

DECISION AND ORDER

Decision Issue Date Tuesday, January 11, 2022

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

Appellant(s): YIFAN CHEN

Applicant(s): ALLAN STONE ARCHITECT

Property Address/Description: 323 OAKWOOD AVE

Committee of Adjustment File

Number(s): 21 126607 STE 09 MV (A0375/21TEY)

TLAB Case File Number(s): 21 195983 S45 09 TLAB

Hearing date: January 04, 2022

Deadline Date for Closing Submissions/Undertakings:

DECISION DELIVERED BY TLAB Panel Member S. Gopikrishna

REGISTERED PARTIES AND PARTICIPANT

Appellant YIFAN CHEN

Applicant ALLAN STONE ARCHITECT

Party DAVID STONE AND ERIN BELL

INTRODUCTION AND BACKGROUND

David Stone and Erin Bell are the owners of 323 Oakwood Ave., located in Ward 09 (Davenport) of the City of Toronto. They applied to the Committee of Adjustment (COA) for the approval of two variances, to maintain the façade of the building, as part of a project to convert the existing two-storey mixed building into a single family

townhouse dwelling, by constructing a three-storey rear addition and a rear second storey deck.

The COA heard the Application on July 21, 2021, and approved the two variances requested by the Applicants. On August 9, 2021, the neighbour at 321 Oakwood, Ms. Yifan Chen, appealed the decision of the COA to the Toronto Local Appeal Body

MATTERS IN ISSUE

1. Chapter 40.10.40.70.(4)(AJ, By-law 569-2013

Any portion of a building with dwelling units, located in the first storey of a building, must be set back at least 4.5 m from the front lot line. The altered building will be set back 0.3 m from the west front lot line.

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

At the Hearing held on January 4, 2021, Ms. Erin Bell represented herself and Mr. David Stone, the owners of the property at 323 Oakwood. The Appellant, Ms. Yifan Chen (also known as Helen Chen), the owner of the neighbouring property at 321 Oakwood, represented herself.

Ms. Bell briefly explained the circumstances that resulted in the Appeal respecting 323 Oakwood, before the TLAB. She said that she and Mr. Stone had bought the property at 323 Oakwood, and wanted to make renovations at the back of the Property to use it as a combination of an Office and Residence. A Zoning Examination revealed to them that the front of the Property, facing Oakwood Avenue,

had been built such that a couple of variances were required, including one to retain the façade in an “as is” condition. The Applicants applied to the Committee of Adjustment (COA) for the approval of these variances; the process was completed on July 21, 2021. The Appellant, Ms. Chan, appealed the COA’s decision to the TLAB, on August 9, 2021.

Ms. Bell emphasized that as a result of discussions with the City of Toronto’s Building Permits Office, the Applicants had learnt that only of the two variances approved by the COA would be “necessary” to retain the façade in its present condition. She reiterated that the construction to take place would focus on the back of the property, and not at the front of the property, where the variances were required. She added that the Appellant’s objections were “frivolous” because they focused on the construction at the back of the house, and were consequently, “irrelevant” to the application before the TLAB. She also indicated that in their conversations with the City of Building Permits Office, the Applicants had been advised that even the variance before the TLAB “may not be required”. However, the Applicants wanted to complete the Hearing, and obtain a decision regarding the variances, with what I understood to be an abundance of caution.

Ms. Bell said that she and Mr. Stone had submitted an Expert Witness Statement, prepared by Mr. Michael Larkin, a Registered Professional Planner, but that Mr. Larkin would not be present to give evidence. When she attempted to discuss Mr. Larkin’s qualifications, I informed her that she could rely on Mr. Larkin’s written Statement, to provide evidence by herself, to which Ms. Bell indicated that she was in agreement.

According to Mr. Larkin’s Witness Statement, the notable features of the proposal include a three storey addition at the rear of the existing building, adding an additional 125.33 sq. m. of residential space, 16.99 sq. m of extra residential space at the second floor level, a new deck on the ground of 16.96 sq.m at the second floor level, with external stairs providing access from the rear yard. The existing soft-scape landscaping will be retained, with no vehicular parking on the Site. The existing Subject Lands are located on a 210.51 sq. m. parcel of land, which fronts onto Oakwood Avenue. The Subject Lands are designated “Mixed Use Area” in the City of Toronto Official Plan, and are zoned “Commercial Residential”- CR 2.0(c 0.5 r 2.0) SS2 (X284), under the City of Toronto By-Law 569-2013.

Paragraph 16 of Mr. Larkin’s Statement explains why there is no requirement for the variance required for the side yard setback that was approved by the COA, “as there are no windows or openings proposed on the north, or south walls of the addition”. Ms. Bell repeatedly emphasized that the development at the back of the house was being constructed “as-of-right”, and did not require variances.

According to the Statement, the proposed development is desirable because it maintains the “Mixed-Use attributes of the immediate area”. The development is desirable, and represents appropriate development, by efficiently making use of existing

infrastructure and services, and enhancing the built form to accommodate the expanded residential unit. It is also desirable because “it accommodates jobs, provides commercial services to the area, as well as providing cultural and economic activity”.

With respect to the Application for variance itself, the Statement opines that it is in keeping with the general intent and purpose of the Official Plan, because the variances does not look to change “the land use designation” (Mixed Commercial) in the Official Plan”.

In terms of fulfilling the intent and purpose of the Zoning By-law, it is to be noted that “the façade of the property will remain unchanged, notwithstanding the lack of residential space at on the first floor”. Given that the proposal looks to introduce residential uses on the first floor, there is the need for a setback at the front of the Site, which exists in the form of a 0.3 metre separation from the road. As a result, a variance is required to recognize the existing setback of 0.3 metre, instead of the 4.5 metres required by By-law 569-2013. The requested variance fulfills this requirement of the By-law, and therefore satisfies the intent and purpose of the By-law.

The proposal meets the test of minor because the impact of the front yard setback of 0.3 metre is already experienced by the neighbours, and there is no adverse impact resulting from the front yard setback. The variance is consistent with the test of appropriate development by efficiently making use of existing infrastructure and services, and enhancing the built form to accommodate the expanded residential unit. The proposal is appropriate because it is consistent with the OP, and the Zoning By-law. It supports the public interest because it is “desirable to expand on the existing built form to accommodate the expanded residential unit.”

The Statement concluded that because the requested variance meets the four tests under Section 45.1 of the Planning Act, as discussed above, it should be approved.

Ms. Chan concentrated her presentation on the contemplated development at the back of the property, and narrated concerns about the possible loss of privacy and sunlight, with the help of various photographs. When asked if she had any comments about the one and only variance before the TLAB, which I emphasized, was at the front of the house, Ms. Chan said that she had no comments.

I thanked both Parties, and asked Ms. Chan to send in the pictures shown to me at the Hearing, since they had not been pre-filed. The pictures from Ms. Chen, as well as a closing statement from Ms. Bell, were forwarded to me by the TLAB Staff on January 6, 2022.

ANALYSIS, FINDINGS, REASONS

The TLAB’s jurisdiction, under the Planning Act, and its own Rules, is confined to making decisions on variances submitted by the Applicant. The TLAB does not have the

**Decision of Toronto Local Appeal Body Panel Member: S. Gopikrishna
TLAB Case File Number: 21 195983 S45 09 TLAB**

ability to intervene, on components of a given development, which don't require variances. In the case of 323 Oakwood, the application of the aforementioned principle, means that the contemplated development at the back of the house is beyond the jurisdiction of the TLAB; any issues arising with the proposal are consequently beyond the purview of the TLAB.

Given the Appeal focuses on proposed changes to the back of the house, instead of the front of the house, where the variance has been requested, I regret my inability to address the Appellant's concerns..

The Submission adequately demonstrated how the requested variance itself satisfied all the four tests under Section 45.1 of the Planning Act. I understand that the setback of 0.3 metre at the front of the building has been in existence in for quite some time, as a result of which its impact is very evident. On the basis of a lack of complaint, or concern about the requested variance, I find that there is no discernable impact, let alone an adverse impact, which is the threshold for the TLAB to express concerns about the variance. I find that the variance is consistent with the test of the OP, because it does not contradict, nor violate any of the policies of the OP. It fulfills the performance standards of providing a *setback* (my emphasis) , which is now required because residential use is being introduced onto the first floor, and thereby satisfies the intent and purpose of the Zoning By-law. I understood the sentence "the façade of the property will remain unchanged, notwithstanding the lack of residential space at on the first floor" to mean that at this point in time, there is no need for a setback, because of the lack of residential uses on the first floor. However, the introduction of residential uses on the first floor, necessitates the need for a setback at the front of the house. This required setback already exists in the form of a 0.3 metre, though it is smaller than the required 4.5 m separation required by the Zoning By-law. In other words, the solution of a setback, predates the causative issue of residential uses on the first floor.

The variance does not result in any new, hitherto unexperienced impacts, which results in my finding that the proposal meets the test of minor. Lastly, I find that the variance meets the test of appropriate development by virtue of contributing to the proposal's fulfilling the intent of the By-Law, as discussed in the earlier paragraph

On the basis of the analysis presented above, I find that the requested variance meets the four tests under Section 45.1 of the Planning Act, and may be approved.

While it is customary for the TLAB to impose a condition on the approval of variances requiring construction to take place in substantial accordance with the submitted Plans, and Elevations, an exception is being made here, because the construction does not change the front of the Property, which means that the existing setback of 0.3 metre at the front of the property will be retained. However, the drawings submitted by the Applicant are attached to this Decision, by way of reference.

DECISION AND ORDER

1. The Appeal respecting 323 Oakwood Ave. is refused, and the following variance is approved:

Chapter 40.10.40.70.(4)(AJ, By-law 569-2013

Any portion of a building with dwelling units, located in the first storey of a building, must be set back at least 4.5 m from the front lot line. The altered building will be set back 0.3 m from the west front lot line.

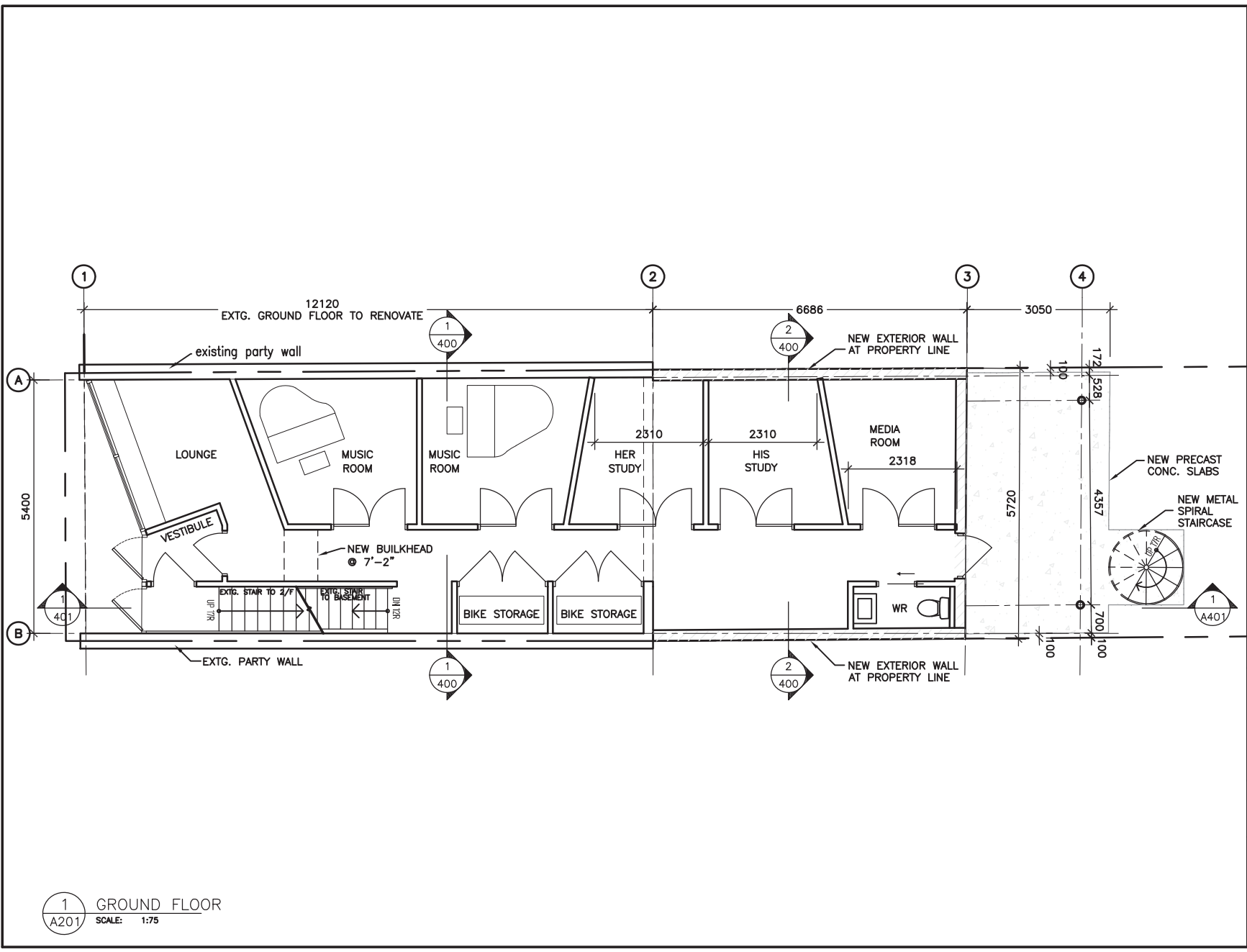
2. No other variances are approved.

So orders the Toronto Local Appeal Body (TLAB)

X 

S. Gopikrishna
Panel Chair, Toronto Local Appeal Body

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Project:
RESIDENTIAL RENOVATION & ADDITION
 DAVID STONE
 323 OAKWOOD AVENUE
 TORONTO ON

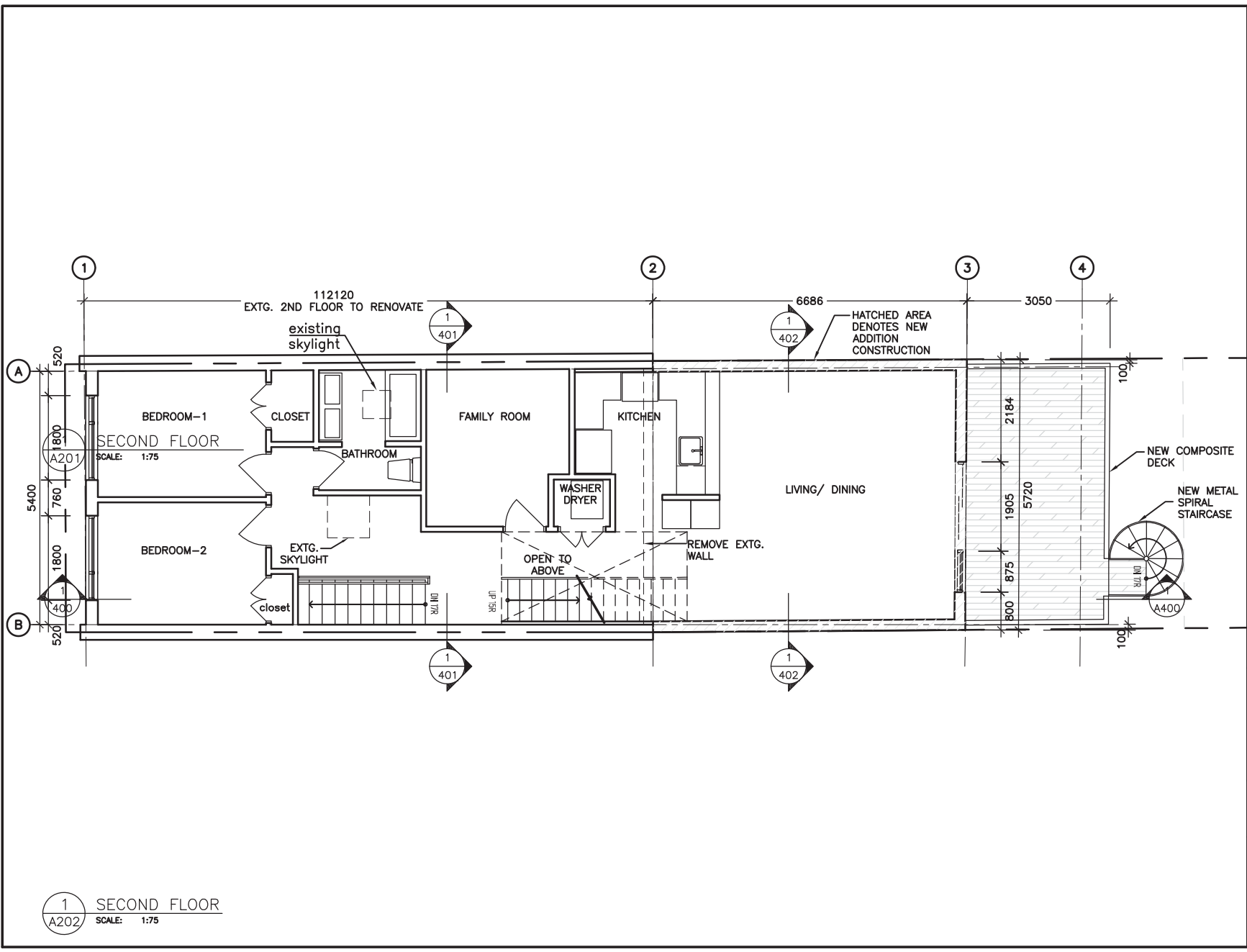
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Drawn By: WL	Checked By: AS	Date Checked: 10 JAN 2021	Project No. ASA-01/P201109
Date Plotted: Mar 15, 2021 - 3:00pm			Scale:

Drawing No.: **A201** Revision No.:

1 GROUND FLOOR
 A201 SCALE: 1:75

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1 SECOND FLOOR
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Project:
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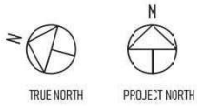
323 OAKWOOD AVENUE
TORONTO ON

Drawing Title:
SECOND FLOOR PLAN

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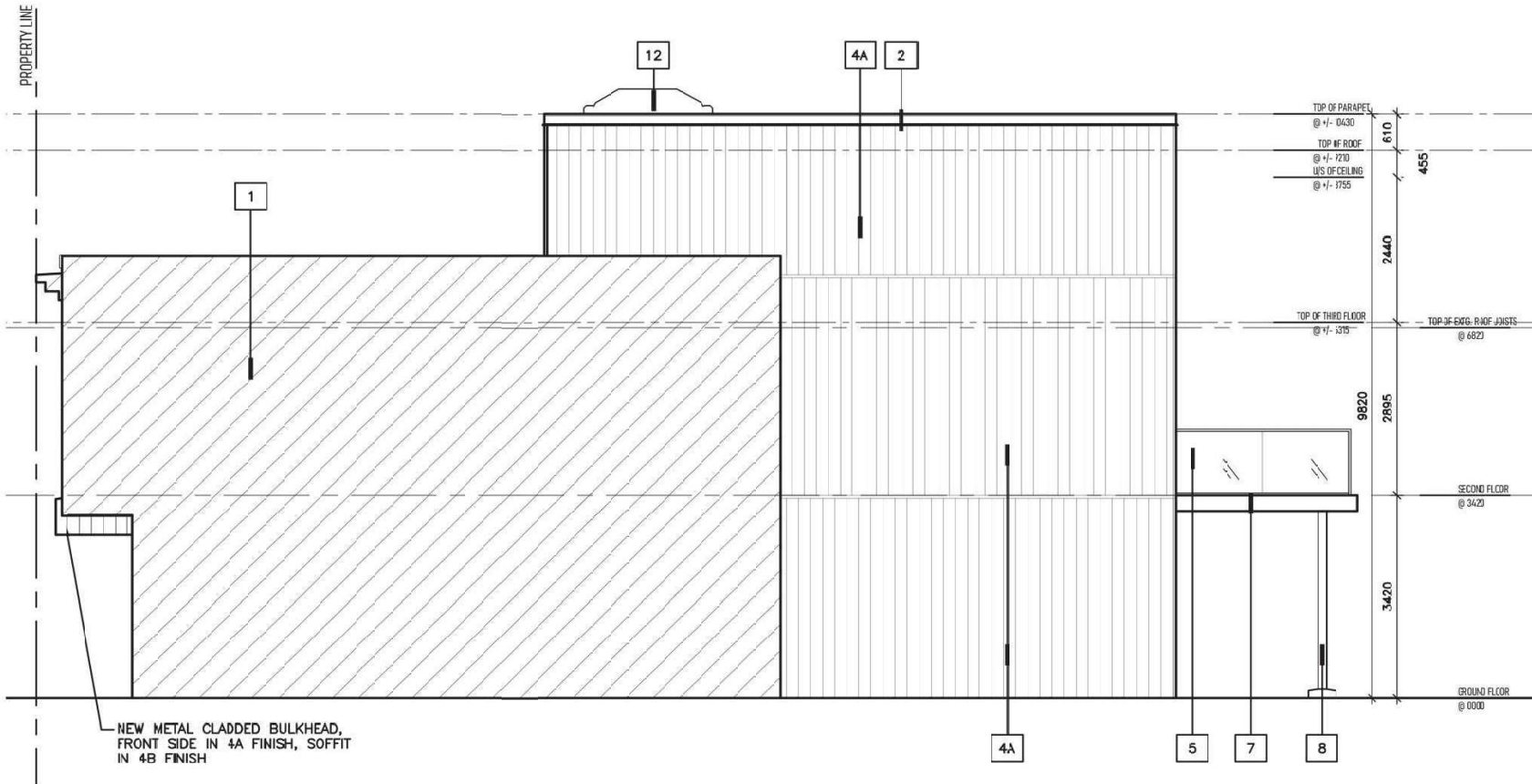
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Mar 15, 2021 - 4:11pm

Drawing No. A202	Revision No.:
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LEGEND

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| 2 METAL FLASHING TO MATCH METAL SIDING | 6 METAL STAIRCASE W/ METAL HANDRAIL | 11 NEW STOREFRONT DOOR W/ BACK PAINTED GLAZING & CLEAR ANODIZED ALUM. FRAME |
| 3 DOUBLE GLAZED WINDOW W/ BLACK FRAME | 7 NEW WOOD DECK | 12 NEW SKYLIGHT |
| 4A METAL SIDING - A CHARCOAL COLOR | 8 METAL COLUMN IN PAINT FINISH | |
| 4B METAL SIDING - B CHERRY WOODGRAIN | 9 NEW STOREFRONT GLAZING W/ CLEAR ANODIZED ALUM. FRAME | |

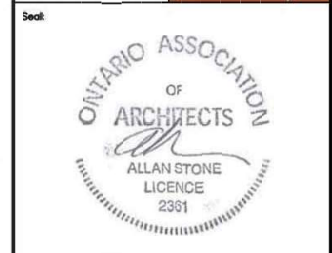
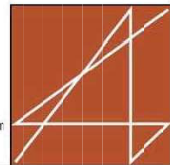


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Drawing Title:
SOUTH ELEVATION

Drawn By: Checked By: Date Checked: Project No.

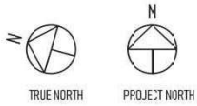
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Drawing No.: Revision No.:

A301

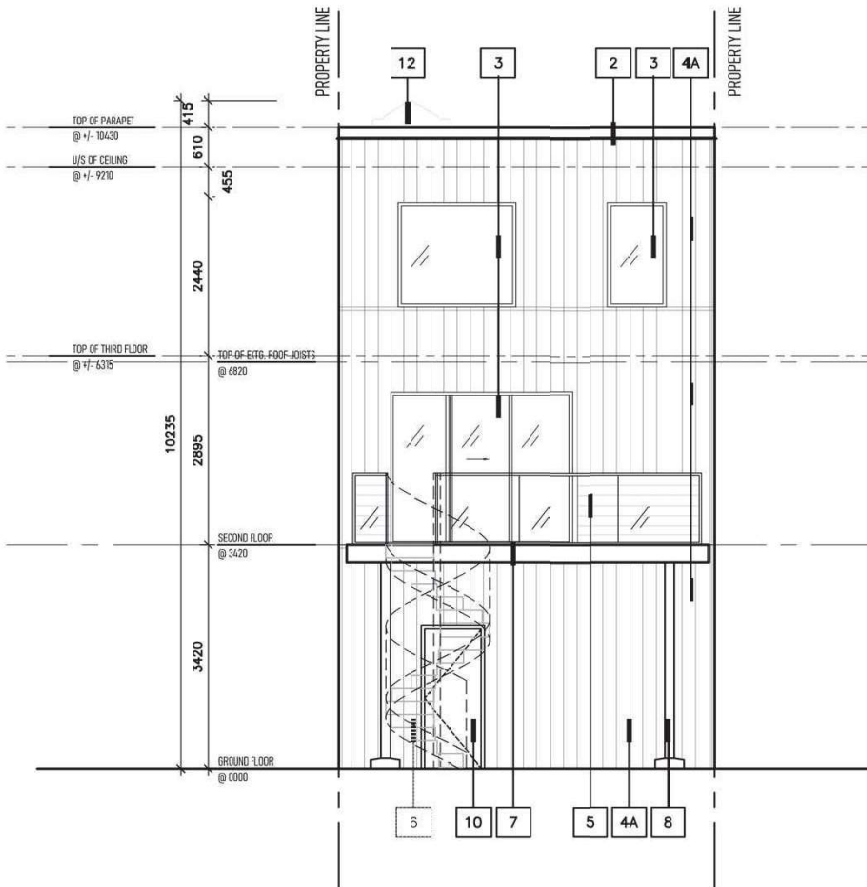
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1 SOUTH ELEVATION
 A301 SCALE: 1:75



LEGEND

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| 2 METAL FLASHING TO MATCH METAL SIDING | 6 METAL STAIRCASE W/ METAL HANDRAIL | 11 NEW STOREFRONT DOOR W/ BACK PAINTED GLAZING & CLEAR ANODIZED ALUM. FRAME |
| 3 DOUBLE GLAZED WINDOW W/ BLACK FRAME | 7 NEW WOOD DECK | 12 NEW SKYLIGHT |
| 4A METAL SIDING - A CHARCOAL COLOR | 8 METAL COLUMN IN PAINT FINISH | |
| 4B METAL SIDING - B CHERRY WOODGRAIN | 9 NEW STOREFRONT GLAZING W/ CLEAR ANODIZED ALUM. FRAME | |



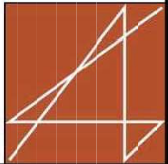
1 EAST ELEVATION
A302 SCALE: 1:75

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Seal:



Project:
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& ADDITION

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Drawing Title:
WEST ELEVATION

Drawn By: Checked By: Date Checked: Project No.

Date Plotted: Mar 15, 2021 - 3:52pm
Seals:

Drawing No.: Revision No.:

A302

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