

DECISION AND ORDER

Decision Issue Date Friday, December 10, 2021

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

Appellant(s): Andrey Matusevich

Applicant(s): Andrey Matusevich

Property Address/Description: 313 Belsize Drive

Committee of Adjustment File

Number(s): 20 215030 NNY 15 MV

TLAB Case File Number(s): 21 127759 S45 15 TLAB

Hearing date: August 04, 2021, October 4, 2021

Deadline Date for Closing Submissions/Undertakings: December 20, 2021

DECISION DELIVERED BY D. LOMBARDI, TLAB Chair

REGISTERED PARTIES AND PARTICIPANTS

Applicant/Appellant	Andrey Matusevich
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Appellant's Legal Rep.	Zachary Fleisher
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Party	Al Kivi
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Party	Ray Edney
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Expert Witness	Eli Aaron
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Expert Witness	Martin Rendl
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INTRODUCTION AND BACKGROUND

This matter arises by way of conditions placed within the Interim Decision and Order of the Toronto Local Appeal Body (TLAB) dated November 18, 2021 (ID&O) respecting 313 Belsize Drive (subject property).

The subject property is currently developed with a three-storey detached residential dwelling with an integral garage constructed in 2015. The dwelling was originally constructed with a rear deck which lacked the required variance approvals and building permit.

In a decision dated January 6, 2016, the COA refused an application to legalize and maintain the deck and the owner subsequently removed the illegal deck.

The Application that was before the TLAB sought permission to construct a rear elevated deck 5.4 m in width and 2.42 m in depth attached to the rear main wall. The deck is intended to provide access from the main floor family room and kitchen of the existing dwelling to an outdoor amenity space with no stairs connecting the deck to the rear yard at grade.

In the Interim Decision and Order, the TLAB found conditionally in favour of the Applicant/Owner granting the appeal and varying the Committee of Adjustment's February 25, 2021, decision. The Tribunal also approved the revised List of Variances that were attached to that ID&O as Attachment 1, thereto, subject to the following conditions:

- i. Preparing a revised set of Plans, including a Site Plan and elevation drawings, to those in Attachment 2 incorporating the revisions to reflect the permanent opaque screening height of 1.8 m on both the east and west side faces of the proposed deck and necessary to implement this Interim Decision and Order (Revised Plans); and
- ii. The Owner shall have a period of one (1) month from the date of the issuance of this Interim Decision and Order to comply with the provisions of paragraph i) hereof. The TLAB upon receipt may issue a final Decision and Order, with or without conditions; and
- iii. If the TLAB is not in receipt of the revised Plans described in paragraph i) hereof within the time period set out in paragraph 1. a) ii), or any extensions granted by the TLAB, the appeal in respect of this paragraph 1 of this Interim Decision and Order shall be dismissed.

MATTERS IN ISSUE AND EVIDENCE

The main matter in issue at the appeal Hearing was whether the three variances sought to permit the construction of the rear, elevated deck meet the applicable statutory test in s.45(1) of the *Planning Act (Act)*. In addition, the TLAB was tasked with determining whether the proposed size and location of the deck at the rear of the subject property would result in unacceptable or undue adverse impacts of a planning nature on the abutting neighbours.

In the ID&O, I found that the privacy fence proposed by the Applicant as a condition of approval would contribute to adequately mitigating issues of privacy and overlook into his rear yard raised by Mr. Edney in his evidence and testimony. However, I qualified my findings with the following caveat as I stated on page 17 of the ID&O:

“...I am not convinced that the 1.5 m height recommended by the Appellant resolves the issue. Instead, I am directing that a permanent opaque screen be installed that is 1.8 m high from the base of the proposed deck and that such a screen be also incorporated on the west face of the deck as well. I believe that increasing the height of the screening to 1.8 m will further mitigate the issues of impact raised by SERRA and the abutting neighbour.”

Furthermore, on page 18 of the ID&O, I wrote:

“However, given the revisions I have directed to the height of the screening of the proposed deck and the incorporation of screening on the west face as well, I am not prepared to give effect to the Plans supportive of the variances that I’ve found acceptable. Therefore, I am issuing an Interim Decision and Order conditionally granting the variances requested subject to the conditions below.

Once the drawings have been revised and re-submitted to the TLAB, the Tribunal will issue a Final Decision and Order that reflects the drawings as amended.”

On November 24, 2021, the TLAB received an email from Davies Howe LLP, the law firm representing Mr. Matusevich in this matter. Attached to that email were revised Site Plan drawings submitted on his behalf, in response to Conditions 1. A) i-iii in the ID&O.

The revised Plans were submitted within the requisite timeframe as outlined in Condition 1. a) ii of that ID&O and no further action is required by the Applicant/Owner.

JURISDICTION

The jurisdiction of the TLAB is set out in the ID&O and continues with the final resolution of the matter.

ANALYSIS, FINDINGS, REASONS

I have reviewed the Revised Site Plan drawings and the proposed conditions, varied from that originally placed in evidence.

In summary fashion, the Applicant has now revised the Site Plan drawings to reflect the additional height to 1.8 m of the privacy screening on both the east and west sides of the proposed rear deck.

It is appropriate, therefore, that a final decision and order brining forward the considerations to date to facilitate building permit issuance.

In all other respects, except as varied by this Final Decision and Order, the ID&O remains unchanged.

DECISION AND ORDER

1. The appeal is allowed in part and the variances identified in **Appendix 1** are approved.
2. The approval in paragraph 1, above, is subject to the following conditions:
 - a) The proposed dwelling shall be constructed substantially in accordance with the Site Plan A0.2, Deck Layout A1.1, Rear Elevation A2.0, Deck Side Elevation (West) A2.1, and Deck Side Elevation (East) A2.2, dated August 21, 2021, prepared by Valente CAD Studios.
 - b) The Applicant is to provide permanent opaque screening along the east and west edge of the proposed rear deck; with a minimum height of 1.8 m from the floor to the deck.
3. For greater certainty, the Site Plan and drawings referenced in paragraph 2 a), above, are attached and contained in **Appendix 2**. Any other or additional variances required by any of the **Appendix 2** plans are expressly **NOT** approved.

If difficulties arise from the implementation of this decision, the TLAB may be spoken to.

X



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

Attachment 1 – Revised List of Variances

1. Chapter Exception R 930 (D)(i), By-law No. 569-2013

A platform without main walls, attached to or within 0.3 m of the rear main wall of a residential building must have a maximum area of 4.0 m².

The proposed rear deck is 11.24 m².

2. Chapter Exception R 930 (D)(ii), By-law No. 569-2013

A platform without main walls, attached to or within 0.3 m of the rear main wall of a residential building, must have a minimum side yard setback of 1.8 m.

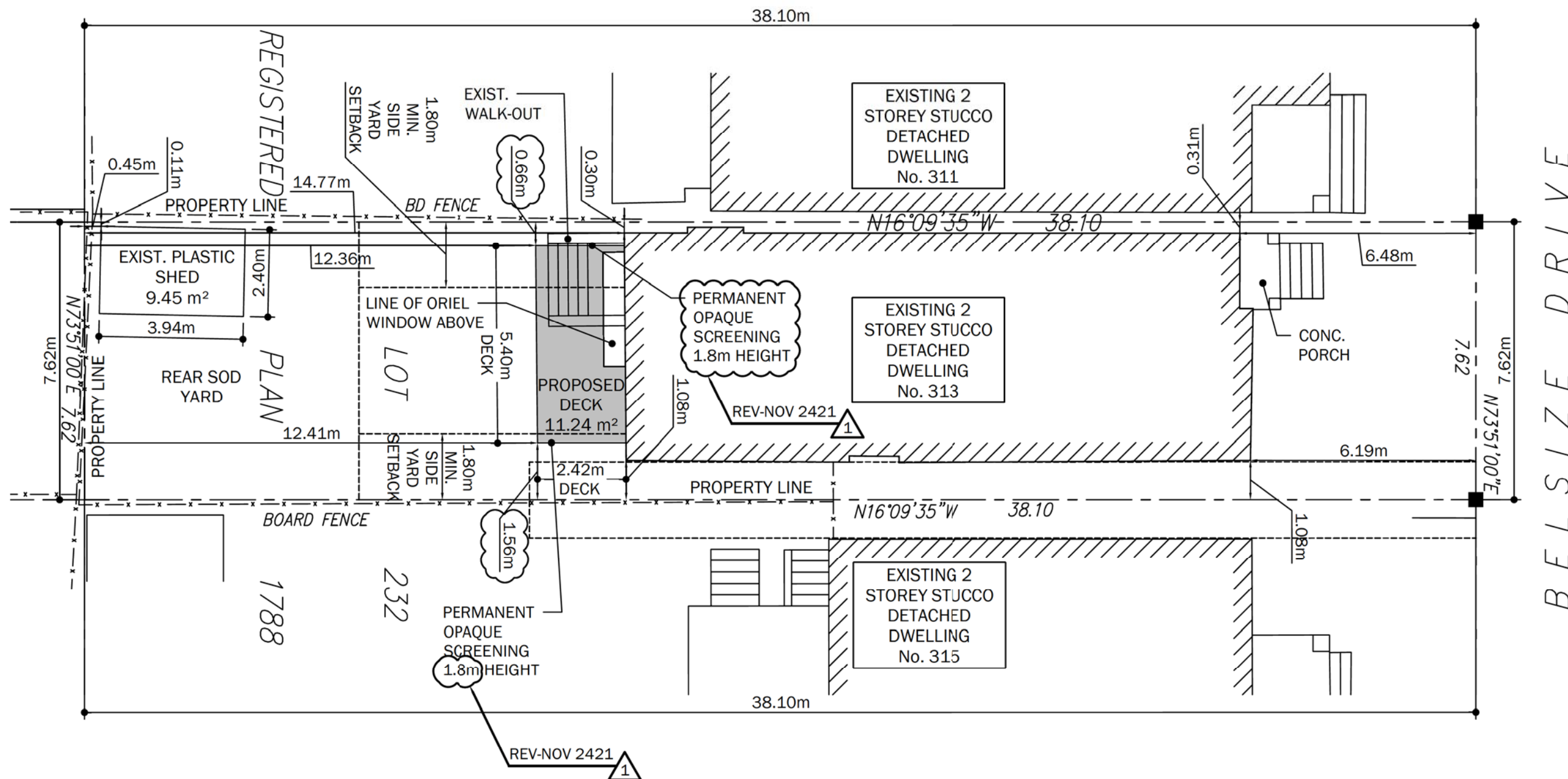
The proposed Rear Deck will have a 1.56 m setback at the east side.

3. Chapter Exception R 930 (D)(ii), By-law No. 569-2013

A platform without main walls, attached to or within 0.3 m of the rear main wall of a residential building, must have the minimum side yard setback of 1.8 m.

The proposed Rear Deck will have a 0.66 m setback at the west side.

ATTACHMENT 2 – Revised Site Plan Drawings



313 BELSIZE DRIVE

SITE STATISTICS
ZONING
LEGAL DESCRIPTION
PROPOSED DECK AREA

R2 Z0.6/R (d0.6) (x930) [ZZC]
LOT 232, REGISTERED PLAN 1788 CITY OF TORONTO
11.24 sm

SITE PLAN

SCALE 1:125

INFORMATION SHOWN ON THIS SITE PLAN IS
TAKEN FROM SURVEY OF LOT 232, REGISTERED
PLAN 1788, CITY OF TORONTO PREPARED BY
LAWRENCE O ERTL OLS, DATED JANUARY 2021,

Date:	Issued For:
00 AUG/16/21	CLIENT'S REVIEW
01 ---	---
02 ---	---
03 ---	---

THE UNDERSIGNED HAS REVIEWED AND TAKES RESPONSIBILITY FOR
THIS DESIGN, AND HAS THE QUALIFICATIONS AND MEETS THE
REQUIREMENTS SET OUT IN THE ONTARIO BUILDING CODE TO BE A
DESIGNER.

QUALIFICATION INFORMATION
REQUIRED UNLESS DESIGN IS EXEMPT UNDER Division C - 3.2.5.1. OF
THE ONTARIO BUILDING CODE

ROBERTO VALENTE *Roberto Valente* 42324
NAME SIGNATURE BCIN

REGISTRATION INFORMATION
REQUIRED UNLESS DESIGN IS EXEMPT UNDER DIVISION C - 3.2.4.1. OF
THE ONTARIO BUILDING CODE

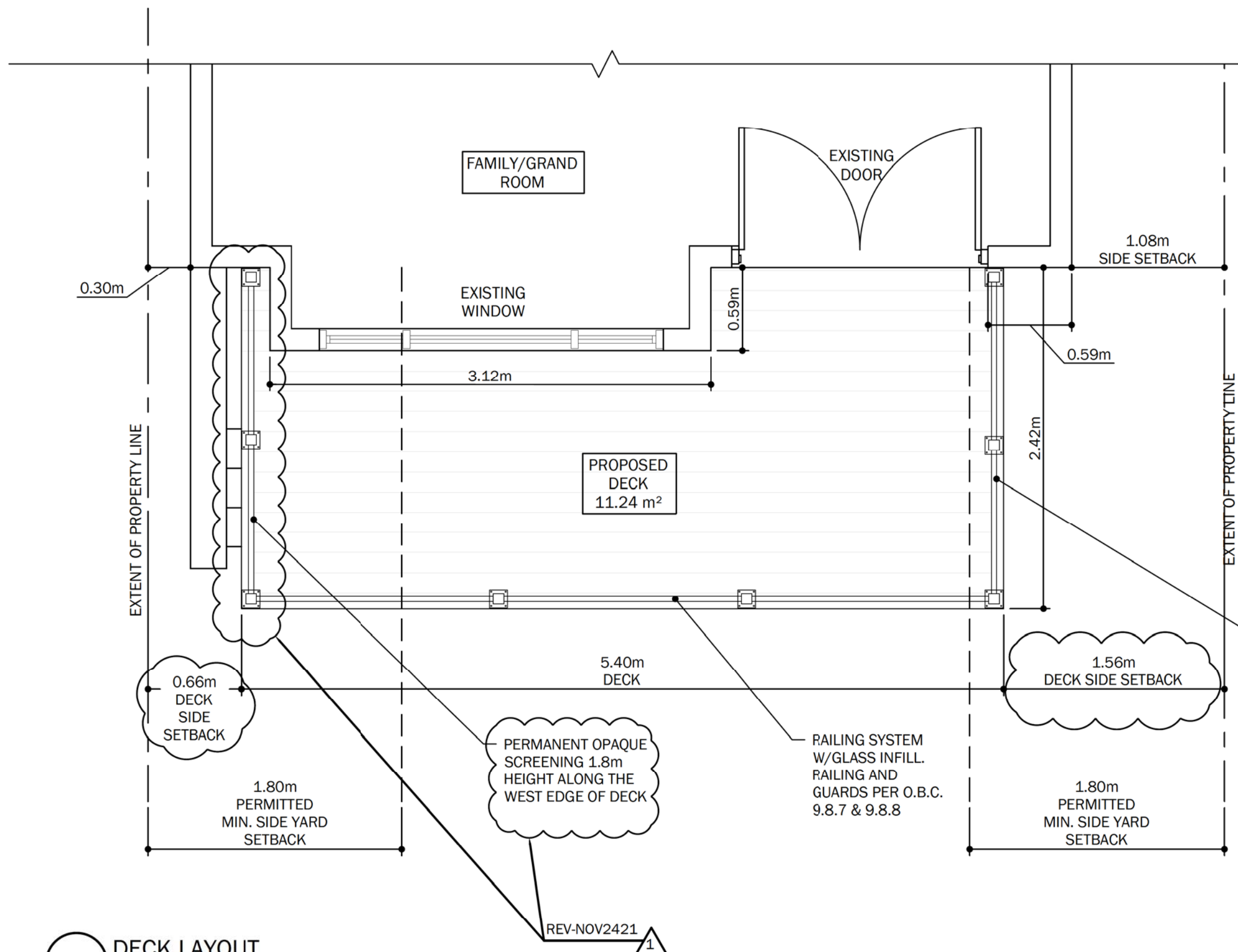
FIRM NAME 44796
BCIN

project
PROPOSED REAR DECK
313 BELSIZE DRIVE, TORONTO

drawings title
SITE PLAN

scale	1:125	drawn by	RV
date	21/AUG/2021	project No.	210811ZP
north		dwg. No.	

A0.2



Date:	Issued For:
00 AUG/16/21	CLIENT'S REVIEW
01 AUG/18/21	CLIENT'S REVIEW
02 AUG/19/21	TLAB
03 NOV24/21	AS PER TLAB COMMENTS

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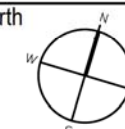
REGISTRATION INFORMATION
REQUIRED UNLESS DESIGN IS EXEMPT UNDER DIVISION C - 3.2.4.1. OF THE ONTARIO BUILDING CODE

VALENTE CAD STUDIO **44796**
FIRM NAME BCIN

project
PROPOSED REAR DECK
313 BELSIZE DRIVE, TORONTO

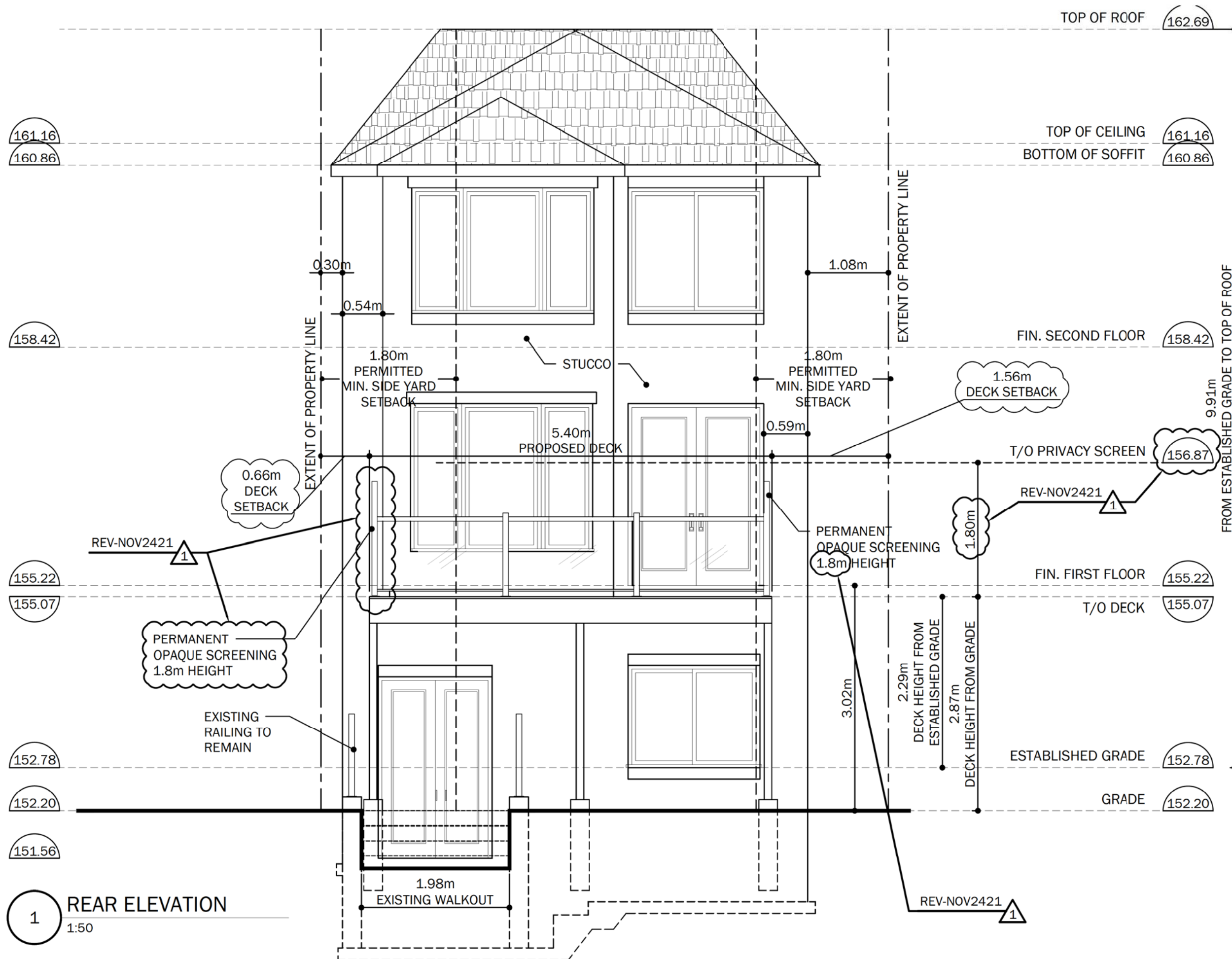
drawings title
DECK LAYOUT

scale 1:30 drawn by RV
date 21/AUG/2021 project No. 210811ZP
north dwg. No.



A1.1

1 DECK LAYOUT
1:30



Date:	Issued For:
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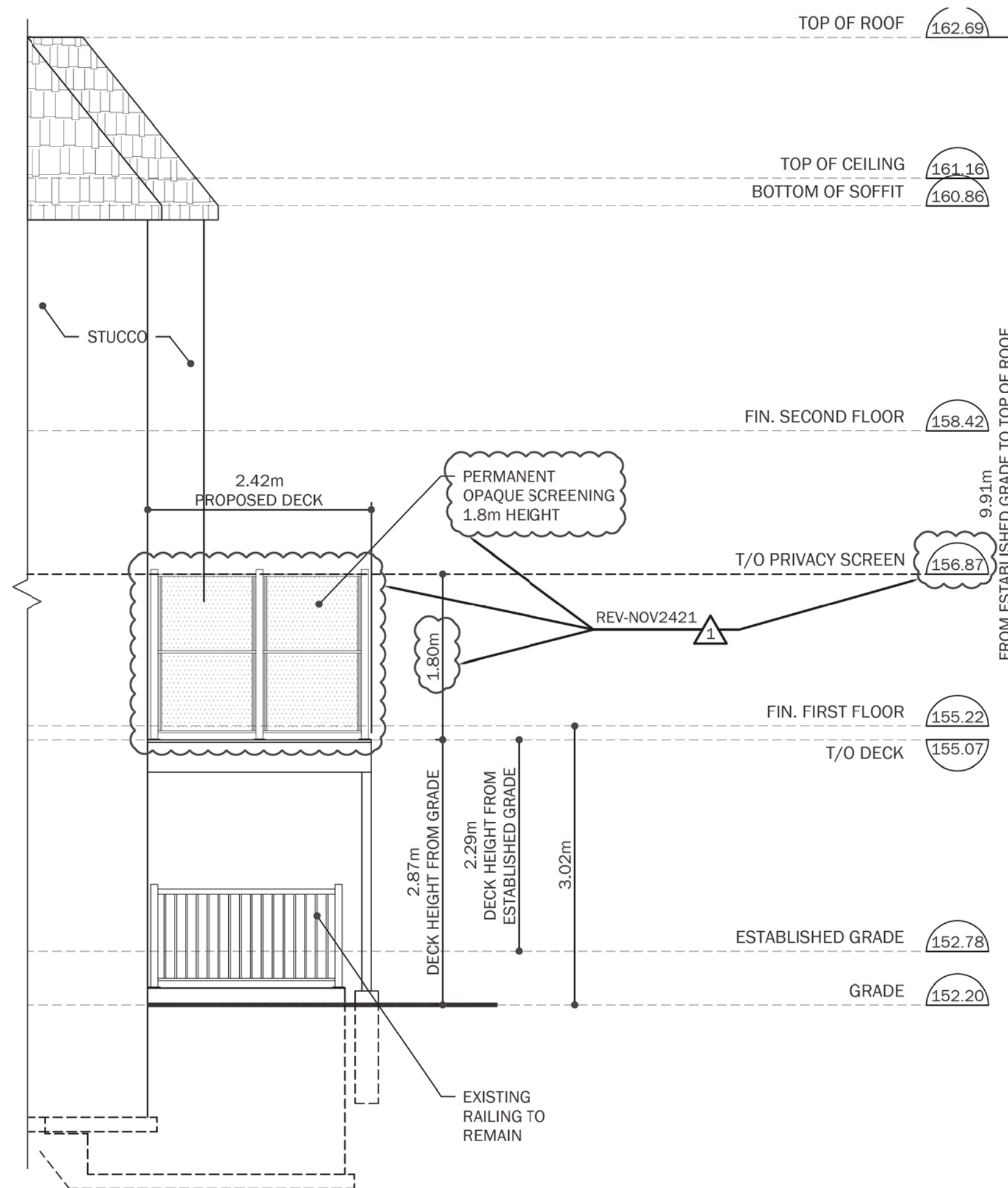
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VALENTE CAD STUDIO 44796
FIRM NAME BCIN

project
PROPOSED REAR DECK
313 BELSIZE DRIVE, TORONTO

drawings title
REAR ELEVATION

scale	1:50	drawn by	RV
date	21/AUG/2021	project No.	210811ZP
north		dwg. No.	



Date:	Issued For:
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VALENTE CAD STUDIO **44796**
FIRM NAME BCIN

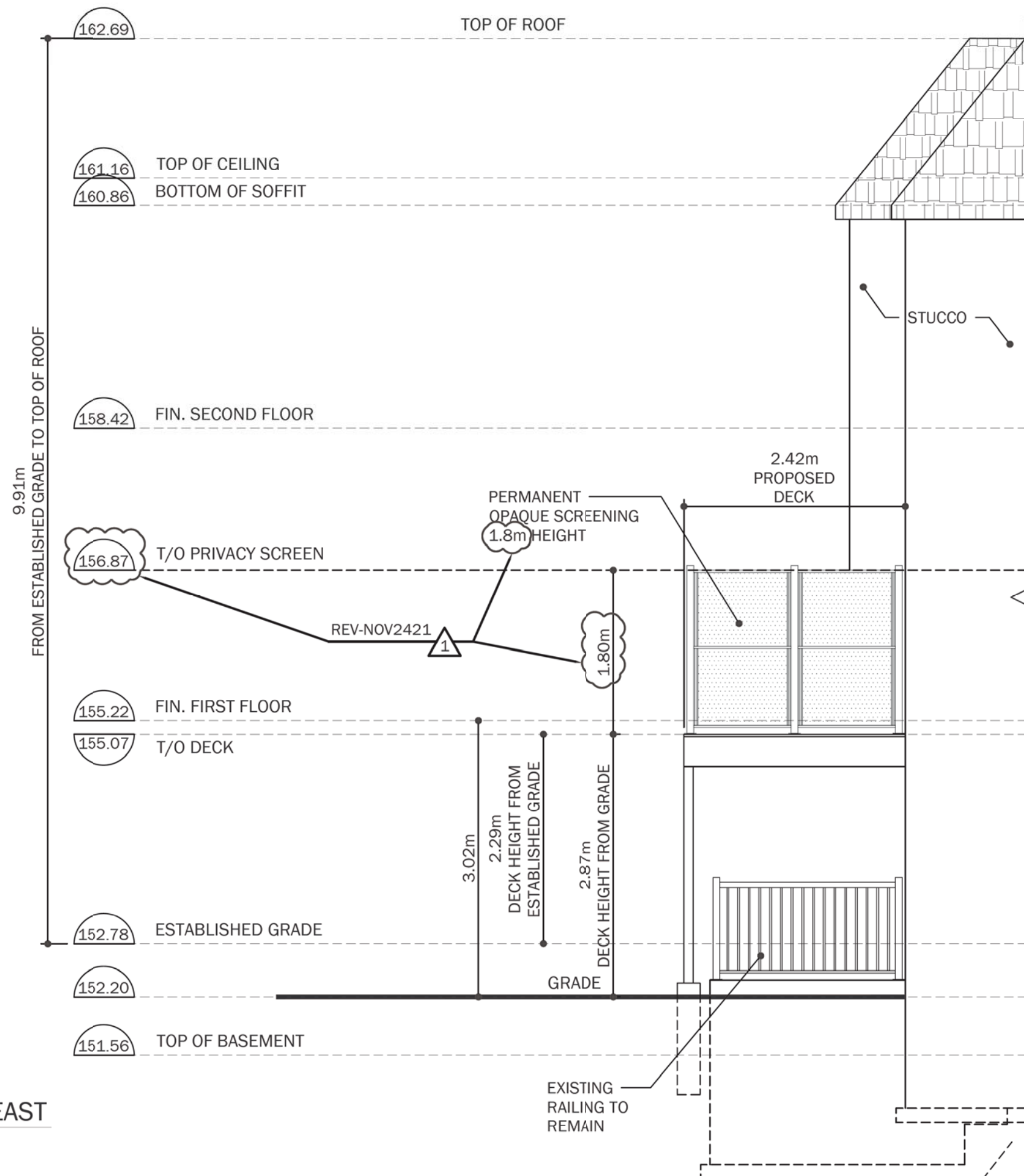
project
PROPOSED REAR DECK
313 BELSIZE DRIVE, TORONTO

drawings title
DECK SIDE ELEVATION WEST

scale	1:50	drawn by	RV
date	21/AUG/2021	project No.	210811ZP
north		dwg. No.	

A2.1

1 **SIDE ELEVATION - WEST**
1:50



Date:	Issued For:
00 AUG/16/21	CLIENT'S REVIEW
01 AUG/18/21	CLIENT'S REVIEW
02 AUG/19/21	TLAB
03 NOV24/21	AS PER TLAP COMMENTS

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VALENTE CAD STUDIO **44796**
FIRM NAME BCIN

project
PROPOSED REAR DECK
313 BELSIZE DRIVE, TORONTO

drawings title
DECK SIDE ELEVATION EAST

scale	1:50	drawn by	RV
date	21/AUG/2021	project No.	210811ZP
north		dwg. No.	

A2.2

1 **SIDE ELEVATION - EAST**
1:50