

DECISION AND ORDER

Decision Issue Date Friday, May 21, 2021

PROCEEDINGS COMMENCED UNDER section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant(s): DANA KATARINA ANELIUNAS

Applicant(s): CHRISTOPHER JOHN
BARCUS

Property Address/Description: 65 MELBOURNE AVE

Committee of Adjustment File

Number(s): 20 146272 STE 04 MV

TLAB Case File Number(s): 20 216081 S45 04 TLAB

Hearing date: Wednesday May 5, 2021

Deadline Date for Closing Submissions/Undertakings: May 19, 2021

DECISION DELIVERED BY D. Lombardi

REGISTERED PARTIES AND PARTICIPANTS

Applicant CHRISTOPHER JOHN BARCUS

Owner ANIKA BARCUS

Appellant DANA KATARINA ANELIUNAS

Party CHRISTOPHER JOHN BARCUS

INTRODUCTION AND BACKGROUND

This is an appeal by Dana Aneliunas (Appellant) of a decision of the Etobicoke-York Panel of the City of Toronto (City) Committee of Adjustment (COA) approving, with

a condition, a single variance to permit the alteration of the existing attached, two-storey townhouse at 65 Melbourne Avenue (subject property) by constructing a rear one-storey addition with a terrace above (Application).

The subject property is located on the south side of Melbourne Avenue, north of King Street West, between Elm Grove Avenue and Cowan Avenue, in the Parkdale-High Park neighbourhood. It is designated 'Neighbourhoods' in the City Official Plan and is zoned R (d1.0)(x324) in the City-wide Zoning By-law 569-2013, as amended (new By-law) and R2 Z1.0 in the former municipality of Toronto Zoning By-law 438-86 (former By-law).

The maximum permitted building depth for a townhouse is 14.0 m under the new By-law. The Applicant is proposing a building depth of 18.6 m.

The COA heard the matter on October 20, 2020 and granted the requested variance subject to the following condition:

"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."

Ms. Aneliunas appealed the COA decision, and the Toronto Local Appeal Body (TLAB) set a 'virtual' Hearing date for May 5, 2021 by way of the City's WEBEX remote meeting platform to hear the matter. On the return date, the only person to attend electronically and who appeared at the scheduled commencement time of 9:30 am was the Applicant, Mr. Christopher Barcus (Owner).

Given the general courtesy allowed by the Tribunal to accommodate late arrivals to a Hearing, I allowed 15 additional minutes before starting the proceeding with the consent of Mr. Barcus. No further persons connected remotely.

At 9:45 am, I started the Hearing and advised that I was prepared to hear the matter in the absence of the Appellant. For the record, I noted that Ms. Aneliunas was not in attendance, had not contacted TLAB staff to advise as to whether she intended to appear.

At the outset, I advise that pursuant to Council's direction, I had attended the site, walked the immediate area and the neighbourhood, and had reviewed the pre-filed materials but that it is the evidence to be heard and referenced that is of importance.

At the commencement of the Hearing, I established that the Applicant had not provided any Disclosure Documents to support the Application, apart from a Form 19 Response to Party Witness Statement (Response) filed by Mr. Barcus on February 7, 2021. His Response included a series of eight (8) photographs, marked as Exhibit 2 in the Hearing, showing a visual perspective of abutting properties from the rear of the subject property as well as a panoramic view of surrounding homes looking south from the rear of 65 Melbourne Avenue (Photo 8).

The Applicant acknowledged that he had not retained Legal Counsel or an Expert Witness to provide evidence on his behalf and intended to rely solely on his Response and photo book to support his position that the single variance sought meets the four statutory tests under s. 45(1) of the *Planning Act*.

MATTERS IN ISSUE

The matters in issue in this proceeding are rather simple and straightforward: does the Application meet the tests under the *Planning Act*; and, has the Applicant provided the necessary and requisite evidentiary basis for the TLAB to approve the single variance requested.

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.

EVIDENCE

I heard from Christopher Barcus who is the Applicant and the owner of the subject property. No other persons attended the Hearing and there was no evidence provided at the Hearing in opposition to the Tribunal authorizing the variance requested.

As the presiding Member, I have an independent duty to ascertain that the *Planning Act* is complied with before any variance is granted.

After affirming Mr. Barcus, he proceeded to provide a brief overview of the Application and the reason for the variance sought to permit a rear one-storey addition

and terrace above which would increase the overall building depth of the existing townhouse to 18.6 m.

He referenced the set of Site Plan drawings, which were entered into the record as Exhibit 1 along with the Survey of the subject property, and he confirmed that those drawings had been presented to the COA, had not been revised and are now before the Tribunal for approval. He explained that the one-storey rear addition is intended to accommodate an extended and more suitably sized kitchen space than what currently exists. The proposed 12.9 m² terrace above the addition is planned as a small outdoor amenity space to be accessed by the Owner by way of new French doors from the primary bedroom on the second floor.

Mr. Barcus asserted that the proposed addition extends approximately half the length of a similar addition constructed by the owner of the attached townhouse to the west at 67 Melbourne Avenue. He also submitted that the addition, and associated terrace above, would not result in the obstruction of the views of adjacent neighbours given the dense urban conditions in this neighbourhood.

He suggested that the tight side yard setbacks in the area and the orientation of adjacent residential properties contribute to urban conditions one would find in such a downtown residential area. In highlighting photos in Exhibit 2, specifically Photo 8, he opined that there are many examples of one- and two-storey additions at the rear of existing homes in the immediate vicinity of his home. In addition, he highlighted Photos 1-7 that show numerous rear and front facing, upper-level balconies in the surrounding neighbourhood,

In particular, Mr. Barcus highlighted for the Member's attention the panoramic view of the neighbourhood from his rear yard in Photo 8 noting the existing 3rd-storey terrace at the rear of the home at 69 Melbourne Avenue which he submitted overlooks the Appellant's rear yard. Additionally, he identified three (3) terraces directly overlooking into his property and others with views into his home.

Mr. Barcus stated that he was surprised that Ms. Aneliunas appealed the Committee's decision noting that he assumed issues related to any impacts of overlook, privacy and sunlight had already been addressed through ongoing discussions with the neighbours both at 63 Melbourne Ave. and 169 Cowan Ave (the Appellant's property). In fact, he stated that he had agreed at the COA meeting to include privacy screening on the proposed terrace and that that commitment was further affirmed in an October 26, 2020 email to Ms. Aneliunas in which he confirmed that privacy screening would be installed.

However, while he appreciated his neighbours concerns regarding privacy and overlook impacts and what he termed 'amicable' discussions concerning the potential for privacy screen along the terrace, he now preferred a less obtrusive solution given that he anticipated using the terrace only for a few short months during the summer. He stated discussing with his architect exploring what he termed 'seasonal or non-permanent' screening options such as outside cabana style curtains, canopies, a plant-wall, etc.

He also questioned the need for any screening along the east edge of the terrace since he asserted that the owners of 63 Melbourne Ave. were actually opposed to installing any screening along the east terrace edge that would obscure sunlight to their rear yard.

I note that although the Appellant had not attended the Hearing, it was clear from her Witness Statement filed with the TLAB on January 16, 2021, and from Mr. Barcus' own testimony, that Ms. Aneliunas was concerned with the proposed 2nd-storey terrace and the anticipated sightlines into her home, and more specifically her kitchen and 2nd floor bedroom. She expressed these concerns on page 3 of her Witness Statement, and Mr. Barcus confirmed that the Appellant raised these concerns at the COA meeting. This was further confirmed in Ms. Aneliunas' Witness statement in which she indicated that Mr. Barcus stated that *"we are more than happy to include a privacy screen"* and that *"there appears to be no objection to the addition for a max. height privacy screen that runs the length of the west side of the terrace."* (p. 3, Witness Statement)

Both the Appellant and the Applicant had anticipated that this requirement (privacy screening) would be a condition of the Committee's approval of the application. However, the only condition the Committee attached to the approval of the requested variance at its October 2020 meeting related to the submission of an application for a permit to injure or remove a black walnut tree located in the rear yard of the subject property.

In that regard, I queried Mr. Barcus as to the tree's location and how it would be impacted by the proposed one-storey rear addition. In response, he noted that he had already received a clearance letter from Urban Forestry staff that the requisite application was no longer required but that he had not filed that letter with the TLAB. He promised to forward it to the TLAB following the Hearing.

Mr. Barcus concluded his testimony by requesting that the TLAB granted the variance sought and permit the addition and the terrace. He submitted that the Application is not out of character with the neighbourhood, is desirable for the development of the subject property, and is minor as any impacts of overlook and privacy will be mitigated.

ANALYSIS, FINDINGS, REASONS

The TLAB is committed to sustaining an accessible forum for the resolution of land use disputes within its mandate. On occasion, this means that latitude will be granted to those who are self-represented and those who are not familiar with the TLAB appeal process. This, however, does not mean that a Party involved in a Hearing before the Tribunal, and in this case the Applicant/Owner, is excused the basic responsibilities and respect that must be accorded to the TLAB process.

There are numerous resources, on the TLAB website and elsewhere, which are available to assist the public and stakeholders that engage in the appeal process in

understanding what a Hearing before the Tribunal entails and the duties and obligations of Parties, Participants and Representatives in the TLAB appeal.

While some participants might be unacquainted with the principles of administrative law, or those of good community planning, even the most cursory of research would identify that the basis for the granting of variances to a Zoning By-law in Ontario, whether at the COA or via appeal at a tribunal, rests on the applicant satisfying the four tests outlined in s. 45(1) of the *Act*. In other words: do the variances sought maintain the general intent and purpose of the Official Plan and the Zoning By-laws; are they desirable for the appropriate development or use of the land; and are they minor.

An appeal against a decision of the COA is a hearing ‘de novo’ meaning that the entire application must be considered anew and the burden rests squarely on the applicant to prove its case, even where the COA has previously authorized the requested variances – in other words, variances are a privilege and not a right.

It is the Applicant’s responsibility to put before the TLAB the evidence necessary to enable the Body to make the findings required by the *Act*. In the matter at hand, Mr. Barcus acknowledged that he and his architect did not file any Disclosure Documents other than the Photo Book (Exhibit 2) and the Response to Party Witness Statement.

He asserted that he was ‘surprised’ (his word) when Ms. Aneliunas appealed the COA decision given that he had agreed to include privacy screening as part of the proposed 2nd-storey terrace; he thought, therefore, that he had addressed the Appellant’s concerns and no further submissions were required before the TLAB as he and the Appellant had reached an agreement regarding privacy screening at the Committee of Adjustment.

I sympathize with Mr. Barcus’ predicament before the TLAB, more so given the fact that the Appellant did not attend the virtual Hearing, nor did she provide TLAB staff with any explanation for her absence.

I note that although Mr. Barcus is not a land use planner nor did he present himself as such before the Tribunal, he attempted to address the requisite four statutory tests and explained how the requested variance met those tests.

The variance sought must satisfy all four tests under s. 45(1) of the *Planning Act*: that is, whether it individually and cumulatively:

- maintains the general intent and purpose of the Official Plan;
- maintains the general intent and purpose of the Zoning By-laws;
- is desirable for the appropriate development or use of the land; and
- is minor

The variance must be consistent with and conform to higher level Provincial Policies. The 2020 PPS and the Growth Plan discuss high level issues such as land use coordination, employment, housing infrastructure, climate change and resource

management. I did not find these useful for this particular application as it deals with a single variance for building depth.

With respect to the OP, the variance sought for building depth is not mentioned as a category. I have visited the site, and I accept Mr. Barcus' submission that the proposed addition which would increase the building depth of the townhouse to 18.6 m will not be out of place given the existing one-storey rear addition at 67 Melbourne Ave., the attached townhouse to the subject home.

As to the 2nd-storey rear terrace, I agree with Mr. Barcus that there are several rear, above-grade terraces in the immediate neighbourhood all similar to what Mr. Barcus is proposing and all with views to rear yards. This was confirmed both on my site visit and through the photographs submitted by and referred to by the Applicant in his testimony. Therefore, I find the character of the neighbourhood is respected and reinforced and the intent of the OP is maintained.

As to the second statutory test, whether the variance maintains the general intent and purpose of the Zoning By-law, the site plan shows that the proposed addition will extend the townhouse depth to 18.6m whereas the new By-law permits a maximum depth of 14 m. Mr. Barcus submitted, and I agree, that the resulting townhouse depth will not be unreasonably longer than the neighbour at 63 Melbourne and the proposed addition will only be approximately half the depth of the addition of the townhouse to the west. Therefore, I find the zoning intent will be maintained.

I find as well that the variance is minor and desirable for the appropriate development of the land given that the Owner has agreed to incorporate privacy fencing on the terrace, specifically along the west edge, which addresses the concerns expressed by the Appellant. Accordingly, I find the statutory tests under the *Planning Act* are met.

Epilogue

At the end the Hearing, I asked Mr. Barcus whether including privacy screening to a maximum height of 1.8 m (6 ft.) along **both** the east and west edges of the proposed terrace to address overlook and privacy impacts on the neighbours at 169 Cowen as well as 63 Melbourne Avenues would be reasonable. He was reluctant to the necessity of privacy screen along the east edge of the terrace asserting that the owner of that townhouse did not want his sunlight blocked by any proposed privacy screening.

I directed Mr. Barcus to discuss the matter further with that neighbour and to file with the TLAB a letter confirming the owner's position that Mr. Barcus not require privacy screening along the east edge of the terrace. I also requested that he revise the site plan drawings accordingly to illustrate the proposed privacy screening as well as details regarding dimensions and materials of that screening. I gave him a due date of May 19, 2021 to submit these documents to the TLAB.

On May 18th, Mr. Barcus sent an email to the TLAB in this regard. In that email, he stated that following the Hearing he spoke with the owner of 63 Melbourne (Mr. Bridgeman and Ms. Y Zeitler) as I directed and he now advises that they do want privacy screening to be added to the east side of the proposed terrace. He, therefore, submitted revised set of plans incorporating 1.82 m high privacy screens on both sides of the proposed 2nd-floor terrace.

He also attached to his email a Letter of Clearance from Urban Forestry (dated November 17, 2020) which indicated that Urban Forestry no longer requires a complete submission to injure or destroy a privately-owned tree from the Applicant. This, then, satisfies the condition imposed by the Committee of Adjustment in its October 20, 2020 decision and is no longer required as a condition of approval for this Application.

DECISION AND ORDER

The appeal is dismissed; the decision of the Committee of Adjustment is approved, in part.

The following variance is authorized on the condition that construction of the rear one-storey addition with a terrace above is in substantial compliance with the site plan drawings, prepared by La Vecchia Designs and dated May 15, 2021, attached as Attachment 1 to this decision:

Chapter 10.10.40.30.(1)(B), By-law 569-2013

The maximum permitted depth of a townhouse is 14.0 m.

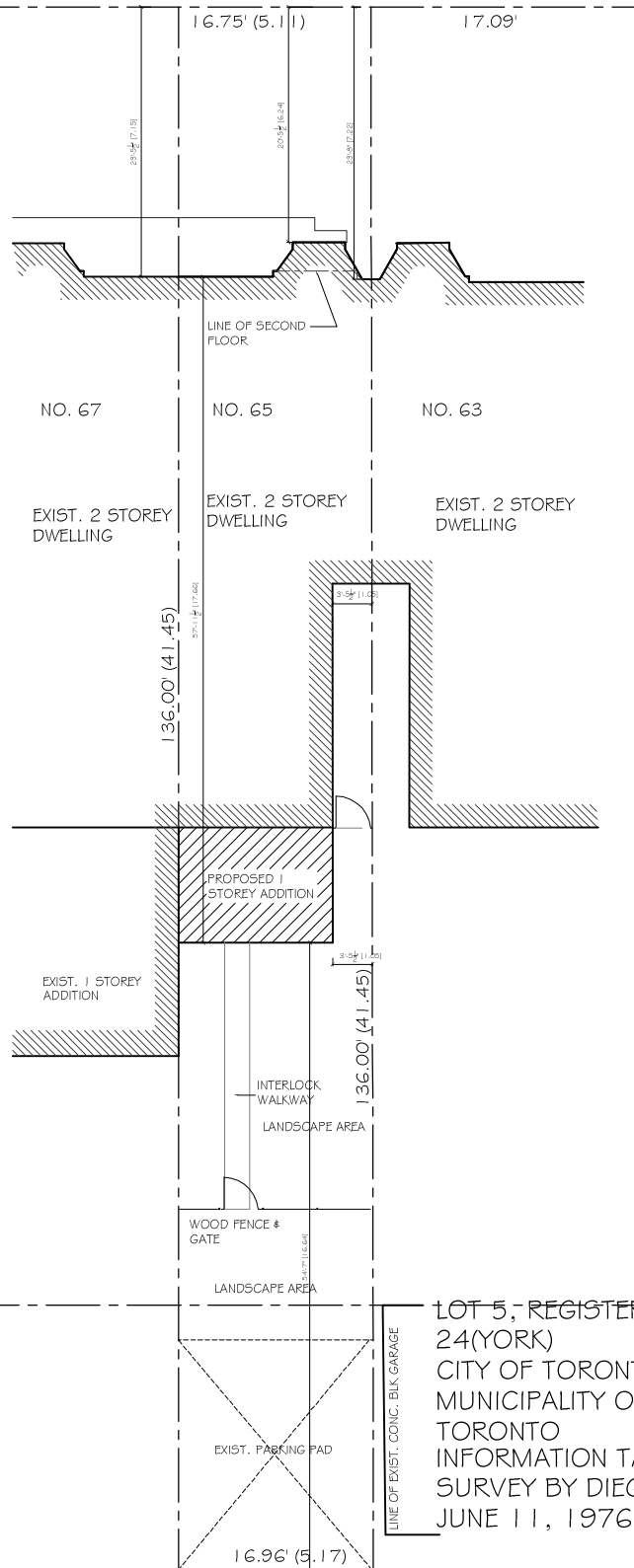
The altered townhouse will have a depth of 18.6 m.

ATTACHMENT 1 – Site Plan Drawings

X 

Dino Lombardi
Panel Chair, Toronto Local Appeal Body
Signed by: dlombar

MELBOURNE AVENUE



SITE DATA

LOT AREA: 212.96m² (2292.28 SQ.FT.)

EXIST. HOUSE COVERAGE: 75.04m² (817.69 SQ.FT.)
 PROPOSED HOUSE ADDITION: 12.85m² (138.33 SQ.FT.)
 TOTAL COVERAGE = 87.89m² (956.02 SQ.FT.)

LOT COVERAGE: 41.3%

EXIST. HOUSE GFA: 149.55m² (1620.15 SQ.FT.)
 PROPOSED ADDITION GFA: 12.85m² (138.33 SQ.FT.)
 TOTAL GFA = 163.37m² (1758.48 SQ.FT.)

FSI : .77

REAR YARD AREA: 89m² (958 SQ.FT.)
 LANDSCAPE AREA: 57.54m² (619.35 SQ.FT.) 65%
 SOFT LANDSCAPING: 52.87m² (569.10 SQ.FT.) 59%
 HARD LANDSCAPING (PARKING PAD): 31.46 m² (338.58 SQ.FT.) 35%

LOT 5, REGISTERED PLAN
 24(YORK)
 CITY OF TORONTO IN THE
 MUNICIPALITY OF METROPOLITAN
 TORONTO
 INFORMATION TAKEN FROM
 SURVEY BY DIEGO FAZIO O.L.S.
 JUNE 11, 1976

PRIVATE LANE

Client:	Sheet Title: SITE PLAN	No. Revisions 1 ISSUED FOR CLIENT REVIEW 2 ISSUED FOR PERMIT 3 REVISED AS PER CITY COMMENTS 4 COA APPLICATION	Date AUG.8/19 OCT.15/19 JAN.21/20 MAY12/20	Drwn PLV PLV PLV PLV	LA VECCHIA DESIGNS 1348 OGDEN AVENUE MISSISSAUGA, ON, L5E 2H8 (416)206-6749 plave@rogers.com	Drawing No. A1/A9
Project Location: 65 MELBOURNE AVENUE TORONTO, ONTARIO	Scale: 3/32"=1'-0" Date: OCT. 2019	Drawn by: PLV. Checked by:		ARCHITECTURAL DESIGN FOR RESIDENTIAL AND SMALL COMMERCIAL PROJECTS		

By Toronto Local Appeal Body at 2:47 pm, May 18, 2021



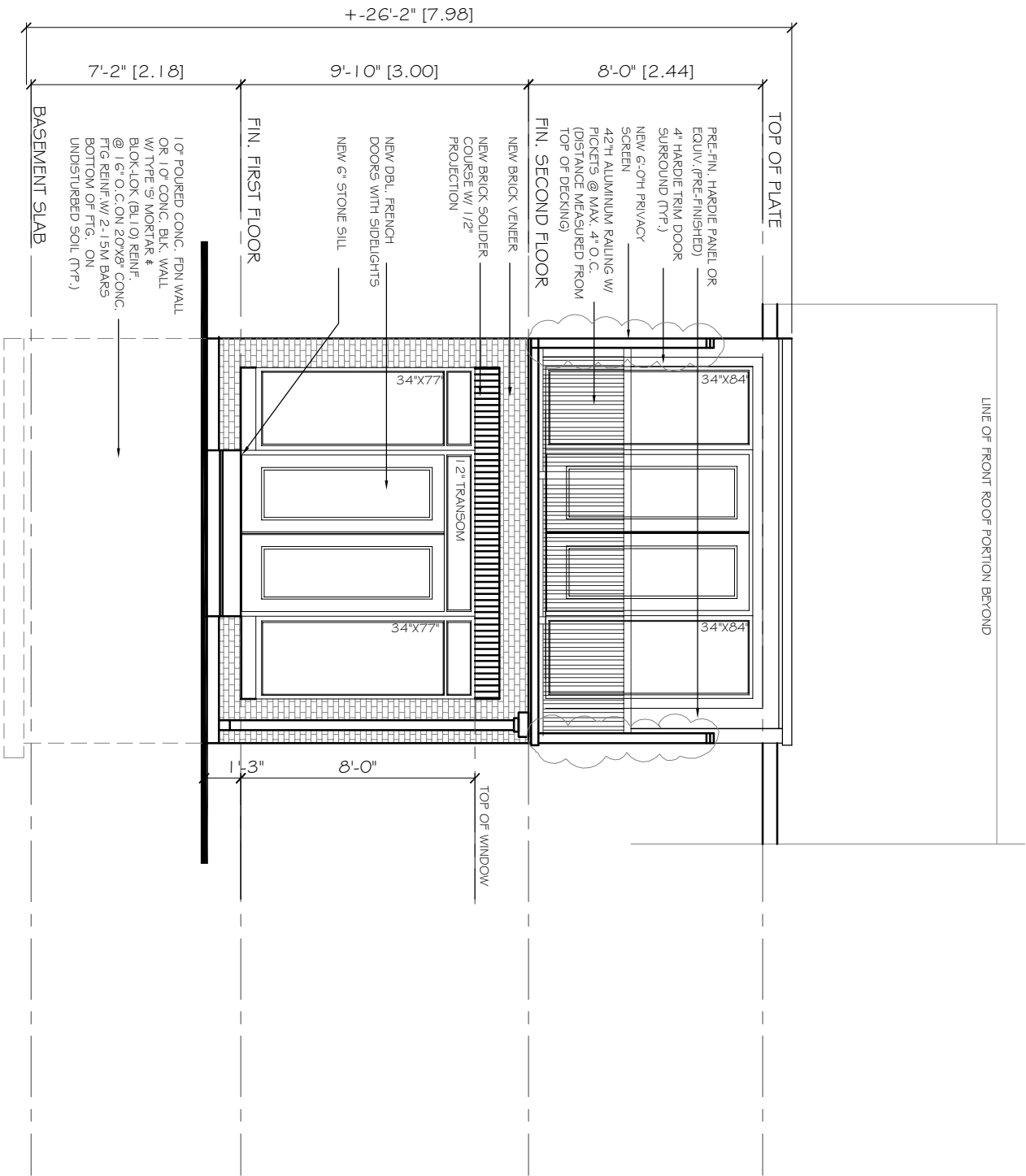
The undersigned has reviewed and takes responsibility for the design, and has the qualifications and meets the requirements set out in the Ontario Building Code to be designer.

QUALIFICATION INFORMATION

Required unless design is exempt under Division C-3.2.5.1. of the 2006 Ontario Building Code

Pinu Longesima	36258
NAME	SIGNATURE
LA VECCHIA DESIGNS	FIRIN BCIN
	40709

Client:	Sheet Title: FLOOR PLANS		No.	Revisions	Date	Drwn	<div>LA VECCHIA DESIGNS</div> <div>ARCHITECTURAL DESIGN FOR RESIDENTIAL AND SMALL COMMERCIAL PROJECTS</div>	<div><div></div><div>1348 OGDEN AVENUE MISSISSAUGA, ON, L5E 2H8 (416)206-9749 claved@rogers.com</div></div>	Drawing No. <div>A4/A8</div>
			1	ISSUED FOR CLIENT REVIEW	AUG.8/19	PLV			
			2	REVISED AS PER CITY COMMENTS	JAN.21/20	PLV			
			3	ADDED PRIVACY SCREEN TO TERRACE	MAY15/21	PLV			
Project Location: 65 MELBOURNE AVENUE TORONTO, ONTARIO	Scale: 3/16"=1'-0"	Drawn by: PLV.							
	Date: AUG./ 2019	Checked by:							



REAR ELEVATION

SCALE: 3/16" = 1'-0"




EXAMPLE RAILING PROFILE

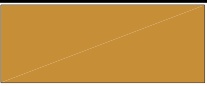
The undersigned has reviewed and takes responsibility for the design of this project and the qualifications and meet the requirements set out in the Ontario Building Code to be designer.

QUALIFICATION INFORMATION

Required unless design is exempt under Division C-3.2.5.1. of the 2006 Ontario Building Code

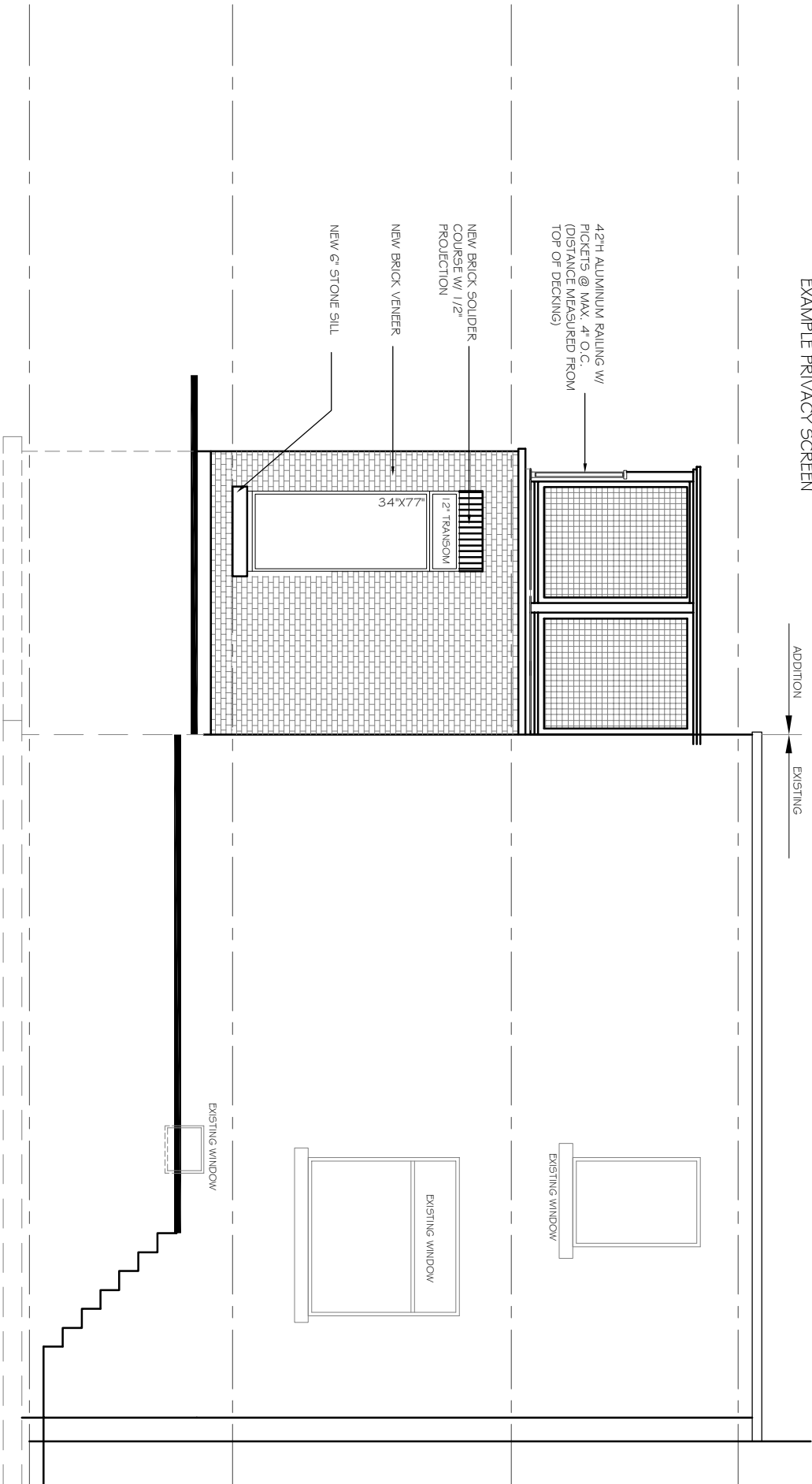
Pinu Lovecchia  38258
NAME SIGNATURE BCIN

LA VECCHIA DESIGNS FRM BCIN 40709

Client:	Sheet Title: ELEVATIONS		No.	Revisions	Date	Drwn	LA VECCHIA DESIGNS	 1348 OGDEN AVENUE MISSISSAUGA, ON, L5E 2H8 (416)206-9749 lclave@moers.com	Drawing No. A5/A8
			1	ISSUED FOR CLIENT REVIEW	AUG.8/19	PLV			
			2	REVISED AS PER CITY COMMENTS	JAN.21/20	PLV			
			3	ADDED PRIVACY SCREEN TO TERRACE	MAY15/21	PLV			
Project Location: 65 MELBOURNE AVENUE TORONTO, ONTARIO	Scale: 3/16"=1'-0"		Drawn by: PLV.				ARCHITECTURAL DESIGN FOR RESIDENTIAL AND SMALL COMMERCIAL PROJECTS		
	Date: AUG./ 2019		Checked by:						



EXAMPLE PRIVACY SCREEN



SIDE ELEVATION

SCALE: 3/16" = 1'-0"

SIDE WALL AREA : 507.76 SQ.FT. (ADDITION ONLY)
PERMITTED GLASS AREA 7% : 35.54 SQ.FT.
PROPOSED GLASS AREA 3.5% : 18.08 SQ.FT.

The undersigned has reviewed and takes responsibility for the design. I have the qualifications and meet the requirements set out in the Ontario Building Code to be designer.

QUALIFICATION INFORMATION
Required unless design is exempt under Division C-3.2.5.1. of the 2006 Ontario Building Code

Pino Lovecchia

NAME

38258

BCIN

38258

BCIN

LA VECCHIA DESIGNS

FIRM BCIN

40709

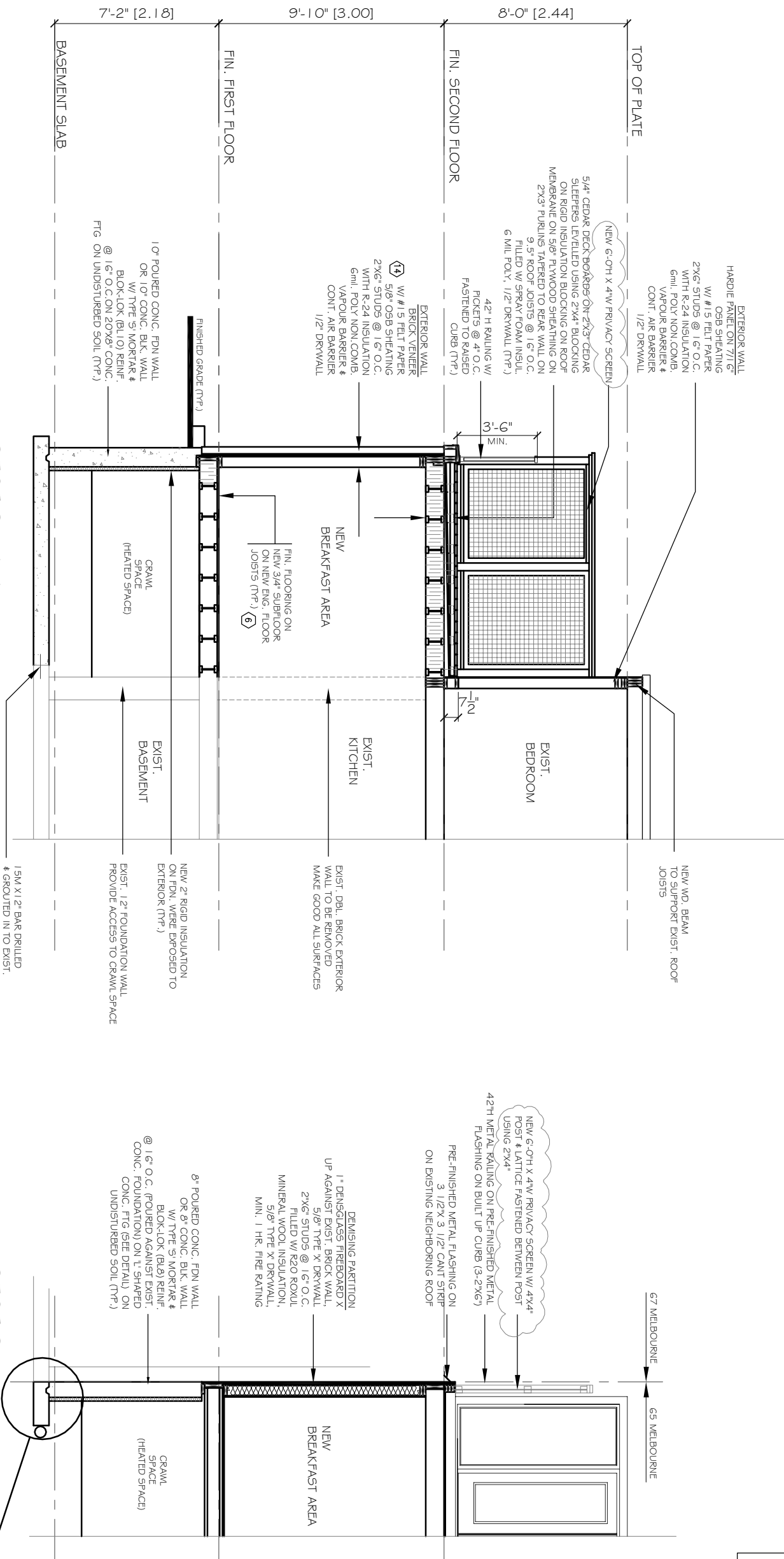
Client:	Sheet Title: ELEVATIONS		No.	Revisions	Date	Drwn	LA VECCHIA DESIGNS ARCHITECTURAL DESIGN FOR RESIDENTIAL AND SMALL COMMERCIAL PROJECTS	<div>1348 OGDEN AVENUE MISSISSAUGA, ON, L5E 2H8</div> <div>(416)206-9749 claved@rogers.com</div>	Drawing No. A6/A8		
			1	ISSUED FOR CLIENT REVIEW	AUG.8/19	PLV					
			2	REVISED AS PER CITY COMMENTS	JAN.21/20	PLV					
			3	ADDED PRIVACY SCREEN TO TERRACE	MAY15/21	PLV					
Project Location: 65 MELBOURNE AVENUE TORONTO, ONTARIO	Scale: 3/16"=1'-0"	Drawn by: PLV.									
	Date: AUG./ 2019	Checked by:									

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QUALIFICATION INFORMATION
Required unless design is exempt under Division C-3.2.5.1. of the 2006 Ontario Building Code

Pinco Lovachio
NAME: SIGNATURE: 38258 BCIN

LA VECCHIA DESIGNS FRM BCIN 40709



PLAN VIEW AT SCREEN POST

SCALE: N.T.S.

SECTION A-A

SCALE: 3/16" = 1'-0"

DETAIL 'X'

SCALE: N.T.S.

SECTION B

SCALE: 3/16" = 1'-0"

WALLS TO REMAIN

NEW WALLS

Client:	Sheet Title: SECOND FLOOR PLANS– SECTION		No.	Revisions	Date	Drwn	LA VECCHIA DESIGNS	<div>1348 OGDEN AVENUE MISSISSAUGA, ON, L5E 2H8 (416)206-9749 claved@rogers.com</div>	Drawing No. A7/A8
			1	ISSUED FOR CLIENT REVIEW	AUG.8/19	PLV			
			2	REVISED AS PER CITY COMMENTS	JAN.21/20	PLV			
			3	ADDED PRIVACY SCREEN TO TERRACE	MAY15/21	PLV			
Project Location: 65 MELBOURNE AVENUE TORONTO, ONTARIO	Scale: 3/16”=1’–0”	Drawn by: PLV.							
	Date: AUG./ 2019	Checked by:							