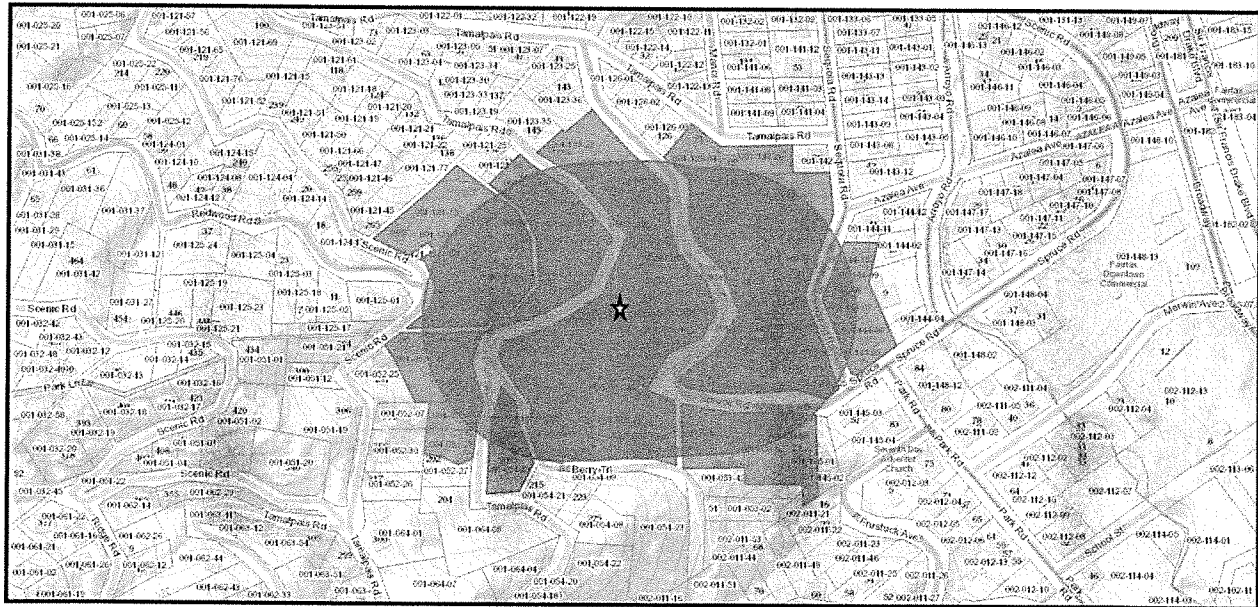


**The TOWN OF FAIRFAX
STAFF REPORT**
Department of Planning and Building Services

TO: Planning Commission
DATE: June 17, 2021
FROM: Linda Neal, Principal Planner
LOCATION: 183 Tamalpais Road; APN # 001-053-18
ZONING: Residential Single-family RS-6
PROJECT: Deck addition to an existing single-family residence
ACTION: Use Permit and Combined Side Setback Variance; application # 21-12
APPLICANT: Shannon and Justin Sobieraj
OWNER: Same
CEQA STATUS: Categorically exempt, § 15301(a) and 15305(a)



183 TAMALPAIS ROAD

DESCRIPTION

Construction of an approximately 173 square-foot, second floor deck off the east side of an existing single-family residence.

BACKGROUND

The site has no original lot numbers because it was not conceived as a developable parcel when it was originally excluded from the surrounding parcels that were subdivided by the Manor Road subdivision recorded in 1916. At that time, this area was

part of the Fairfax incline railway route. The railway line closed in 1929 and this parcel was created by deed in 1937. The site has a 50% slope and fronts on both Tamalpais and Spruce Roads.

The 1,286 square-foot, 2-bedroom, 1-bathroom, single-family residence was constructed in 1981.

A combined side yard setback variance and encroachment permit were approved by the Planning Commission in 1981 to allow construction of the residence with a combined side setback of 16 feet while the code requires a combined side-yard setback of 20 feet. The encroachment permit granted at the same time was to allow the parking deck approach to project into the Tamalpais Road right-of-way.

A fence height variance was approved by the Commission in 1994 to allow construction of the eight-foot-tall entrance gate.

DISCUSSION

The deck addition is proposed off the second floor living room. An existing deck exists on the first floor, below the location of the proposed deck addition. The proposed second floor deck is not as deep as the lower floor deck, with its outermost (eastern) edge stepped back 3½ feet from the lower floor deck's eastern edge.

Use Permit

The site is zoned Residential Single-family RS-6 and has a 50% slope. Town Code (TC) § 17.080.050(C) indicates that parcels with a 50% slope shall be a minimum of 42,000 square-feet in size and 170 feet wide. The first paragraph of TC § 17.080.050 requires that projects on parcels that do not meet the minimum size and width requirements based on their average slope must obtain a use permit or a hill area residential development permit prior to any physical improvement of or on a legal non-conforming building site.

Therefore, the deck addition on this legal non-conforming, approximately 6,000 square foot, 30-foot-wide site requires the approval of a use permit.

The existing lower deck provides approximately 243 square-feet of usable outdoor living space, but it is only accessible through the master bedroom. The 50% slope of the site makes providing other usable outdoor space difficult and likely in conflict with the Town Hill Area Residential Development (HRD) Ordinance due to the amount of grading that would be required. The only way to create usable outdoor space on this site, other than by enlarging the existing deck or adding a new deck, is to excavate and level a portion of the steep hillside in conflict with the HRD Ordinance which indicates that grading in the hillside areas shall be minimized [Town Code § 17.072.010(B)(2)]. The approximately 173 square-foot deck addition will provide much needed usable outdoor living space that can be accessed easily by all the residents of the house because it is

off the main shared living space on the upper floor.

Combined Side Yard Setback Variance

Town Code § 17.080.070(B)(2) requires that new construction in the RS 6 Zone maintain a combined side-yard setback of 20 feet. The existing house maintains a combined side-yard setback of 16 feet. The new upper deck, proposed to follow the setback line of the existing structure and the existing deck below, would maintain a combined side-yard setback of 16 feet, requiring the approval of a combined side-yard setback variance.

The very narrow, approximately 30-foot width of the site is a special circumstance that makes it difficult to comply with the required combined 20-foot side-yard setback, leaving only a 10-foot-wide area within which construction can occur in compliance with the code. The variance being requested today is similar to the variance granted by the Town for the structure's original construction in 1981.

Construction of the deck will require the removal of no trees and will not project closer to the neighboring residences at 175 and 185 Tamalpais Road than the existing improvements, maintaining a combined setback of 16 feet instead of the required 20 feet. Both sides of the deck will exceed the required minimum five-foot (individual, not combined) side-yard setback. There are mature trees on both sides of the proposed deck that will help screen views from the deck into the adjacent structure's living space and vice versa.

It is common throughout the steep hillsides of Fairfax for residences to have rear decks off all the levels of the house on both the upsloping and down sloping properties. Therefore, the proposed deck addition will not significantly change the massing of the existing residence or result in a structure out of scale with its site or out of character with the surrounding hillside residential development (see the properties at 192, 207, 175 and 163 Tamalpais Road).

The staff visited the residence at 185 Tamalpais Road and viewed the project site from the rear deck of that property. Due to the close proximity and the difference in elevation between the existing deck at 185 Tamalpais Road and the proposed second floor deck at 183 Tamalpais, staff has included a condition in Resolution No. 2021-14 recommending that a 6-foot privacy screen be included on the south side of the deck subject to the review and approval of the Planning Department prior to issuance of the project building permit.

Other Agency/Department Comments/Conditions

Staff received no comments from Ross Valley Fire, Ross Valley Sanitary, or Marin Municipal Water Districts or from the Town of Fairfax Police, Building or Public Works Departments on this project.

RECOMMENDATION

1. Conduct the public hearing.
2. Move to approve the proposed deck addition by adopting Resolution No. 2021-14 setting forth the findings and the conditions for the project approval.

ATTACHMENTS

Attachment A – Resolution No. 2021-14

Attachment B – applicant's supplemental information

RESOLUTION NO. 2021-14

A Resolution of the Fairfax Planning Commission Approving Application No. 21-12 for a Use Permit and Combined Side-yard Setback Variance to Construct an approximately 173 Square-foot, Upper Floor Deck Addition to the Residence at 183 Tamalpais Road

WHEREAS, the Town of Fairfax has received an application from Shannon and Justin Sobieraj to construct an approximately 173 square-foot, upper floor deck addition onto an existing residence at 183 Tamalpais Road; and

WHEREAS, the Planning Commission held a duly noticed Public Hearing on June 17, 2021, at which the Planning Commission determined that the project complies with the Town Code provisions regulating residential development permits; and

WHEREAS, based on the plans and other documentary evidence in the record, the Planning Commission has determined that the applicant has met the burden of proof required to support the findings necessary to approve the Conditional Use Permit and Combined Side-yard Setback Variance for the deck addition; and

WHEREAS, the Commission has made the following findings:

General Plan Compliance

The project is consistent with the following 2010-2030 Fairfax General Plan Policies:

Policy LU-1.2.3: New and renewed development shall be designed and located so as to minimize the visual mass. The Town will require exterior materials and colors that blend the exterior appearance of structures with the surrounding natural landscape, allowing for architectural diversity.

Policy LU-7.1.5: New and renewed residential development shall preserve and enhance the existing character of the town's neighborhoods in diversity, architectural character, size, and mass.

Conditional Use Permit

1. The approval of the use permit shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.
2. The development and use of property as approved under the use permit shall not cause excessive or unreasonable detriment to adjoining properties or premises, or cause adverse physical or economic effects thereto, or create undue or excessive burdens in the use and enjoyment thereof, or any or all of which effects are substantially beyond that which might occur without approval or issuance of the use permit. The deck addition will match the existing lower deck and will not project outside the footprint of the existing structure.

ATTACHMENT A

3. Approval of the use permit is not contrary to those objectives, goals, or standards pertinent to the particular case and contained or set forth in the Zoning Ordinance.
4. Approval of the use permit will result in equal or better development of the premises than would otherwise be the case, and that said approval is in the public interest and for the protection or enhancement of the general health, safety, or welfare of the community.

Combined Side-yard Setback Variance

1. Because of the very steep 50% slope and very narrow 30-foot width of the site, the strict application of the combined 20-foot side-yard setback will deprive the applicant of privileges enjoyed by other property owners in the vicinity and under identical zone classification.
2. The variance or adjustment will not constitute a grant of special privilege, is consistent with the limitations upon other steeply sloped properties in the vicinity and under identical zone classification and is consistent with the objectives of this title.
3. The strict application of this title would result in excessive or unreasonable hardship because the site is too steep to otherwise provide additional usable outdoor living space.
4. The granting of the variance of adjustment will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated.

WHEREAS, the Commission has approved the project subject to the applicant's compliance with the following conditions:

This approval is limited to the development illustrated on the plans prepared by Kenneth Berman, Architect, stamped received by the Town on April 7, 2021.

1. A 6-foot privacy screen be included on the south side of the deck subject to the review and approval of the Planning Department prior to issuance of the project building permit.
2. During the construction process, all construction-related vehicles including fixture/supply or equipment delivery, cement trucks and construction materials shall be situated off the travel lane of the adjacent public right(s)-of-way at all times. This condition may be waived by the building official on a case-by-case basis with prior notification from the project sponsor.
3. Any proposed temporary closure of a public right-of-way shall require prior approval by the Public Works Manager and shall be coordinated with the Fairfax Police Department and any necessary traffic control, signage or public notification shall be

4. the responsibility of the applicant or his/her assigns. Any violation of this provision will result in a stop work order being placed on the property and issuance of a citation.
5. The Building Official shall field check the completed project to verify compliance with the approved plans and building code requirements.
6. The Planning Department shall field check the completed project to verify that the construction reflects the plans approved by the Planning Commission and to verify that all planning commission conditions have been complied with.
7. The roadways shall be kept clean and the site free of dust by watering down the site if necessary. The roadways shall be kept free of dust, gravel, and other construction materials by sweeping the roadway, daily, if necessary.
8. During construction, the property owner, and all employees, including contractors and subcontractors must comply with all requirements set forth in Chapter 8.32 of the Town Code entitled, "Urban Runoff and Pollution Prevention".
9. Any changes, modifications, additions, or alterations made to the approved set of plans will require a modification of Application # 21-12 or the approval of the Planning Director if the changes are minor and do not conflict with the intent of this ridgeline development or design review permit approvals. **Any** construction based on job plans that have been altered without the benefit of an approved modification of Application No. 21-12, or without the approval of the Planning Director, will result in the job being immediately stopped and red tagged.
10. The applicant and its heirs, successors, and assigns shall, at its sole cost and expense, defend with counsel selected by the Town, indemnify, protect, release, and hold harmless the Town of Fairfax and any agency or instrumentality thereof, including its agents, officers, commissions, and employees (the "Indemnitees") from any and all claims, actions, or proceedings arising out of or in any way relating to the processing and/or approval of the project as described herein, the purpose of which is to attack, set aside, void, or annul the approval of the project, and/or any environmental determination that accompanies it, by the Planning Commission, Town Council, Planning Director or any other department or agency of the Town. This indemnification shall include, but not be limited to, suits, damages, judgments, costs, expenses, liens, levies, attorney fees or expert witness fees that may be asserted or incurred by any person or entity, including the applicant, third parties and the Indemnitees, arising out of or in connection with the approval of this project, whether or not there is concurrent, passive, or active negligence on the part of the Indemnitees. Nothing herein shall prohibit the Town from participating in the defense of any claim, action, or proceeding. The parties shall use best efforts, acting in good faith, to select mutually agreeable defense counsel. If the parties cannot reach agreement, the Town may select its own legal counsel and the applicant agrees to pay directly, or timely reimburse on a monthly basis, the Town for all such court costs, attorney fees, and time referenced

herein, provided, however, that the applicant's duty in this regard shall be subject to the Town's promptly notifying the applicant of any said claim, action, or proceeding.

NOW, THEREFORE BE IT RESOLVED, the Planning Commission of the Town of Fairfax hereby finds and determines as follows:

The approval of the Conditional Use Permit and the Combined Side-yard Setback Variance can occur without causing significant impacts on neighboring residences; and

The foregoing resolution was adopted at a regular meeting of the Planning Commission held in said Town, on the 17th day of June 2021, by the following vote:

AYES:

NOES:

ABSENT:

Chair

Attest:

Ben Berto, Director of Planning and Building Services

PROJECT DESCRIPTION: We propose to add a 160 sq. foot wood deck (Exhibit B) to the top floor of our home. This deck would be over and within the outline of the existing lower level wood deck (195 sq. feet; Exhibit C). The existing bottom deck is off the master bedroom on the lower floor. This addition will not expand or alter the footprint of our house.

Our house is 1023 sq. feet total with no useable yard space (sloped in front and to the rear; Exhibits D and E), and this addition would greatly add livable space for our family. We have had a dream of this addition since purchasing the home in 2006. We now have two boys aged 14 and 7. We love being a part of the Fairfax community and raising our kids in such a supportive environment. As grateful as we are to explore the abundance of accessible outside space in Marin, day to day space in our home is quite limited for our family of four.

GENERAL INFORMATION (if applicable):

Item	Existing	Proposed
Lot size	6,000 ft ²	
Size of structure(s) or commercial space (square feet)	1,023 ft ²	
Height and No. of stories	2	
Lot coverage		
No. of dwellings units	1	
Parking ¹ No. of spaces	1 (Exhibit F)	
Size of spaces		

Amount of proposed excavation and fill	Excavation =	Fill =
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Estimated cost of construction \$ 35,000

Lot Coverage is defined as the land area covered by all buildings and improvements with a finished height above grade and all impervious surfaces except driveways.

¹Minimum parking dimensions are 9' wide by 19' long by 7' high. Do not count parking spaces that do not meet the minimum standards.

Restrictions: Are there any deed restrictions, easements, etc. that affect the property, and, if so, what are they? No

Use Permit Applications - Additional information required.

- A written description of the proposed use, major activities, hours of operation, number of employees on the premises during the busiest shift and when the busiest shift is expected and other information pertinent to the application.
- Floor plans must include location of any special equipment.
- Designate customer, employee and living areas.
- If different uses are included in this activity, for example storage, retail, living space, etc. Indicate square footage of each proposed use.

In order to approve your project, the Planning Commission must make findings of fact which state that the project will not have a negative impact on the general public welfare, conforms with the policies of the Town, does not create excessive physical or economic impacts on adjacent property and provides for equal treatment with similar properties in Town.

In the space below, please provide any information which you feel is relevant to these issues and which further explains your project.

Our deck would allow additional living space /
outdoor space for our family of four. As stated,
we do not have usable/workable yard due to
the ^{hill} slope. This deck provides this much needed
outlet for our growing children (age 14, 7).

The final disposition of each use permit shall be in accordance with the facts of the particular case, and such facts must support the following determinations and findings before a use permit may be approved. Indicate how the findings below can be made:

- The approval of the use permit shall not constitute a grant of special privilege and shall not contravene the doctrines of equity and equal treatment.

The deck remains on our home footprint not extending into neighbors yards or invading privacy.

- The development and use of property, as approved under the use permit, shall not create a public nuisance, cause excessive or unreasonable detriment to adjoining properties or premises, or cause adverse physical or economic effects thereto, or create undue or excessive burdens in the use and enjoyment thereof, any or all of which effects are substantially beyond that which might occur without approval or issuance of the use permit.

The deck would be used by our family of four as outdoor yard/living space.

- Approval of the use permit is not contrary to those objectives, goals or standards pertinent to the particular case and contained or set forth in any master plan, development plan or other plan or policy, officially adopted by the town.

This deck is not set forth in any master plan

175

Tamalpais Road

Kitchen

Living Room

Back Deck

Bay tree - 1.5 ft. dia.

Oak tree - 1 ft dia.

Oak tree - 1 ft dia.

Bay tree - 6 in. dia.

Oak tree - 1 ft dia.

Bay tree - 8 in. dia.

Bay tree - 1 ft dia.

183

Power Pole

Proposed Top Deck

Oak tree - 2 ft dia.

Pine 1ft dia.

Oak tree - 1 ft dia.

185

Ivy Privacy wall

Back Deck

Bedrooms

Kitchen

LIVING ROOM

North

10m

40ft

Distance from 183 Tamalpais:

175 Tamalpais = 50 feet

185 Tamalpais = 10 feet

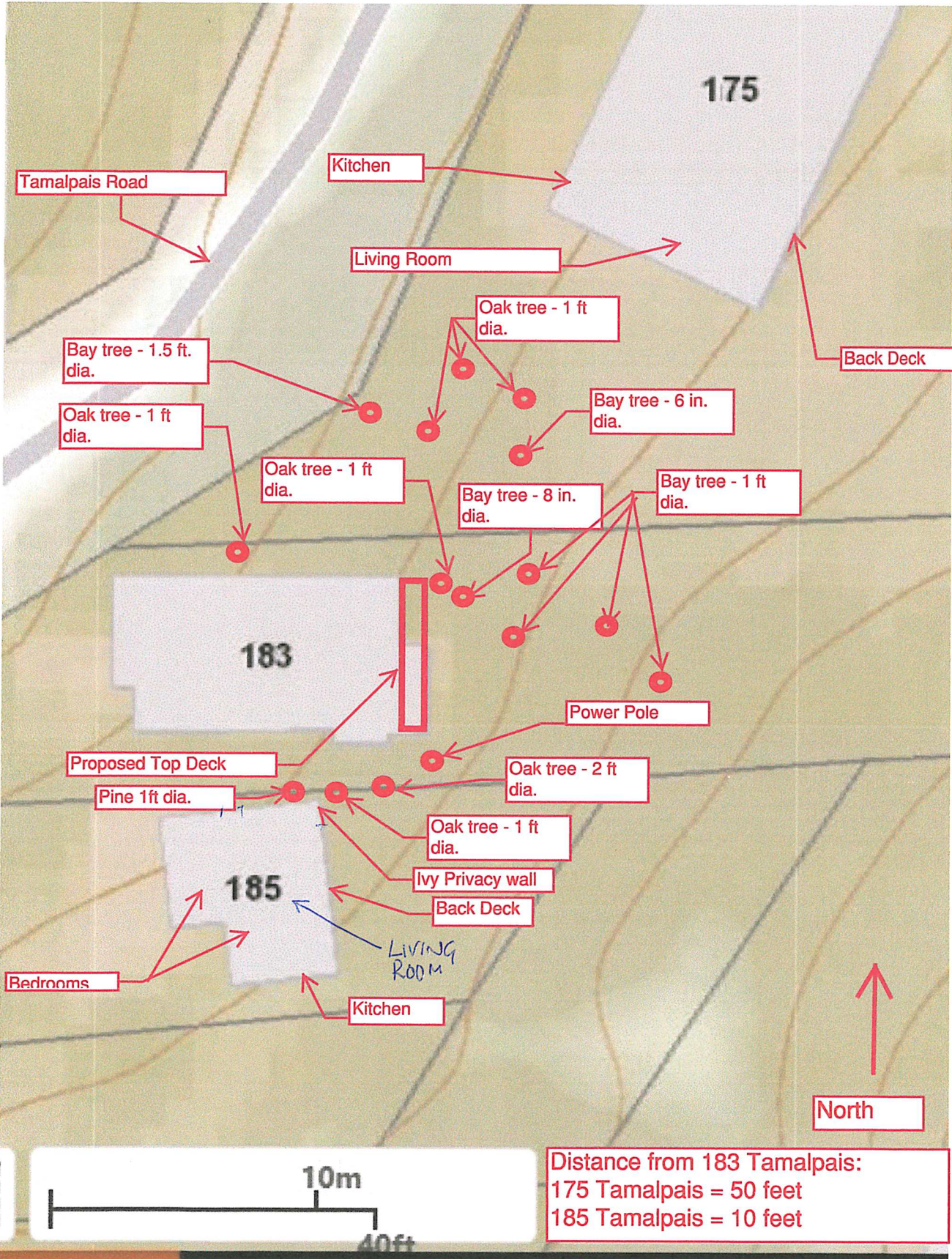




Photo 1: Looking north toward 175 Tamalpais. View at approximate level of proposed deck.

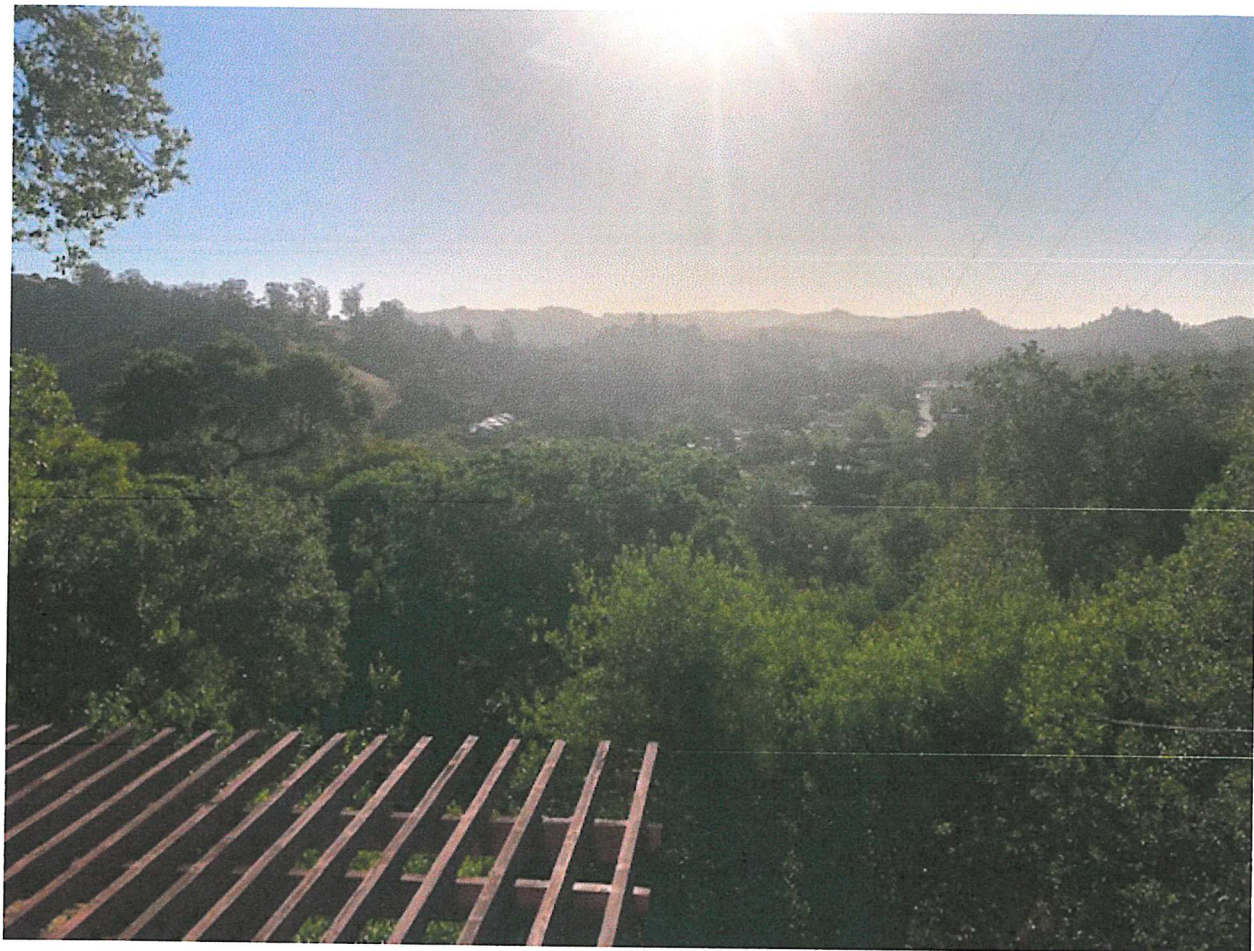


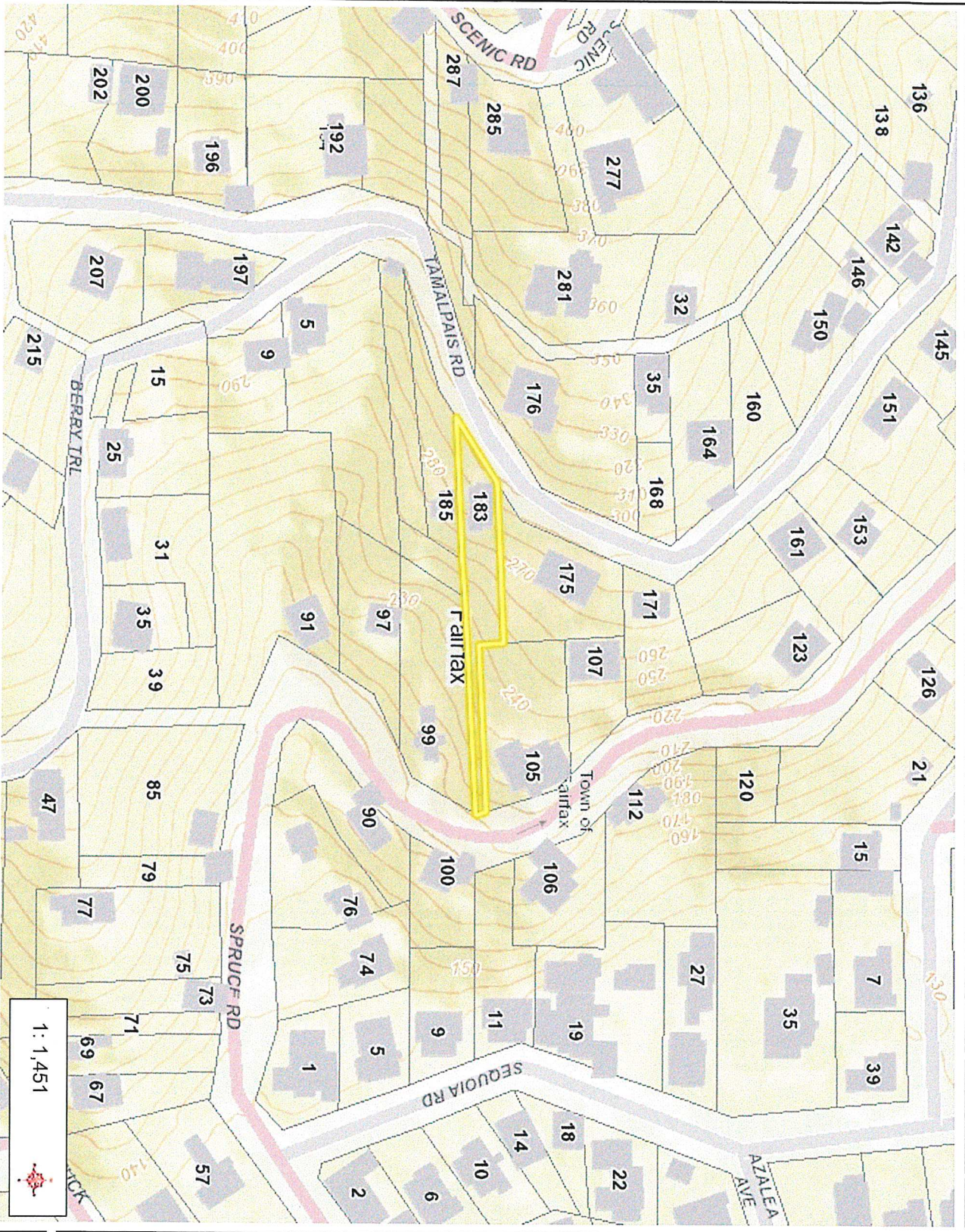
Photo 2: Looking east. View at approximate level of proposed deck.



Photo 3: Looking south toward 185 Tamalpais. View at approximate level of proposed deck.



Photo 4: Looking southwest toward 185 Tamalpais. View at approximate level of proposed deck. 185 Tamalpais rooftop in a background.



241.8 0 120.90 241.8 Feet

NAD_1983_HARN_StatePlane_California_III_FIPS_0403_Feet
© Latitude Geographics Group Ltd.

1 : 1,451



- Legend**
- Parcel Note
 - ▭ easement
 - ▭ centerline
 - Address
 - Building Footprint
 - Parcel
 - Condominium Common Area
 - Mobile Home Pad
 - City
 - Community
 - Marin County Legal Boundary
 - Other Bay Area County
 - Stream - Perennial (NHD)

Notes

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.
THIS MAP IS NOT TO BE USED FOR NAVIGATION

FRONT

FRONT DOOR

33' ROOF

REAR

183 TAMARINDS RD
SIDE VIEW

1" = 5'

HILLSIDE
SLOPE

12'

10'

PROPOSED
REAR DECK

2

EXISTING
DECK

14'

9'

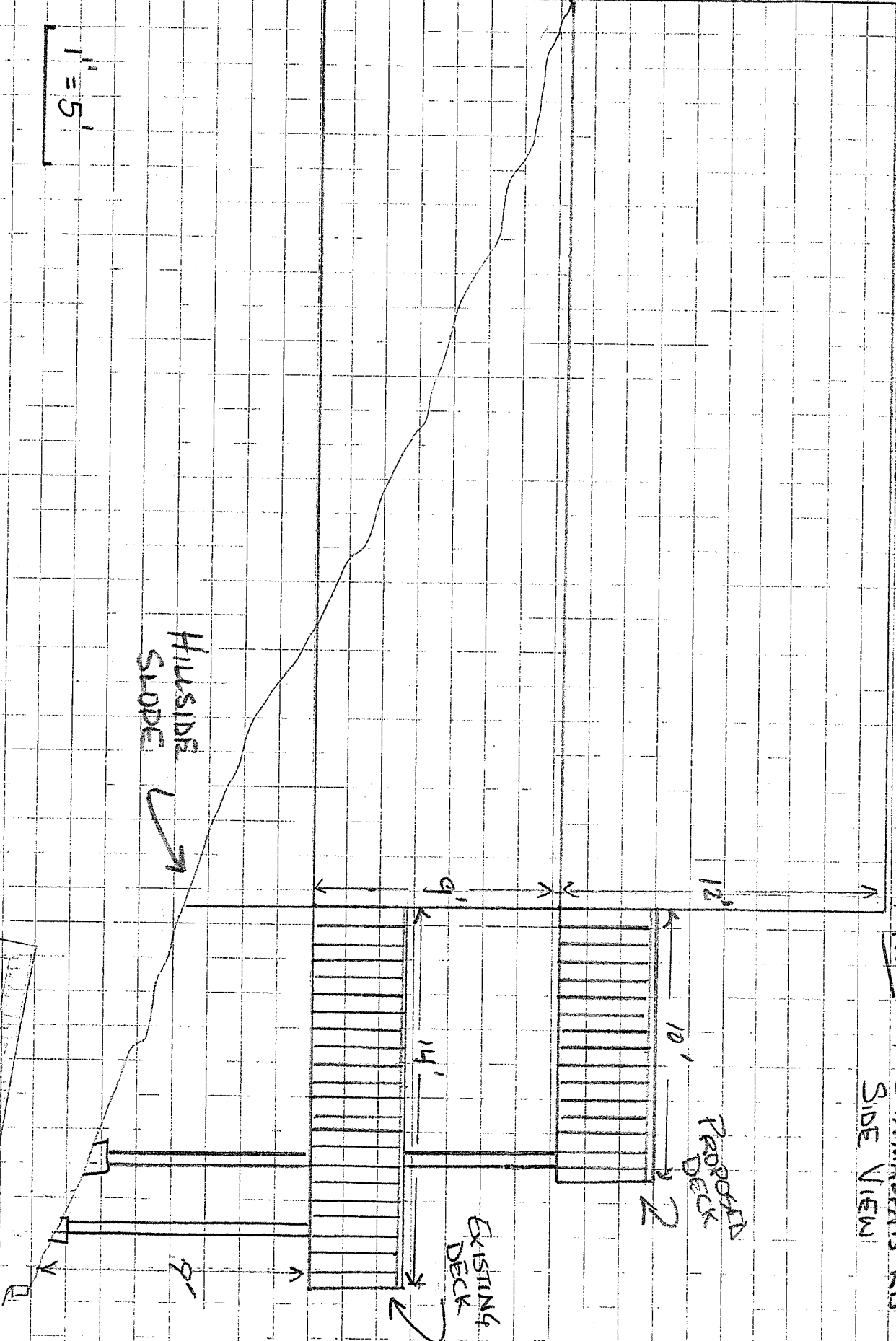
2

2

9'

APPROVED 2020

APR 07 2020

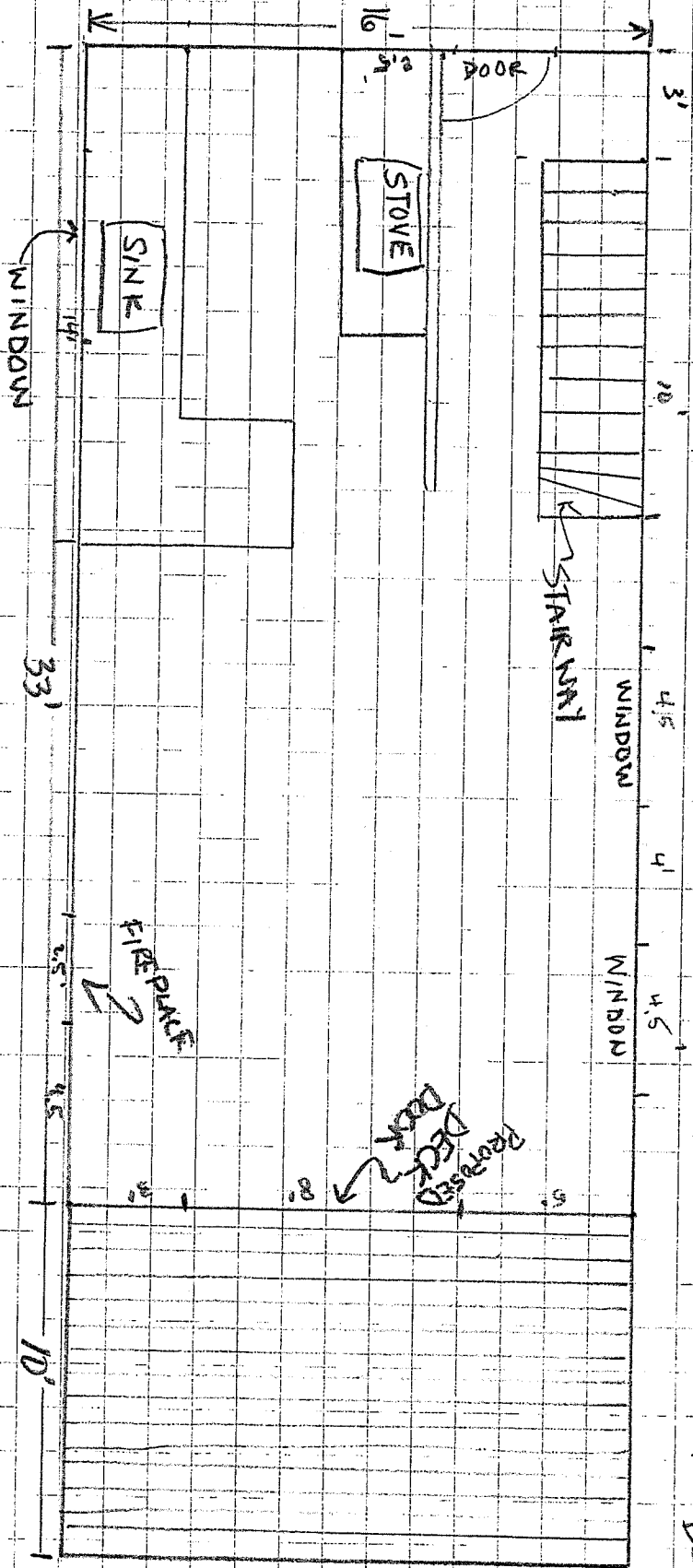


183 JAWLENS RD
TOP FLOOR PLAN

1" = 5'

PROPOSED
ROOF DECK

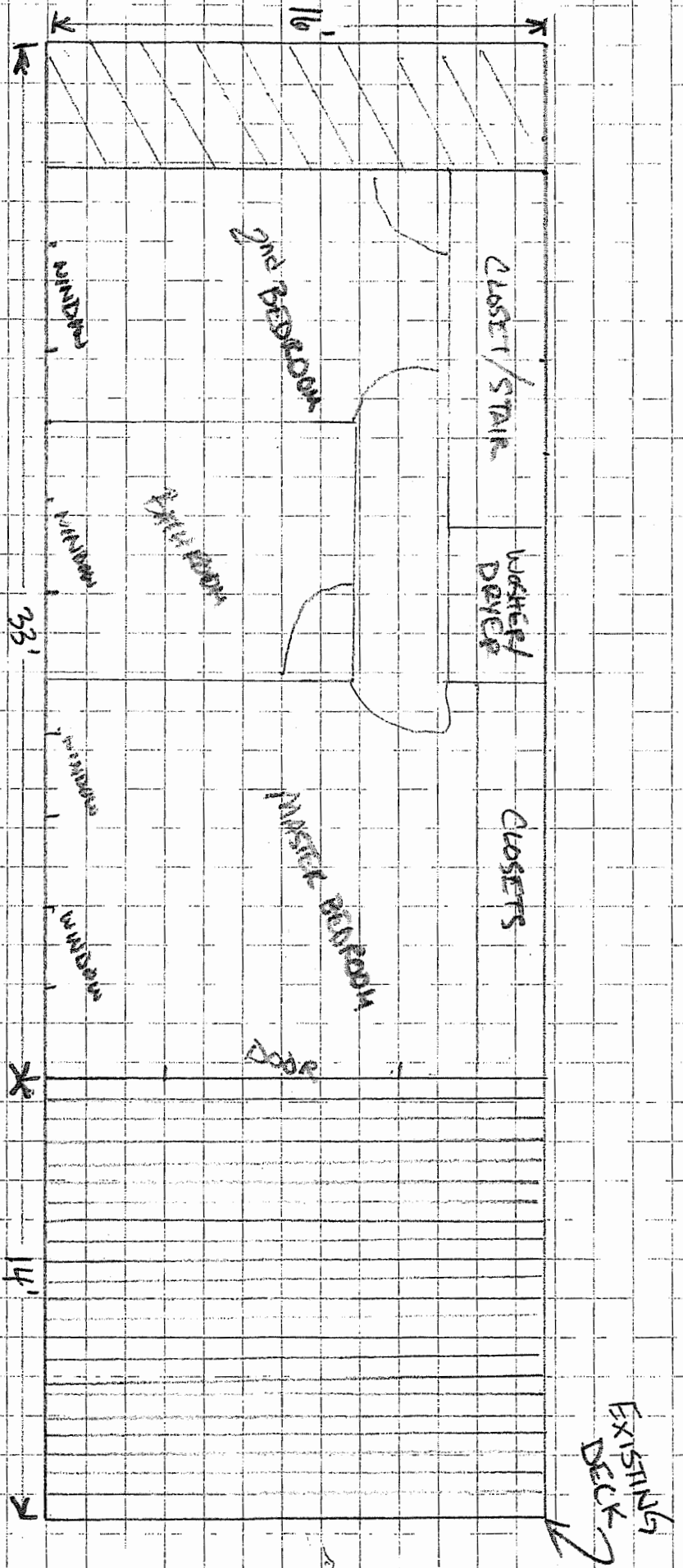
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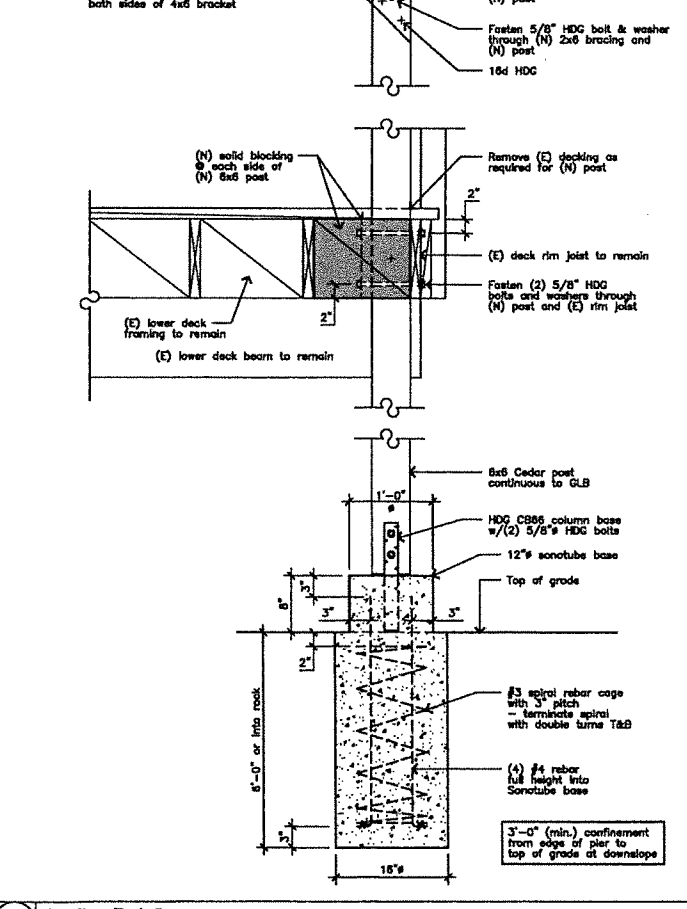
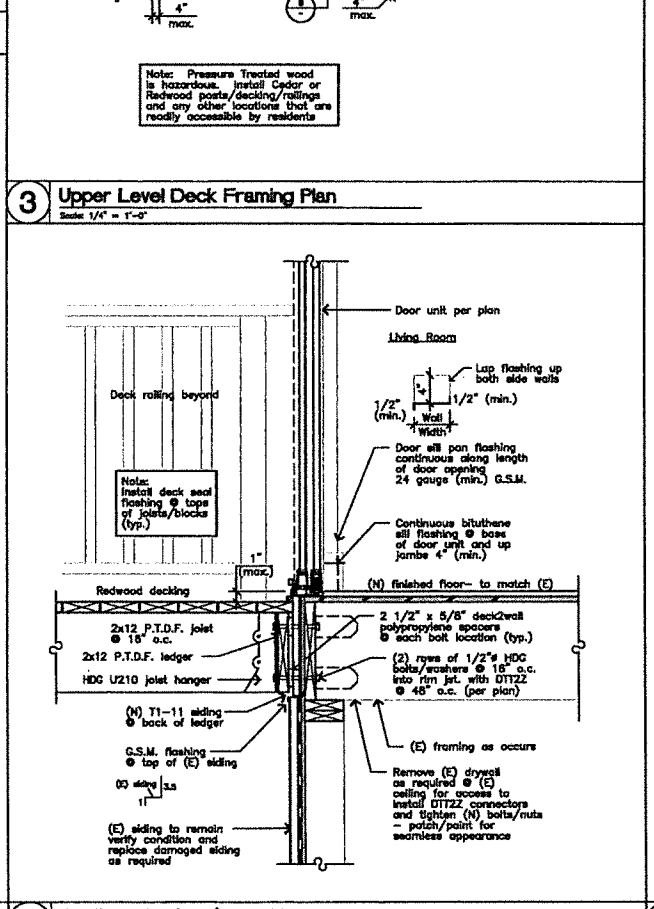
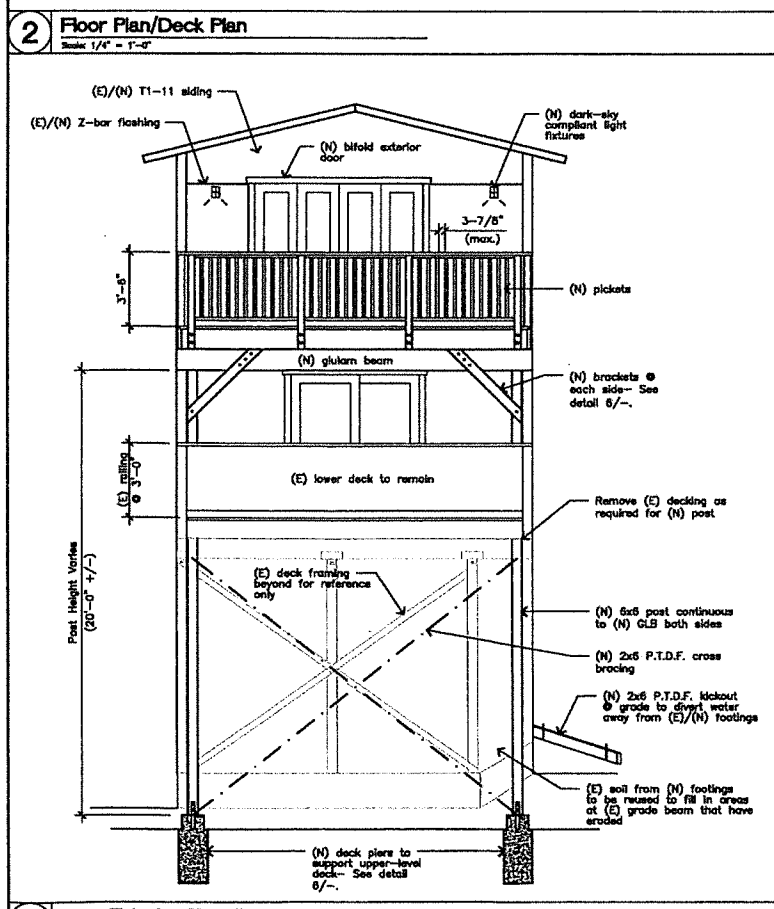
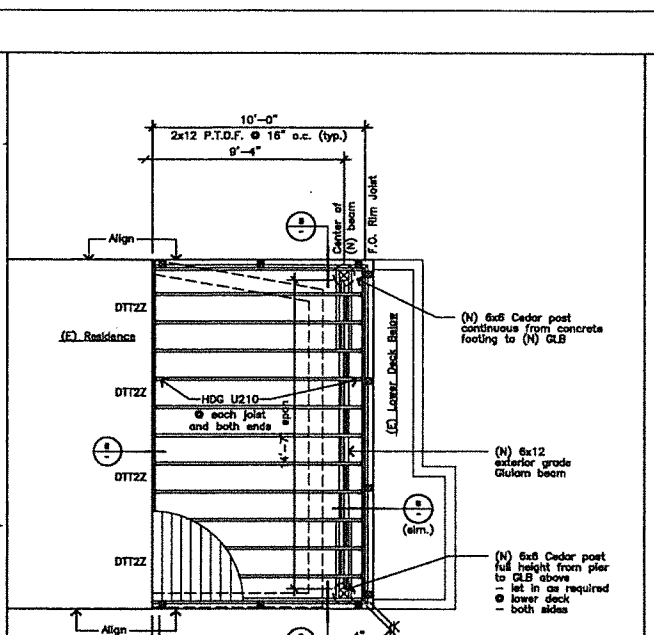
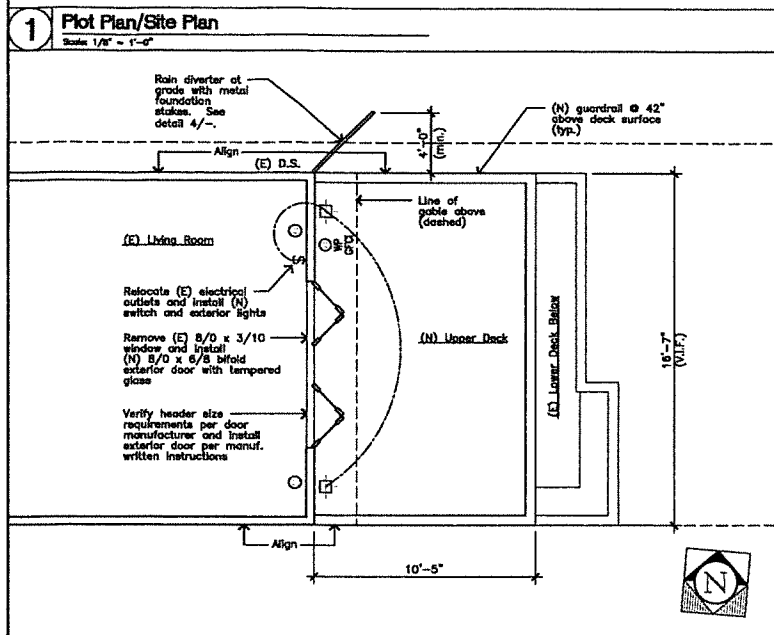
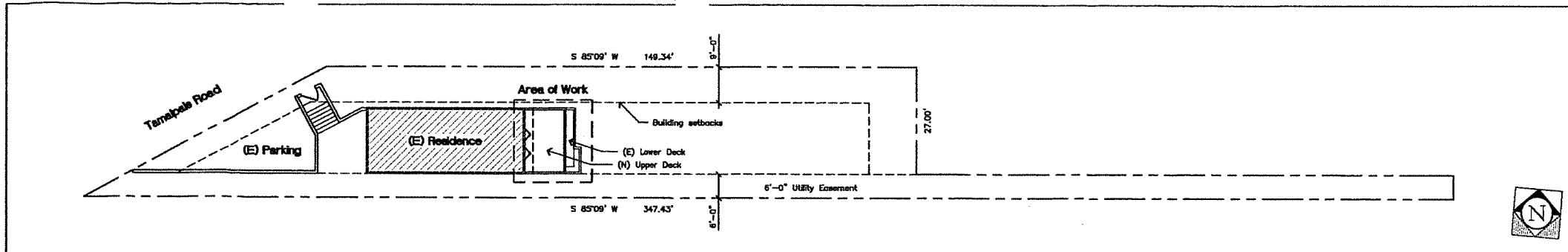


183 TAMALPAHS RD
BOTTOM FLOOR PLAN

1" = 5'

N





A Project Description

1 This project consists of the construction of a new 170 S.F. upper level deck for an existing residence in Fairfax, California. Also included in the scope of work is the installation of a new exterior tempered glass door and minor electrical items.

B Vicinity Map

C Sheet Notes

1) Verify all existing framing, mechanical, electrical and plumbing appurtenances in the area of work for compatibility with new utilities. Repair, replace or relocate existing utilities as required for new work.

2) The Contractor shall verify the installation of (1) smoke detector in each bedroom and the installation of (1) carbon monoxide detector outside each sleeping area.

The Contractor shall also verify the installation of (1) smoke and carbon monoxide detector on each floor level.

Smoke and carbon monoxide detectors may be battery operated in existing areas but shall be hard-wired when installed in areas of new work. All detectors shall be installed per manufacturer's written instructions including proximities to registers, walls and ceilings.

New smoke alarms shall be interconnected hard-wired with battery backup.

3) The finished slope of the deck is 1/4" (min.) and 1/2" (max.) per foot away from the building.

4) All exterior lighting shall be 'Dark-Sky' compliant. Verify with Owners on style.

RED MAPLE
Architects and Designers

707-823-8915

Architect

Red Maple Workshop Architects and Designers
Kenneth M. Berman, Architect

P.O. Box 1065
Sebastopol, CA 95473.1065
Phone: 707.823.8915

TOWN OF FAIRFAX
MAR 29 2021
RECEIVED

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Issued For	Stamp/Sign
General Review	
Design Review	
Financing	
Cost Estimating	
Building Permit	
Bidding	
Construction	

The Sobieraj Residence

New Deck

183 Tamalpais Road
Fairfax, California 94930
AP # 001-053-18
Zoning: RS6

Plot Plan/Site Plan, Framing Plans, Details and Notes

Miscellaneous	Revisions
PH Nov 2020	Sheet 1
BD Dec 2020	A1
DD Feb 2021	
CD Feb 2021	
BN - - -	
CA - - -	
FC - - -	

PROJECT #311 February 18, 2021 File: 311-A1

Exhibit B - Top Deck Design 2021