

DECISION AND ORDER

Decision Issue Date Friday, November 30, 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): FOUR SEASONS SUNROOMS

Applicant: FOUR SEASONS SUNROOMS

Property Address/Description: 182 MCKEE AVE

Committee of Adjustment Case File: 18 129073 NNY 23 MV

TLAB Case File Number: **18 172159 S45 23 TLAB**

Hearing date: Tuesday, October 09, 2018

DECISION DELIVERED BY S. GOPIKRISHNA

APPEARANCES

NAME	ROLE	REPRESENTATIVE
HYE SUN CHOI	OWNER	
CHANG HWAN CHOI	PRIMARY OWNER	
FOUR SEASONS SUNROOMS	APPLICANT/APPLICANT	
CITY OF TORONTO	PARTY	SARAH O'CONNOR
VICTORIA FUSZ	EXPERT WITNESS	

INTRODUCTION AND BACKGROUND

Hye Sun Choi and Chang Hwan Choi are owners of 182 McKee Avenue, located to the east of Willowdale Ave, between Finch and Sheppard Aves; the property is closer to the former. The Chois wanted to add a sunroom to their house, and applied to the Committee of Adjustment (COA) for variances related to length, depth, rear yard

setback, and coverage. The COA heard the Application on 16 May, 2018, and refused the Application.

On behalf of the Chois, Four Seasons Sunrooms appealed the Decision to the Toronto Local Appeal Body (TLAB) on 5 June, 2018. On 24 July, 2018, the City of Toronto elected to be a Party to the Appeal.

MATTERS IN ISSUE

City-wide Zoning By-law

By way of an editorial note, the numbering of the variances starts at 2 instead of 1, because the Appellant withdrew the first variance at the beginning of the hearing. I have chosen to go along with the original numbering, in the interests of consistency.

The property is subject to the City-wide Zoning By-law No. 569-2013, as amended. Based on By-law No. 569-2013, the property is zoned RD (f15.0; a550) (x5).

2. B) The required minimum rear yard setback is 9.68 meters. **The revised proposed rear yard setback is 9.27 meters.** [10.20.40.70.(2) Minimum Rear Yard Setback]

3. In the RD zone with a minimum required lot frontage of 18.0 meters or less, the permitted maximum building length for a detached house is 17.0 meters. **The revised proposed building length is 21.8 meters.** [10.20.40.20(1)-Maximum Building Length if Required Lot Frontage is in Specified Range]

4. The permitted maximum lot coverage is 30 percent of the lot area: 176.98 square meters. **The revised proposed lot coverage is 37.29 percent of the lot area: 219.98 square meters.** [10.20.30.40.(1) Maximum Lot Coverage]

5. The permitted maximum building depth for a detached house is 19.0 meters. **The revised proposed building depth is 22.54 meters.** [10.20.40.30.(1) Maximum Building Depth if Required Lot Frontage is in Specified Range]

North York Zoning by-law 7625

The property is located in the former municipality of North York and is subject to Zoning By-law No. 7625, as amended. Based on Zoning By-law No. 7625, the property is zoned R4.

6. The minimum required rear yard setback is 9.5 m. **The revised proposed rear yard setback is 9.27 m.** [13.2.3c - Minimum Rear Yard Setback]

7. The maximum permitted building length is 16.8 m. **The revised proposed building length is 21.8 meters.** [13.2.5A - Maximum Building Length]

JURISDICTION

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 of the Greater Golden Horseshoe for the subject area ('Growth Plan').

Minor 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

At the hearing held on 9 October, 2018, the Appellants were represented by Mr. Matt Jacewicz, General Manager of Four Season Sunrooms, while the City of Toronto was represented by Ms. Sarah O'Connor, a lawyer and Ms. Victoria Fusz, a land use planner.

Mr. Jacewicz began by stating that there had been revisions to the Plans, and that some of the variances had been reduced, while one had been eliminated. Ms. O'Connor responded that the City had not been made aware of these changes, and "did not know what to expect" as a result. I suggested that we take a half an hour break, to enable Mr. Jacewicz to explain the changes to the City, and how they would impact the requested variances, and to establish if the City would still be in opposition to the Appeal. When we reconvened after half an hour, Ms. O'Connor advised that while some of the requested variances had been reduced from before, they did not correspond to the City's concerns, and the City would continue to be in opposition.

Given that the City had a land use planner to provide expert evidence, I drew the attention of both Parties to the flexibility of the TLAB Rules in terms of allowing the Appellants and Respondents to present their case first. Ms. O'Connor indicated that her preference would be for the Appellants to present first, in order to understand the thinking behind the proposal. I therefore asked Mr. Jacewicz to present his case.

Mr. Jacewicz spoke about the work of Four Seasons Sunrooms, and described his relationship to the project as "the company proposing the sunroom addition on the subject property". He said that over the last 10 years, his company had presented many proposals to various COAs in different parts of the province, and that "99% of them get

approved". Stating that many of the approved proposals had "similar setbacks, lot coverages, GFA and dwelling lengths / depths" as the proposal before the TLAB, he described his "bafflement" over "why this one wasn't approved, or even that we were not offered a potential reduction in size". He said that it was important for him to get approval for this project so that he could help his "client build a room for his wife who had a medical condition, which prevented her from being outdoors for long periods of time" and that accessing such a room would provide her (i.e. the client's wife, Ms. Choi) "that basic human right". He offered to introduce into evidence, a doctor's letter describing the medical condition of Ms. Choi, and why it is important for her to have access to a sunroom. I asked Mr. Jacewicz if he was aware that any letter submitted to the TLAB would be posted on the TLAB website, and if his clients had consented to the effective disclosure of their personal information (including any medical issues) to everybody , as a result of the information's being posted on the TLAB website. When Mr. Jacewicz responded in the negative on both questions; I stated that we would proceed without admitting the letter into evidence to protect his clients' confidentiality, but that I would proceed with the knowledge that Ms. Choi had a significant disability, which had significantly impacted the proposal.

Mr. Jacewicz then spoke to the compatibility between the proposal, and each of tests under Section 45(1). He said that The Official Plan (OP) speaks to "allowing people to have a better, more inclusive quality of life, and where the elderly can live comfortable and securely". He said that the OP also "mentioned strategies to make Toronto's air clean and free of harmful levels of pollutants", and repeated that his client 's wife had a condition where she physically couldn't be outdoors for long periods of time. As a result, the clients requested a "glass, garden room to be built on their property, to essentially bring the outdoors in", which would allow Ms. Choi to stay within the comfort of her home and enjoy the sun, without having to be outdoors. Mr. Jacewicz alluded to the OP's emphasis on embracing "innovative implementation solutions", and upheld the proposal in question to be an example of such a solution, something which deserved even more attention when the solution also aligned with the OP's requirement of "people with special needs being supported to live in their communities".

Mr. Jacewicz then spoke to the issue of how the proposal was consistent with the Zoning By-laws. He said that the property was subject to the City-wide zoning by law no. 569-2013, as amended, and that the property was zoned RD (fl 5.0; a550) (x5) He said that the Bylaw permitted single detached dwellings, and included regulations to ensure a "certain consistency of design and siting". Mr. Jacewicz then stated that the design of the garden room addition was such that the "existing abutting property owners were not hindered in the enjoyment of their rear yards, as the garden room is going to occupy the location of the existing deck". The remaining amenity space is 1,869.83 sq. ft. (or 161.75 sq.m.), in the rear yard. Mr. Jacewicz asserted that he had canvassed the neighbourhood and had received no objections , especially from " abutting neighbors". Emphasizing that the existing deck provided the foot print and accommodation for a garden room/solarium addition, he added that "An aerial view of the property would practically remain unchanged following the construction of the addition". He then stated that the existing house length, and depth, as they exist today, did not comply with the zoning requirements because they were "at some point, either missed or approved by city staff at the time a building permit was granted". He said that the proposal, if

approved, would add 3.54m to the overall length and depth, and that a lot coverage of 37.29% versus the 30% as-of-right. He claimed that the existing house, as it stood, “was originally approved at 34.32% to our knowledge, with no variance required”. He emphasized that the proposed variance with respect to the rear yard setback was requested because the “addition is interpreted as building area, whereas the existing deck is not”, and the setback has to be measured where the built area ends. Mr. Jacewicz highlighted that the additions were “lightweight”, and were distinguishable from traditional extensions to a house which have brick and mortar and heavy roofs. This feature, and the modest addition as could be seen from the provided site plans, he claimed, indicated that there were no major changes to the building’s massing. He also drew my attention to various COA Decisions, which had approved length variances. It may be noted that these examples were from an era that pre-dated the application of By-law 569-2013.

Based on the arguments provided above, Mr. Jacewicz concluded that the addition did not destabilize the existing neighbourhood, and that the proposed variances were consistent with the general intent and purpose of the Zoning By-laws.

Speaking to the desirability of the variances, Mr. Jacewicz asserted that the proposed variances were desirable for the appropriate expansion of the subject site, because they facilitated “improved use of an existing deck, which was underutilized majority of the year”, and added that the proposed also allowed “the homeowner to continue pursuing her passion in gardening, while allowing her to maintain a quality of life that most take for granted”.

Lastly, Mr. Jacewicz spoke to the test of the proposed variances being minor, and opined that the test was satisfied because the variances did not result “in any unacceptable impacts on any other existing, abutting houses”. He then stated that the Planning Act identified that the expression “minor” considered the suitability of development in the context of Zoning Standards. He concluded that the proposed “minor” addition complemented the existing lot fabric, home construction and the community, and that it represented good planning. He concluded by stating that the proposal “should have been approved by the COA”, and ought to be approved by the TLAB.

Under cross examination by Ms. O’Connor, Mr. Jacewicz admitted that he did not know which point the “length” was measured from, to determine the provided figure in the Zoning Notice, under the 2 by-laws. Ms. O’Connor demonstrated that there was a difference between how “length” was being measured in the case of the Appeal before the TLAB, when compared to other examples cited by the Appellant. She said that while in the case of the proposal, the front yard setback matched what was required by the by-law; the consequence of this was that the expressed “length” in the Zoning Notice reflected the true length of the house measured from one end to the other. However the comparators provided by the Appellant used the definition of length, as defined under By-Law 7625, which meant it was measured from the setback, even if the front of the house had been pushed away from the setback. The consequence of this methodology of measurement was that the actual length of the house was smaller than the ostensible numerical value under By-Law 7625 suggested it was, and specifically

referred to the approval respecting 198 McKee Avenue, as an example of how the length calculations varied, depending on the by-law. Referring to the COA approvals referenced by the Appellant as not being “apples to apples” comparisons with the proposal, Ms. O’Connor then discussed the case of 216 McKee Avenue, where the Appellant had stated that the COA had approved the coverage at 35%. Referring to a subsequent OMB Decision, Ms. O’Connor pointed out that the Decision been appealed to the OMB, which had approved the coverage at 32% as a result of a Settlement.

Ms. O’Connor concluded that the provided comparators, did not constitute an “apples to apples” comparison because of the calculations, the lengths of all other houses referenced in the Appellants’ submissions were considerably shorter, making this house the longest if approved.

She then demonstrated, through references to the Official Plan, that the excerpts cited by the Appellant in his evidence regarding the OP were descriptive language, as opposed to Official Policies.

The City then presented its case in opposition to the Proposal.

Ms. Fusz, a land planner working with the City of Toronto was sworn in, and was recognized as an Expert Witness in the area of land use planning. She first referred to the Site and the surrounding context, and pointed out that the site was located on the north side of McKee Avenue, east of Yonge Street and south of Finch Avenue East. Providing some statistics about the property, Ms. Fusz said that the site had a frontage of approximately 15.24 metres, a depth of approximately 38.71 metres, and a lot area of 589.93 square metres. She added that the property had a two-storey brick dwelling with an integral garage at present, and that the site was surrounded entirely by single detached dwellings,

Referring to the Provincial Policy Statement (2014) and the Growth Plan for the Greater Toronto Horseshoe (2017), Ms. Fusz said that her conclusion that while the proposal did not conflict with either of these Plans, these Plans, higher in the hierarchy, were themselves not particularly relevant to the proposal before the TLAB, and supported her conclusion with the reasoning that while these documents focused on intensification, the proposal simply proposed an addition to an existing dwelling.

Ms. Fusz reiterated that the site was designated '*Neighbourhoods*' in the City of Toronto's Official Plan, and was zoned R4 in the former City of North York Zoning By-law No. 7625 and RD(f15.0;a550)(x5) in the City of Toronto Zoning By-law No. 569-2013, as amended.

Ms. Fusz then discussed the study area she had chosen as being relevant to this proposal; which was bounded generally by Dunview Avenue to the north, Wilfred Avenue to the east, Parkview Avenue to the south, and Willowdale Avenue to the west. This area encompassed a “particular character” in terms of the lot fabric, with many lots having large frontages that either met, or exceeded zoning by-law requirements. She spoke to the character of the community, and distinguished what lay east of Willowdale as being different from west of Willowdale, on the basis of rebuilding and consent

variances. She said that the neighbourhood chosen by her consisted of approximately 284 detached houses, and said that her rationale for choosing this area was supported by the fact that these houses were subject to the same land use designation within the Official Plan, and or similar, if not the same, zoning standards under both Zoning By-law Nos. 7625 and 569-2013. Ms. Fusz added that she had analyzed close to 60 COA decisions from this area, which were shared with the TLAB and the Appellant, as part of the disclosure process. She said that of the decisions analyzed, 157 A and 157 B, Church Street, which had been approved by the former OMB with a coverage of 32% coverage, constituted the largest single variance in terms of percentage, which was significantly less than the 37.29% requested. She also pointed that in the cases of 157 A and 157 B, Church Street, there was no requested variance for building length, and emphasized that the longest length variances were shorter than what the Appellant had requested

Speaking to the Official Plan, she asserted that there was nothing in the OP that spoke to health concerns, as stated by the Appellant. She then referred to various policies, including the Section 2.3.1, and the direction in the section to “*respect what already exists*”, and Section 4.1.5., which she stated to be “most relevant”. She referenced Section (c)- *Heights, massing, scale and dwelling type of nearby residential properties*, and interpreted this to mean that any dwelling had to respect the heights, massing, scale and dwelling type of what existed on nearby residential properties, . She then pointed out that the building length of 22.43 metres was proposed, as measured under Zoning By-law Nos. 569-2013, would be the longest building of all the residential properties on McKee Avenue. She followed the earlier conclusion by saying that the proposed lot coverage of 37.29% was significantly greater than the maximum approved lot coverage of 32%, granted by the OMB Decision respecting 157 A and 157 B Church Ave. Emphasizing that no variance had been granted for either building length, or lot coverage, to the extent of what was sought by the Application, she contrasted the approvals with what existed already at the site- a building with a length of 18.9 metres, and a lot coverage of approximately 34%. Ms. Fusz emphasized that this length and coverage already exceeded corresponding statistics for both the adjacent properties at 180 and 184 McKee Avenue. She concluded that the proposed rear one-storey addition , would exaggerate an already existing, beyond what-is-of-right condition, which was also not consistent with the existing physical character.

Ms. Fusz then referred to Section 4.1.8 of the Official Plan and discussed Policy 8 , which stated that “*Zoning By-laws will contain numerical site standards for matters such as building type and height, density, lot sizes, lot depths, lot frontages, parking, building setbacks for lot lines, landscaped open space and any other performance standards to ensure that new development will be compatible with the physical character of established residential Neighbourhoods*”, and relied on this to further buttress her earlier conclusion about the lack of compatibility between the proposal and what existed in the community. She also added that no changes could be made through rezoning, minor variance, consent, or other public action, that are out of keeping with the physical character of the neighbourhood.

Based on this discussion, Ms. Fusz concluded that the Application proposed a rear addition, with a scale, that failed to respect and reinforce the existing physical character of the neighbourhood, and thereby failed the test of conformity with the Official Plan.

Ms. Fusz then discussed the compatibility of the proposal with the Zoning By-Law. She said that the general intent and purpose of the zoning by-laws was to regulate the use of the land to ensure that proposed development fit on a given site, and reduced the impacts on adjacent properties. She added that building length and lot coverage provisions looked to control the scale of developments, and to ensure compatibility between adjacent properties.

Applying these principles to the proposal, Ms. Fusz said that the Application proposed a building length that exceeded the by-law requirement by more than 5 metres. , as well as added to the lot coverage, in significant excess of the by-law requirement. She also drew my attention to a previously identified 2002 COA Decision which allowed for a building length of 18.9 metres on this property. The existing dwelling, she said, had a lot coverage of 34% which exceeded the maximum permitted lot coverage, however, a variance was never granted for the excess lot coverage, notwithstanding the granting of the length variance.

Ms. Fusz reiterated that, as identified in the minor variance decision analysis, the existing lot coverage of 34% exceeded the standard lot coverage of 32% for this neighbourhood, and that the proposed building length exceeds any building length approval granted by the COA, or the OMB, under Zoning By-law No. 569-2013. She interpreted these facts to mean that proposed building length and lot coverage exceeded the scale of development contemplated in the zoning by-law , and proposed a scale that was not compatible with the neighbouring properties. She concluded that the Application did not meet the intent of the zoning by-laws, because the variances, both individually and collectively, significantly departed from what is granted under the zoning by-law. According to Ms. Fusz, the increased scale of the proposed dwelling resulted in a building massing that posed potential adverse impacts to adjacent properties

Speaking next to the test about desirability of the appropriate development of the land, Ms. Fusz said that while a significant number of dwellings in the neighbourhood had undergone redevelopment and reinvestment in the form of renovated or new dwellings; no property had required variances to the extent that this Application requested. She again reiterated that the proposed building length and lot coverage indicated that the scale of the dwelling “was not appropriately sized on the lot for which it is to be located, and that the scale of the proposed dwelling exceeded the scale of all dwellings within the neighbourhood, including those that have been granted variances”. Based on this, Ms. Fusz concluded that the proposed variances are not desirable for the appropriate development of the land.

Discussing next the test of being minor, Ms. Fusz said that the proposal did not pass the test of being minor, because the Application looked to permit an addition with characteristics that substantially differed from other dwellings within the study area.

Reiterating that the proposed dwelling would be the biggest within the neighbourhood, she was concerned that the result of the “precedent-setting building length and lot coverage” was that of unacceptable adverse impacts to adjacent properties, and the broader neighbourhood. On the basis of this analysis, Ms. Fusz concluded that the proposal did not meet the test of being minor.

Based on these discussions, Ms. Fusz concluded that the proposal did not pass any of the tests under Section 45(1). However, she added, that “if the Panel found it appropriate to approve the proposal”, then the City would recommend a condition that the solarium be built in substantial accordance with the submitted Plans and Elevations.

When I asked Ms. Fusz if her reasoning for the tests of desirability and being minor relied heavily on the tests addressing the Official Plan, and the Zoning, she replied in the affirmative. When I asked her to specifically discuss how the proposal would impact the neighbouring properties, she said that the length of the building “may” have a negative impact on the next property at 184 McKee. However, this couldn’t be confirmed because the house in question was not presently inhabited. She also said that while she was not an engineer, she was concerned about storm water management, if other large buildings were constructed along the street as a result of an approval at 182 McKee, but did concede that this was “speculation”.

Mr. Jacewicz said that he had no questions for Ms. Fusz.

By way of reply, Mr. Jacewicz opined that the whole issue of storm water management was mere speculation. He then referred to the houses at 157 A and B, Church Street as “sore thumbs sticking out” and asked that if “overdevelopment” could be permitted on those sites, then why couldn’t something smaller be permitted at 182 McKee? He also disagreed with the City’s position about the impact of the development on the neighbour at 184 McKee, and claimed that the solarium would reduce any impact due to noise as a result of being enclosed, allowing the neighbours at 184 McKee more peace and quiet if they decided to “relax on their deck, or have a barbecue on their deck”.

It took multiple rounds of emails between myself, the TLAB staff, and the Appellant, to obtain the variances, exhibits and pictures, without which it becomes impossible to render a Decision

ANALYSIS, FINDINGS, REASONS

It is necessary to admonish Mr. Jacewicz for what came across, at times, a cavalier attitude, throughout the hearing, as well as afterwards.. He did not disclose details of the updated variances until the hearing had begun, had to be reminded to submit exhibits after the hearing was completed and didn’t take the precaution of taking notes of what was being requested of him. This as was evidenced by his reply to the TLAB staff about my needing to jog his memory, because he wasn’t sure of what being referred to, when reminded to submit exhibits. Lastly, the updated Site Plans submitted a week or so after the hearing were not accompanied by the corresponding Elevation diagrams, which makes it necessary for the TLAB staff to sift through various exhibits to identify the correct pair of Site and Elevation drawings. This kind of behavior erodes

confidence in the Appellants' sincerity, and ability to follow instructions. However, I have not come to any conclusions as a result of this behavior, because the client should be penalized for the actions of the Agent.

I start off by noting that Mr. Jacewicz is not a planner, and confessed to his not being familiar with the OP, or even how length is measured under various by-laws..

Notwithstanding the above comments, I detected a genuine desire to help the client address the situation of his disabled wife, as expressed in the cross examination by the City about financial incentives for involvement in the project. He was forthcoming about what he knew and didn't know, even if the revelations portrayed his less than perfect grasp of planning principles.

The proposal essentially seeks variances related to the rear yard setback, building length, building depth and lot coverage. On further analysis, it is easy to tell that the request for the solarium at the back of the house, has resulted in a request for a variance to length, which in turn spawned, at least in this case, changes to the depth, rear yard setback, and the lot coverage. It would be reasonable to state that any conclusion about the length of the house, would substantially influence conclusions about the other listed parameters.

As noted by Ms. O'Connor, Mr. Jacewicz's evidence about the OP was weak, in that he referred only to descriptive language, and not the Policies themselves. However, his evidence is important in that he pointed out the recognition of the special needs of populations with disabilities in the description, even if there is no specific policy pertaining to this topic. On the matter of zoning, Mr. Jacewicz, made two interesting points:

- There is a technical change in length, as opposed to an actual lengthening of the house, because the only physical change is to enclose an existing deck. While an open deck does not count towards the length, an enclosed deck would count towards the length
- The length of the house, including the deck, has already been "experienced" from an impact perspective, by the neighbours, leading him to conclude that in that there were no changes in performance standards, irrespective of changes to length.

As a result of these conclusions, it is easy to understand why Mr. Jacewicz argued that the tests of appropriate development, and being minor, were satisfied, because both tests essentially depend on the lack of impact to the neighbours. On the basis of his sincerity and candour, as noted and commented upon earlier, I accept Mr. Jacewicz's assertion that he canvassed the neighbourhood, and found support for the proposal. No letters were submitted for, or against the proposal, by the neighbours, nor did the neighbours participate in the TLAB hearing.

The City's evidence, by comparison, was neatly presented, and comprehensible throughout the hearing. A close reading of the submitted evidence, led me to conclude that their opposition was based on the following:

- If approved, the length of the house would be the longest in the community, and exceeds what exists today by 3.54 m. As a result of this, the coverage also increases significantly, from the allowable 30% to 37.29%.
- These two changes, and the related changes to the reduction of the back yard setback, represent significant changes from Sections 4.1.5, 4.1.8 of the OP, as well as fail the performance standards in the Zoning Standards, and are therefore to be refused.
- While the depth was not discussed, it was implied that there was a significant change to the depth, analogous to the length
- In terms of impact, the increase in length “may” impact the neighbor at 184 McKee, though this wasn’t determined, because the house is not inhabited presently. There may be an impact, admittedly speculative, about the impact of such development on storm water management, if all houses were enlarged, as a result of the “precedent” created at 182 McKee.

The tests of being minor and appropriate development, as admitted by Ms. Fusz, relied heavily on the tests of compatibility with the OP, and Zoning, which in turn, relied on a strict numerical analysis of the COA decisions. The requested increase in length of 3.54 metres, was stated, repeated, iterated and reiterated many times, and relied on to be proof of a significant increase beyond what was allowed.

Thus, while the City could explain its perspective on the OP and Zoning more convincingly than the Appellants, the latter were more convincing on the matters of the tests for appropriate development, and being minor.

At this stage, I point out that no Party had failed any of the 4 tests, but had not convinced me entirely about why I should prefer their evidence. To assist me with this impasse, I looked at the higher level Policies:

I note that Mr. Jacewicz had no evidence about the higher level policies. The City did not deem it relevant to discuss the PPS and Golden Growth Plan, because the proposed development was merely an extension of a house, and did not involve intensification. While I don’t dispute this conclusion, it is important to point out that there is a very significant recognition of the needs of a disabled individual in the PPS, specifically in Section 1.1.1(f) ::

Improving accessibility for persons with disabilities and older persons by identifying, preventing and removing land use barriers which restrict their full participation in society

I interpret the expression “accessibility” to include accessing sunlight, and the outdoors, as asserted repeatedly by Mr. Jacewicz. I accept Ms. Fusz’s contention that there is no policy in the OP that specifically references disabilities, but conclude that the policies should be interpreted in light of the descriptive language referenced by Mr. Jacewicz, as well as the PPS- in other words, there is a powerful, if implicit recognition of the needs of a disabled population, in the higher echelons of the hierarchy of policies. I therefore disagree with the City’s conclusion of these policies being irrelevant to this proposal.

The other concern expressed repeatedly by the City was that the length of the building was already the longest among the COA approved variances at 18.9 m, and that the existing coverage of 34%, was already above the allowable, and had not even been appealed to the COA, resulting in what may be perceived as layers of ostensible overdevelopment. However, it is important to note that:

- The actual increase in length,(even if the technical nature of enclosing the deck, as opposed to an lengthening of the deck, is ignored), increased from an existing 18.9 m to 22.8 m, and the coverage from 34% to 37.29%, which is different in jumping from what is of right to 22.8 m, and 37.29%. The change in both length, and the area coverage has happened in 2 increments, which means that the starting point for the proposal is not what is of right, but what already exists.
- The impact of the first increment is already discernable because it is in existence, while the 2nd increment before the TLAB is technical because of the enclosure of the deck, with parallel changes to the coverage. There is a long, and undisputed tradition of jurisprudence which requires adjudicators to assess the impact of an already built extension, while “pretending” that the construction hadn’t occurred. On the basis of this perspective, the first increment, already built, has not had any impact, while the second increment is of a technical nature. There is no change to length, much less to the building type.

While the jurisprudence was not referenced by Mr. Jacewicz, I am duty bound to apply the same, by virtue of the need to adjudicate to the best of my knowledge. On the basis of these observations, I disagree with the City’s conclusion about a completely new type of development being proposed at 182 McKee- the deck is merely being enclosed to create the solarium in question, with no discernable impact on the neighbours . A back yard setback of 9.27 m against the by-law requirement of 9.68 m, on a 38 m metre lot, is minor. The massing is not impacted, in that there are no height related variances, nor any reductions to side yard setbacks, or shadows. As noted earlier, the depth variance is related to the length variance, and approving the latter would have to mean approving the former. Thus, when I contrast the mere numerical increases, key to the City’s arguments, with the lack of any significant impact, as asserted by the Appellant, I find myself agreeing with the latter.. .

I therefore allow the Appeal, and authorize all variances, as discussed.

As for conditions, I take Ms. Fusz’s advice about the need to build in substantial compliance with submitted Plans and Elevations. I note that in the cross-examination, Ms. O’Connor expressed no concern about the quality of the drawings submitted by the Appellant, and am therefore confident about their accuracy. I note that there has been construction resulting in increased coverage , without *a priori* approval from the COA . To prevent such incidents on a go forward basis, I impose another condition requiring the Appellant to not make any further alterations to the building envelope without obtaining the prior permission of the City, or its tribunals, given how the coverage was increased without an application to the COA

I conclude by stating my Decision was a conscientious one, arising from the need to be sensitive to the needs of a disabled person, in how policies are interpreted

DECISION AND ORDER

1. The proposal, as modified at the beginning of the hearing, is allowed, and the Decision of the COA dated 16 May, 2018, is set aside.

2. The following variances are approved:

The property is subject to the City-wide Zoning By-law No. 569-2013, as amended. Based on By-law No. 569-2013, the property is zoned RD (f15.0; a550) (x5).

City Wide By-law 569-2013:

2. B) The required minimum rear yard setback is 9.68 meters. **The revised proposed rear yard setback is 9.27 meters.** [10.20.40.70.(2) Minimum Rear Yard Setback]

3. In the RD zone with a minimum required lot frontage of 18.0 meters or less, the permitted maximum building length for a detached house is 17.0 meters. **The revised proposed building length is 21.8 meters.** [10.20.40.20(1)-Maximum Building Length if Required Lot Frontage is in Specified Range]

4. The permitted maximum lot coverage is 30 percent of the lot area: 176.98 square meters. **The revised proposed lot coverage is 37.29 percent of the lot area: 219.98 square meters.** [10.20.30.40.(1) Maximum Lot Coverage]

5. The permitted maximum building depth for a detached house is 19.0 meters. **The revised proposed building depth is 22.54 meters.** [10.20.40.30.(1) Maximum Building Depth if Required Lot Frontage is in Specified Range]

North York Zoning By-law 7625

The property is located in the former municipality of North York and is subject to Zoning By-law No. 7625, as amended. Based on Zoning By-law No. 7625, the property is zoned R4

6. The minimum required rear yard setback is 9.5 m. **The revised proposed rear yard setback is 9.27 m.** [13.2.3c - Minimum Rear Yard Setback]

7. The maximum permitted building length is 16.8 m. **The revised proposed building length is 21.8 meters.** [13.2.5A - Maximum Building Length]

3. No other variances are approved.

4. The following conditions are imposed on the approval:

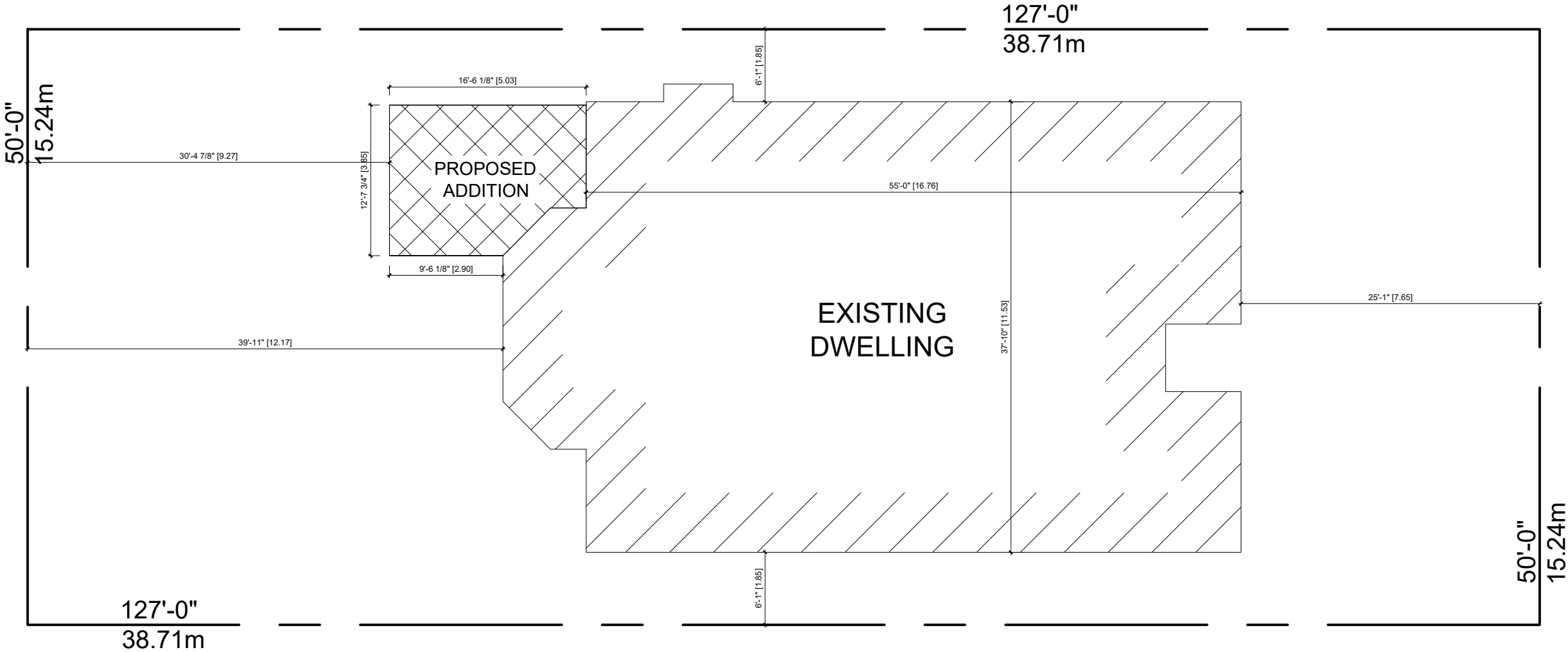
Decision of Toronto Local Appeal Body Panel Member: S. Gopikrishna
TLAB Case File Number: 18 172159 S45 23 TLAB

- a) The extension has to be built in substantial compliance with the Site Plans and Elevations, as attached, and for descriptive simplicity, consists of a one storey glass enclosed atrium on the footprint of an existing at-grade deck.
- b) No further extensions or changes to the building envelope, are permitted, unless there is an explicit *a priori* authorization of variances by the City, its tribunals, or the courts.

X



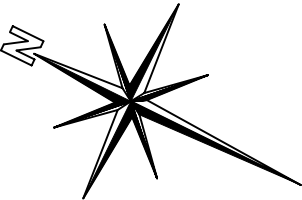
S. Gopikrishna
Panel Chair, Toronto Local Appeal Body



SITE STATISTICS

LOT AREA=	6,350.00SF (589.93SM)
EXISTING HOUSE=	2,179.44SF (202.48SM)
ADDITION=	188.79SF (17.54SM)
LOT COVERAGE (HOUSE/ADDITION)=	37.29%
LOT COVERAGE (HOUSE)=	34.32%
LOT COVERAGE (ADDITION)=	2.97%

LENGTH 21.8M



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 design the work shown on the attached documents.

NAME SIGNATURE BCIN



FOUR SEASONS SUNROOMS
240 Viceroy Road Unit 6
905-404-2789

Customer Signature: _____ Date: _____

Account # customerAccount
Purchase Order #
Mr. & Mrs. Chang Choi
182 Mckee Ave, Toronto, ON
M2N 4C7

Initials: _____

Project No.	Revision #	Revision Date:	Revision By:	File Name:
				Sheet Number:
				SP-1
Scale: 3/32"=1'-0"	Project Name: 182 Mckee Ave		Notes:	

GLAZED OPENING
CALCULATIONS

PER O.B.C. TABLE 9.10.15.4

Rear Elevation

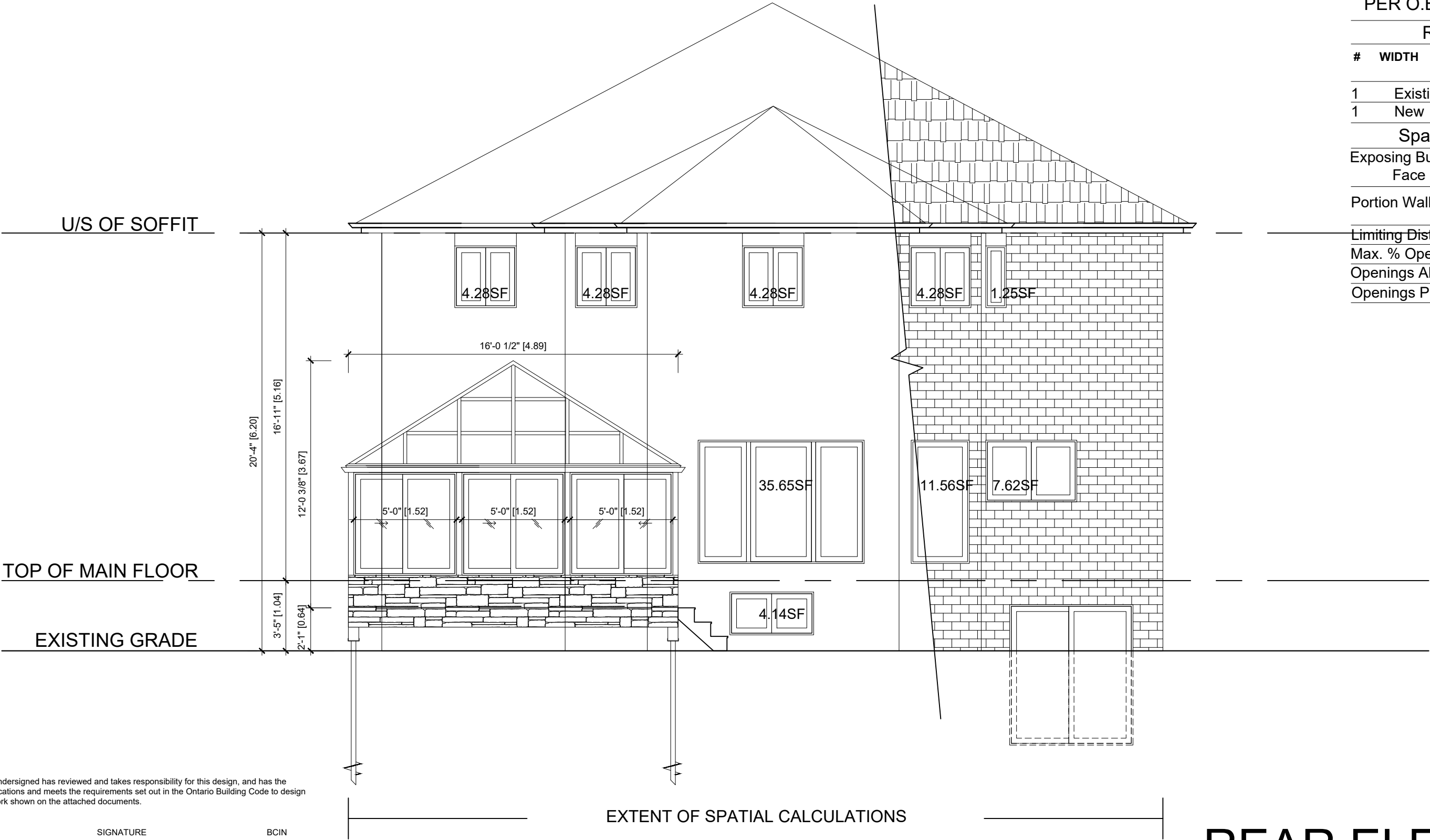
#	WIDTH	DEPTH	WINDOW / DOOR FRAME SIZE (S.F)
1	Existing		77.34
1	New		75

Spatial Calculations S.M.

Exposing Building Face	784.90	S.F.
	72.92	

Portion Wall Area	%
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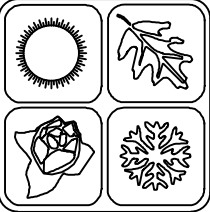
Limiting Distance	8.63m	
Max. % Openings	56	
Openings Allowed	439.54	S.F.
Openings Provided	152.34	S.F.



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REAR ELEVATION



FOUR SEASONS SUNROOMS
240 Viceroy Road Unit 6
905-404-2789

F o u r S e a s o n s S u n r o o m s

Account # customerAccount
Purchase Order #
Mr. & Mrs. Chang Choi
182 Mckee Ave, Toronto, ON
M2N 4C7

Initials: _____

Project No.	Revision #	Revision Date:	Revision By:	File Name:
Scale: 1/5"=1'-0"	Project Name: 182 Mckee Ave		Notes:	

Sheet Number:
A1

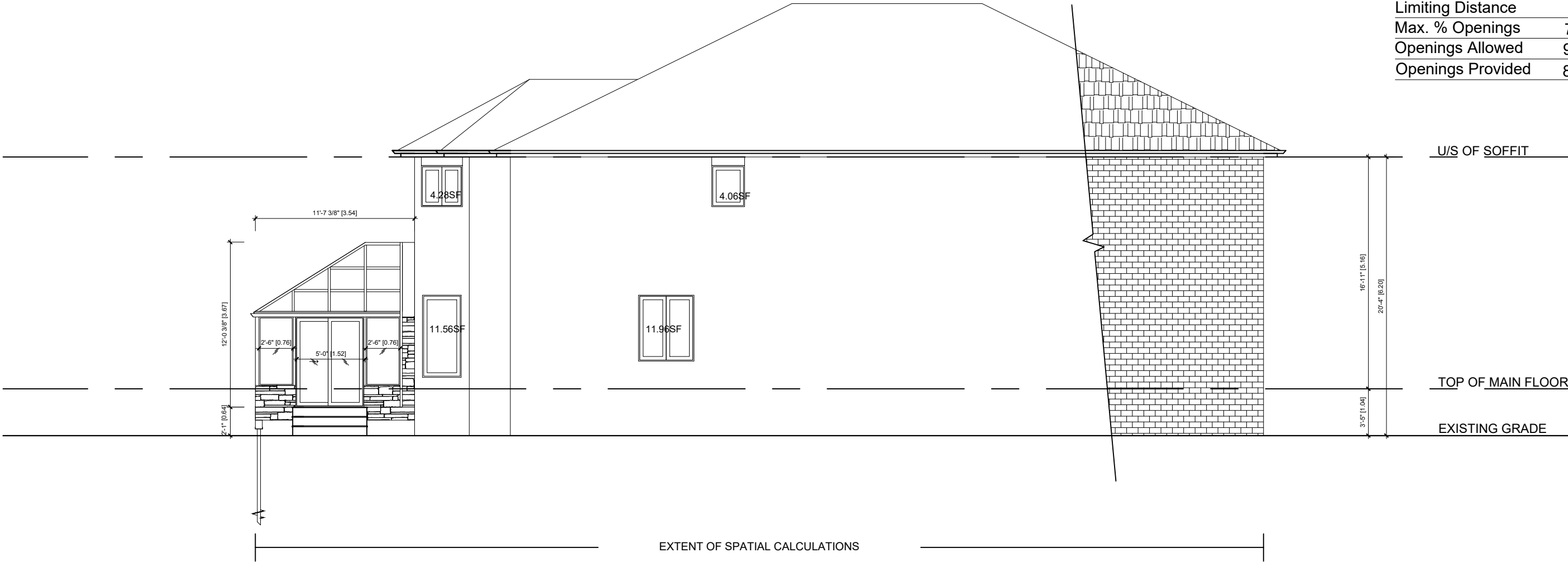
GLAZED OPENING
CALCULATIONS

PER O.B.C. TABLE 9.10.15.4

Right Elevation			
#	WIDTH	DEPTH	WINDOW / DOOR FRAME SIZE (S.F)
1	Existing		31.86
1	New		57.86

Spatial Calculations		
Exposing Building Face	1348.09	S.M. S.F.
	125.24	

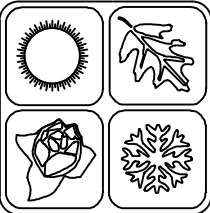
Portion Wall Area		%
Limiting Distance	1.85m	
Max. % Openings	7	
Openings Allowed	94.37	S.F.
Openings Provided	89.72	S.F.



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NAME _____ SIGNATURE _____ BCIN _____

RIGHT ELEVATION



F o u r S e a s o n s S u n r o o m s

FOUR SEASONS SUNROOMS
240 Viceroy Road Unit 6
905-404-2789

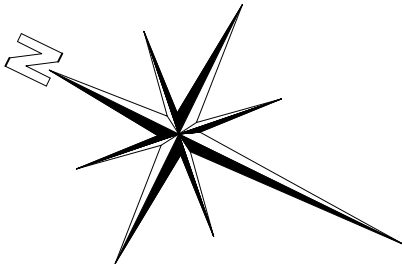
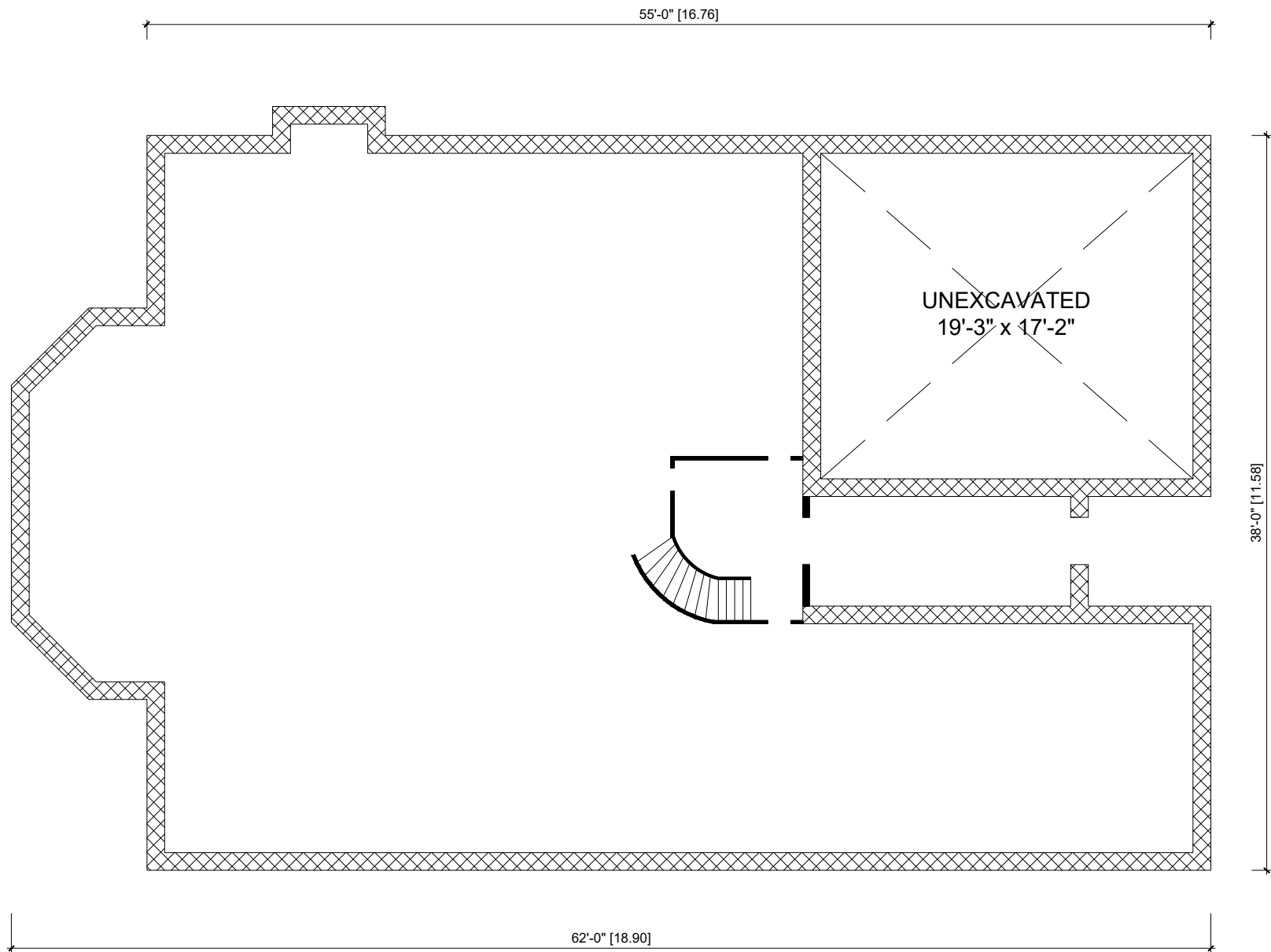
Account # _____ customerAccount
Purchase Order # _____
Mr. & Mrs. Chang Choi
182 Mckee Ave, Toronto, ON
M2N 4C7

Initials: _____

Project No.	Revision #	Revision Date:	Revision By:	File Name:
				Sheet Number:
				A2
Scale: 1/8" = 1'-0"	Project Name: 182 Mckee Ave		Notes:	

Openings Provided	66.65	S.F.
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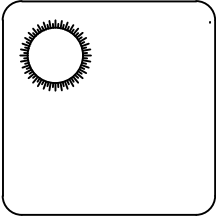
Project No.	Revision #	Revision Date:	Revision By:	File Name:
				Sheet Number: A3
Scale: 1/8" = 1'-0"	Project Name: 182 McKee Ave		Notes:	



BASEMENT PLAN

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 design the work shown on the attached documents.

NAME SIGNATURE BCIN



F o u r S e a s o n s S u n r o o m s

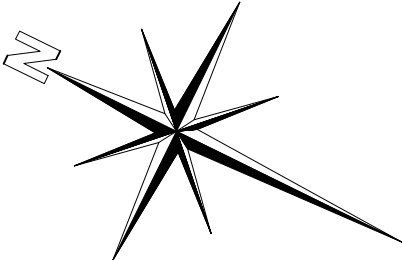
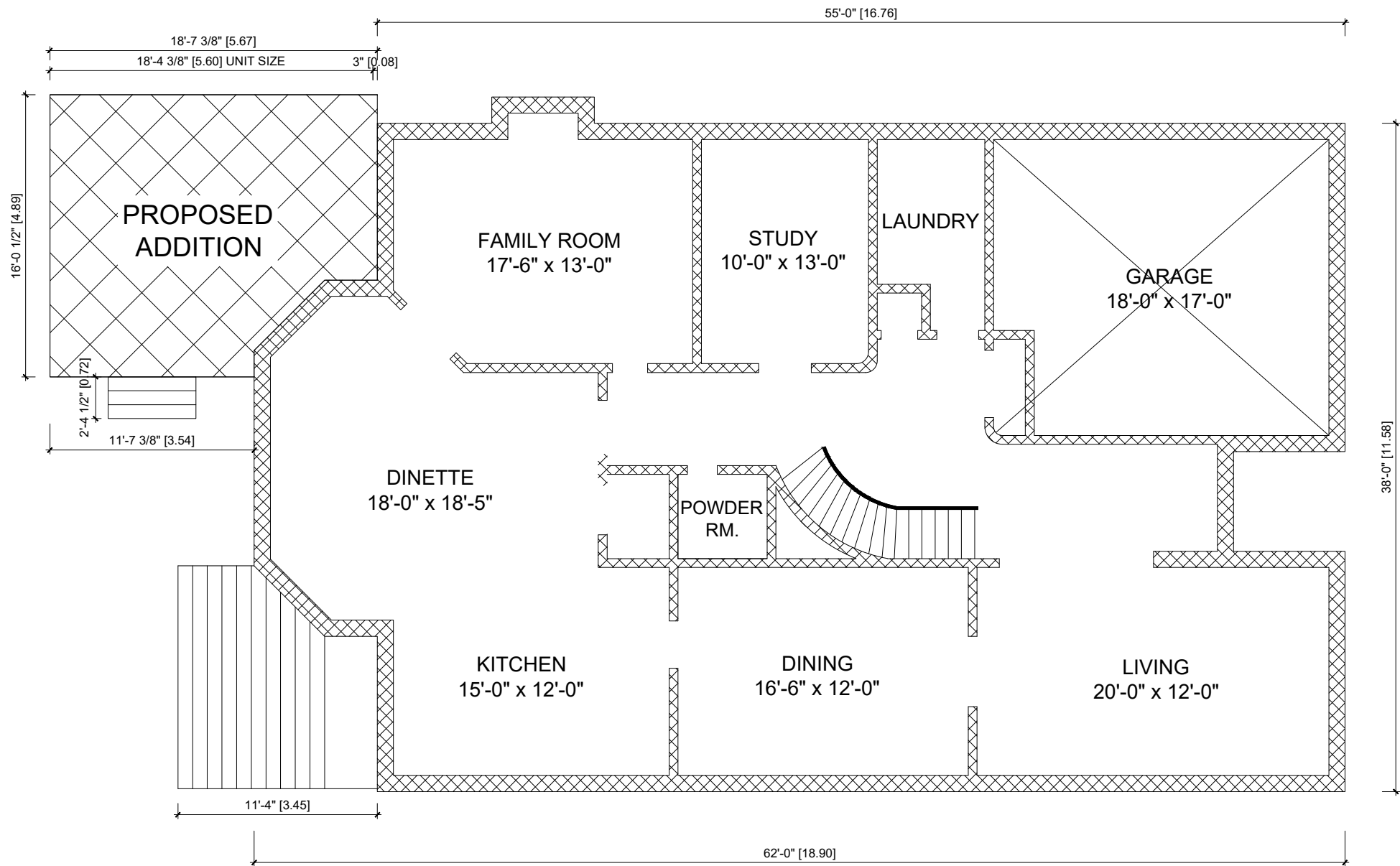
FOUR SEASONS SUNROOMS
240 Viceroy Road Unit 6
905-404-2789

Account # customerAccount
Purchase Order #
Mr. & Mrs. Chang Choi
182 Mckee Ave, Toronto, ON
M2N 4C7

Initials: _____

Project No.	Revision #	Revision Date:	Revision By:	File Name:
Scale: 1/8"=1'-0"	Project Name: 182 Mckee Ave		Notes:	


Sheet Number:
A4



FIRST FLOOR PLAN

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 design the work shown on the attached documents.

NAME _____ SIGNATURE _____ BCIN _____



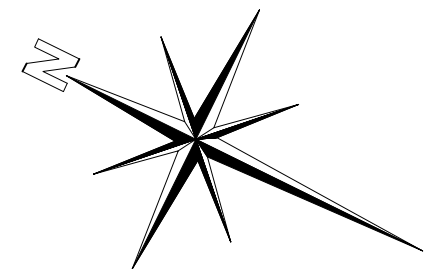
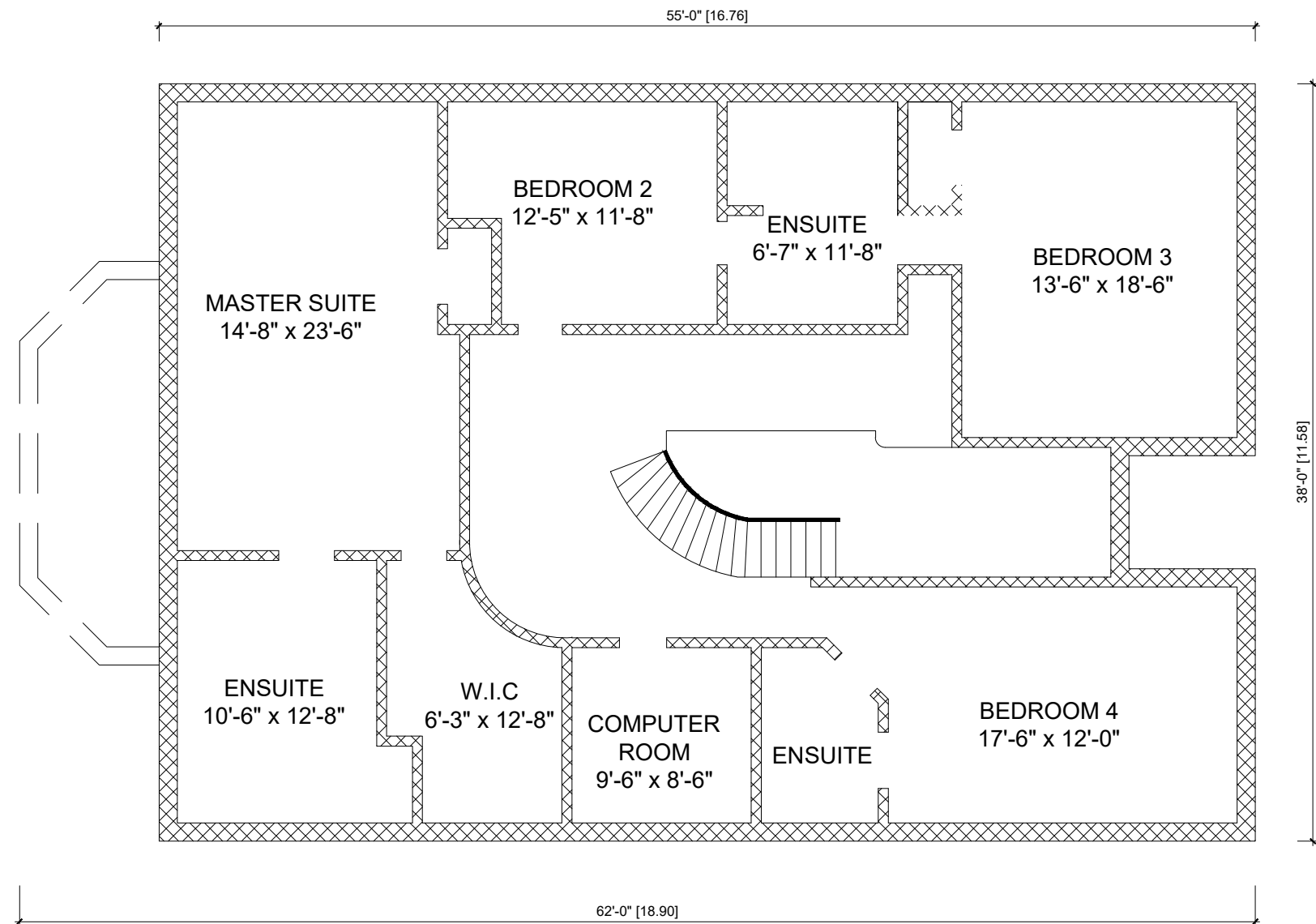
F o u r S e a s o n s S u n r o o m s

FOUR SEASONS SUNROOMS
240 Viceroy Road Unit 6
905-404-2789

Account # _____ customerAccount
Purchase Order # _____
Mr. & Mrs. Chang Choi
182 Mckee Ave, Toronto, ON
M2N 4C7

Initials: _____

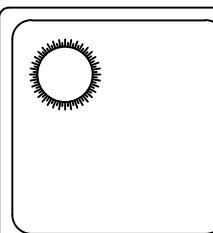
Project No.	Revision #	Revision Date:	Revision By:	File Name:
				Sheet Number:
				A5
Scale: 1/8"=1'-0"	Project Name: 182 Mckee Ave		Notes:	



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NAME SIGNATURE BCIN

SECOND FLOOR PLAN

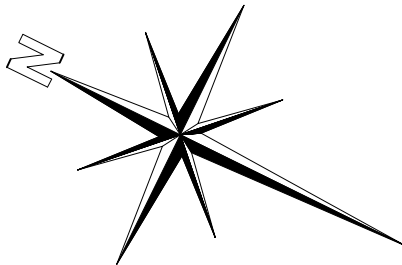
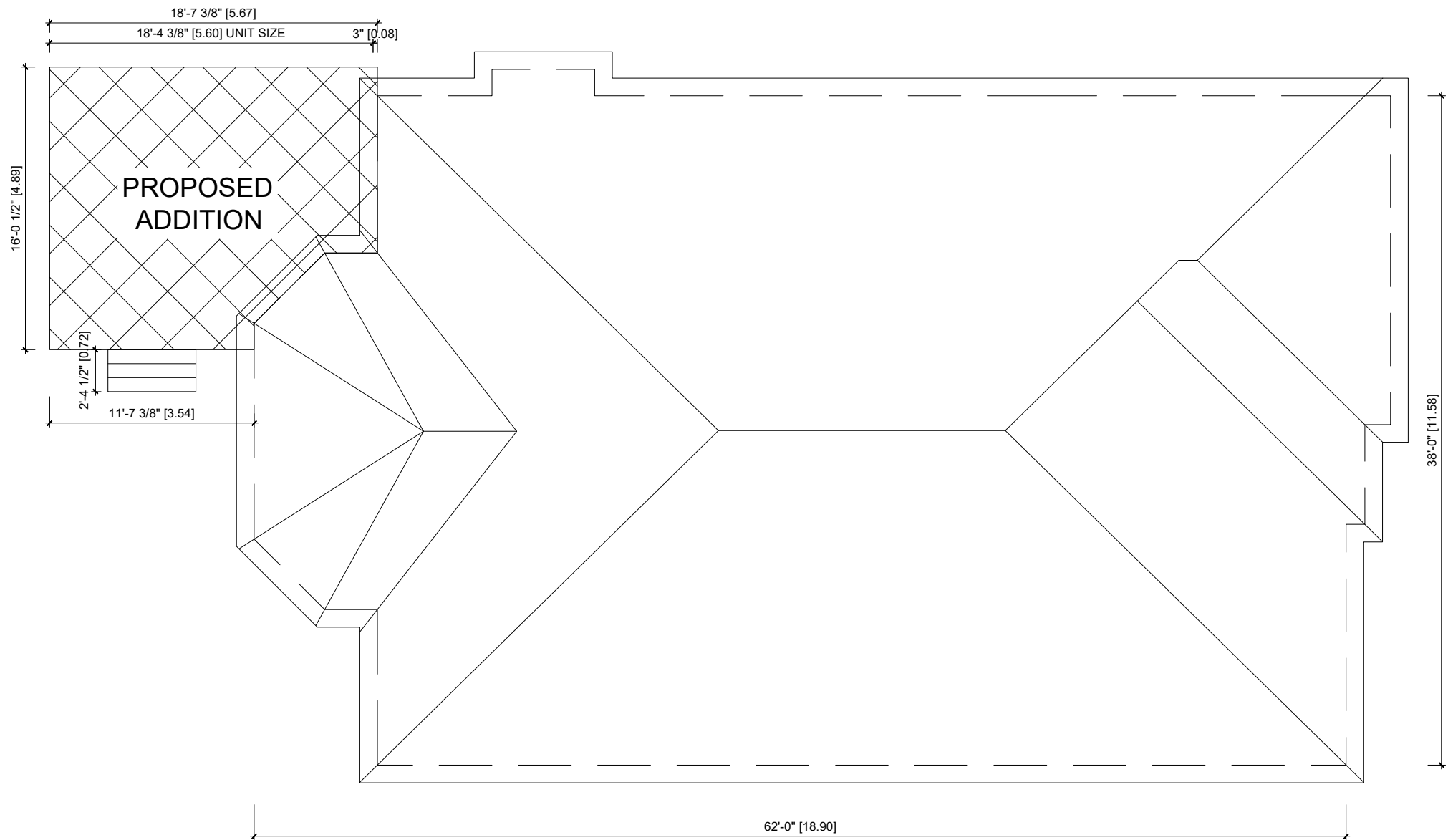


F o u r S e a s o n s S u n r o o m s

FOUR SEASONS SUNROOMS
240 Viceroy Road Unit 6
905-404-2789

Account # customerAccount
Purchase Order #
Mr. & Mrs. Chang Choi
182 Mckee Ave, Toronto, ON
M2N 4C7

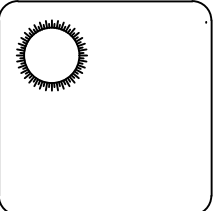
Project No.	Revision #	Revision Date:	Revision By:	File Name:
Date:				Sheet Number: A6
Drawn By:				
Scale: 1/5"=1'-0"	Project Name: 182 Mckee Ave		Notes:	



ROOF PLAN

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 design the work shown on the attached documents.

NAME SIGNATURE BCIN



F o u r S e a s o n s S u n r o o m s

FOUR SEASONS SUNROOMS
240 Viceroy Road Unit 6
905-404-2789

Account # customerAccount
Purchase Order #
Mr. & Mrs. Chang Choi
182 Mckee Ave, Toronto, ON
M2N 4C7

Project No.	Revision #	Revision Date:	Revision By:	File Name:
				Sheet Number: A7
Date:				
Drawn By:				
Scale: 1/8"=1'-0"	Project Name: 182 McKee Ave		Notes:	