

Memorandum to the City of Markham Committee of Adjustment

September 13, 2021

File: A/063/21
Address: 132 Dundas Way – Markham, ON
Applicant: Lenny Lesmana Ng
Agent: Yue Li
Hearing Date: September 22, 2021

The following comments are provided on behalf of the East District Team. The applicant is requesting relief from the following “Community Amenity Three Exception *512 (CA3*512) Zone” requirement under By-law 177-96, as amended, as it relates to an existing rear yard deck. The variance requested is to permit:

a) By-law 177-96, Section 6.2.1 b) iii):

a deck to be located at the second storey, whereas the By-law requires that the floor of the deck not be higher than the floor level of the first storey of the main building; and

b) By-law 177-96, Section 6.2.1 b):

a deck with a maximum rear yard projection of 3.65 m (11.97 ft), whereas the By-law permits a deck with a maximum rear yard projection of 3.0 m (9.84 ft).

NOTE: Staff note that Notice of Hearing has already been sent out with the wording noted above. Upon receipt of the variance application, Planning staff completed a review of the requested wording of variance b) against the applicable By-law Section 6.2.1 b), and determined that the following wording would be more suitable, to permit:

“a deck with a maximum projection of 3.65 m (11.98 ft) from the wall closest to the rear lot line, whereas the By-law permits a deck with a height greater than 1.0 m (3.28 ft) above the lowest ground surface to extend a maximum of 3.0 m (9.84 ft) from the wall closest to the rear lot line.”

In the event of approval, staff recommend that the Committee of Adjustment (“the Committee”) obtain agreement from the applicant at the meeting, and that the wording suggested above be substituted with the current wording of variance b) to ensure consistency with the applicable By-law section.

BACKGROUND

Property Description

The subject property is located on the south side of Dundas Way, east of Donald Cousens Parkway, south of Major Mackenzie Drive East, and west of Delray Drive. There is currently a three-storey townhouse located on the property, with an existing rear yard deck. The property is located within a residential neighbourhood, which contains a mix of low rise dwellings including three-storey townhouses, and two-storey semi-detached dwellings. Properties along Dundas Way and Weidman Lane contain similar three-storey townhouses.

Proposal

The applicant is proposing to recognize an existing rear yard deck located at the second-storey level which projects 3.65 m (11.97 ft) from the building wall closest to the rear lot line, and has an approximate area of 11.90 m² (128.0 ft²), excluding the stairs.

Official Plan and Zoning

Official Plan 2014 (partially approved on November 24/17, and updated on April 9/18)

The subject property is designated "Residential Low Rise", which provides for low rise housing forms with a building height of up to three-storeys.

Zoning By-Law 177-96

The subject property is zoned "Community Amenity Three Exception *512 (CA3*512) Zone" under By-law 177-96, as amended, which permits one townhouse dwelling per lot. The subject development does not comply with the By-law with respect to the maximum deck height, and maximum projection from the dwelling wall closest to the rear lot line.

Zoning Preliminary Review (ZPR) Not Undertaken

The applicant has confirmed that a ZPR has not been conducted. However, the applicant has received comments from the building department through their building permit process to confirm the variances required for the proposed development.

COMMENTS

Section 45(1) of the *Planning Act, R.S.O. 1990, c. P.13, as amended*, states that four tests must be met in order for a variance to be granted by the Committee of Adjustment ("the Committee"):

- a) The variance must be minor in nature;
- b) The variance must be desirable, in the opinion of the Committee, for the appropriate development or use of land, building or structure;
- c) The general intent and purpose of the Zoning By-law must be maintained;
- d) The general intent and purpose of the Official Plan must be maintained.

Increase in Maximum Deck Height and Increase in Maximum Projection from the Dwelling Wall Closest to the Rear Lot Line

The applicant is requesting a deck to be located at the second-storey projecting a maximum distance of 3.65 m (11.97 ft) from the building wall closest to the rear lot line, whereas the By-law requires that the floor of the deck is not higher than the floor level of the first-storey of the main building, and projects no more than 3.0 m (9.84 ft) from the wall closest to the rear lot line.

Properties within the immediate vicinity along Dundas Way and Weidman Lane have been similarly developed as three-storey townhouses, without a basement floor level. The By-law provides the following definitions:

- a) **basement** which means: *"that portion of a building below the first storey";*
and,
- b) **first-storey** which means: *"the storey with its floor closest to established grade and having its ceiling more than 1.80 m (5.91 ft) above grade."*

A review of the architectural plans approved by the City in 2015 shows that the first-storey floor level as defined by the By-law is occupied by a recreation room at the rear; this is the

lowest level of the dwelling, is not below grade, and provides for a walk-out into the rear yard. The kitchen and family room areas are shown to be located at the floor above, next to the existing deck entrance. Prior to construction of the deck, a juliette balcony existed.

Approval of the requested variance would provide for alternate access to the rear yard area from the main living and dining area, and direct access to the outdoor amenity space at the second-storey.

Site photos of the property provided by the applicant, in combination with a site visit conducted by staff, shows that other second-storey decks have been constructed within the immediate vicinity. The juliette balconies provide residents who live in similar townhouses within the immediate vicinity with an opportunity to build a deck at the second-storey level, subject to obtaining a building permit. In this particular minor variance application, the applicant has chosen to construct a deck into the rear yard area prior to obtaining the necessary approvals. Notwithstanding completion of construction, staff's assessment of this variance application is based on whether the development as proposed, meets the four tests of the *Planning Act*. In the event that the application is denied, the applicant would be required to address any existing non-compliances with the By-law, which may include partial, or full removal of the existing deck.

Staff have given consideration to:

- a) the context of properties within the immediate vicinity;
- b) the limited projection from the rear building wall; and,
- c) development standards of the By-law which includes permissions for balconies to project a distance of no more than 2.0 m (6.56 ft) at a second-storey level.

Staff are of the opinion that the impacts of the proposed second-storey deck and its projection are minor in nature, and meets the general intent of the By-law. Accordingly, staff do not object to the proposed development, and recommend that the conditions in Appendix "A" be adopted in the event of approval.

PUBLIC INPUT SUMMARY

No written submissions were received as of September 13, 2021. It is noted that additional information may be received after the writing of the report, and the Secretary-Treasurer will provide information on this at the meeting.

CONCLUSION

Planning staff have reviewed the application with respect to Section 45(1) of the *Planning Act*, and are of the opinion that the variance request meets the four tests. Staff recommend that the Committee consider public input, and the conditions of approval detailed in Appendix "A" in reaching a decision. The onus is ultimately on the applicant to demonstrate how they satisfy the tests of the *Planning Act* required for the granting of minor variances.

APPENDICES

Appendix "A" – Conditions of Approval

Appendix "B" – Plans

Appendix "C" – Aerial Photo: Properties along Dundas Way and Weidman Lane

PREPARED BY:



Aleks Todorovski, Planner, Zoning and Special Projects

REVIEWED BY:



Stacia Muradali, Development Manager, East District

APPENDIX "A"

CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/035/21

1. That the variance applies only to the subject development for as long as it remains.
2. That the variance applies only to the subject development, in substantial conformity with the plans attached as Appendix "B" to this Staff Report, and that the Secretary-Treasurer receive written confirmation that this condition has been fulfilled to the satisfaction of the Director of Planning and Urban Design, or their designate.

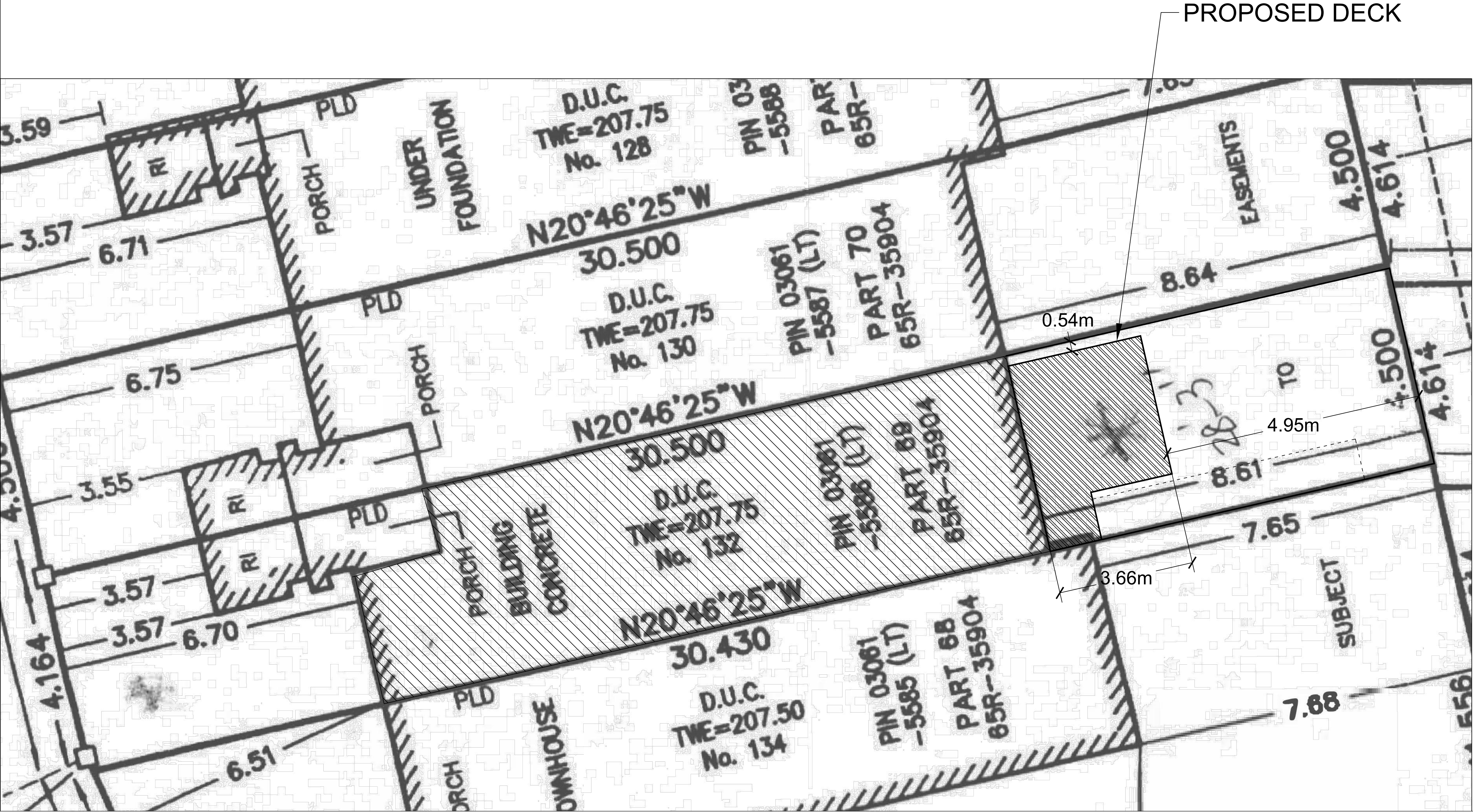
CONDITIONS PREPARED BY:

A handwritten signature in black ink, appearing to be 'Aleks Todorovski', written over a horizontal line.

Aleks Todorovski, Planner, Zoning and Special Projects

APPENDIX “B”

PLANS TO BE ATTACHED TO ANY APPROVAL OF FILE A/035/21



The contractor must verify and accept responsibility for all dimensions and conditions on site. This drawing is not to be scaled. The designer is not responsible for the accuracy of survey, structural, mechanical, electrical, etc., information shown on this drawing. Refer to the appropriate consultant's drawings before proceeding with the work. Construction must conform to all applicable codes and requirements of authorities having jurisdiction. The contractor working from drawings not specifically marked 'For Construction' must assume full responsibility and bear costs for any corrections or damages resulting from his work.

REV.	ISSUED FOR:	DATE:
1.	PERMIT	SEPT 05

The undersigned has reviewed and takes responsibilities for this design, and has the qualifications and meets the requirements set out in the Ontario building code to be a designer.

QUALIFICATIONS INFORMATION
Required unless design is exempt under 2.17.5.1 of the building code

YUE LI #103525
Name Signature BCIN/BCDN

Project :

132 DUNDAS WAY
MARKHAM, ON L6E 0T1

Drawing Name :

SITE PLAN

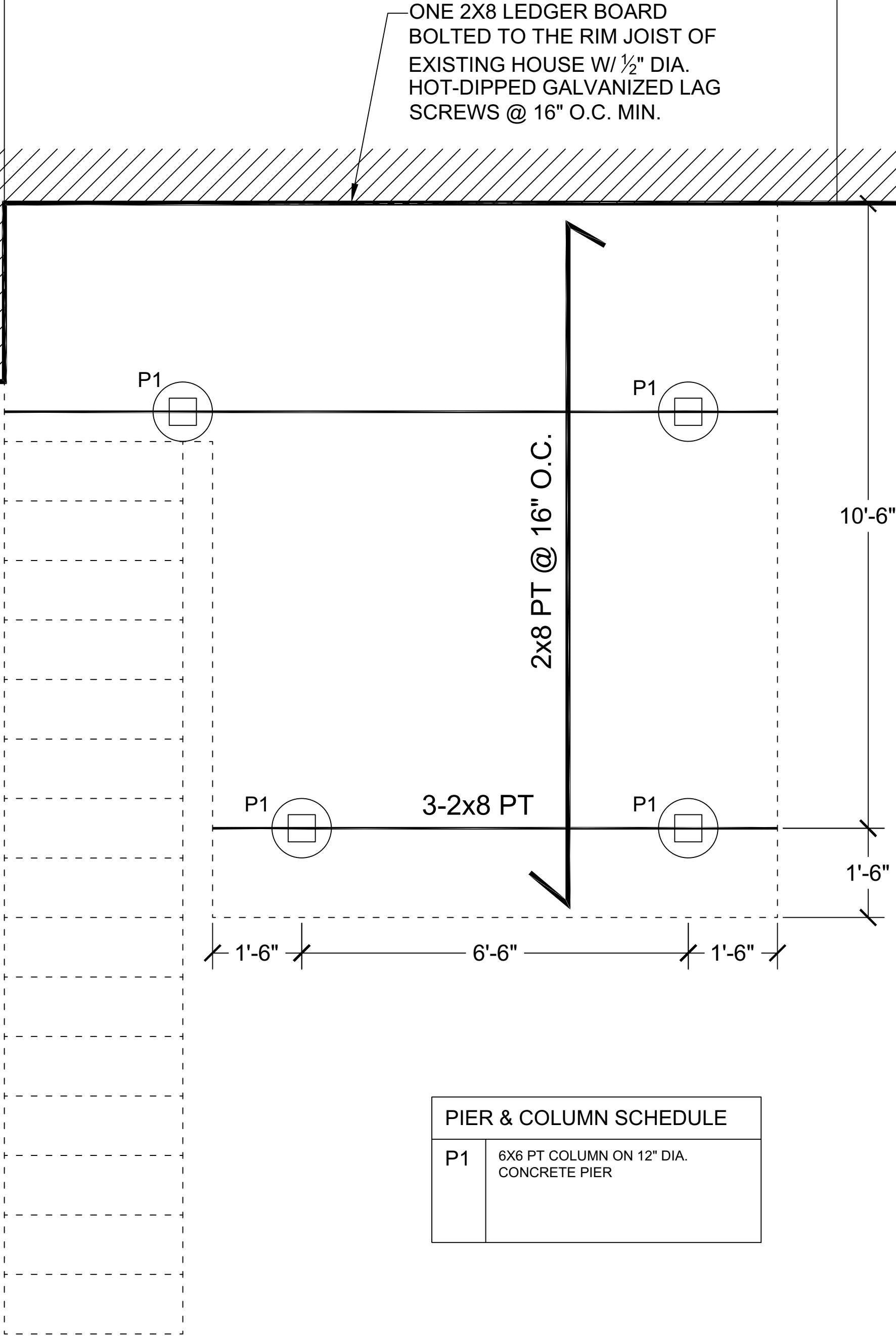
Proj No.:
Drawn by:
Checked by:
North:

Date: APRIL 2020
Scale:
Drawing No.:

←

A00

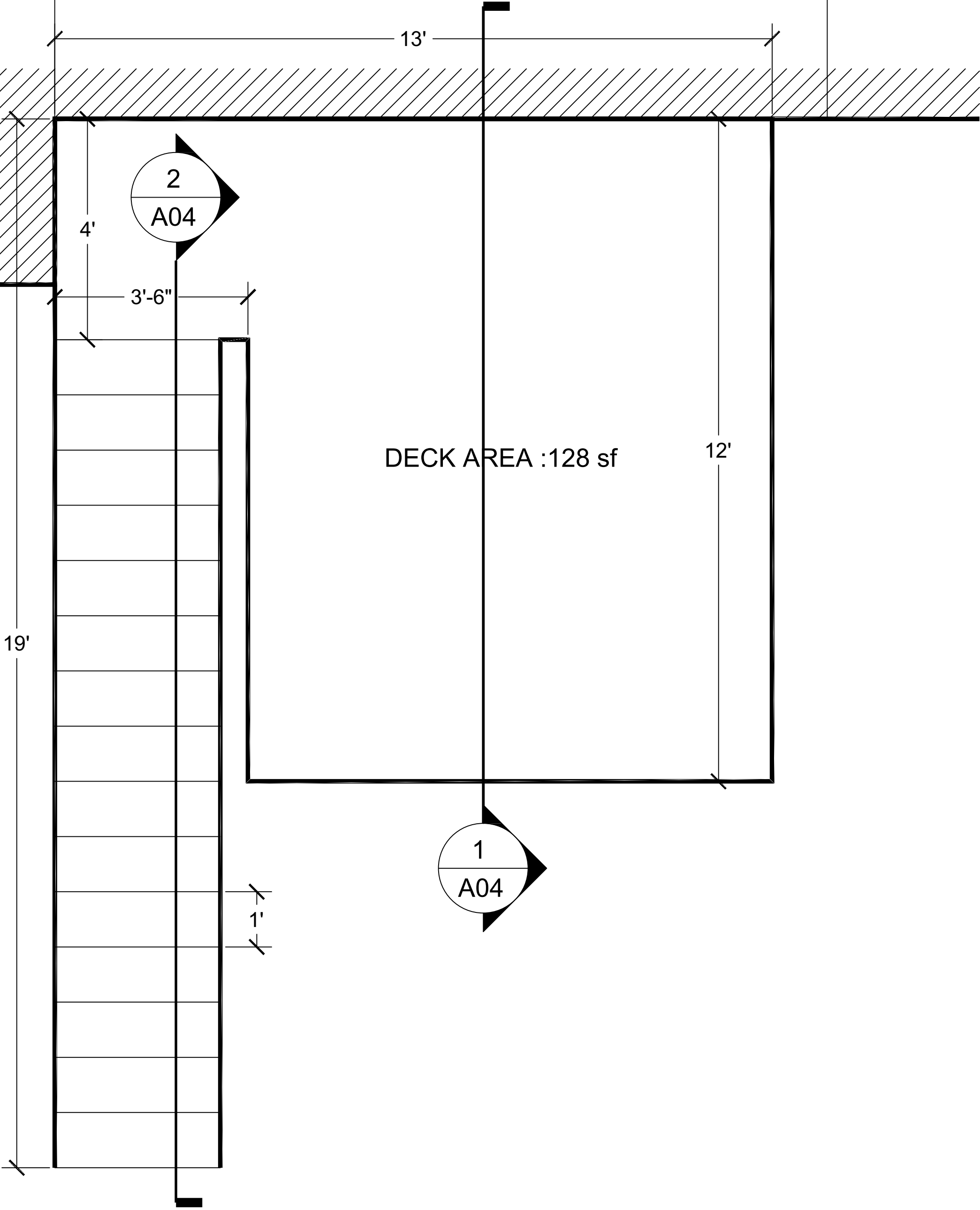
EXISTING
TOWNHOUSE



PIER & COLUMN SCHEDULE	
P1	6X6 PT COLUMN ON 12" DIA. CONCRETE PIER

1 - FOOTING PLAN

EXISTING
TOWNHOUSE



2 - DECK PLAN

The contractor must verify and accept responsibility for all dimensions and conditions on site. This drawing is not to be scaled. The designer is not responsible for the accuracy of survey, structural, mechanical, electrical, etc., information shown on this drawing. Refer to the appropriate consultant's drawings before proceeding with the work. Construction must conform to all applicable codes and requirements of authorities having jurisdiction. The contractor working from drawings not specifically marked 'For Construction' must assume full responsibility and bear costs for any corrections or damages resulting from his work.

REV.	ISSUED FOR:	DATE:
1.	PERMIT	SEPT 05

The undersigned has reviewed and takes responsibilities for this design, and has the qualifications and meets the requirements set out in the Ontario building code to be a designer.

QUALIFICATIONS INFORMATION
Required unless design is exempt under 2.17.5.1 of the building code


YUE LI #103525
Name Signature BCIN/BCDN

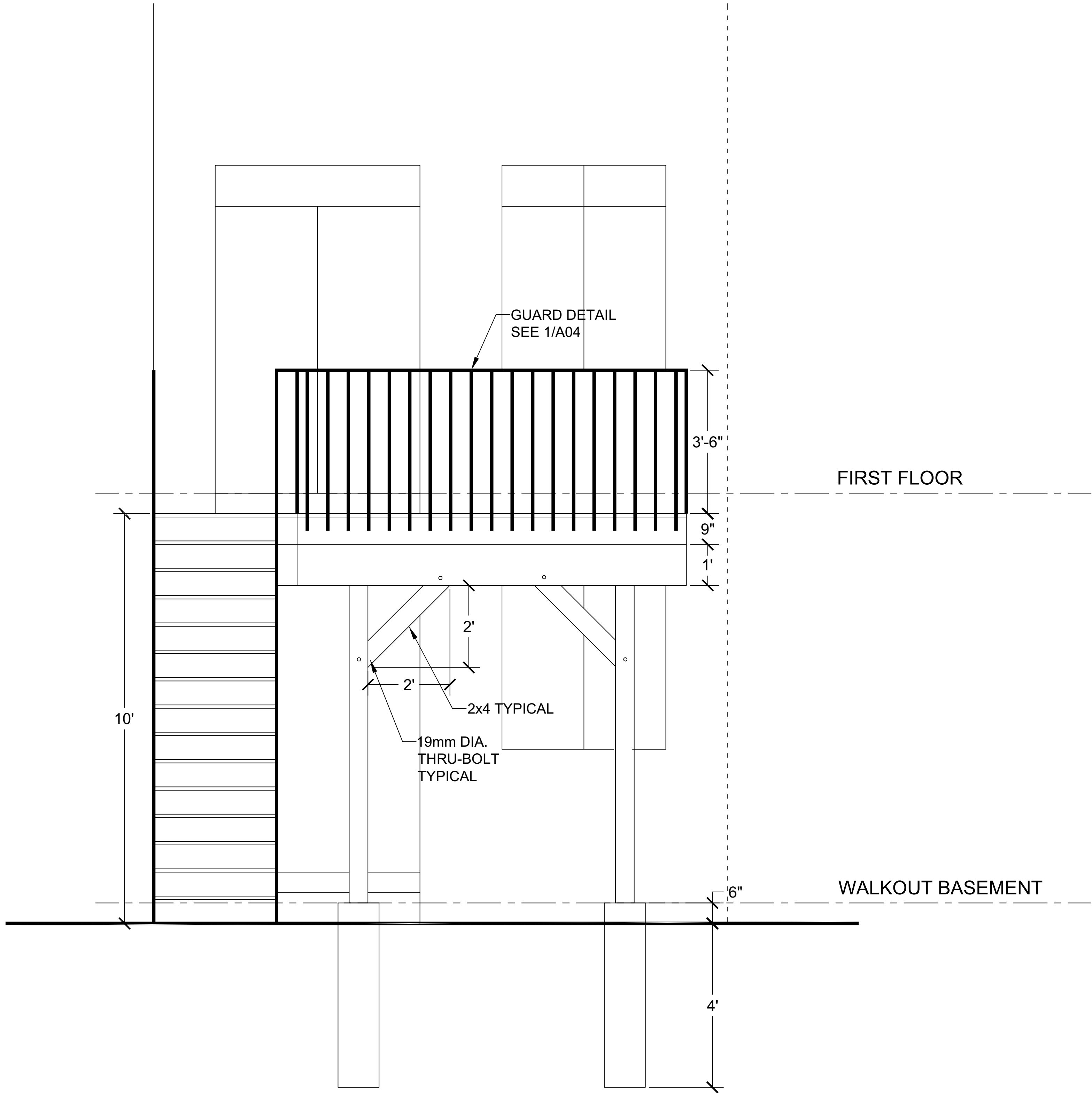
Project :
132 DUNDAS WAY
MARKHAM, ON L6E 0T1

Drawing Name :
**FOOTING &
DECK PLAN**

Proj No.:
Drawn by:
Checked by:
North:

Date: APRIL 2020
Scale: 1-1/2"=1'-0"
Drawing No.:

**A01**



The contractor must verify and accept responsibility for all dimensions and conditions on site. This drawing is not to be scaled. The designer is not responsible for the accuracy of survey, structural, mechanical, electrical, etc., information shown on this drawing. Refer to the appropriate consultant's drawings before proceeding with the work. Construction must conform to all applicable codes and requirements of authorities having jurisdiction. The contractor working from drawings not specifically marked 'For Construction' must assume full responsibility and bear costs for any corrections or damages resulting from his work.

REV.	ISSUED FOR:	DATE:
1.	PERMIT	SEPT 05

The undersigned has reviewed and takes responsibilities for this design, and has the qualifications and meets the requirements set out in the Ontario building code to be a designer.

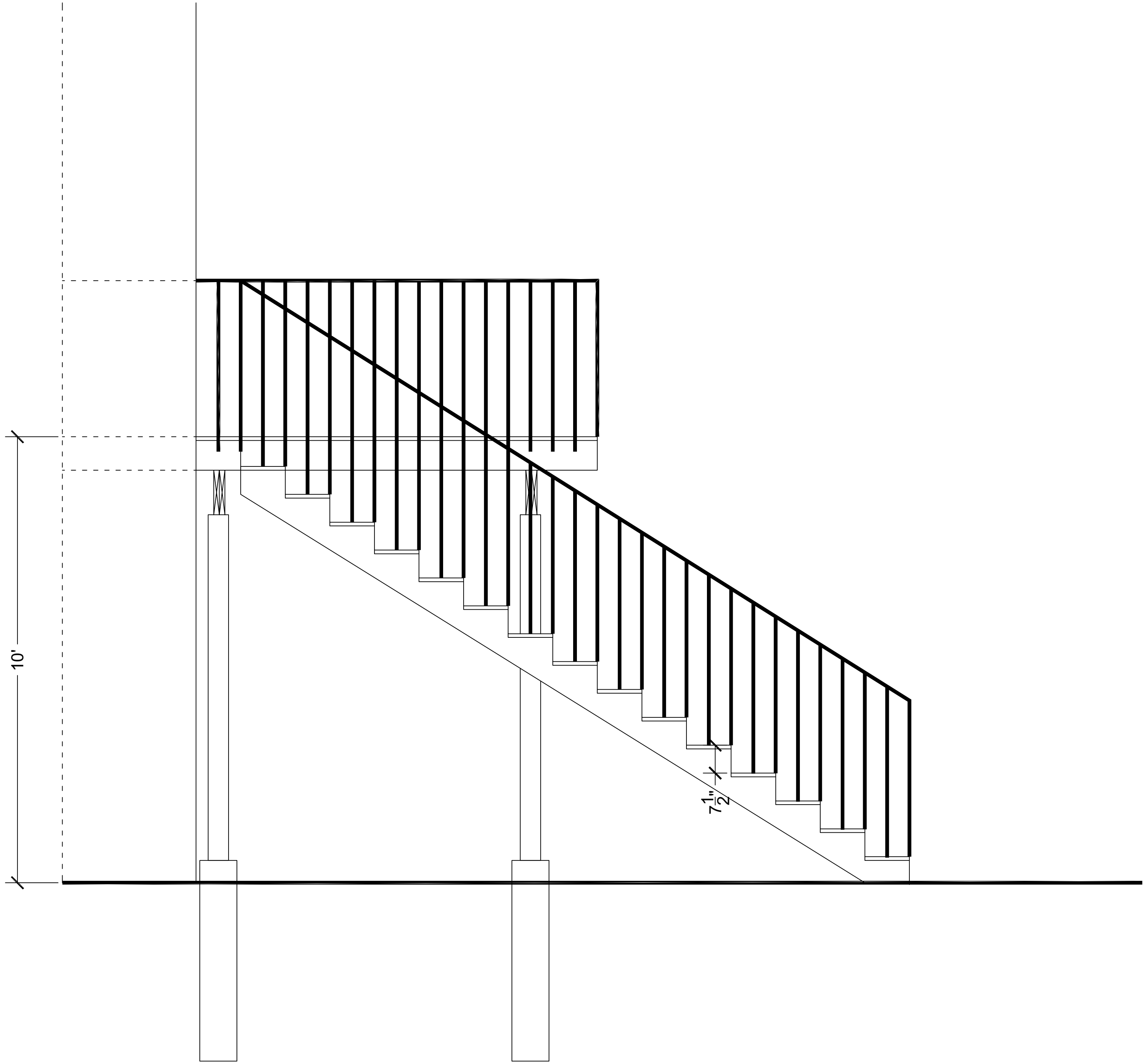
QUALIFICATIONS INFORMATION
Required unless design is exempt under 2.17.5.1 of the building code

YUE LI
Name Signature BCIN/BCDN #103525

Project :
132 DUNDAS WAY
MARKHAM, ON L6E 0T1

Drawing Name :
SOUTH
ELEVATION

Proj No.:	Date: APRIL 2020
Drawn by:	Scale: 1-1/2"=1'-0"
Checked by:	
North:	Drawing No.: A02



The contractor must verify and accept responsibility for all dimensions and conditions on site. This drawing is not to be scaled. The designer is not responsible for the accuracy of survey, structural, mechanical, electrical, etc., information shown on this drawing. Refer to the appropriate consultant's drawings before proceeding with the work. Construction must conform to all applicable codes and requirements of authorities having jurisdiction. The contractor working from drawings not specifically marked 'For Construction' must assume full responsibility and bear costs for any corrections or damages resulting from his work.

REV.	ISSUED FOR:	DATE:
1.	PERMIT	SEPT 05

The undersigned has reviewed and takes responsibilities for this design, and has the qualifications and meets the requirements set out in the Ontario building code to be a designer.

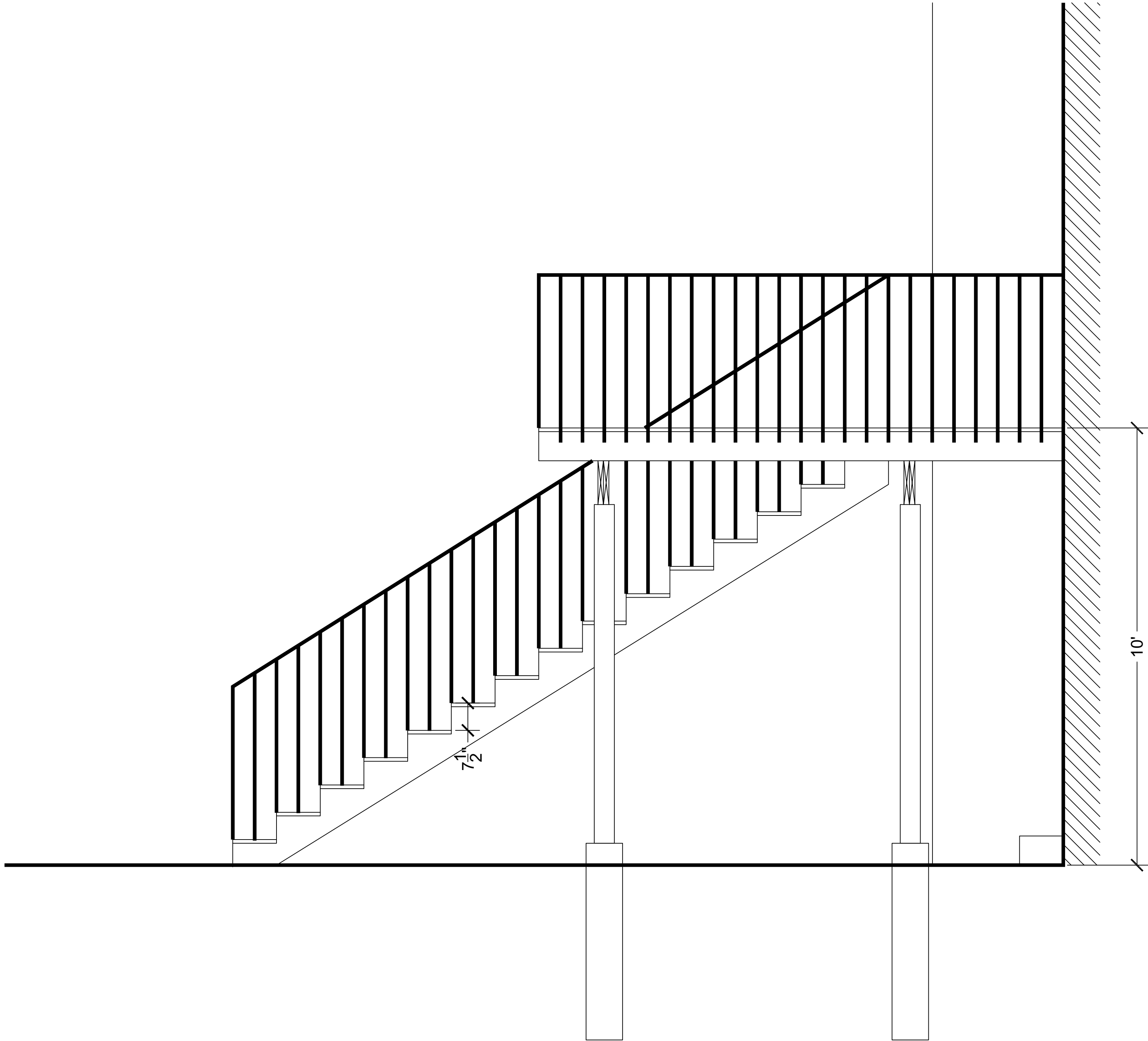
QUALIFICATIONS INFORMATION
Required unless design is exempt under 2.17.5.1 of the building code

YUE LI #103525
Name Signature BCIN/BCDN

Project :
132 DUNDAS WAY
MARKHAM, ON L6E 0T1

Drawing Name :
**WEST
ELEVATION**

Proj No.:	Date: APRIL 2020
Drawn by:	Scale: 1-1/2"=1'-0"
Checked by:	
North:	Drawing No.: A03

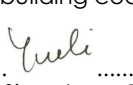


The contractor must verify and accept responsibility for all dimensions and conditions on site. This drawing is not to be scaled. The designer is not responsible for the accuracy of survey, structural, mechanical, electrical, etc., information shown on this drawing. Refer to the appropriate consultant's drawings before proceeding with the work. Construction must conform to all applicable codes and requirements of authorities having jurisdiction. The contractor working from drawings not specifically marked 'For Construction' must assume full responsibility and bear costs for any corrections or damages resulting from his work.

REV.	ISSUED FOR:	DATE:
1.	PERMIT	SEPT 05

The undersigned has reviewed and takes responsibilities for this design, and has the qualifications and meets the requirements set out in the Ontario building code to be a designer.

QUALIFICATIONS INFORMATION
Required unless design is exempt under 2.17.5.1 of the building code

YUE LI		#103525
Name	Signature	BCIN/BCDN

Project :

132 DUNDAS WAY
MARKHAM, ON L6E 0T1

Drawing Name :

EAST
ELEVATION

Proj No.:	Date: APRIL 2020
Drawn by:	Scale: 1-1/2"=1'-0"
Checked by:	
North:	Drawing No.:










A05

APPENDIX “C”

AERIAL PHOTO: PROPERTIES ALONG DUNDAS WAY AND WEIDMAN LANE



Legend

-  Condominium Plans
- LANDMARKS_6000
- SLRN_6000
- PARKS_6000
-  Heritage Districts
-  Building Footprints
-  Ponds
-  Creeks
-  Rivers
-  Park Facilities
- Parks
 -  <all other values>
 -  Under Development

Notes

25.4 0 12.70 25.4 Meters

NAD_1983_UTM_Zone_17N
© City of Markham

DISCLAIMER: The information is presented on a best-efforts basis, and should not be relied upon for making financial, survey, legal or other commitments. If you have questions or comments regarding the data displayed on this map, please email cgis@markham.ca and you will be directed to the appropriate department.