

# DECISION AND ORDER

**Decision Issue Date**      Wednesday, May 02, 2018

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): JOSEPH CULOTTI

Applicant: PARRACK DANIEL JAMES

Property Address/Description: 21 MATTHEW CRT

Committee of Adjustment Case File Number: 17 265254 WET 03 MV

TLAB Case File Number: **18 118415 S45 03 TLAB**

**Hearing date:**      Tuesday, April 24, 2018

**DECISION DELIVERED BY D. Lombardi**

## APPEARANCES

Name	Role	Representative
Parrack Daniel James	Applicant/Party	
Vanessa Gnidec	Owner	
Joseph Culotti	Appellant	
Linda Wilson	Appellant's Spouse	

## INTRODUCTION

This was a motion brought by the Applicant, James Parrack, to recognize a settlement reached with the Appellant, Mr. Joseph Culotti. A Hearing Date of June 28, 2018, has been assigned to hear the appeal in full.

Generally, the Toronto Local Appeal Body's (the "TLAB") policy is to retain the hearing date unless events, properly advanced, demonstrate that an earlier disposition is appropriate.

However, the parties to this appeal agreed much before the date that they had achieved a settlement of the two variances that were in contention in the appeal. Thus the TLAB determined, on the consent of all parties present, to convert the Motion Hearing into a Settlement Hearing, as permitted under Rule 19 of the TLAB's Rules of Practice and Procedure.

Since there was evidence that there were no other parties or participants to this hearing, the parties present were satisfied with the revised variances and conditions, and the TLAB concluded that no further notice of a settlement hearing was required under Rule 19.3

This Rule states:

19.3 The Local Appeal Body shall give notice to all Parties and participants of the date, time and location of the Settlement Hearing and shall thereafter conduct a Settlement Hearing on the terms of the proposed settlement.

Further, Rule 19.4 provides:

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

## **BACKGROUND**

The Applicant had applied to the Committee of Adjustment ("COA") for a total of two (2) variances under the former City of Etobicoke By-law 619-2012. There were no variances required under the new City of Toronto By-law 569-2013, as the subject property is exempt from this By-law.

These are the variances approved by the COA:

- 1. Section (2)(C), By-law 619-2012**

The maximum permitted coverage is 55% of the lot area (79.2 m<sup>2</sup>).

The altered dwelling will cover 57.2% of the lot area (82.4 m<sup>2</sup>).

- 2. Section 320-42(E)**

The maximum projection for a deck into the required rear yard setback is 1.6 m.

The proposed deck will project 2.6 m into the required rear yard setback.

The COA approved these variances by its decision dated February 8, 2018. Mr. Culotti appealed to the TLAB on February 16, 2018 and attended the hearing of the motion.

## **JURISDICTION AND MATTERS IN ISSUE**

Although the parties agreed to a settlement of issues that arose from the COA approval of the variances requested by the Applicant, the TLAB must hear evidence respecting all of the variances sought, including any modifications, so as to satisfy itself that they meet the four tests in subsection 45(1) of the *Planning Act* (the “Act”). The appeal is a *hearing de novo* and therefore a new consideration of the merits or otherwise of the original application.

The tests are whether the variances:

- *Maintain the general intent and purposes of the Official Plan;*
- *Maintain the general intent and purpose of the Zoning By-law;*
- *Are desirable for the appropriate development or use of the land; and,*
- *Are minor.*

The application of Provincial plans and policy are also to be considered.

This panel member stated the following in introductory remarks in the settlement hearing;

*“...If we decide that we can proceed to resolve this appeal today, we will need to hear the same evidence and arguments from Mr. Parrack that he presented to the COA. The rationale is that the TLAB must be convinced that these variances meet the tests in section 45 of the Act, just as the COA did. As a de novo hearing, it will be a rehearing of the matter at the COA.”*

## **EVIDENCE**

In his opening remarks, the Applicant gave a brief description of the two proposed variances, pointing out that they were minor variances dealing with the projection and coverage of a proposed wooden deck at the rear of the dwelling at 21 Matthew Court (the “subject property”). He referenced Exhibit 1 (Plans - Back Deck, dated February 1, 2018), which represent the drawings of the proposed rear deck.

Mr. Parrack confirmed that the variances approved by the COA represented and reflected reductions in the original plans proposed by the Applicant. He noted that he had worked closely with the Appellant and his neighbours, as well as with City Planning Staff to arrive at variances that could be supported by the COA. He also noted that he

had obtained letters from abutting neighbours in support of the variances, which were submitted to the COA.

Mr. Parrick argued that the proposed variances were slight increases to what is permitted in the By-law and were indeed minor in nature and met the intent of both the Official Plan and the Zoning By-law.

Mr. Culotti, who resides at 125 prince George Drive, immediately north of the subject property, indicated that prior to purchasing his home in 2012, he was advised by the previous home owner that for reasons of privacy no second storey balconies or decks would be allowed at the rear of the townhouse dwellings immediately to the north of his property, including the subject dwelling. He argued that the mere fact that the developer of the townhouse complex had included 2<sup>nd</sup> storey doors for a balcony/deck at the rear of each unit but never had added decks indicated that these were not permitted.

He noted that his rear yard and elevation (Exhibit 3) are most impacted by views from the rear of this townhouse complex as any proposed balcony would face directly into his rear yard and master bedroom. He stated he appealed the COA decision because he was not able to attend and wanted to provide his perspective on the proposal. He stated that to allow the two variances and, therefore, the construction of the deck would in his opinion totally disregard his concern for privacy and would greatly reduce the value of his home.

Despite the concerns expressed, Mr. Culotti agreed with the variances being granted provided a condition aimed at protecting his privacy was added.

## **ANALYSIS, FINDINGS, REASONS**

TLAB is to consider conformity with provincial plans and consistency with provincial policy. There is nothing in the TLAB file, including the COA documentation, or the evidence, that raised any issues on these matters.

As well, TLAB is satisfied, from the Applicant's very brief outline of the variances requested, that they were indeed minor and met the intent of both the Official Plan and the Zoning By-law. I have considered and agree with the conclusion of the COA to approve both variances as meeting all four of the above referenced statutory tests. They appear to be minor and desirable variances in the by-law requirements, and will maintain the integrity of the use of the rear yard.

Nevertheless, both parties agreed in the terms of the settlement (Minutes of Settlement, dated April 2, 2018) to the inclusion of an uninterrupted/contiguous privacy screen 1.98 m in height across the entire north side of the approved 2<sup>nd</sup> storey deck (Exhibit 2 – Pages 5-8). As a result, both parties consented to a condition being imposed on a decision that will require construction in accordance with the revised

plans filed with the TLAB (Exhibit 2 – Illustration of Privacy Screen - 21 Matthew Court, dated, February 5, 2018), which reflects the basis of the agreed settlement. .

## **DECISION AND ORDER**

The appeal is allowed in part and the following variances are approved subject to the following conditions:

**1. Section (2)(C), By-law 619-2012**

The maximum permitted coverage is 55% of the lot area (79.2 m<sup>2</sup>).

The altered dwelling will cover 57.2% of the lot area (82.4 m<sup>2</sup>).

**2. Section 320-42(E)**

The maximum projection for a deck into the required rear yard setback is 1.6 m.

The proposed deck will project 2.6 m into the required rear yard setback.

The original hearing date of June 28, 2018 is released.

**Condition:**

1. The proposal be developed substantially in accordance with the plans submitted to the Committee of Adjustment, attached as **Attachment 1**, dated February 5, 2018, received by the Toronto Local Appeal Body. Any other variance(s) that may appear on these plans but are listed in the written decision are NOT authorized.
2. The rear deck be developed substantially in accordance with the north elevation and isometric view drawings (Pages 6 and 8), attached as **Attachment 1**, and dated February 5, 2018 (Revision Date) with an uninterrupted/contiguous privacy screen of 1.98 meters in height across the entire north side of deck. Any other variance(s) that may appear on these plans but are not listed in the written decisions are NOT authorized.

The original Hearing Date of June 28, 2018 is released.

X 

---

Dino Lombardi  
Panel Chair, Toronto Local Appeal Body

# Attachment 1

## 21 Matthew Court - Back Deck

21 Matthew Ct.  
Toronto, ON

S-01 - GENERAL NOTES  
S-02 - GENERAL NOTES  
S-03 - SITE PLAN  
S-04 - FRAMING PLAN  
S-05 - SOUTH ELEVATION  
S-06 - NORTH ELEVATION  
S-07 - EAST ELEVATION

DRAWING LIST



REVISIONS	
MM/DD/YY	REMARKS
1 10/27/17	Issued for Committee of Adjustments Review
2 01/29/18	Re-issued for Committee of Adjustments Review
3 01/31/18	Re-issued for Committee of Adjustments - Minor Variances
4 02/16/18	Re-issued for Committee of Adjustments - Minor Variances
5 02/16/18	Re-issued for Committee of Adjustments - Minor Variances

00

5

EXHIBIT 2

## GENERAL NOTES:

### 1.0 GENERAL

1.1 All construction shall conform to the requirements of the Ontario Building Code 2012 (hereafter referred to as OBC).

### 2.0 SITE WORK

2.1 Footings shall be in all cases not less than 4'-0" below finished grade. See structural specifications for required bearing capacity of soil.

2.2 Treat soil in area of construction with termite and carpenter ant protection in accordance with the Ministry of Environment standards.

2.3 Remove organic material under slabs-on-grade. Use 6" of granular fill compacted to 98% standard proctor density under slabs, porches and steps. Refer to OBC for further requirements.

2.4 Provide bituminous dampproofing (or waterproofing where hydrostatic pressure exists) on cement parging on concrete block foundation walls. Parging and dampproofing (or waterproofing as required) shall cover-over the top of footings. Refer to OBC for further requirements.

2.5 Provide minimum one course of masonry units, in foundation walls, without voids to protect against transmission of soil gas.

### 3.0 WOOD

3.1 Exterior wood columns shall be pressure treated per OBC.

3.2 Rough carpentry to comply with the OBC.

3.3 Wood framing members, that are not pressure treated with a wood preservative and which are supported on concrete or concrete block that is in contact with the ground or fill, shall be separated from the concrete or concrete block by at least 2 mil polyethylene film or type 'S' roll roofing.

3.4 Typical partitions, load bearing and non-load bearing are 2"x6" studs spaced at 16" o.c. with a 2"x6" bottom plate and double 2"x6" top plate.

3.5 Trim for exterior/interior shall be "Custom" grade softwood for paint as defined by AWMAC standards.

3.6 Wood subfloor shall be T&G plywood glued and screwed to wood joists.

3.7 Install 3/4" plywood backing for towel bars, grab bars, and built-in cabinets.

### 4.0 THERMAL AND MOISTURE PROTECTION

4.1 Provide minimum 1:300th of the insulated ceiling area in ventilation to roof space and attics for 1:6 roof slopes and steeper. For shallower slopes and flat roofs, vent at 1:150th of the insulated ceiling area.

4.2 Provide continuous exterior air barrier and 6 mil poly vapour barrier.

4.3 Seal Air barrier at all penetrations, at junctions with plywood subfloor, at door and window frame junctions, and at perimeter foundation wall below basement slab.

4.4 Provide continuous closed cell foam air seal or gasket between sill plates and concrete foundation wall and sill plates and plywood subfloor.

4.5 Provide preformed polystyrene boxes around outlet boxes in exterior walls and seal to gypsum board. Seal all penetrations through polyethylene boxes.

4.6 Seal within floor and roof structure around perimeter of wood blocking, framing and rigid insulation to provide air tight junction between exterior walls and roof, and exterior walls and floor. Use non-shrink and non-drying air barrier sealant.

4.7 Provide moisture seal around attic access door opening.

4.8 Conform to all aspects of the OBC 2012.

### 5.0 WINDOWS, SKYLIGHTS AND DOORS

5.1 Windows and skylights shall comply with OBC. Provide all operating hardware, screens, weatherstripping and muntin bars.

5.2 All windows to be flashed at the head, with weathers for drainage.

### 7.0 ROOFING

7.1 Asphalt Roofs with slopes from 1:6 to 2:6 to meet CAN3-A123.52 and conform to the requirements of the OBC.

### 8.0 PLUMBING FACILITIES

8.1 Plumbing facilities shall conform to the requirements of the OBC.

### 9.0 VENTILATION

9.1 Ventilation of rooms shall conform to the requirements of the OBC.

### 10.0 HEATING AND AIR CONDITIONING

10.1 Heating and air conditioning of rooms and spaces shall conform to the requirements of the OBC.

### 11.0 ELECTRICAL FACILITIES

11.1 Electrical design to be reviewed by electrician and to be adjusted as required to conform to the requirements of the OBC and the applicable municipal and provincial standards and codes, and shall be installed by only by a certified and liscenced electrician.

## GENERAL NOTES



21 Matthew Ct. - Back Deck

#### REVISIONS

	MM/DD/YY	REMARKS
1	10/27/17	Issued for Committee of Adjustments Review
2	01/29/18	Re-issued for Committee of Adjustments Review
3	01/31/18	Re-issued for Committee of Adjustments - Minor Variances
4	02/05/18	Re-issued for Committee of Adjustments - Minor Variances
5	12/1/18	-

01  
S

## GENERAL NOTES (continued):

11.2 In insulated ceiling spaces always use "Insulated Ceiling Frame Kits" with vapour barriers, for recessed pot lights. Follow manufacturers instructions regarding the clearance to spray foam insulation and other insulations. Otherwise, maintain a minimum clearance of 2" from spray foam, and fill with non-combustible insulation once the spray foam has set.

### 12.0 PREFABRICATED ITEMS

12.1 All prefabricated items such as steel, stone, windows, and cabinets are to be site measured by the contractor, manufacturer, or installer prior to fabrication of the item. Discrepancies to be reported to the Engineer of Record prior to construction.

12.2 All items to have shop drawings prepared by manufacturer, for submittal to the Engineer prior to construction.

### 13.0 LIGHTNING PROTECTION

13.1 Provide lightning protection where municipal and provincial standards, regulations, and codes require.

13.2 Provide lightning protection for cottages even if no regulations require it.

### 14.0 RESISTANCE TO FORCED ENTRY

14.1 General Contractor to provide resistance to forced entry in accordance with the requirements of the OBC.

### 15.0 MASONRY

15.1 General Contractor to provide veneer ties in accordance with the OBC for any masonry veneers.

15.2 General Contractor to provide lateral support and ties for all masonry walls in accordance with the requirements of the OBC.

## SMOKE ALARMS

Smoke alarms must be installed at or near ceilings, at least one (1) on each floor, near stairs connecting the floor levels, and either inside or within 16'5" of each bedroom. Alarms shall be audible within each bedroom when intervening doors are closed. Smoke alarms must be powered with a direct, permanent electrical line and shall have no disconnect switch between the overcurrent circuit device on the alarm. The maximum distance between alarms shall be 49'3". Alarms must be wired so that activation of one alarm causes all alarms in the dwelling unit to sound. Alarms must be installed in accordance with the manufacturers instructions and any manufacturers instructions regarding required maintenance of smoke alarms shall be posted in an accessible location to residents. See OBC for further requirements.

## CARBON MONOXIDE DETECTORS

Install a minimum of one (1) carbonmonoxide detector per floor including the basement. In dwelling units with attached storage garages and/or fuel burning appliances, install detectors adjacent to each sleeping area so that the alarm can be heard clearly inside bedroom when all intervening doors are closed. All carbon monoxide detectors are to be located per building department specifications. All detectors are to be permanently connected to an electrical circuit and shall have no disconnect switches between the overcurrent device and the detector. All detectors shall be linked together so that if one sounds, they all sound. All detectors are to meet requirements of: OBC, CAN/CGA-6.19 "Residential Carbon Monoxide Alarming Devices", CSA 6.19 "Residential Carbon Monoxide Alarming Devices", or UL 2034 "Single and Multiple Station Carbon Monoxide Detectors" and are to be installed in accordance with the manufacturers instructions and all applicable municipal by-laws.

## IMPORTANT STRUCTURAL NOTE

THE STRUCTURAL DESIGN SHOWN HEREIN HAS BEEN COMPLETED IN ACCORDANCE WITH ALL APPLICABLE PROVISIONS OF THE ONTARIO BUILDING CODE 2012.

THE STRUCTURAL DESIGN IS BASED ON ASSUMED DIRECTION OF FRAMING AND ON ESTIMATED SITE MEASUREMENTS. THEREFORE, IT IS ESSENTIAL TO CONFIRM THAT THE ACTUAL CONDITIONS DO NOT DIFFER FROM THOSE ASSUMED ON THE STRUCTURAL DRAWINGS. IF AT ANY POINT DURING THE CONSTRUCTION THE CONTRACTOR IS UNSURE ABOUT THE ACCURACY OF THE STRUCTURAL ASSUMPTIONS, THEY SHOULD REQUEST A SITE INSPECTION FROM THE ENGINEER BEFORE PROCEEDING.

ONCE THE FINISHES HAVE BEEN REMOVED AND/OR THE STRUCTURE HAS BEEN EXPOSED, THE CONTRACTOR SHOULD REQUEST THAT THE ENGINEER MAKE A SITE VISIT TO CONFIRM THAT THE STRUCTURAL ASSUMPTION MATCH THE EXISTING STRUCTURE.

THE CONTRACTOR MUST PROVIDE ADEQUATE TEMPORARY STRUCTURAL SUPPORT DURING CONSTRUCTION. IF EVER THE CONTRACTOR IS UNCERTAIN AS TO WHETHER THE TEMPORARY SUPPORT IS ADEQUATE, A LICENCED STRUCTURAL ENGINEER SHOULD BE CONSULTED BEFORE THE EXISTING STRUCTURE IS REMOVED AND/OR COMPROMISED.

## GENERAL NOTES (CONT.)



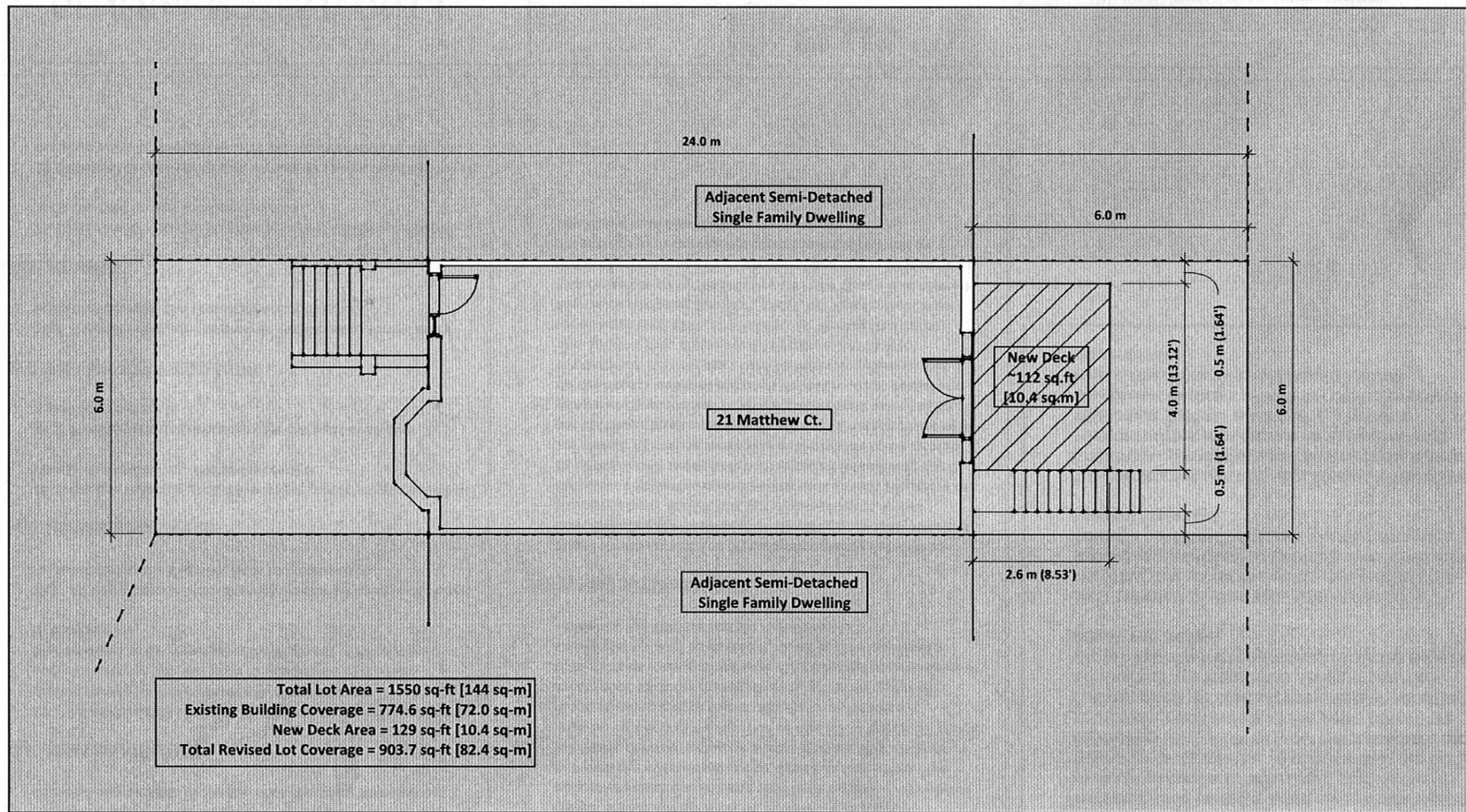
21 Matthew Ct. - Back Deck

### REVISIONS

REVISIONS		REMARKS
1	10/27/17	Issued for Committee of Adjustments Review
2	01/29/18	Re-issued for Committee of Adjustments Review
3	01/23/18	Re-issued for Committee of Adjustments - Minor Variances
4	02/05/18	Re-issued for Committee of Adjustments - Minor Variances
5		

02

S



# SITE PLAN

INTS



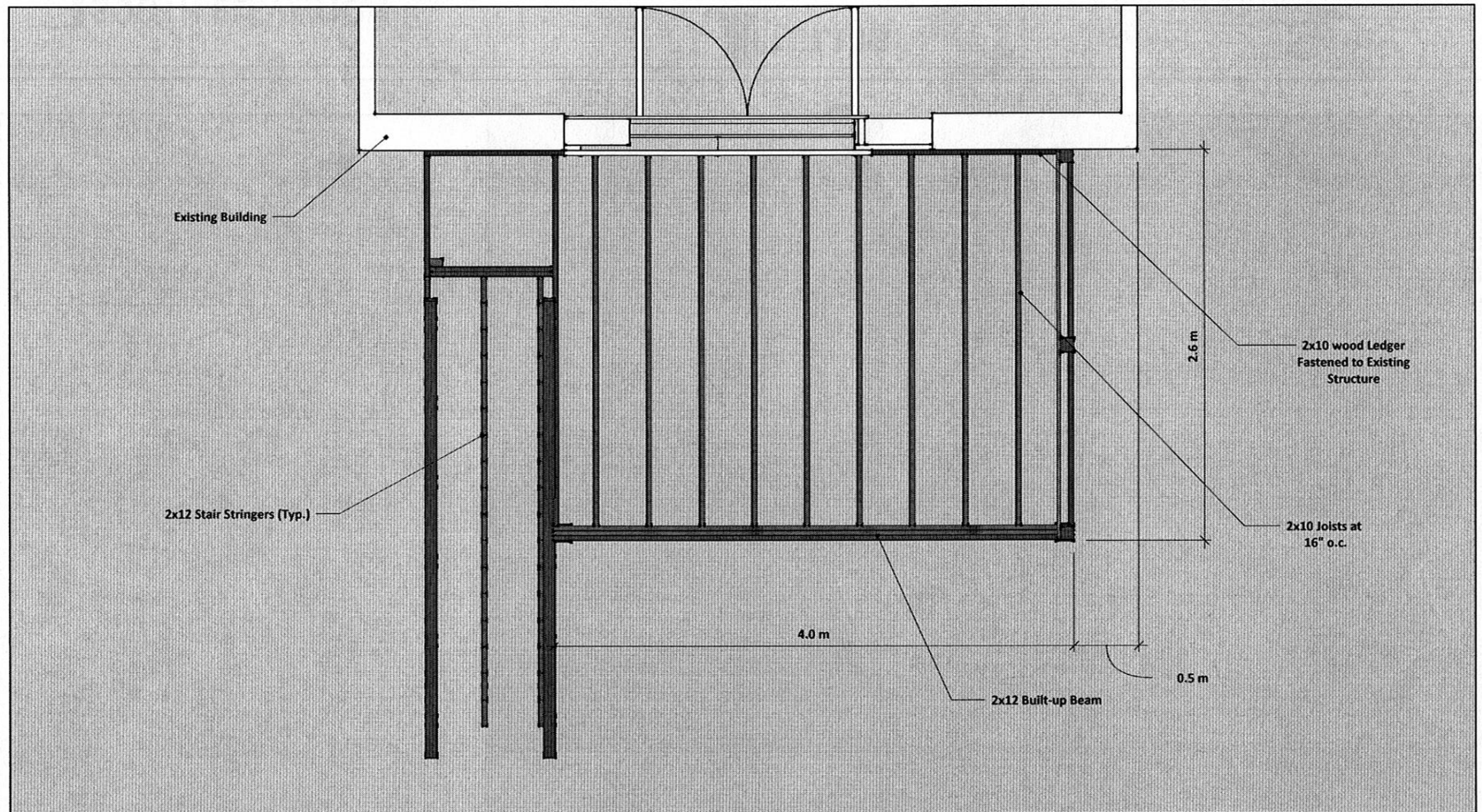
21 Matthew Ct. - Back Deck

## REVISIONS

MM/DD/YY	REMARKS
10/27/17	Issued for Committee of Adjustments Review
01/29/18	Re-issued for Committee of Adjustments Review
01/31/18	Re-issued for Committee of Adjustments - Minor Variances
02/05/18	Re-issued for Committee of Adjustments - Minor Variances
02/05/18	Re-issued for Committee of Adjustments - Minor Variances

03

S



# FRAMING PLAN

Scale = 1:30



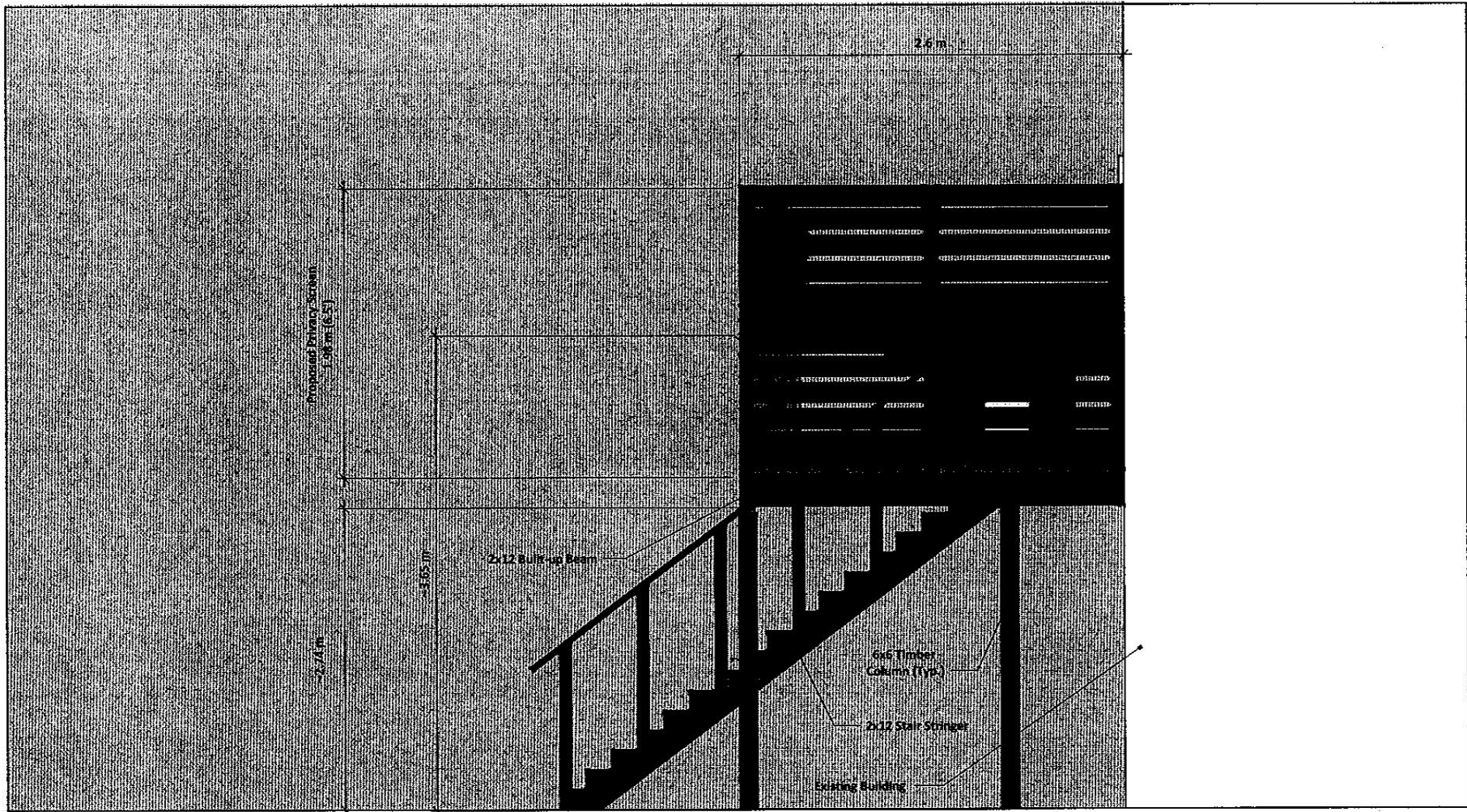
21 Matthew Ct. - Back Deck

## REVISIONS

MM/DD/YY	REMARKS
1 10 /27 /17	Issued for Committee of Adjustments Review
2 01 /29 /18	Re-issued for Committee of Adjustments Review
3 01 /31 /18	Re-issued for Committee of Adjustments - Minor Variances
4 02 /05 /18	Re-issued for Committee of Adjustments - Minor Variances
5	

04

S



# NORTH ELEVATION

Scale = 1:30



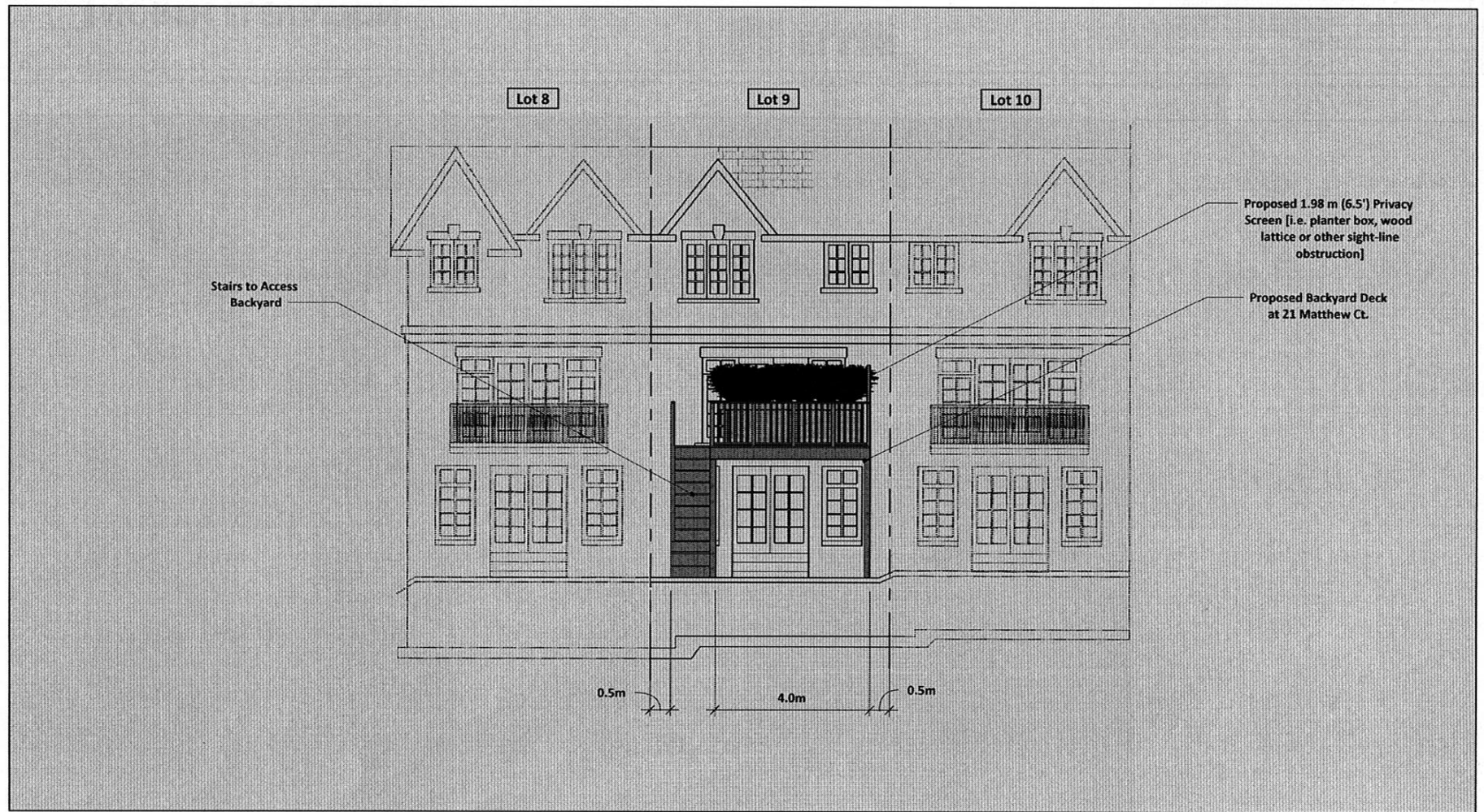
21 Matthew Ct. - Back Deck

## REVISIONS

MM/DD/YY	REMARKS
1 10/27/17	Issued for Committee of Adjustments Review
2 01/29/18	Re-issued for Committee of Adjustments Review
3 01/31/18	Re-issued for Committee of Adjustments - Minor Variations
4 02/05/18	Re-issued for Committee of Adjustments - Minor Variations
5 02/05/18	...

06

S



**EAST ELEVATION**

Scale = 1:30



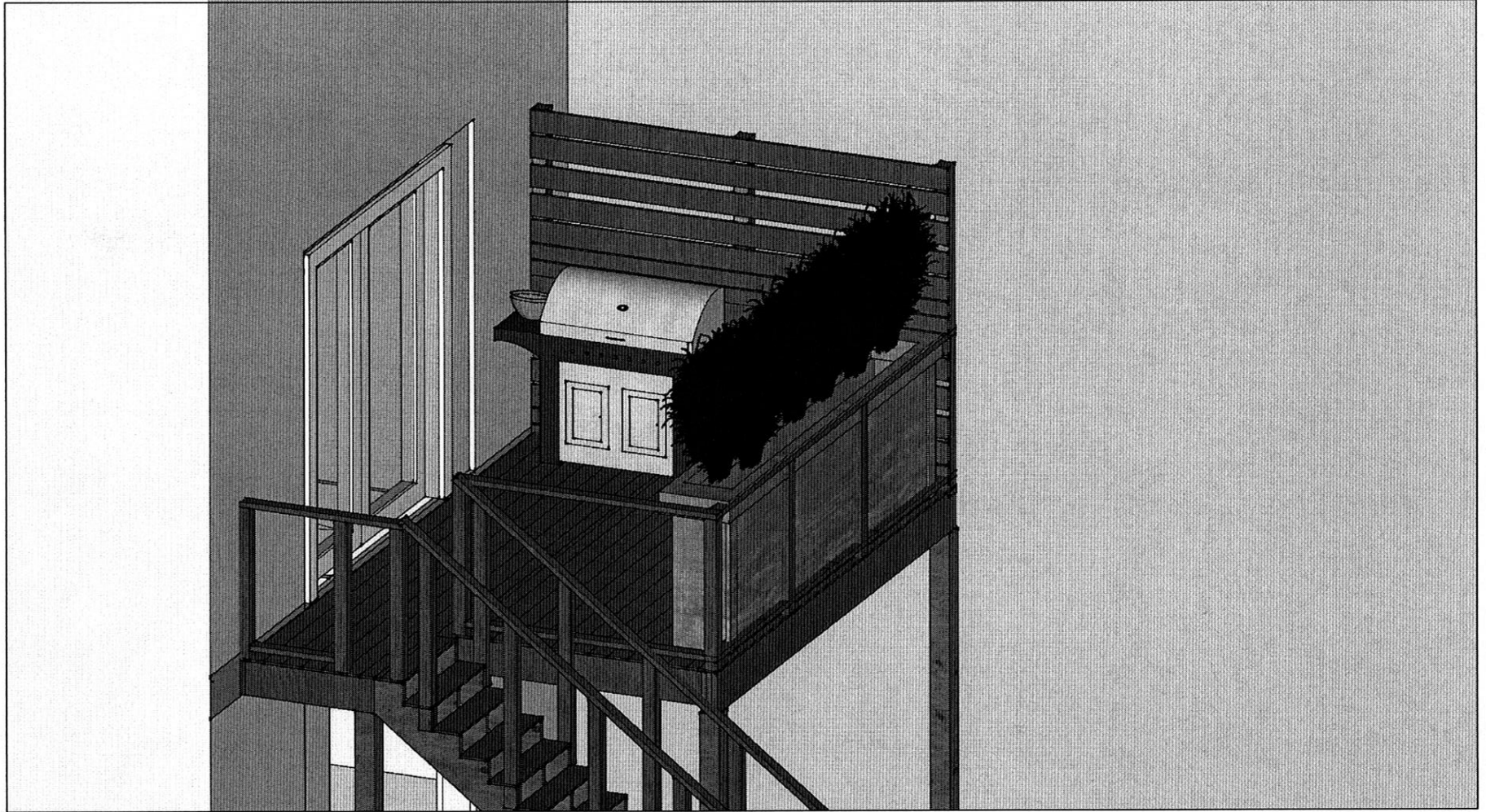
21 Matthew Ct. - Back Deck

REVISIONS

MM/DD/YY	REMARKS
1 10 /27 /17	Issued for Committee of Adjustments Review
2 01 /29 /18	Re-issued for Committee of Adjustments Review
3 01 /31 /18	Re-issued for Committee of Adjustments - Minor Variances
4 02 /05 /18	Re-issued for Committee of Adjustments - Minor Variances
5 -- -- --	-- -- --

S 07

S



**ISOMETRIC VIEW**

INTS



21 Matthew Ct. - Back Deck

REVISIONS	
MM/DD/YY	REMARKS
1 10 /27 /17	Issued for Committee of Adjustments Review
2 01 /29 /18	Re-issued for Committee of Adjustments Review
3 01 /31 /18	Re-issued for Committee of Adjustments - Minor Variances
4 02 /05 /18	Re-issued for Committee of Adjustments - Minor Variances
5 -- /-- /--	--