

DECISION AND ORDER

Decision Issue Date Friday, February 26, 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): ALIDA MILETIC

Applicant(s): LUIS CALLE

Property Address/Description: 45 HOLMESDALE CRES

Committee of Adjustment File

Number(s): 19 197227 STE 09 MV

TLAB Case File Number(s): 19 264416 S45 09 TLAB

Hearing date: January 19, 2021

DECISION DELIVERED BY DINO LOMBARDI

APPEARANCES

| Name | Role | Representative |
|-------------------|-----------------|----------------|
| Luis Calle | Applicant/Party | |
| Analie Bumagat | Owner | |
| Jayson Condoy | Primary Owner | |
| Alida Miletic | Appellant | Amber Stewart |
| Loretta Piattelli | Party | |

INTRODUCTION

On December 4, 2019, the Toronto and East York Panel of the City of Toronto (City) Committee of Adjustment (COA) approved an application submitted by Luis Calle of Ecuabuilder Ltd. (Applicant), on behalf of Analie Bumagat and Jayson Condoy (Owners), the Owners of 45 Holmesdale Crescent (subject property).

The Owners requested approval of one variance to legalize and alter the existing rear, second storey balcony/deck (deck) attached to the home by repositioning the deck railings without altering the existing deck platform.

BACKGROUND

The subject rear deck had been constructed in 2017 without a building permit as part of an overall renovation to the home. Following an Order to Comply issued by the City, the Owners applied to the COA for approval of two variances to legalize and maintain the deck. On September 13, 2019, the Committee refused that application, and the Owners appealed the decision to the Toronto Local Appeal Body (TLAB) which heard the matter on February 28, 2019.

In a Decision and Order dated March 22, 2019, Member Gopikrishna dismissed the appeal in its entirety, refused the requested variances, and confirmed the COA decision.

In the interim, the Applicant revised the plans for the deck by proposing to reduce the area of the rear platform from 19 m² to 11.1 m² and to reposition the perimeter railing along the edges of the proposed smaller platform. He submitted a new application to the COA reflecting the proposed smaller rear platform and requesting only one variance.

The Committee heard the matter on December 4, 2019 and approved the requested variance application as follows:

Chapter 10.80.40.50.(1)(B), By-law 569-2013

The maximum permitted area of each platform at or above the second storey is 4 m². The altered second storey rear deck will be 11.1 m².

The approval was subject to the following condition:

The altered rear deck shall be constructed with opaque privacy screening or fencing that is permanent, located on the east and west edges of the deck to a minimum height of 1.5 m, measured from the floor of the deck.

Ms. Miletic appealed the Committee's decision to the TLAB; Ms. Piattelli, her sister, elected Party status.

The TLAB set a date for an in-person Hearing for April 6, 2020; however, in the ensuing period prior to the scheduled return date, the world encountered a global pandemic in the form of COVID-19. The Government of Ontario subsequently passed an Emergency Order (Ontario Regulation 73/20) retroactive to March 16, 2020, which, in effect, resulted in the TLAB suspending previously scheduled hearing events.

As a result, the TLAB issued a Notice of Postponement regarding the in-person hearing of the subject matter on April 1, 2020.

Following the lifting of the Suspension Period by the Tribunal on August 14th, 2020, the TLAB rescheduled an in-person Hearing for this matter but determined that the Application could be heard virtually and directed TLAB staff to issue a new Notice of Electronic Hearing to convert the October 22nd Hearing to a virtual event. The matter was convened via the WEBEX format on the return date, October 22, 2020.

Those present included Luis Calle, Applicant, Amber Stewart (Amber Stewart Law), the Appellant's solicitor, and Alida Miletic, Appellant, and Loretta Piattelli, Party. However, neither of the Owners of the subject property were present.

At the commencement of that Hearing, I canvassed the Parties to gauge their interest in participating in Mediation to determine if any or all the issues in dispute in this appeal could be resolved. The Parties agreed, and the TLAB issued a Decision and Order issued on October 27, 2020, directed the following:

"The TLAB adjourns the Hearing of October 22, 2020 and directs staff to canvas the Parties for a date to conduct a Mediation to be scheduled for either November or December 2020, if possible. Once a date for Mediation is secured, a Notice of 'virtual' Mediation will be issued for a session to be scheduled for no more than three (3) hours in length commencing at 9:30 am on that day. The Parties are advised that the session will be converted to a virtual Hearing in the event that they cannot reach a settlement of all of the issues in dispute and the Parties must be prepared to provide evidence on the appeal.

The owners of the subject property, Analie Bumagat and Jayson Condo, or either of them with authority, are directed to attend the Mediation session.

Prior to this Mediation/Hearing event, the Applicant (Mr. Calle) is to revise and resubmit the set of drawings reflecting the modifications identified by the Member. These drawings are to be filed with the served with the Appellant and the other Party and filed with the TLAB five (5) days prior to the Mediation.

The Applicant/Owners are to provide an affidavit advice attesting to whether they intend to proceed with professional planning opinion evidence in support of the variance on appeal and file same with the TLAB seven (7) days prior to the Mediation/Hearing event. If so, an Expert Witness Statement must be filed with the TLAB and served on the Parties at the same time."

The Tribunal conducted a virtual Mediation Hearing session on November 27, 2020. In brief, the Parties agreed at that Hearing that the Applicant would reduce the overall size of the rear, 2nd -storey deck area to a maximum of 9.0 m² and to reorient its base further to the west along the rear wall of the home thereby shifting the deck away from Ms. Miletic's property. This shift in the location of the deck would also result in the removal of the easterly corner of the existing underpinning wood platform, which would now be deemed superfluous, as well as the repositioning of the supporting posts.

Additionally, the Owners agreed to erect permanent, opaque privacy screening along the east and west edges of the perimeter railing of the deck to a minimum height of 1.5 m. They also agreed to Ms. Miletic's request that the screening material incorporate material that will allow light penetration but at the same time maintain privacy and overlook onto her rear yard.

Ms. Stewart agreed to draft a Settlement agreement to memorialize the matters agreed to and to have the Parties execute that agreement serving the terms of the proposed Settlement on the Parties and filing same with the TLAB.

The Applicant was also directed to revise and finalize the site plan drawings and elevations to reflect the discussions and the terms of the settlement agreed to at the Mediation by no later than December 18, 2020. The Applicant was also directed to forward those drawings to the Appellant, Ms. Piattelli, and Ms. Stewart, and the TLAB forthwith.

Furthermore, I advised that I would direct TLAB staff to canvas the Parties for an expediated, one-day Settlement Hearing return date sometime in January 2021.

That Hearing date was eventually set for January 19, 2021.

MATTERS IN ISSUE

The matter in issue is whether the one proposed variance meets the applicable statutory tests in the s.45(1) of the *Planning Act*.

In addition, the TLAB must determine whether the smaller and reoriented 2nd floor deck will result in unacceptable adverse impacts of a planning nature on the Appellant's property.

JURISDICTION

Settlement - TLAB Rule 19.4

Where no Person at the Hearing opposes the proposed settlement or where the TLAB rejects an objection, the TLAB may issue an order giving effect to the settlement and any necessary amendments.

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

On the return date, the same Parties attended the expedited Settlement Hearing virtually.

At the outset of the Hearing, Ms. Stewart advised that a Minutes of Settlement had not been drafted nor filed with the TLAB but that discussions between the Appellant and the Applicant/Owners had continued since the November 27, 2020 Mediation session. She noted that terms of a settlement were verbally agreed to by the Parties and that the Appellant was comfortable that those terms could be reflected through a revised set of drawings and conditions of variance approval.

However, in this regard, she also noted that Ms. Miletic had forwarded an email to the TLAB on January 15, 2021 with several outstanding concerns with the set of revised drawings filed by Mr. Calle. In that email, she asserted that the Parties had agreed that the Site Plan drawings were to be revised accordingly to reflect the concerns expressed by Ms. Miletic at the TLAB-led Mediation event. Those drawings were entered as Exhibit 1 in the Hearing.

Along with her email, the Appellant also included a red-lined copy of the Applicant's A106 rear elevation drawing illustrating information that had not been revised or was missing. She asserted that the revised drawings now before the TLAB did not satisfy the spirit of the terms and conditions agreed to verbally at that Mediation and subsequent discussions between the Parties. She also asserted that Mr. Calle had failed to include the items outlined in the Mediation Summary of December 2, 2020 and directed by the presiding Member.

She specifically highlighted the following information as missing on the drawings:

- Various dimensions/measurements.
- Repositioning of the easterly post for the deck.
- Details of the material of the east privacy screening along the perimeter of the deck and how that material would allow for light penetration.

Ms. Stewart reiterated the Appellant's assertion that the plans as submitted failed to reflect the settlement terms verbally agreed to but acknowledged that her client would not fall away from the agreed to terms if the Applicant revised the drawings to include the items above cited.

Mr. Calle provided evidence on behalf of the Applicant in support of the requested variance. He is not a land use planner no was he presented as such. He is a contractor who has experience in home construction and renovation, and I qualified him to give evidence in the area of home renovation and deck design as the contractor of record.

He briefly reviewed the revised drawings noting that the size of the existing 2nd floor deck area will be reduced to reflect the smaller dimension of 9.0 m² agreed to with the Appellant. He also noted that the wood platform underpinning the floor of the existing deck will be reduced accordingly to match the smaller sized deck area. However, he did acknowledge that the entire east portion of that platform underpinning, and the corresponding supporting wooden posts could not be repositioned or removed for structural reasons.

He explained that those support posts were positioned due to the cantilevered overhanging roof of the existing 1st floor rear deck which extended out some 32 inches from the rear wall of the home.

I asked Mr. Calle to address the four statutory tests and how in his opinion the requested variance for the size of the deck satisfied those tests. He acknowledged that he was not a land use planner, was not putting himself forward as such for qualification, and was not fully familiar with those tests. However, he asserted that the Applicant is requesting one 'simple' (his word) variance that was previously approved by the COA, on condition, and that the terms of Settlement verbally agreed to by the Parties represent a compromise acceptable to the Owners. He submitted that the requested variance satisfies the tests because it is numerically small, the deck will respect the physical character of the neighbourhood and it will not result in undue adverse impacts on the neighbours, and specifically Ms. Miletic.

He stated that the deck has been designed to be subordinate to the main house; he suggested that the reduction in the size of the deck area and repositioning the deck structure west along the rear wall of the home further setback from Ms. Miletic's east property line represents an appropriate and desirable situation which mitigates any unacceptable adverse impacts on her property.

I asked Mr. Calle to expound on why the most easterly structural wood beam supporting the section underpinning the existing platform could not be moved given that the deck area will now be even smaller in size and was being shifted further west and away from the Appellant's property. Mr. Calle again reiterated that he believed the

reason was structural and added that the dimensions of existing 1st storey deck located underneath the 2nd floor deck in question dictated the location of the post in question.

On cross-examination, Ms. Stewart raised the Appellant's continued concern regarding the remove of the platform section and relocation of the post. She stated that Ms. Miletic was most concerned that if that the easterly section of the platform underpinning was not removed and the corresponding wood post supporting that section was not relocated further west as part of any approval, that in the future the Owners could again enlarge the 2nd floor deck to its the original and illegal size of 19 m².

Ms. Stewart questioned Mr. Calle as to the accuracy of the dimensions shown on the rear elevation drawings particularly focusing on the existing 2nd-floor double doors allowing access to the deck. She asserted that the easterly edge of the revised rear deck should be aligned with the edge of the double door entry thereby assuring that it was positioned as far away from Ms. Miletic's property as possible. She drew Mr. Calle's attention to a series of photos taken by Ms. Miletic of the rear wall of 45 Holmesdale which showed the location of the upper double doors. Considering those photos, she asked Mr. Calle if his drawings were accurate and whether they reflected the correct location of the deck.

Mr. Calle confirmed that the dimensions shown on his drawings were accurate. He also agreed to investigate whether the wooden support post of concern to the Appellant could be relocated perhaps through the incorporation of a different structural solution utilizing a larger timber post with a larger load bearing capacity positioned more centrally under the subject deck.

Ms. Stewart then asked Mr. Calle about the proposed privacy screening along the deck perimeter and suggested that the material be 'frosted glass'. Mr. Calle asserted that this type of material would be unsafe and suggested that the screen be a wood fence finished on both sides which he characterized as an "overlapping fence design."

Ms. Stewart requested a short recess of the Hearing to confer with her clients which I granted. On the recommencement of the Hearing, Ms. Stewart asked Mr. Calle to consider a further design option which included removing the joists completely underneath the east portion of the platform and adding a third post/column centrally under the deck as suggested by Mr. Calle. She also suggested additional conditions of approval that would tie the smaller sized deck to a set of revised drawings with specific dimensions as well as requiring the deck modifications to be completed within a 6-month timeframe. Those conditions are attached as **Attachment 1** at the end of this Decision.

At this juncture, Mr. Calle requested, and I agreed, to a short recess to allow him to confer with the Owners regarding the options presented and to contact his structural engineer to discuss the proposed revisions including the relocation of the support posts as suggested by the Appellant.

Upon recommencement of the Hearing, Mr. Calle confirmed that the proposed structural modifications could be accommodated, and that the Owners were fully in

support of the revisions and the conditions of approval suggested by Ms. Stewart, including the condition imposed by the COA.

Consequently, he asked that the TLAB approve the application, and grant the requested variance subject to the conditions highlighted.

Ms. Miletic was called as a witness and was affirmed. She reiterated that the originally built deck at the rear of 45 Holmesdale was 'very large', was built without a permit and the Owners are now before the TLAB proposing to legalize a slightly smaller structure. As a resident in her home for more than 50 years, she understands that the Owners of the subject property want to make improvements to their home that increase the enjoyment of their property. However, she asserted that the existence of the deck has been an on-going issue for over three years and that it has been very difficult on both herself and her sister. Her insistence on the proposed revisions and the conditions of approval is to ensure that a smaller deck area is finalized as agreed to, and that the deck and underpinning platform are modified to prevent the structure from being made larger in the future.

Ms. Piattelli also provided very brief testimony. She stated her support for the proposed revisions to the existing 2nd floor deck and expressed her hope that the matter will finally be resolved for her sister's sake.

ANALYSIS, FINDINGS, REASONS

The TLAB is satisfied that the single variance requested by the Applicant, together with the proposed conditions, meet the criteria set out in Section 45(1) of the *Planning Act*.

I find that the proposed smaller, altered 2nd storey rear deck is appropriate and maintains the residential character of the neighbourhood. There are examples of homes in this neighbourhood that also include rear decks and balconies similar in size and location to that being proposed. While I acknowledge that for all intent and purposes this is an 'after-the-fact' approval of an as-built condition, it is also true that the existing larger deck is being modified appropriately to reflect a more suitably sized structure given its context. The Applicant is also altering the dimensions of the smaller deck and aligning the easterly portion further away from the Appellant's property to address the Appellant's concerns regarding the impact of the deck.

Additionally, the Applicant is proposing conditions of approval including a minimum setback of the deck from the east wall of the subject dwelling and privacy screening that assist in further mitigating privacy and overlook impacts on Ms. Miletic's rear yard.

Furthermore, the proposal now represents a variance of reduced magnitude resulting in a smaller sized deck from that approved by the COA. On that basis, I find that the variance requested is an improvement to that previously proposed and, indeed, represents a reduction in the overall size of the deck, arrived at during settlement

discussions. Therefore, I conclude that the variance and revised plans do not warrant further notice pursuant to s. 45(18.1.1) of the *Planning Act*.

I find that the general purpose and intent of the Official Plan and Zoning By-law is maintained. I agree that the proposal results in an appropriate and desirable development for the subject property and the requested variance is considered minor in the context.

In terms of provincial policy, I am satisfied that the variance is consistent with the PPS and conforms to the Growth Plan, is not directly related to growth, and represents an investment in the maintenance of an existing property.

I take this opportunity to commend the Parties for participating in mediation and arriving at a settlement of the issues before the TLAB in the appeal. The settlement of all outstanding issues before the final determination of the matter by informal discussion, exchange and mediation is encouraged and supported by the Tribunal subject to satisfying the statutory tests in s. 45(1) of the *Planning Act*. The TLAB appreciates the Parties efforts in this regard.

Epilogue

On February 5, 2021, the Applicant, Mr. Calle, filed with the TLAB and served the Parties with a set of revised drawings in this matter, with an accompanying email stating that the drawings now reflected “*all of the changes that have been required.*” Following that email, the TLAB received correspondence from the Appellant, Ms. Miletic, indicating that she had reviewed those drawings and had concerns/issues with the revisions.

Her email included a red-lined copy of Drawing A106 (Back Elevation) and highlighted 4 areas of concerns which related specifically to missing or incorrect information on that Drawing A106 as well as others in the set. She requested that the Applicant revised the drawings accordingly to reflect the matters agreed to.

As a result of this on-going debate between the Parties regarding the accuracy of the drawings submitted by Mr. Calle, I directed TLAB staff to schedule a virtual conference call with the Parties on February 22, 2021, to address the situation and to provide direction. At that conference call, I admonished Mr. Calle and Mr. Condoy, the Owner, for the lack of consistency and clarity in finalizing the requisite drawings as agreed to and the inability to file a set of drawings with the Tribunal that was acceptable to the Parties.

At the conclusion of the call, I advise of my disappointment with this situation and I directed the Applicant to file a final, revised set of drawings with the TLAB and served on the Appellant and Ms. Stewart by no later than 9:00 am. On Friday, February 26, 2021. I stated that those drawings were to be circulated to the Appellant prior to the deadline date established for review and sign-off prior to submission to the TLAB.

On February 26th, at the time prescribed above, a final set of Site Plan drawings was filed with the TLAB along with an email from Ms. Stewart acknowledging the drawings as final. In addition, Ms. Stewart also filed a Minutes of Settlement Agreement dated February 25, 2021 memorializing the settlement agreed to by the Parties and reflected in the revised set of final drawings. As well, she attached the final list of variances and conditions of approval agreed to with the Owners of the subject property to the satisfaction of the presiding Member.

DECISION AND ORDER

The appeal is dismissed, the decision of the Committee of Adjustment dated December 4, 2019 is varied. The revised variance is authorized subject to the conditions as set out in **Attachment 1** to this decision.

ATTACHMENT 1

Variance to the Zoning By-law

Chapter 10.80.40.50.(1)(B), By-law 569-2013

The maximum permitted area of each platform at or above the second storey is 4 m².

The altered second storey rear deck will be 9.0 m².

Conditions of Approval

1. The altered second storey rear platform shall be constructed and maintained substantially in accordance with the Site Plan (A101), Second Floor Plan (A104), Back Elevation (A106), Side Elevation (W) (A107), Side Elevation (E) (A108), and Fence Detail (A109), dated February 26, 2021, prepared by **Ecuabuilder Custom Homes and Complete Renovations**, and attached as **Attachment 2** herein. Any other variance(s) that may appear as required on these plans but are not listed in this written decision are **NOT** authorized.

In particular:

- a) The second storey rear platform shall be set back a minimum 1.47 m from the east wall of the dwelling.
 - b) A privacy fence that is a minimum of 1.8 m high shall be constructed and maintained on the east and west sides of the second-floor platform. The privacy fencing shall be board on board fence with a minimum of 1" gap between fence boards, finished on both sides, with a lattice installed above the fence boards (detailed on Plans A107 and A108) and drawing A109 (Fence Detail).
2. The existing deck shall be modified (including removal of the easterly post, platforms and joists, and wood beams as shown on the plans) and construction

of the altered deck completed on or before June 30, 2021, failing which the variance shall not be authorized.

X 

Dino Lombardi
Panel Chair, Toronto Local Appeal Body

ATTACHMENT 2 – Site Plan



CUSTOM HOMES AND COMPLETE RENOVATIONS

45 HOLMESDALE

Project number 23

| | |
|------|------------|
| Date | 2021-02-26 |
|------|------------|

Drawn by Author

| | |
|------------|---------|
| Checked by | Checker |
|------------|---------|

Scale 1" = 10'-0"

EXISTING ZONING

R2/3623-97

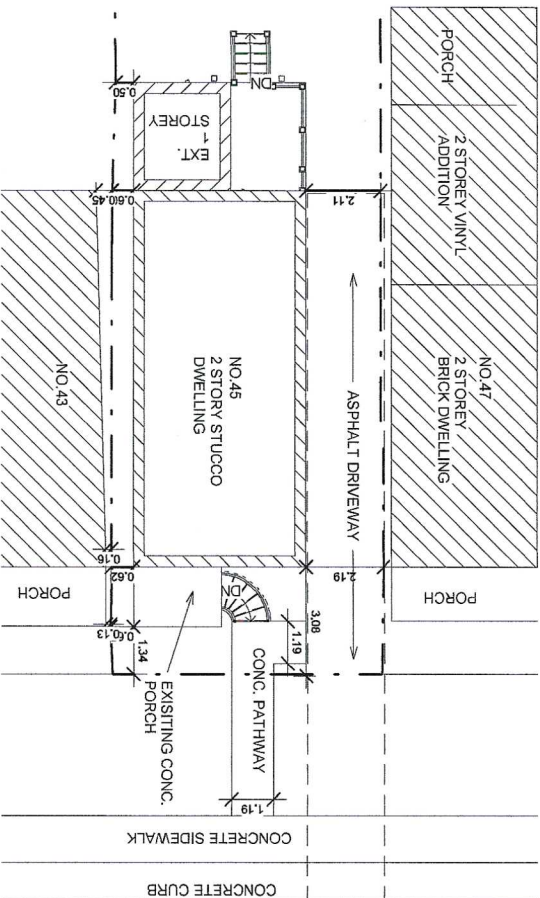
7.62m

290 m2

LOT COVERAGE
(including porches and deck shed)

| | |
|--------------------------------|---------------------------------|
| EXISTING | PROPOSED |
| 44 sq.m. (472 sq.ft) 15% | 50 sq.m. (542 sq.ft.) 17% |

| EXISTING | SQ. FT. | m ² |
|-------------------|---------|----------------|
| FIRST FLOOR AREA | 472 | 43.85 |
| SECOND FLOOR AREA | 340 | 31.59 |
| PROPOSED | | |
| FIRST FLOOR AREA | 430 | 39.94 |
| SECOND FLOOR AREA | 340 | 31.59 |
| TOTAL | 770 | 71.53 |
| G.F.A. | 1540 | 143.06 |





ECUABUILDER
CUSTOM HOMES AND COMPLETE RENOVATIONS

Owner

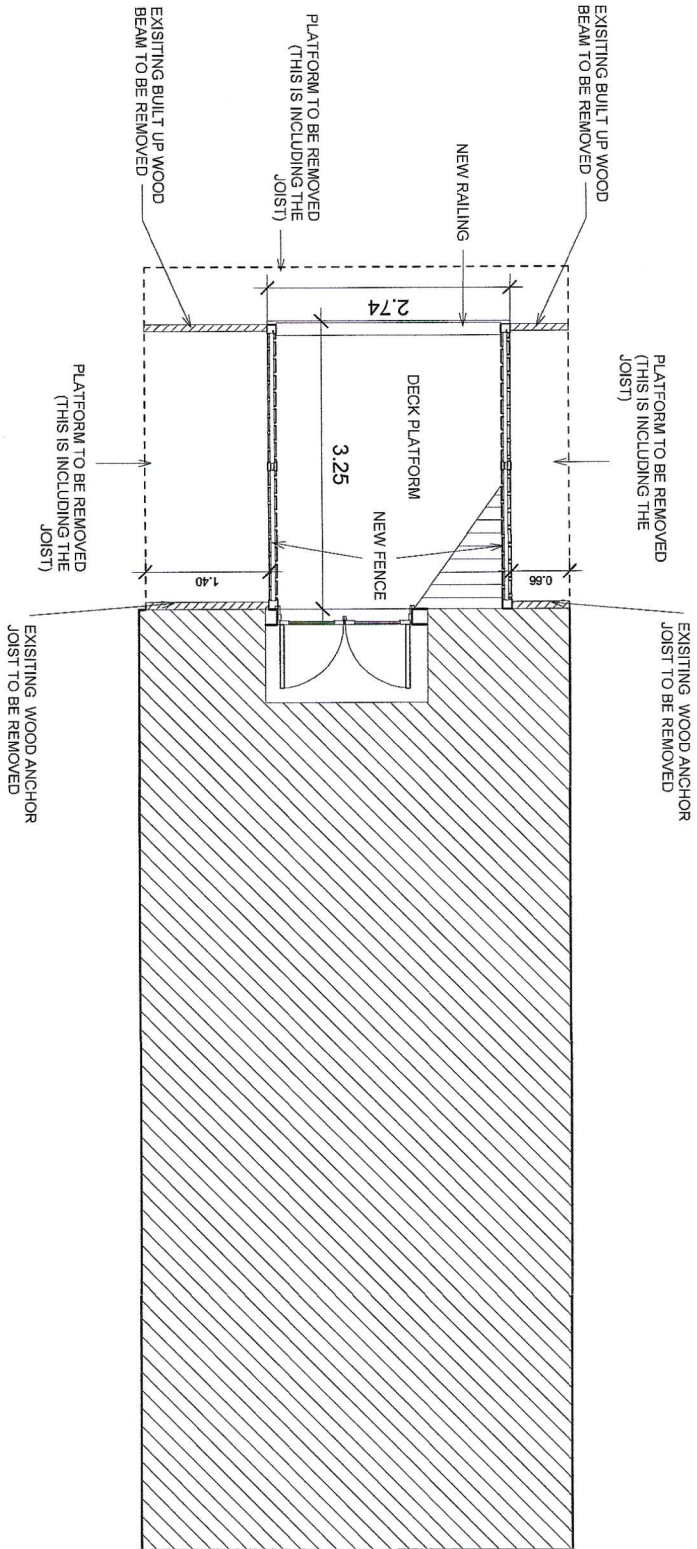
45 HOLMESDALE

SECOND FLOOR PLAN

| | | |
|----------------|------------|------|
| Project number | 23 | A104 |
| Date | 2021-02-26 | |
| Drawn by | Author | |
| Checked by | Checker | |

Scale 1/4" = 1'-0"

TOTAL DECK SQ.M. - 9.0M. SQ.

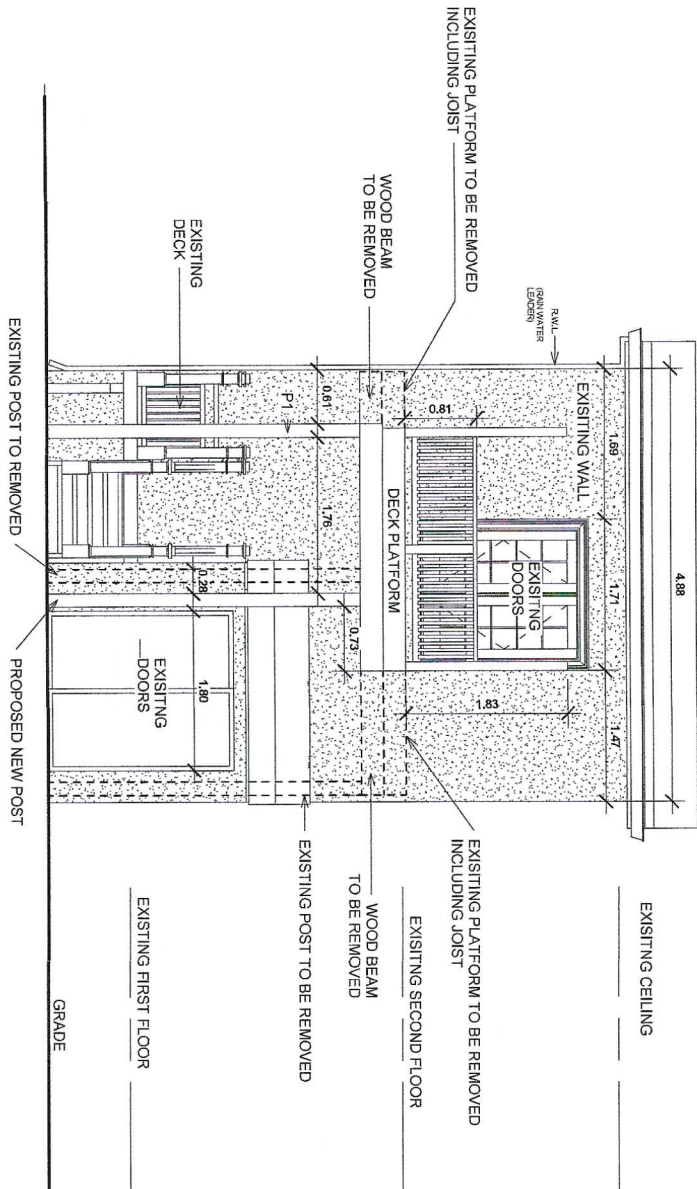




45 HOLMESDALE

| | |
|----------------|------------|
| Project number | 23 |
| Date | 2021-02-26 |
| Drawn by | Author |

A106
Scale 1/4" = 1'-0"





ECUABUILDER
CUSTOM HOMES AND COMPLETE RENOVATIONS

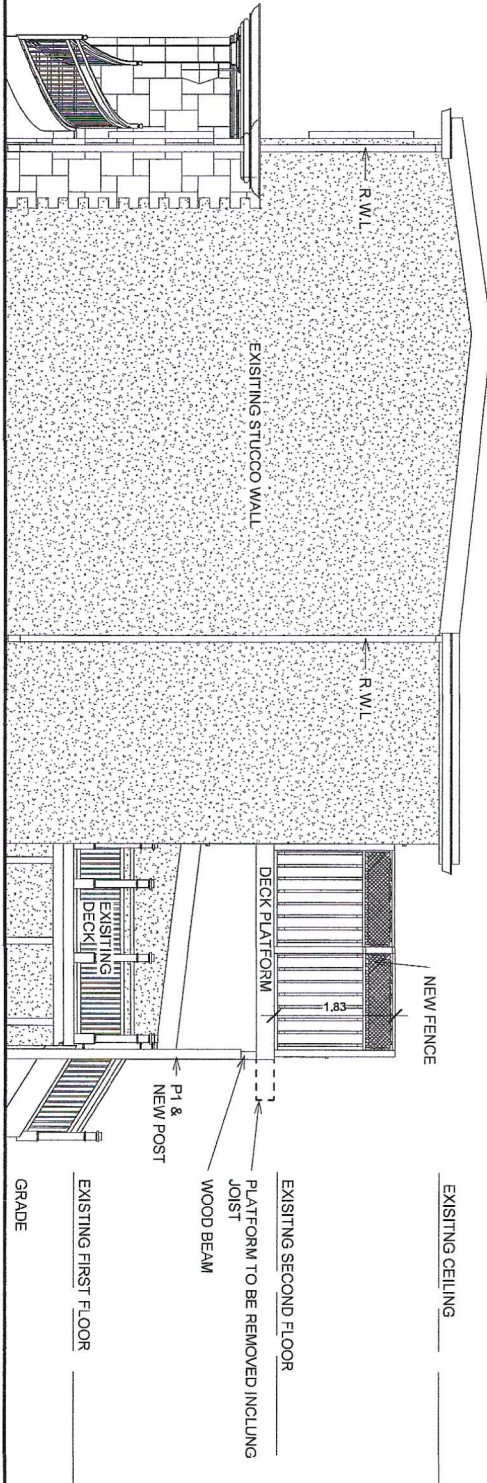
Owner

45 HOLMESDALE

SIDE ELEVATION (W)

| | | |
|----------------|------------|------|
| Project number | 23 | A107 |
| Date | 2021-02-26 | |
| Drawn by | Author | |
| Checked by | Checker | |

Scale 3/16" = 1'-0"





ECUABUILDER
CUSTOM HOMES AND COMPLETE RENOVATIONS

Owner

45 HOLMESDALE

SIDE ELEVATION (E)

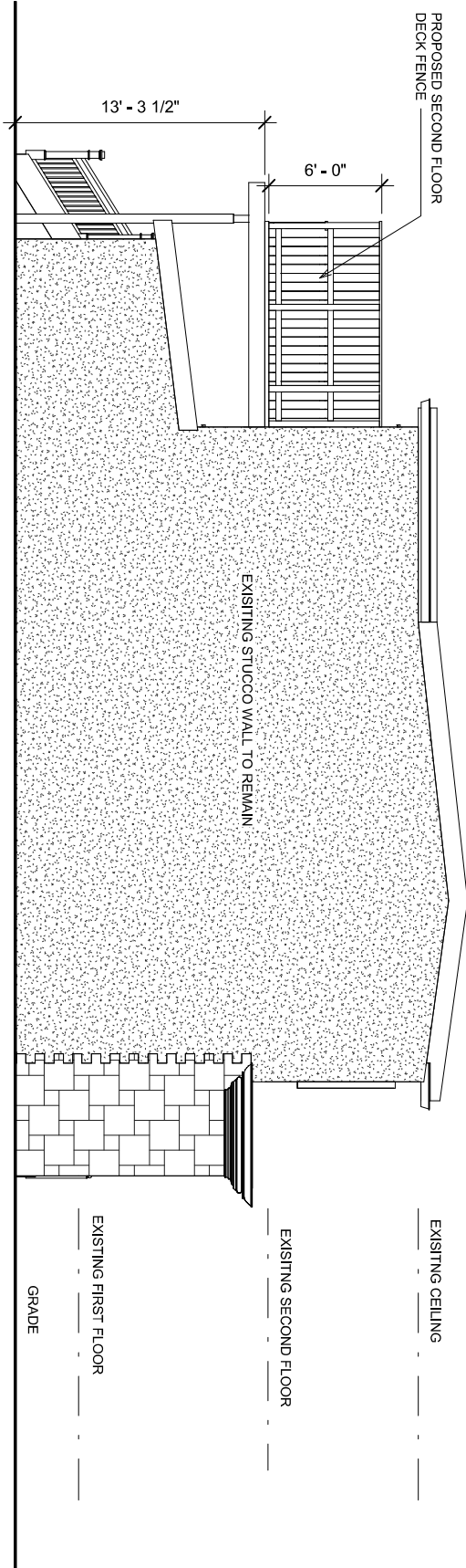
Project number 0001
Date Issue Date
Drawn by Author
Checked by Checker

A108

Scale 3/16" = 1'-0"

The undersigned has prepared and taken responsibility for the design and construction of the building shown on this drawing. The design is based on the information provided by the client and is not intended to be a substitute for a professional engineer or architect. The client is responsible for obtaining all necessary permits and for the accuracy of the information provided. The undersigned is not responsible for the construction of the building or for the safety of the building. The undersigned is not responsible for the design of the building or for the safety of the building. The undersigned is not responsible for the design of the building or for the safety of the building.

NAME: TONY HENRICKS BOM 30445
SIGNATURE: 
FIRM NAME: ECUABUILDER INC. BOM 31787





ECUABUILDER
CUSTOM HOMES AND COMPLETE RENOVATIONS

Owner
45 HOLMESDALE

| FENCE DETAIL | | |
|----------------|------------|--------------------|
| Project number | 23 | A109 |
| Date | 2021-02-26 | |
| Drawn by | J.C | |
| Checked by | L.C | |
| | | Scale 3/4" = 1'-0" |

