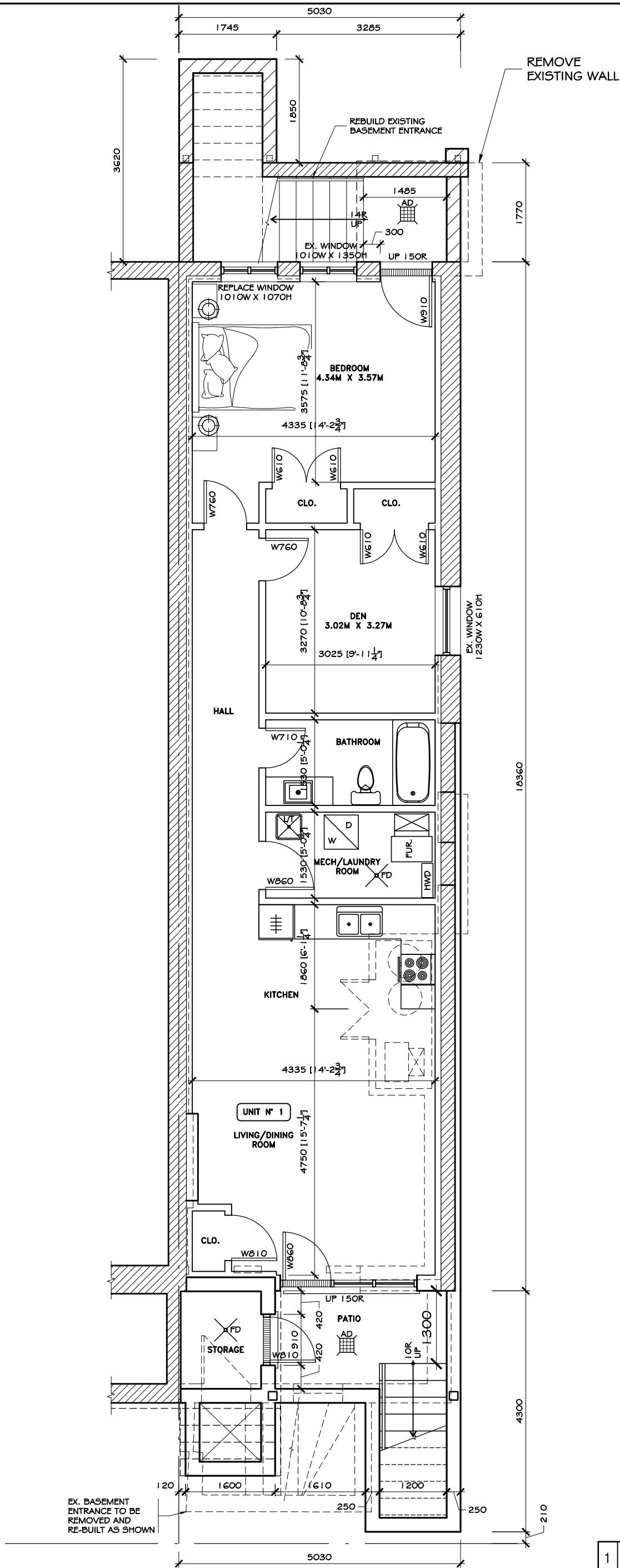
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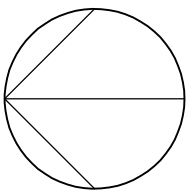
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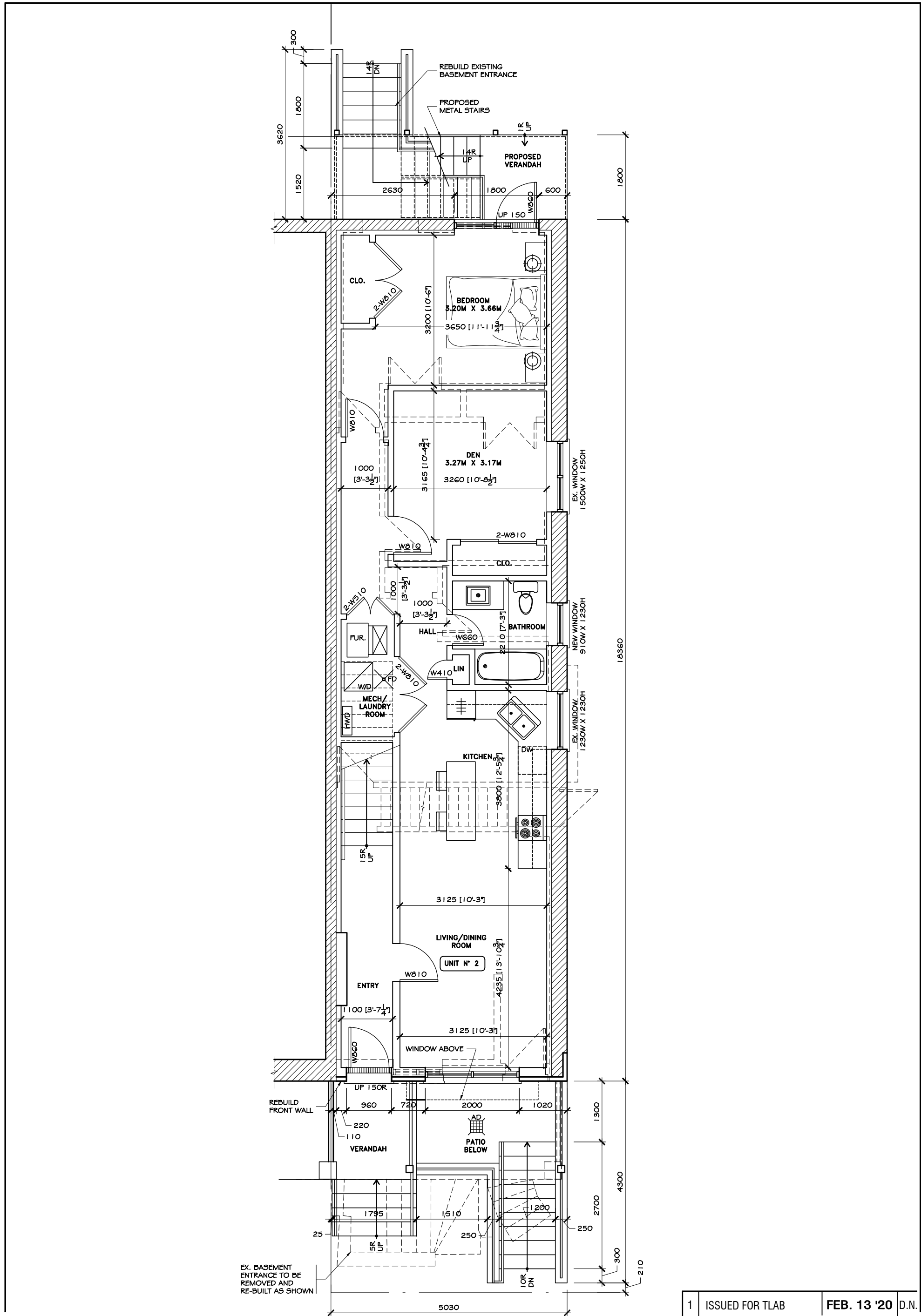
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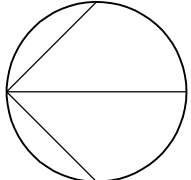
SK2

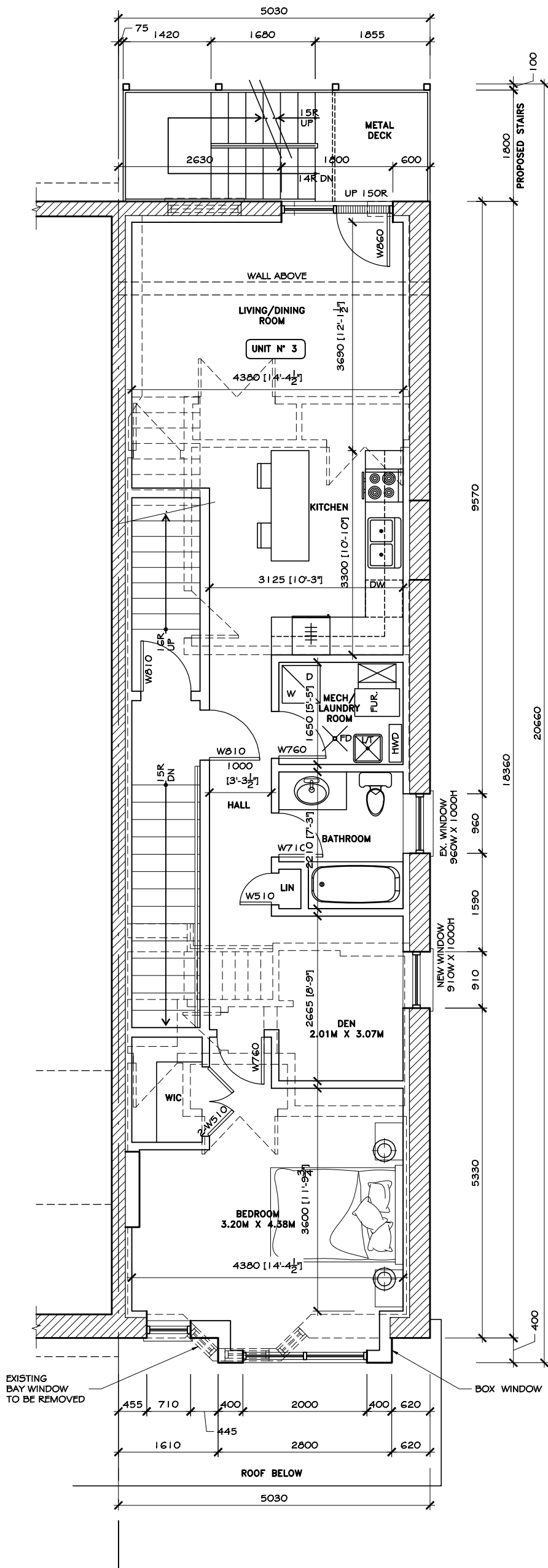


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		DRAWN BY: D.N.		DWG. NAME: FIRST FLOOR PLAN	
		DATED: JUNE 12TH 2019		SHEET NO. SK4	
		1		ISSUED FOR TLAB	

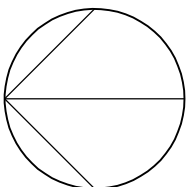


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A17154

SCALE:

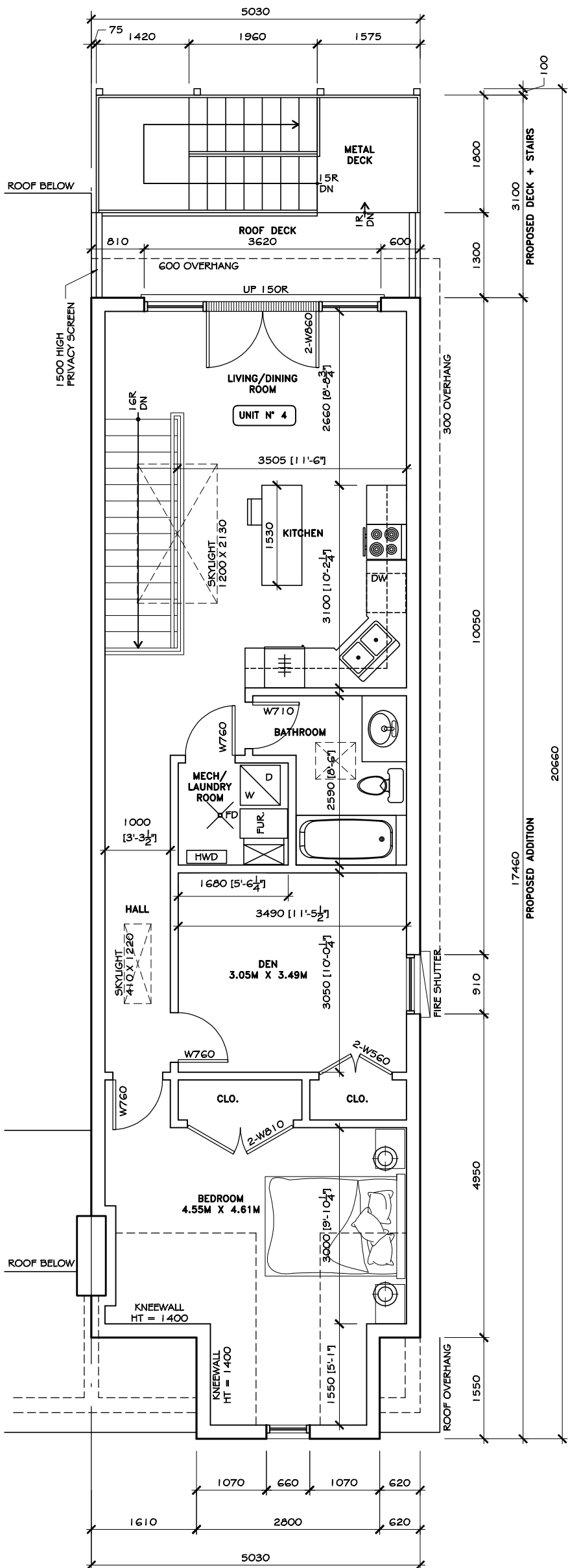
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DWG. NAME:

SECOND FLOOR PLAN

SHEET NO.

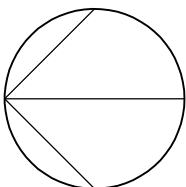
SK5



1	ISSUED FOR TLAB	FEB. 13 '20	D.N.
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1115 COLLEGE STREET TORONTO, ONTARIO M6H 1B5
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PROJECT NAME
431 CONCORD AVE.
CITY OF TORONTO

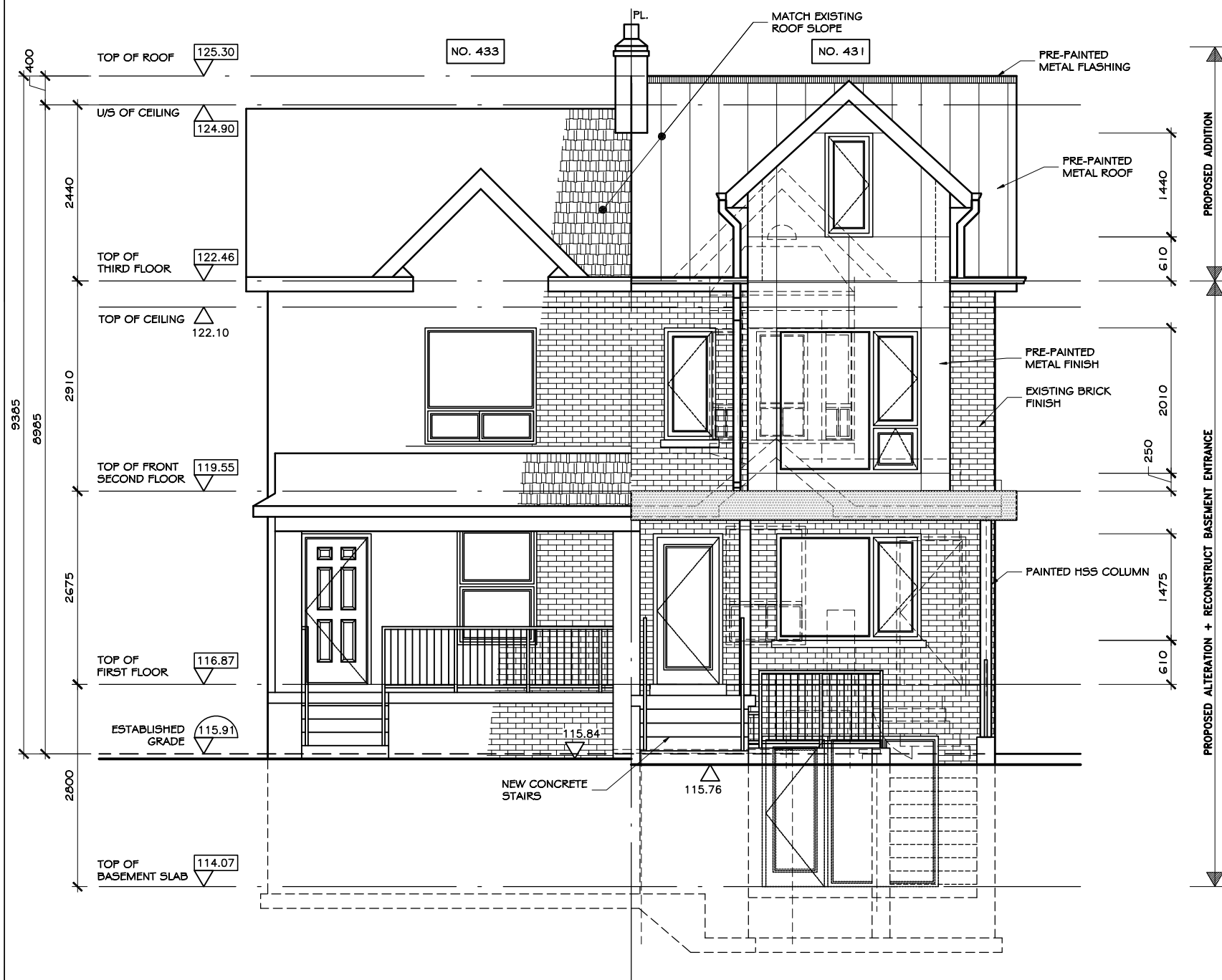
DRAWN BY: D.N.

DATED: JUNE 12TH 2019

PROJECT NO. A17154 SCALE: 1:75M

DWG. NAME: THIRD FLOOR PLAN

SHEET NO. SK6

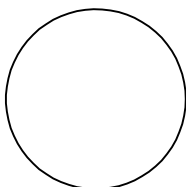


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**AMBIENT DESIGNS LTD.**
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BCIN: 29659



PROJECT NAME
**431 CONCORD AVE.
CITY OF TORONTO**

DRAWN BY: D.N.

DATED: JUNE 12TH 2019

PROJECT NO. **A17154** SCALE: 1:75M

DWG. NAME: **WEST ELEVATION**

SHEET NO. **SK7**

