

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** October 31, 2023

**CASE NO(S):**

OLT-23-000746

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

Applicant and Appellant:	Constantine Rallis
Subject:	Minor Variance
Description:	To permit a cabana accessory structure
Reference Number:	MV-2022-36
Property Address:	12 Buchanan Crescent
Municipality/UT:	Aurora/York
OLT Case No.:	OLT-23-000746
OLT Lead Case No.:	OLT-23-000746
OLT Case Name:	Constantine Rallis v. Aurora (Town)

**Heard:** October 17, 2023, by Video Hearing

**APPEARANCES:**

**Parties**

**Counsel**

Constantine Rallis - (*in absentia*)

Town of Aurora

S. Szlapczynski

**MEMORANDUM OF ORAL DECISION BY STEVEN T. MASTORAS ON OCTOBER 17, 2023 AND ORDER OF THE TRIBUNAL**

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## INTRODUCTION

[1] The matter before the Tribunal is a Merit Hearing (“Hearing”) (“*de novo*”) pursuant to an Appeal under s.45(12) of the *Planning Act* (“Act”) based on a decision by the Committee of Adjustment (“COA”) from the Town of Aurora (“Town”) refusing an application for a minor variance (“Application”). The Appeal has been filed by Constantine Rallis (“Appellant”) regarding the property located at 12 Buchanan Crescent (“Subject Property”).

[2] The purpose of the Application is to facilitate the construction of a cabana accessory structure with a proposed exterior side yard setback of 1.3 metres (“m”), whereas Zoning By-law No. 6000-17 (“ZBL”) requires a setback of 6.0m. The variance requested would bring the built-form cabana into conformity with the ZBL.

[3] A notice of the Hearing was properly issued by the Tribunal dated August 16, 2023, and is marked as Exhibit 1. The Municipal Record is marked as Exhibit 2, and the Witness Affidavit from Ms. Elaine Leung, dated October 10, 2023, is marked as Exhibit 3.

[4] Ms. Leung was present and provided expert land use testimony to support the application during the Hearing.

## STATUS REQUESTS

[5] There were no requests for Party or Participant Status.

[6] The Hearing proceeded as an uncontested matter, as Counsel for the Town, Mr. Szlapczynski, advised that he was present to provide any assistance to the Tribunal in its consideration of the Appeal and any conditions that the Tribunal may wish to impose.

## LEGISLATIVE FRAMEWORK

[7] As this is a Hearing *de novo*, s. 45(1) of the Act establishes the “four tests”. In other words, to authorize the variance, the Tribunal, in an Appeal, must be satisfied that the variance:

- a. Maintains the general intent and purpose of the official plan;
- b. Maintains the general intent and purpose of the Zoning By-law;
- c. Is minor in nature; and,
- d. Is desirable for the appropriate development or use of the land, building or structure.

[8] In addition, s. 3(5) of the Act requires the Tribunal's Decision to be consistent with policy statements and Provincial plans, including the Provincial Policy Statement 2020. The Tribunal must also have regard to the matters of Provincial interest set out in section 2 of the Act, as well as the decision of the COA and the information considered in the course of making its Decision, as set out in section 2.1(1) of the Act.

## PLANNING EVIDENCE

[9] Ms. Leung, a Registered Professional Planner from Macaulay Shiomi Housing Ltd. (“MSH”), outlined her Curriculum Vitae and was properly qualified to provide land use planning opinion evidence, and delivered her comprehensive contextual and planning rationale in support of the variance.

[10] Ms. Leung opined that the Application satisfies all requisite legislative tests relating to s.45(1) of the Act and is consistent with the Provincial Policy Statement 2020 (“PPS”), the Region of York’s Official Plan (“RYOP”), the Town’s Official Plan (“TOP”), and the Zoning By-law (“ZBL”), and is also representative of good planning in the public interest.

## **TESTS FOR MINOR VARIANCES**

Maintains the General Intent of the Official Plans (“RYOP” and “TOP”)

[11] Ms. Leung testified that the RYOP’s policies are appropriately maintained, with a particular focus on “Policies 2.1, 2.1.4, 4.0, and 4.1, along with the definitions of development, built-up area, community area, complete community, development, gentle density, housing options, and intensification.” (Exhibit 3, TAB 15). She also asserts that the “Urban Area” designation allows for a range of land uses, including intensification, which maximizes existing municipal infrastructure and services.

[12] Ms. Leung also testified that the TOP designates the Subject Property as “Stable Neighbourhood,” which permits pools and cabanas and allows for uses compatible with the surrounding area, which she asserts this Application represents.

[13] Furthermore, Ms. Leung opines that the cabana specifically “complies with the “low density residential policies of the TOP” and that the “development is consistent in-built form with the surrounding form and character of existing accessory buildings in the neighbourhood.” Therefore, she concludes that the Application conforms with the overall objectives of both the RYOP and the TOP.

Maintains The General Intent and Purpose of the Zoning By-law (“ZBL”)

[14] Ms. Leung testified that the site-specific nature of this Application meets all of the ZBL requirements except for the exterior side yard setback variance as requested. She asserts that the zoning specific to this property is “Detached Third Density Residential R3 (28)” pursuant to ZBL No. 6000-17, which permits accessory structures.

Maintains The General Intent and Purpose of the Zoning By-law (“ZBL”)

[15] Ms. Leung emphasizes that the additional structure is “incidental and accessory to the main residence,” and because of the unique nature of the Subject Property as a corner lot, she asserts that the variance requested along the west side is not adjacent to another lot and respectful of existing dwellings.

[16] Finally, Ms. Leung concludes that “the cabana meets the maximum height, lot coverage, and rear yard setback as required in the ZBL” and therefore conforms with the ZBL.

Is Desirable for The Appropriate Development or Use of The Land, Building or Structure.

[17] Ms. Leung testified that the development meets this test in that it is a single-storey accessory building with a flat roof, no shadow impact, and no windows, which ensures the privacy of neighbouring dwellings.

[18] Ms. Leung asserts that the cabana is compatible with neighbouring dwellings that have similar property characteristics and has a positive and appropriate impact on the neighbourhood, generally in keeping with good land use planning. She further maintains the structure in its current form, does not impact public safety and asserts that pedestrian activity is primarily limited to sidewalks across the street and that the structure does not have any adverse impact on neighbouring properties.

## Is Minor in Nature

[19] Ms. Leung opines that the variance request is minor in nature as it solely applies to the exterior side yard setback for the cabana only, functioning as a seasonal accessory structure along Buchanan Crescent, and which is incidental to the main dwelling unit.

[20] Ms. Leung emphasizes that this is evidenced further based on the fact that there are no other variances required pursuant to the ZBL, public safety is not at risk, the main residence is unaffected, and there is no adverse impact on or impediments to the neighbouring community's enjoyment or character elements. Furthermore, the fact that the cabana is screened with six-foot fencing and stone landscaping enhancing lot drainage supports her view that the variance requested is minor in nature.

## **Provincial Policy Statement 2020 ("PPS")**

[21] Ms. Leung testified that in her review of the applicable policies in the PPS, there is particular regard in the area of "Policies 1.1.1, 1.1.2, 1.1.3.1, 1.1.3.2, 1.1.3.3, 1.1.3.4, 1.1.3.5, 1.1.3.6, and 1.4.1, along with the definitions of development, housing options, intensification, and settlement areas" (Exhibit 3, TAB 14).

[22] Ms. Leung concludes that the Application maintains consistency with the PPS based on its adherence to a land use pattern within a settlement area, uses existing municipal infrastructure effectively, and represents positive development that is also well served by transit. Additionally, the neighbouring uses are compatible with the Application with a variety of commercial, institutional, and community services already in existence.

## Section 2, of the Planning Act

[23] Ms. Leung opined that the Application has regard for section 2 of the Act in part in these specific areas (Exhibit 3, TAB 13):

- (h) The orderly development of safe and healthy communities; and the resolution of planning conflicts involving public and private interests;
- (o) The protection of public health and safety;
- (p) The appropriate location of growth and development;
- (q) The promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians; and,
- (r) The promotion of built form that:
  - (i) Is well-designed,
  - (ii) Encourages a sense of place, and,
  - (iii) Provides for public spaces that are of high quality, safe, accessible, attractive and vibrant.

[24] Ms. Leung concludes that based on her analysis above and pursuant to the PPS, s. 2 of the Act, the RYOP, the TOP, and the ZBL, it was her opinion that the proposed minor variance to permit the cabana in its current built form is consistent with and conforms with all of the above, respectively. The variance requested also meets the “four tests” for a minor variance pursuant to s. 45(1) of the Act.

[25] Ms. Leung also concludes that her planning analysis is concurrent with the opinions of Town Planning Staff as outlined in their report to the COA (Exhibit 3, p. 34-38), whereby they conclude that “the requested variance meets the four tests” of the Act, subject to specific conditions as outlined in their report dated July 13, 2023, and provided to the Tribunal on consent by Counsel to the Town the day of the Hearing, along with the plan marked as Attachment “1”.

## **DISPOSITION**

[26] The uncontested oral and written testimony from Ms. Leung, which corresponds with the Planning Staff Report to the COA, provides all of the requisite planning rationale in support of the variance.

[27] The Tribunal concurs with this evidence and notes that the testimony of Ms. Leung, corroborated by the Planning Staff Report to the COA, clearly delineates that the requested variance is consistent with the PPS and s. 2 of the Act, conforms with the RYOP, the TOP, and the ZBL, and meets the “four tests” pursuant to s.45(1) of the Act.

[28] In conclusion, the Tribunal finds that it will allow the Appeal subject to the conditions on consent of the Parties and as submitted to the Tribunal by Counsel for the Town.

## **ORDER**

[29] **THE TRIBUNAL ORDERS that** the Appeal is allowed and the variance to By-law No. 6000-17 is authorized, subject to the following conditions:

- a) That the variance only applies to the subject property in conformity with the plan attached as Appendix “1” to the satisfaction of the Town of Aurora Director of Planning and Development Services or designate.



- b) That the owner at its sole cost and expense, provide a report along with a grading and drainage plan prepared by a Professional Engineer demonstrating that the drainage pattern on site has been maintained and the structure and any associated grading work completed at the site shall not cause any adverse impacts on the drainage of the adjacent properties, to the satisfaction of the Town of Aurora Director of Planning and Development Services or designate.

*“Steven T. Mastoras”*

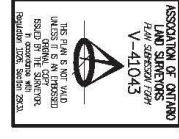
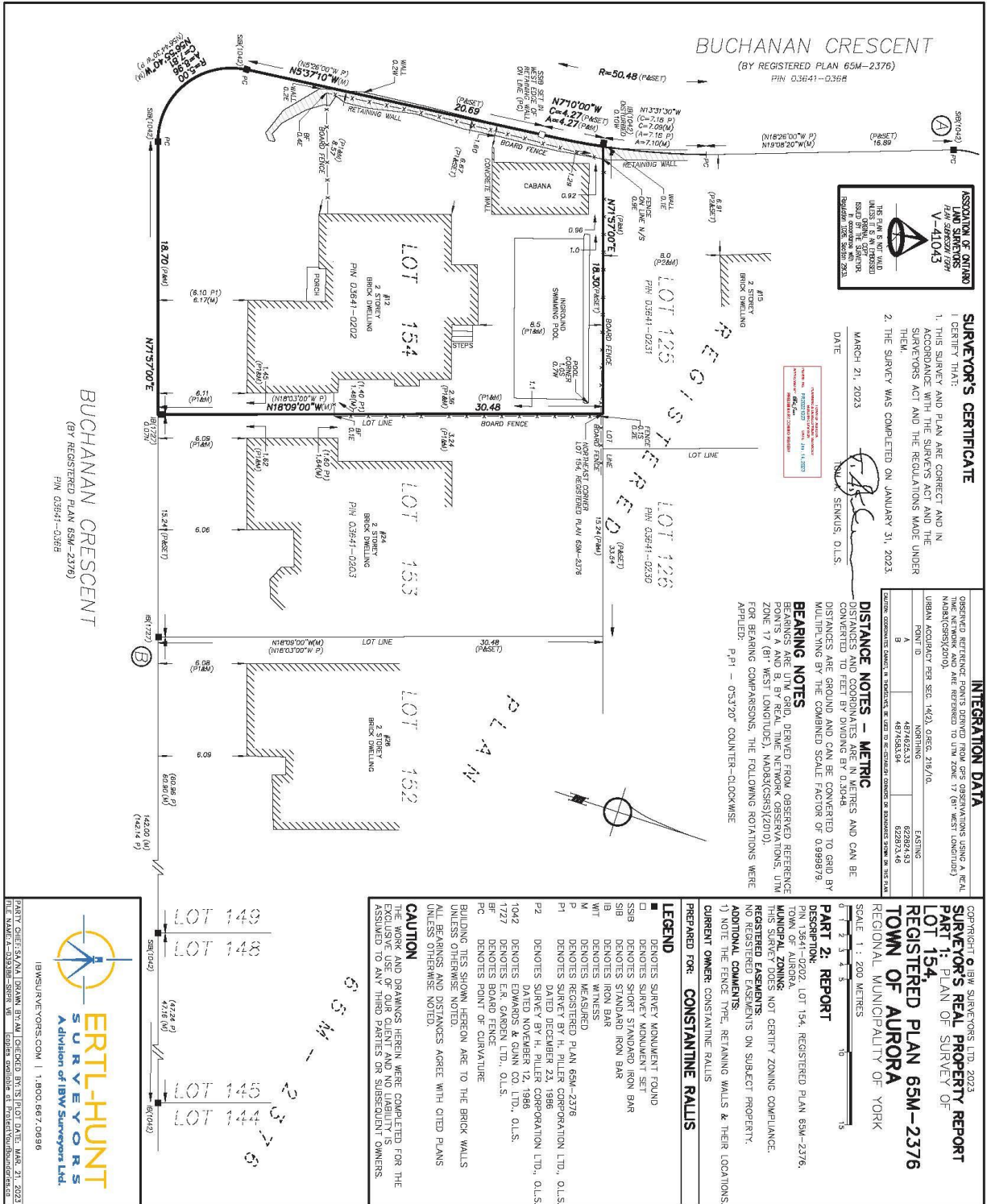
STEVEN T. MASTORAS  
MEMBER

**Ontario Land Tribunal**

Website: [www.olt.gov.on.ca](http://www.olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

# Attachment 1



**SURVEYOR'S CERTIFICATE**

I CERTIFY THAT:

1. THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEYOR'S ACT AND THE SURVEYORS ACT AND THE REGULATIONS MADE UNDER THEM.

2. THE SURVEY WAS COMPLETED ON JANUARY 31, 2023.

DATE: MARCH 21, 2023

N.M. STOKIUS, O.L.S.

INTEGRATION DATA	
GNSS REFERENCE POINTS DERIVED FROM GPS OBSERVATIONS USING A REAL TIME NETWORK AND ARE REFERRED TO UTM ZONE 17 (81° WEST LONGITUDE) MAGNAD(83)Q(2010).	
URBAN ACCURACY PER SEC. 14(2), OREG. 218/10.	
PROJ. ID	4574581394
EST. NO.	622872.46
EST. DATE	48/14/2014
EST. TIME	02:28:23.46
EST. USER	622872.46
EST. SYSTEM	NAD83(CRS)(2010)
EST. METHOD	GNSS
EST. STATUS	OK
EST. TYPE	REAL TIME

**DISTANCE NOTES - METRIC**

DISTANCES AND CAN BE CONVERTED TO GRID BY MULTIPLYING BY THE COMBINED SCALE FACTOR OF 0.999979.

**BEARING NOTES**

BEARINGS ARE TRUE GRID, DERIVED FROM OBSERVED REFERENCE POINTS AND COMPARISONS MADE BY DISTANCE CONCEPT AND DECOMPOSITION BY DISTANCE CONCEPT. THE BEARING IS TRUE GRID (81° WEST LONGITUDE), NAD83(CRS)(2010).

FOR BEARING COMPARISONS, THE FOLLOWING ROTATIONS WERE APPLIED:

P1 - 0°37'20" COUNTER-CLOCKWISE

**LEGEND**

- DENOTES SURVEY MONUMENT FOUND
- DENOTES SURVEY MONUMENT SET
- SSB DENOTES SHORT STANDARD IRON BAR
- SB DENOTES STANDARD IRON BAR
- IB DENOTES IRON BAR
- MT DENOTES METAL
- M DENOTES MEASURED
- P DENOTES REGISTERED PLAN 65M-2376
- P1 DENOTES SURVEY BY H. PILLER CORPORATION LTD., O.L.S. DATED DECEMBER 23, 1986
- P2 DENOTES SURVEY BY H. PILLER CORPORATION LTD., O.L.S. DATED NOVEMBER 12, 1986
- 1042 DENOTES EDWARDS & GUNN CO. LTD., O.L.S.
- 1727 DENOTES E.R. GARDEN LTD., O.L.S.
- BR DENOTES BRICK DWELLING
- BR DENOTES BRICK DWELLING
- BR DENOTES POINT OF CORNER
- BR DENOTES TESS SHOWN HEREON ARE TO THE BRICK WALLS UNLESS OTHERWISE NOTED
- BR DENOTES TESS SHOWN HEREON ARE TO THE BRICK WALLS UNLESS OTHERWISE NOTED

**CAUTION**

THE WORK AND DRAWINGS HEREIN WERE COMPLETED FOR THE EXCLUSIVE USE OF OUR CLIENT AND NO LIABILITY IS ASSUMED TO ANY THIRD PARTIES OR SUBSEQUENT OWNERS.

**ERTL-HUNT SURVEYORS**

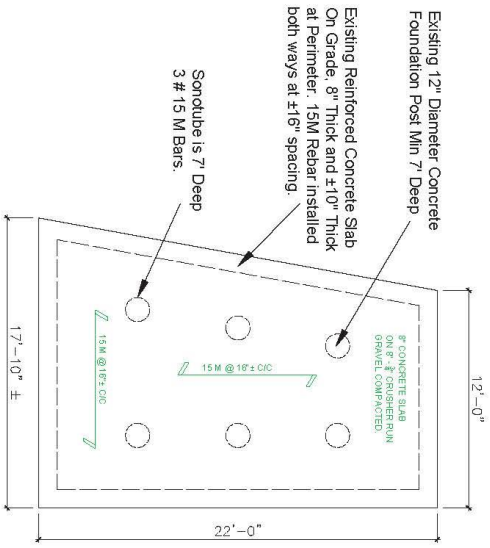
Division of IBW Surveyors Ltd.

IBWSURVEYORS.COM | 1.800.667.0696

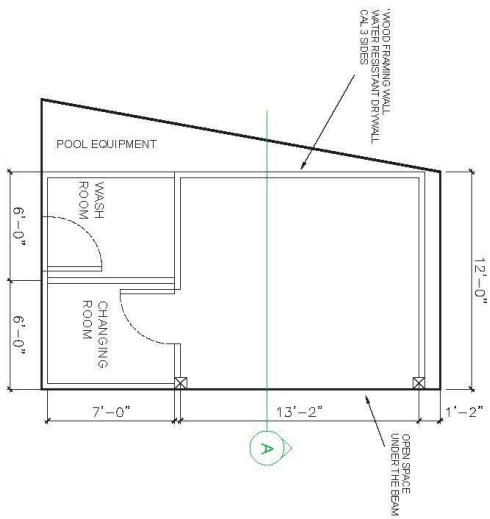
PROFESSIONAL REGISTRATION NO. 11201

PROFESSIONAL REGISTRATION NO. 11201

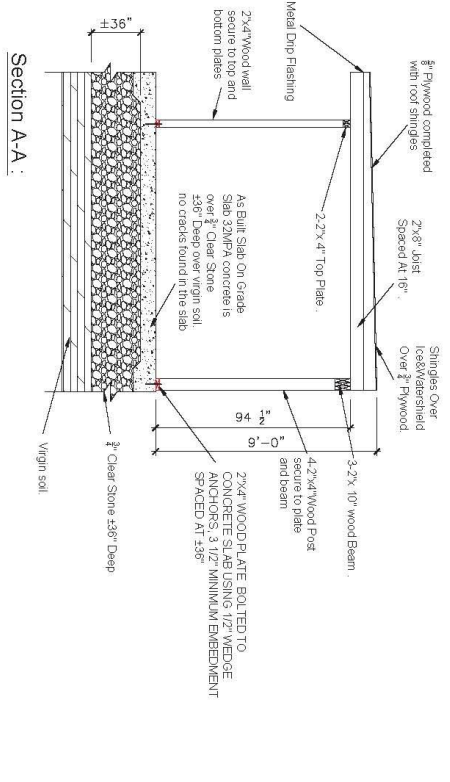
PROFESSIONAL REGISTRATION NO. 11201



FOUNDATION SLAB (As-Built):



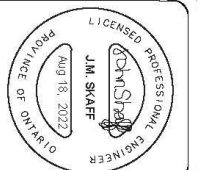
FLOOR PLAN:



Section A-A:

- NOTES:**
- CONSTRUCTION TO BE IN ACCORDANCE WITH THE LATEST EDITION OF ONTARIO BUILDING CODE
  - WALL TO BE CONSTRUCTED FROM 2x4" WOOD STUDS SPACED AT @16" O.C. CMV 2x4 SILL PLATE PLUS 2, 2x4 HEADER IN MY OPINION AND ENGINEERING JUDGEMENT. THE SUB-GRADE UNDER SLAB ON GRADE WILL SUPPORT THE SLAB AND THE PROPOSED CABANA, CONSTRUCTION OF FOOTINGS WILL HAVE NO IMPACT OF THE SLAB ON GRADE. BECAUSE THE SLAB IS RESTING OVER GRAVEL OVER VIRGIN SOIL.
  - NOTIFY THIS ENGINEER FOR INSPECTION

TOWN OF AURORA  
 PLANNING & DEVELOPMENT SERVICES  
 BUILDING DIVISION  
 PERMIT NO.: PR20221023      DATE: Sept. 7, 2022  
 APPROVED BY: *Stacy Greenwood*  
 PRELIMINARY ZONING REVIEW



Name: **James Skaff**  
 Construction Management Ltd.  
 jms@cam-engineering.ca  
 416 846 8121

CABANA DESIGN  
 4172 BUCHANAN CRES.  
 AURORA, ONT.

PROJECT NO.: 22H-88  
 SCALE: NTS      DATE: JULY 2022  
 DRAWN BY: AS      CHECKED BY: AS  
 DRAWING NO. 81      PAGE: 3 OF 3