

DECISION AND ORDER

Decision Issue Date Monday, August 19, 2019

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): NICOLE WASHINGTON-LEE

Applicant: NICOLE WASHINGTON-LEE

Property Address/Description: 6 B SHAMROCK AVE

Committee of Adjustment Case File: 18 261090 WET 06 MV

TLAB Case File Number: 19 128777 S45 03 TLAB

Hearing date: Friday, July 26, 2019

DECISION DELIVERED BY SHAHEYNOOR TALUKDER

APPEARANCES

Name	Role	Representative
Nicole Washington-Lee	Appellant/Applicant	Davies Howes
Walter Lee	Owner	
Eduardo Fazari	Party	Martin Mazierski
Franco Romano	Expert Witness	
Kerry Pohling Khoo-Fazari	Participant	
Andy Choles	Participant	

INTRODUCTION

1. The Applicants, Nicole Washington-Lee and Walter Lee, appealed the decision of the Committee of Adjustment (COA) with respect to the construction of a rear second storey deck on their property located at 6 B Shamrock Avenue (Subject

Property). The application for minor variances before the COA included two variances. The COA approved one variance and refused the second variance.

2. The Subject Property is located in the Long Branch community in Etobicoke.
3. The other party in this matter is Eduardo Fazari, who is the owner of the property located at 8 Shamrock Avenue, which is situated at the west of the Subject Property and abuts the property. Kerry Khoo-Fazari, spouse of Eduardo Fazari, and Andrew (Andy) Choles are named as participants. Mr. Choles resides at 12 Jasmine Avenue, the property abutting the rear of the Subject Property.
4. I visited the site of the Subject Property and the surrounding neighbourhood prior to the hearing to familiarize myself with the area.
5. Prior to the hearing, the parties informed TLAB that that they reached a settlement. As such, the hearing proceeded as a settlement hearing to determine whether the terms of settlement satisfied the statutory criteria for consent and variance applications.

MATTERS IN ISSUE

6. The variances that were before the COA and which are subject to this appeal are the following:

1. Section 10.20.40.50.1(B), By-law 569-2013

The maximum permitted area of each platform at or above the second storey of a detached house is 4 m².

A previous Committee of Adjustment application (A0333/18EYK) refused a rear platform with an area of 10.86 m².

The proposed second storey rear platform will have an area of 8.09 m².

2. Ontario Municipal Board decision issued on October 31, 2014, Case No. PL 140328 granted several variances to Zoning By-Law 569-2013 which are subject to condition 5 in Schedule 2 of the decision which states: "5. No decks above grade." This condition prohibits the construction of an above grade deck.
7. The settlement agreement is based on the Site Plan dated October 2018, revision date 11.14.18, prepared by Broere Design & Drafting. This was submitted to the Committee of Adjustments and is part of settlement package provided by the parties (Exhibit 2). This Site Plan is attached to this decision as Attachment 2.
8. As part of the settlement, the parties and participants agreed to the following conditions for the approval of the variances (Attachment 1 to this decision):

- a) Submission of a complete application for a permit to injure or remove a privately owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article III Private Tree Protection.
 - b) The Deck shall contain a step down from the existing home it gains access from, which step down height (riser) shall be between a minimum of 4 7/8" (0.124 metres) and a maximum of 7 7/8" (0.2 metres);
 - c) A Privacy Screen will be affixed to the west side of the Proposed Deck and shall be a minimum of approximately 2 metres in height; and
 - d) The Deck shall be constructed substantially in accordance with the layout and setbacks reflected in the Site Plan dated October 2018, revision date 11.14.18, prepared by Broere Design & Drafting.
9. The settlement of matters between parties is encouraged. However, despite the presence of a settlement proposal, which should be given great weight, the Toronto Local Appeal Body (TLAB) must still be satisfied that the considerations raised by provincial policy and subsection 45(1) of the *Planning Act* (as set out below), are satisfactorily met by the settlement proposal and that the public interest is served by any settlement.

JURISDICTION

Provincial Policy – S. 3

10. A decision of the TLAB must be consistent with the 2014 Provincial Policy Statement (PPS) and conform to the Growth Plan for the Greater Golden Horseshoe for the subject area (Growth Plan).

Minor Variance – S. 45(1)

11. 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

12. The Applicant called Mr. Franco Romano, a Registered Professional Planner, who I accepted as qualified to give professional land use planning opinion evidence. Mr. Romano provided the sole source of viva voce evidence. There was no contrary evidence presented.
13. Mr. Romano testified that the Subject Property is located within the Long Branch community in the southwest portion of the City of Toronto. Shamrock Avenue is the second street south from Lake Shore Boulevard West and is an Avenue with excellent local and regional transit access. The residential neighbourhood is mature and stable with a variety of building types, including two storey detached dwellings similar to the Subject Property. There has been a gradual regeneration in the neighbourhood in the form of replacement housing, creation of units within existing building forms and also some severance activities.
14. Mr. Romano concluded that the requested variances satisfied the statutory criteria set out in the Act and are individually and cumulatively minor in nature. In reaching these conclusions, he advised of the following in his oral testimony and in his witness statement:
 - a. There are no concerns arising from the PPS and the Growth Plan with respect to the construction of a deck.
 - b. There are many houses in the neighbourhood surrounding the Subject Property that have decks. These decks are at different positions on the property and are of various sizes. Mr. Romano reviewed the photos he took of neighbouring houses and provided examples of these decks – some were at the front of the house and some were at the rear of the house. As decks are a common feature in the neighbourhood, the proposed deck will form part of the physical neighbourhood without any adverse impact.
 - c. The proposed deck with an area of 8.09 m² is a modest sized deck that will provide moderate amenity space. There are houses in the area near the Subject Property that have large decks which were constructed before By-law 569-2013 came into force. These decks would not be by-law compliant under By-law 569-2013 if they were constructed after the By-law came into force.
 - d. The deck will not cover the whole of the rear wall. Instead, the deck platform will be in front of the windows on the second floor and will have 1.9 m side yard setback at the west side and 1.3m side yard setback at the east side. These setbacks are larger than the setbacks of the house itself. As Mr. Fazari's property abuts the west side of the Subject Property, this wide west side yard setback will mitigate issues related to privacy and overlook.
 - e. The Privacy Screen as part of the condition will further mitigate any privacy and overlook issues into Mr. Fazari's property.

- f. The condition requiring the lowering of the deck platform and including a step down from the interior of the property will also ensure that the deck is not very high and would mitigate issues of overlook for all neighbours.
- g. The trees at the rear of the Subject Property will not be harmed during the construction the deck, as the deck will overlap and be constructed over the existing walkout and concrete platform.
- h. Variance # 2 refers to an Ontario Municipal Board (OMB) decision issued on October 31, 2014, which imposed a prohibition against the construction of a deck on the Subject Property. Mr. Romano believes that the intent of the OMB condition is to provide oversight for a potential deck construction. There was no deck proposal when the severance and variance requests with respect to the Subject Property were before the OMB. This condition imposes oversight into the construction of a deck on the Subject Property. This condition, while not a zoning regulation or traditional minor variance item, can be varied. The TLAB is now responsible for reviewing whether the proposed deck is suitable for the Subject Property.

ANALYSIS, FINDINGS, REASONS

- 15. I have accepted Mr. Romano's testimony and have reviewed his testimony against the four tests. I am satisfied that the proposed deck with 8.09 m² will be a suitable development for the Subject Property and will maintain the general intent and purpose of both the OP and the zoning by-law. The deck will be consistent with the physical characteristics of the neighbourhood. Any potential adverse impacts, such as privacy concerns and overlook into neighbouring properties, are mitigated by the proposed conditions, such as lowering the height of the deck and installing a privacy screen. As such, the variances are minor in nature.
- 16. Variance # 2, though not a variance arising out of zoning by-law requirements, is an outcome of the OMB's decision to impose oversight and restriction on the construction of a deck on the Subject Property. By way of this appeal, the TLAB is now able to oversee that the construction of a deck satisfies the statutory criteria set out in the Act.
- 17. Based on the evidence before me and based on the submissions of the Applicant's counsel, I am satisfied that the variances along with the imposed conditions meet the four tests for variance.

DECISION AND ORDER

- 18. The minutes of settlement are approved. Accordingly, the applications for variances are approved and are subject to the conditions listed in Attachment 1.

19. Condition # 4 requires that the deck shall be constructed substantially in accordance with the layout and setbacks reflected in the Site Plan (Attachment 2). It is to be expected that as a result of condition # 2, the deck will be at a lower height and will have less steps than what is shown in the Site Plan. This deviation from the Site Plan does not mean that condition # 4 is not satisfied.

X 

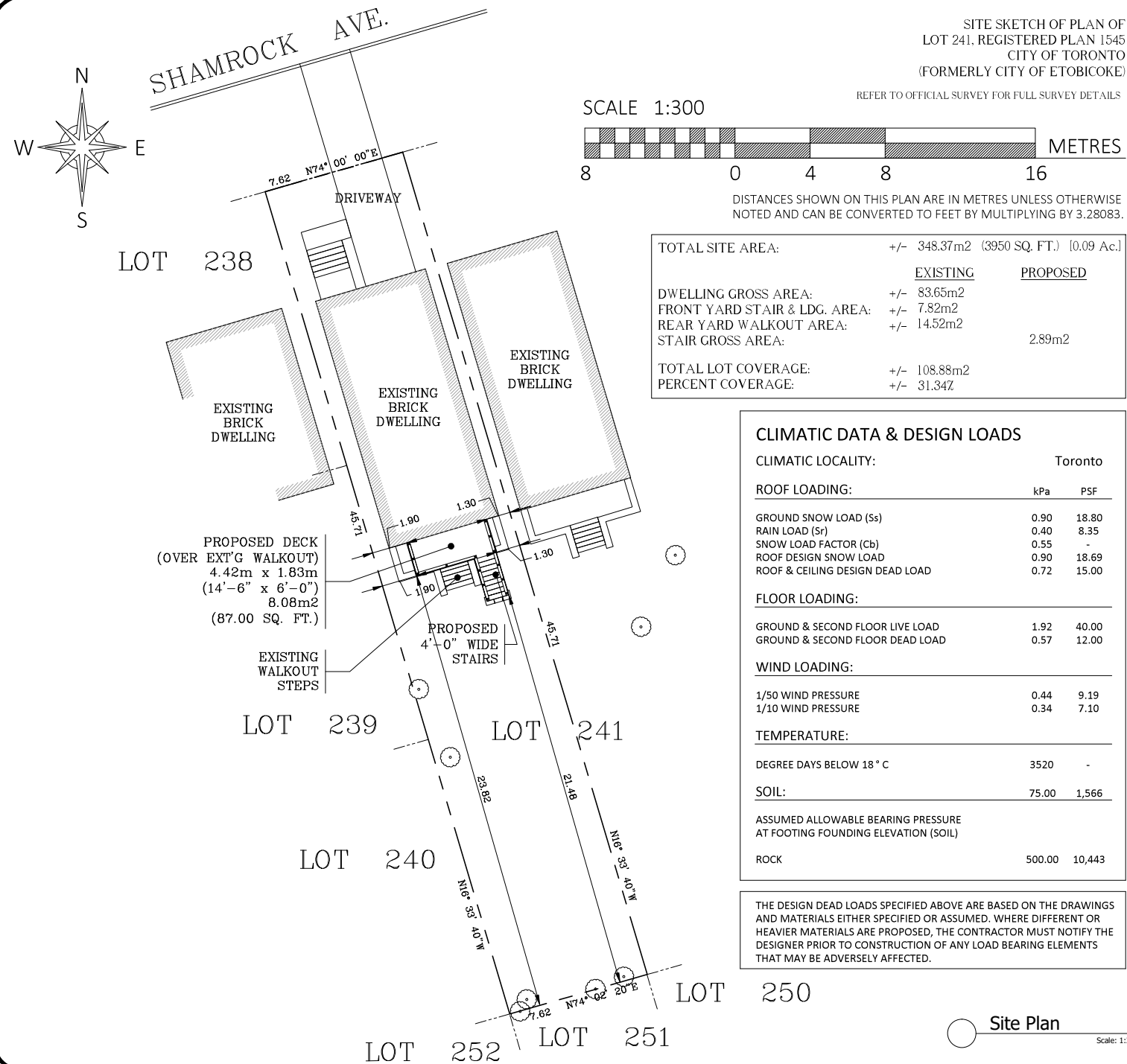
Shaheynoor Talukder
Panel Chair, Toronto Local Appeal Body
Signed by: Shaheynoor Talukder

Attachment 1

6B Shamrock Avenue
TLAB Case No.: 19 12877 S45 03 TLAB

Conditions of Minor Variance Approval

1. Submission of a complete application for a permit to injure or remove a privately owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article III Private Tree Protection.
2. The Deck shall contain a step down from the existing home it gains access from, which step down height (riser) shall be between a minimum of 4 7/8" (0.124 metres) and a maximum of 7 7/8" (0.2 metres);
3. A Privacy Screen will be affixed to the west side of the Proposed Deck and shall be a minimum of approximately 2 metres in height; and
4. The Deck shall be constructed substantially in accordance with the layout and setbacks reflected in the Site Plan dated October 2018, revision date 11.14.18, prepared by Broere Design & Drafting, which is attached to this decision as Attachment 2.



General Notes

- THESE DRAWINGS REMAIN PROPERTY OF BROERE DESIGN & DRAFTING. LICENSE IS GRANTED FOR THE CONSTRUCTION OF ONE ONLY OF THE PROJECTS REPRESENTED HEREIN.
- CONTRACTOR TO CHECK AND VERIFY ALL DIMENSIONS ON SITE PRIOR TO START OF CONSTRUCTION. ANY DISCREPANCIES AND/OR OMISSIONS MUST BE REPORTED TO THE DESIGNER FOR REVISION AND RESUBMISSION TO THE BUILDING DEPARTMENT.
- ANY CHANGES TO THE PLAN MUST BE APPROVED BY THE DESIGNER AND BE RESUBMITTED TO THE BUILDING DEPARTMENT.
- ALL CONSTRUCTION MUST COMPLY WITH THE LATEST EDITION OF THE O.B.C.
- ALL DIMENSIONS ARE IN FEET & INCHES UNLESS OTHERWISE NOTED.
- ALL POINT LOADS TO BE CONTINUOUS TO FOUNDATION.
- ALL WINDOW AND DOOR ROUGH OPENINGS TO BE CONFIRMED BY SUPPLIER.
- FLASHING ABOVE ALL WINDOWS AND DOORS.
- ALL HEADERS ARE 2 - 2 x 10 SPF #2 OR BETTER UNLESS OTHERWISE NOTED.
- DO NOT SCALE DRAWINGS.

4	Gross Area Reduction	11.14.18
No.	Revision / Issue	Date

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

MARK BROERE	36256
NAME	SIGNATURE BCIN
BROERE DESIGN & DRAFTING	40741
FIRM NAME	BCIN



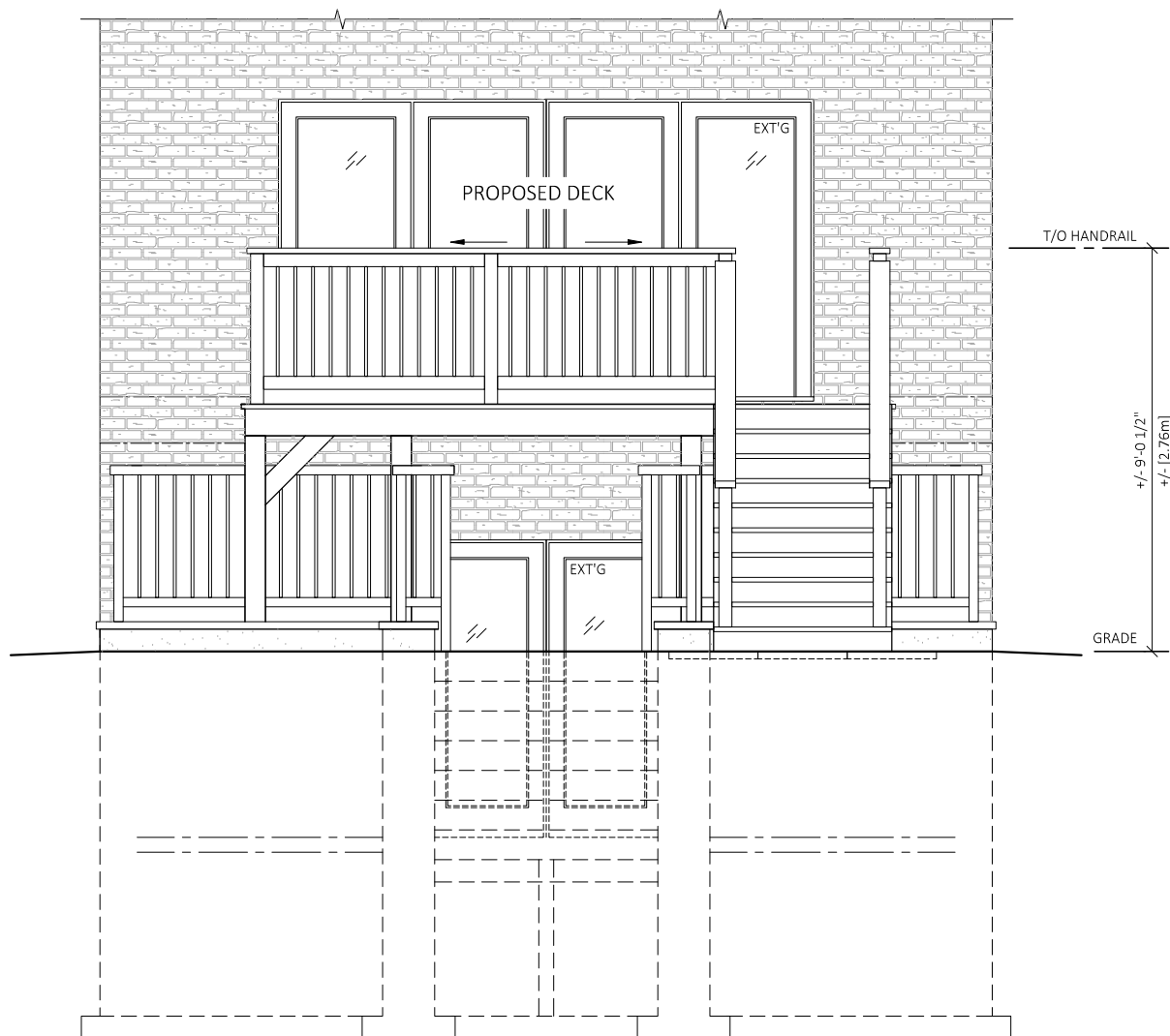
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Lee Family Proposed Deck

6B Shamrock Avenue
City of Toronto, ON

Desc.	Site Plan	Sheet
Date	Oct. 2018	A 1.0
Scale	1:300	




○ Front Elevation
Scale: 1:50

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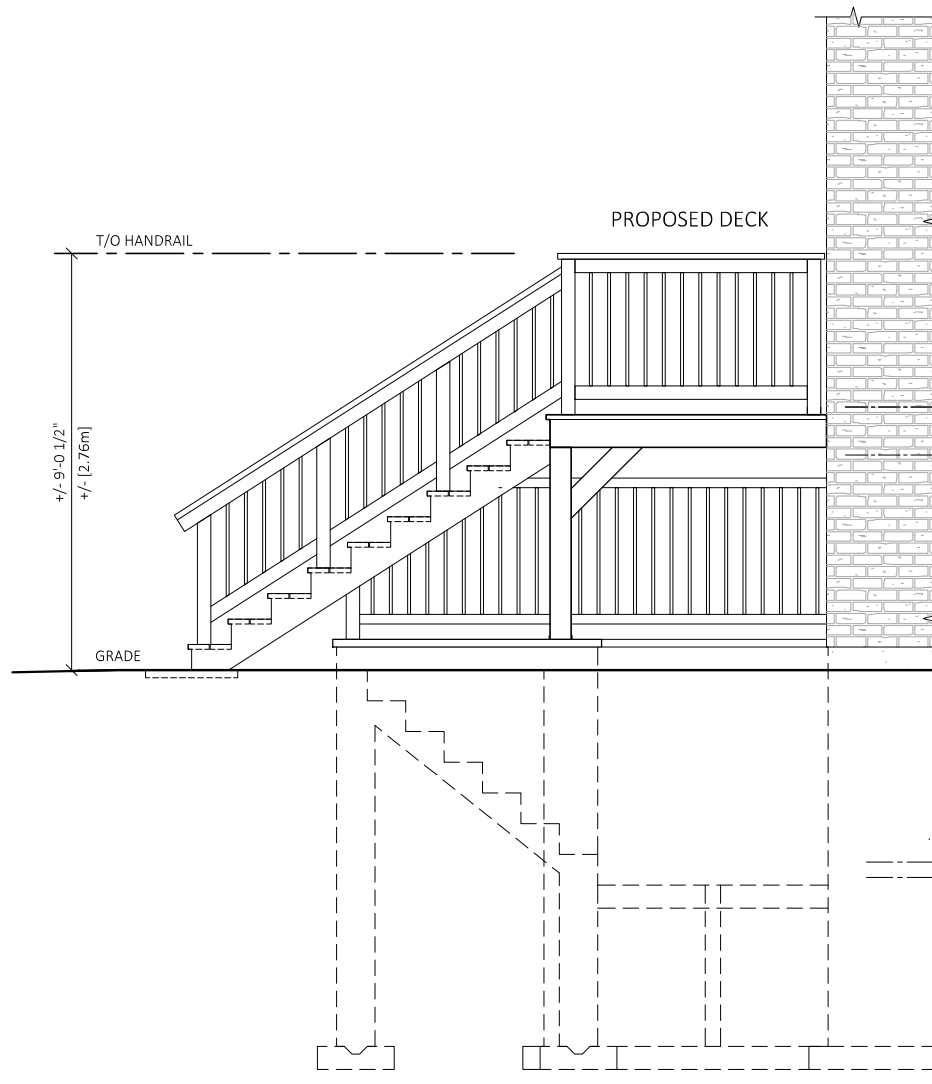
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Lee Family
Proposed Deck

6B Shamrock Avenue
City of Toronto, ON

Desc.	Elevations	Sheet
Date	Oct. 2018	A 1.1
Scale	1:50	



Right Elevation
Scale: 1:50

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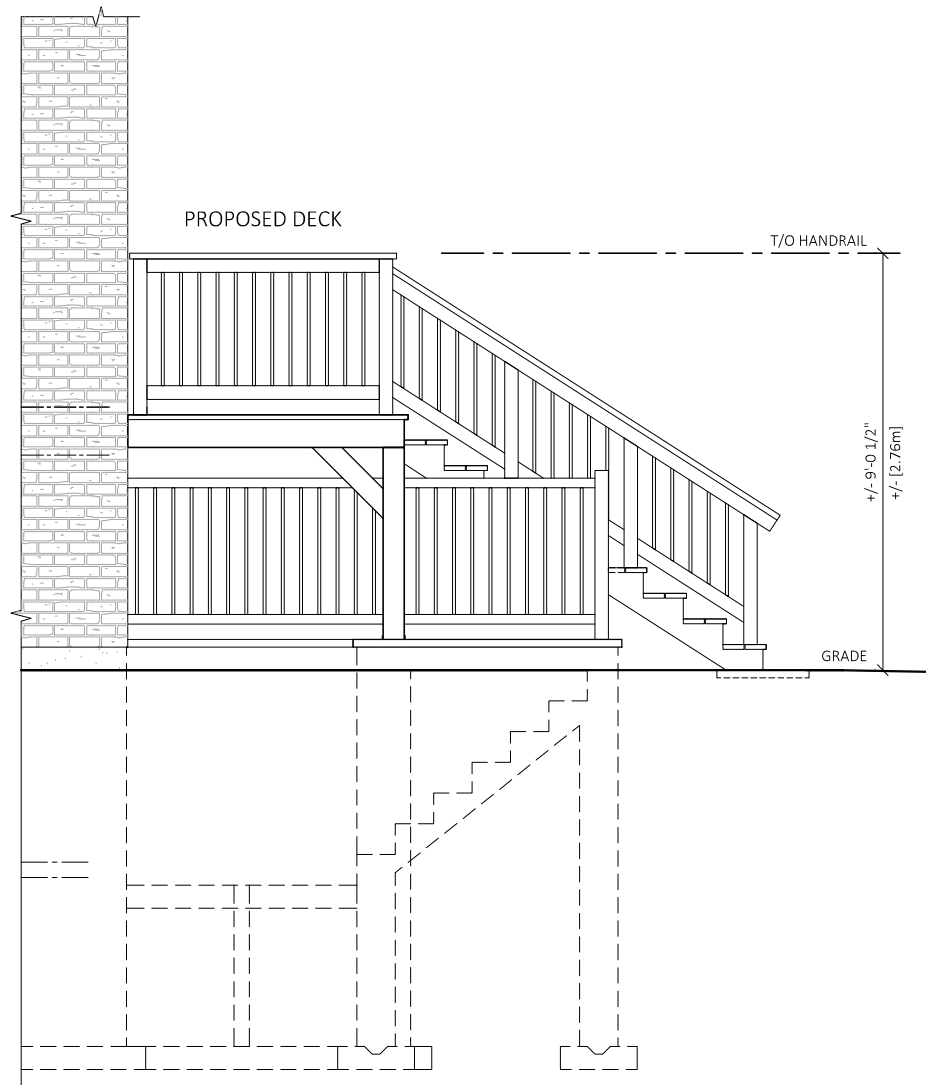


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Desc.	Elevations	Sheet
Date	Oct. 2018	A 1.2
Scale	1:50	



Left Elevation
Scale: 1:50

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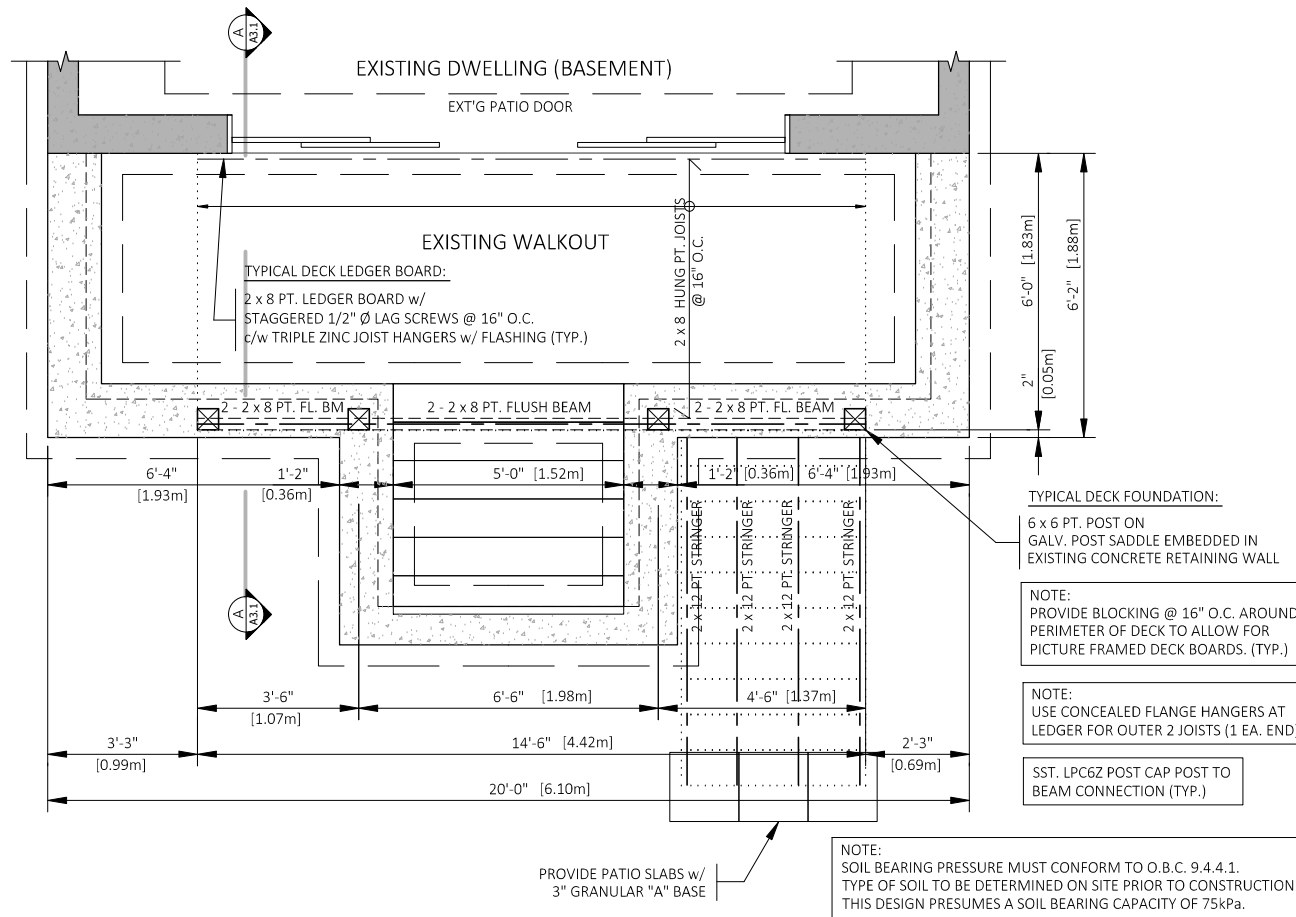
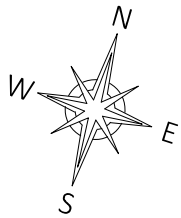
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6B Shamrock Avenue
City of Toronto, ON

Desc.	Elevations	Sheet
Date	Oct. 2018	A 1.3
Scale	1:50	



Foundation Plan
Scale: 1:50

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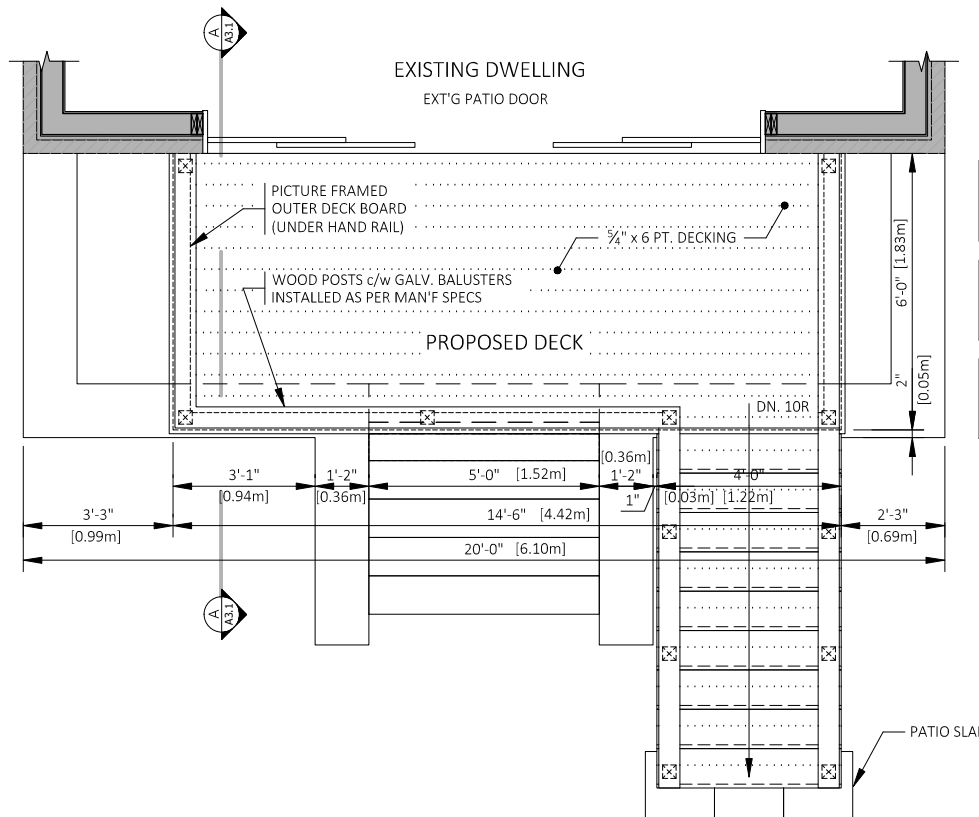
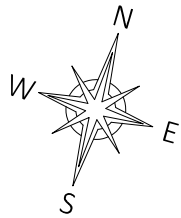
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6B Shamrock Avenue
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Desc.	Fdn. Plan	Sheet
Date	Oct. 2018	A 2.1
Scale	1:50	



NOTE:
GUARD MUST CONFORM TO OBC 9.8.8 &
SB - 7 DETAILS. BALUSTERS TO BE INSTALLED
AS PER MAN'F SPECS OR AS PER SB - 7.

NOTE:
MIN. 35" RAILING HEIGHT REQUIRED
IF GRADE TO TOP OF DECK SURFACE
IS LESS THAN 5'-11".

NOTE:
MIN. 42" RAILING HEIGHT REQUIRED
IF GRADE TO TOP OF DECK SURFACE
IS MORE THAN 5'-11".

Ground Floor Plan
Scale: 1:50

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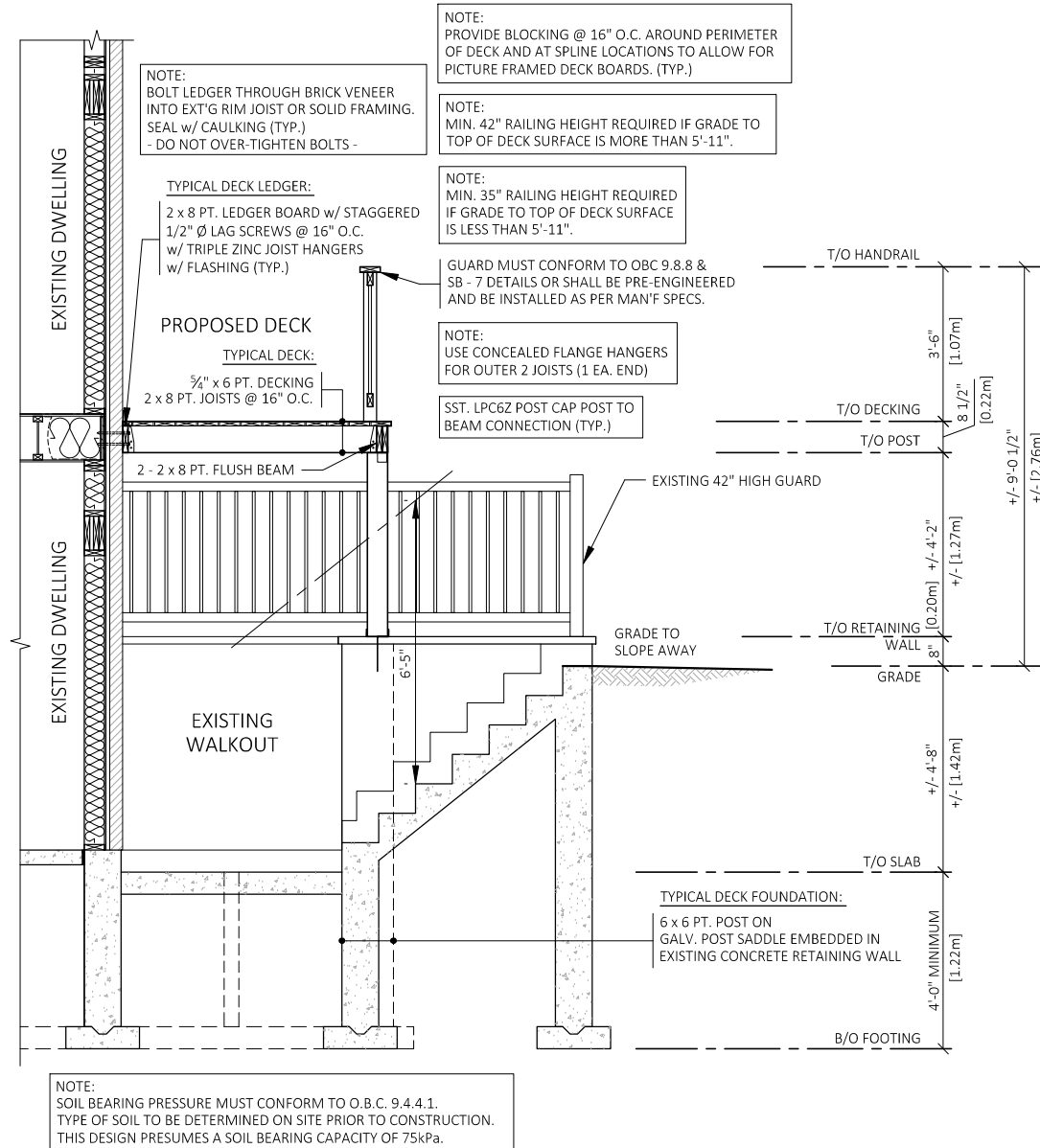
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6B Shamrock Avenue
City of Toronto, ON

Desc.	Ground Plan	Sheet
Date	Oct. 2018	A 2.2
Scale	1:50	



Cross Section A - A
Scale: 1:50

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Lee Family Proposed Deck

6B Shamrock Avenue
City of Toronto, ON

Desc.	Sections	Sheet
Date	Oct. 2018	A 3.1
Scale	1:50	

DECK NOTES

GENERAL:

- ALL CONSTRUCTION TO MEET OR EXCEED THE REQUIREMENTS OF THE 2012 ONTARIO BUILDING CODE, CSA-086, AND SUPPLEMENTARY STANDARDS.
- ALL LUMBER SHALL BE DECAY RESISTANT SPF. NO. 2 OR BETTER AND ALL CUT ENDS OF PT. LUMBER SHALL BE TREATED TO PREVENT DECAY.
- ALL FASTENERS SHALL BE RESISTANT TO CORROSION.
- ALL NAILS SHALL BE COMMON SPIRAL.

5. ALL APPROVED ENGINEERED COMPONENTS SHALL BE INSTALLED AS PER THE MANUFACTURER'S SPECIFICATIONS AND BE CCMC APPROVED.

FOUNDATION:

- FOOTINGS MUST BEAR ON UNDISTURBED SOIL MINIMUM 48" BELOW GRADE UNLESS OF SLAB-ON-GROUND TYPE.
- DECK PIERS SHALL EXTEND NOT LESS THAN 5 7/8" [150mm] ABOVE GROUND LEVEL.

FRAMING:

- ALL FRAMING CONNECTIONS SHALL BE NAILED IN ACCORDANCE WITH OBC 9.23.3.4. ONLY DECK BOARDS MAY BE SECURED WITH EITHER SCREWS OR NAILS.
- DECK POSTS SHALL BE CENTRALLY LOCATED ON THE PIERS.
- DECKS ATTACHED TO THE HOUSE ARE NOT PERMITTED TO BE SUPPORTED ON BRICK VENER; THEY SHALL BE ATTACHED TO THE HOUSE FRAMING STRUCTURE.
- PROVIDE LATERAL SUPPORT (DIA. BRACING) TO DECK POSTS WHEN POSTS ARE MORE THAN 23 5/8" [600mm] IN LENGTH.
- BEAM SPLICES TO OCCUR OVER A POST OR SUPPORT ONLY.
- PROVIDE MID-SPAN BLOCKING WHERE JOISTS SPAN OVER 6'-11".
- MAX. CANTILEVER FOR 2x8 JOISTS IS 15 3/4" [400mm] AND FOR 2x10 AND DEEPER JOISTS IS 23 5/8" [600mm].
- PROVIDE HDG. WASHERS FOR LAG SCREW LEDGER BOARD CONNECTIONS AND HDG. NUTS & WASHERS FOR CARRIAGE BOLTED LEDGER BOARD CONNECTIONS.

GUARDS:

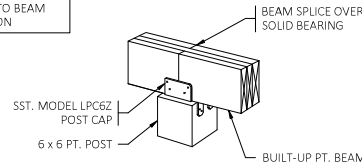
- GUARD IS REQUIRED IF HEIGHT OF DECK EXCEEDS 1'-11 5/8" [600mm] FROM GRADE TO DECK SURFACE.
- GUARD SHALL HAVE MIN. 35" [900mm] HEIGHT IF GRADE TO TOP OF DECK SURFACE IS LESS THAN 5'-11" [1.80m].
- GUARD SHALL HAVE MIN. 42" [1070mm] HEIGHT IF GRADE TO TOP OF DECK SURFACE IS MORE THAN 5'-11" [1.80m].
- GUARDS SHALL MEET THE REQUIREMENTS SET OUT IN DIV. B. SUBSECTION 9.8.8. AND/OR SB-7 OF THE SUPPLEMENTARY STANDARDS OF THE 2012 OBC; OTHERWISE THE GUARD SHALL BE AN APPROVED ALTERNATIVE AND SHALL BE INSTALLED AS PER THE MANUFACTURER'S SPECIFICATIONS.
- MAXIMUM OF 3 7/8" [100mm] OPENING BETWEEN GUARD PICKETS.
- NO MEMBER OR ATTACHMENT BETWEEN 5 1/2" & TOP OF GUARD SHALL FACILITATE CLIMBING.
- PROVIDE SOLID BLOCKING BETWEEN JOISTS AT GUARD RAIL POSTS WHERE GUARD IS PARALLEL TO JOIST DIRECTION.
- MIN. 20 GAUGE FRAMING ANCHOR TO BE USED AT POST TO RAIL CONNECTIONS. PLASTIC CLIPS ARE NOT PERMITTED.

STAIRS:

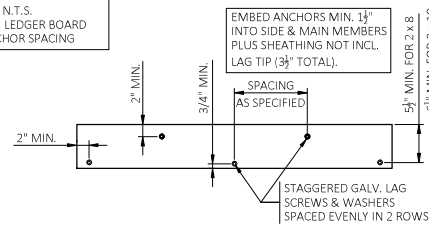
- STAIRS WITH MORE THAN 3 RISERS MUST HAVE A HANDRAIL.
- WOOD STAIR STRINGERS SHALL BE OF MINIMUM SIZE 2x10 AND THE SPACE BETWEEN STRINGERS SHALL BE NOT MORE THAN 35" WITH 2x DECKING OR 14 1/2" WITH 5/4" DECKING. STRINGERS SHALL BE SUPPORTED AND SECURED AT TOP AND BOTTOMS.
- PROVIDE UNIFORM RUN AND TREAD DEPTH, AND UNIFORM HEIGHT FOR STEPS CONFORMING TO THE BELOW TOLERANCES.

RISE:	MIN. 4 7/8"	MAX. 7 7/8"
RUN:	MIN. 8 1/4"	MAX. 14"
TREAD DEPTH:	MIN. 9 1/4"	MAX. 14"

D1 - N.T.S.
TYP. POST TO BEAM
CONNECTION

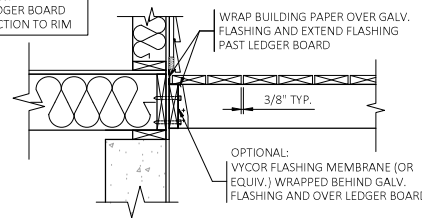


D2 - N.T.S.
TYP. LEDGER BOARD
ANCHOR SPACING



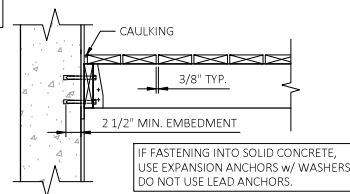
D3 - N.T.S.

TYP. LEDGER BOARD
CONNECTION TO RIM



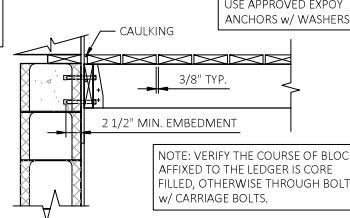
D4 - N.T.S.

TYP. LEDGER BOARD
CONNECTION TO SOLID
CONCRETE WALL

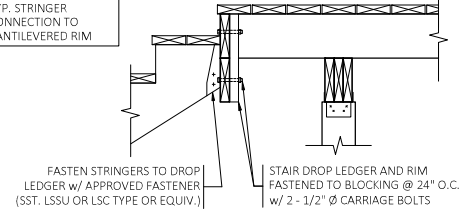


D5 - N.T.S.

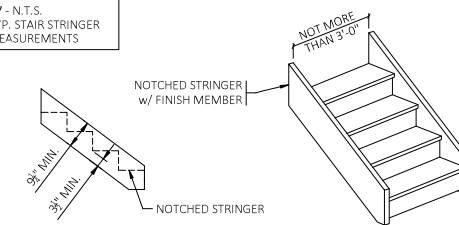
TYP. LEDGER BOARD
CONNECTION TO BLOCK
WALL



D6 - N.T.S.
TYP. STRINGER
CONNECTION TO
CANTILEVERED RIM

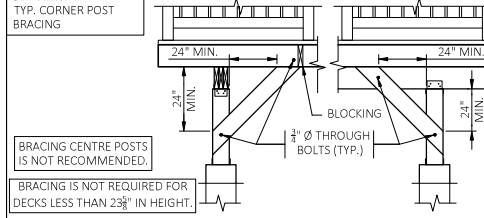


D7 - N.T.S.
TYP. STAIR STRINGER
MEASUREMENTS



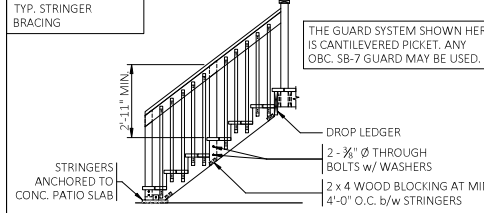
D7 - N.T.S.

TYP. CORNER POST
BRACING



D8 - N.T.S.

TYP. STRINGER
BRACING



D9 - N.T.S.

MIN. SIZE OF GUARD
LOADBRG. ELEMENTS

GUARD ELEMENT:	MIN. SIZE, mm (in):
POST	89 x 89 (4 x 4 NOMINAL)
TOP RAIL	38 x 89 (2 x 4 NOMINAL)
BOTTOM RAIL	38 x 89 (2 x 4 NOMINAL)
PICKET / BALUSTER	32 x 82 (1 3/8\"/>

ABBREVIATIONS

BM.	BEAM
b/w	BETWEEN
BTM.	BOTTOM
BULKING.	BLOCKING
BUP.	BUILT-UP POST
CANT.	CANTILEVERED
CO. DET.	CARBON MONOXIDE DETECTOR
CL	CENTRELINE
CLMN.	COLUMN
c/w	COMPLETE WITH
CONC.	CONCRETE
DKG.	DECKING

DIA.	DIAMETER
D.O.	DO OTHER
DN.	DOWN
ESA.	ELECTRICAL SAFETY AUTHORITY
EXT'G	EXISTING
EXT.	EXTERIOR
FDN.	FOUNDATION
FTG.	FOOTING
HGR.	HANGER
HORIZ.	HORIZONTAL
INSUL.	INSULATION
INT.	INTERIOR
JSTS.	JOISTS

kPa	KILOPASCALS
MAX.	MAXIMUM
MIN.	MINIMUM
N.T.S.	NOT TO SCALE
O.C.	ON CENTRE
OBC.	ONTARIO BUILDING CODE
OH.	OVERHEAD
PERIM.	PERIMETER
PL.	POINT LOAD
PLA.	POINT LOAD ABOVE
POLY.	POLYETHYLENE
PSF.	POUNDS PER SQUARE FOOT
PSI.	POUNDS PER SQUARE INCH

PT.	PRESSURE TREATED (ACQ.)
PROP.	PROPOSED
RFRS.	RAFTERS
RLG.	RAILING
SPEC.	SPECIFICATIONS
SST.	SIMPSON STRONG TIE
TYP.	TYPICAL
UNO.	UNLESS OTHERWISE NOTED
VERT.	VERTICAL
WWM.	WELDED WIRE MESH
w/	WITH

General Notes

- THESE DRAWINGS REMAIN PROPERTY OF BROERE DESIGN & DRAFTING. LICENSE IS GRANTED FOR THE CONSTRUCTION OF ONE ONLY OF THE PROJECTS REPRESENTED HEREIN.
- CONTRACTOR TO CHECK AND VERIFY ALL DIMENSIONS ON SITE PRIOR TO START OF CONSTRUCTION. ANY DISCREPANCIES AND/OR OMISSIONS MUST BE REPORTED TO THE DESIGNER FOR REVISION AND RESUBMISSION TO THE BUILDING DEPARTMENT.
- ANY CHANGES TO THE PLAN MUST BE APPROVED BY THE DESIGNER AND BE RESUBMITTED TO THE BUILDING DEPARTMENT.
- ALL CONSTRUCTION MUST COMPLY WITH THE LATEST EDITION OF THE O.B.C.
- ALL DIMENSIONS ARE IN FEET & INCHES UNLESS OTHERWISE NOTED.
- ALL POINT LOADS TO BE CONTINUOUS TO FOUNDATION.
- ALL WINDOW AND DOOR ROUGH OPENINGS TO BE CONFIRMED BY SUPPLIER.
- FLASHING ABOVE ALL WINDOWS AND DOORS.
- ALL HEADERS ARE 2 - 2 x 10 SPF #2 OR BETTER UNLESS OTHERWISE NOTED.
- DO NOT SCALE DRAWINGS.

4	Gross Area Reduction	11.14.18
No.	Revision / Issue	Date

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

MARK BROERE	36256
NAME	SIGNATURE
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Lee Family Proposed Deck

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City of Toronto, ON

Desc.	Details & Notes	Sheet
Date	Oct. 2018	A 4.1
Scale	N.T.S.	