

# Memorandum to the City of Markham Committee of Adjustment

September 10, 2021

**File:** A/090/21  
**Address:** 124 Dundas Way – Markham, ON  
**Applicant:** Johnson Bao Fen Li  
**Agent:** KCCL Architect Inc (Kelvin Lo)  
**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 6.2.11 (b)(iii):**

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

## 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 houses including two-storey semi-detached dwellings, and three-storey townhouse dwellings. Properties along Dundas Way and Weidman Lane contain similar three-storey townhouse dwellings.

### Proposal

The applicant is proposing to recognize an existing rear yard deck at the second-storey level which has an approximate area of 13.71 m<sup>2</sup> (147.57 ft<sup>2</sup>), excluding the stairs.

### Official Plan and Zoning

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

The subject property is designated “Residential Low Rise”, which provides for low rise housing forms with 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.

### 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 variance 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

The applicant is requesting a deck to be located at the second-storey, 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.

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 with an opportunity to construct 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 are minor in nature, and meet 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 10, 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**

Copyright of KCCL Architect Inc. Duplication or reproduction by any means without the express written consent of KCCL Architect Inc is a violation of Federal and International Law. The information contained in this document are the intellectual property of KCCL Architect Inc. All rights reserved.

GENERAL NOTES 1.0

PROJECT SCOPE:

1. THE FOLLO'MNG ARE NOT INCLUDED IN CONTRACT:
- COMMUNICATION CABLING, TERMINATIONS AND COVER PLATES

• FURNITURE AND FURNISHINGS

• MOVING

• SIGNAGE

• BLINDS

DRAWINGS:

1. CONTRACTOR TO VERIFY ALL SITE DIMENSIONS AND REPORT ANY DISCREPANCIES TO THE ARCHITECT BEFORE PROCEEDING WITH THE WORK.
2. DO NOT SCALE DRAWING
3. IF ANY CONFLICT OR DISCREPANCY EXISTS IN THE CONTR ACT DOCUMENTS, THE FOLLOWING PRIORITY SEQUENCE IS TO BE FOLLOWED:

• DRA'MNGS OF A LATER DATE SUPERSEDE DRA'MNGS OF AN EARLIER DATE.

• LARGER SCALE DRAWINGS SUPERSEDE THOSE OF A SM ALLER SCALE.

• THE SPECIFICATIONS SUPERSEDE THE DRAW1NGS.
4. MECHANICAL AND ELECTRICAL CONTRACTORS ARE TO CROSS REFERENCE THE ARCHITECTURAL AND ENGINEERING DRAWINGS THROUGH-OUT THE COURSE OF THE PROJECT AND REPORT ANY DISCREPANCIES TO THE DESIGNER BEFORE PROCEEDING.

PERMITS & INSPECTIONS:

1. NO DEMOLITION OR CONSTRUCTION IS TO START WITHOUT ISSUANCE OF A BUILDING PERMIT.
2. UPON COMPLETION OF THE WORK, THE CONTRACTOR SHALL PAY FOR AND OBTAIN A SIGNED RELEASE FROM THE MUNICIPALITY HAVING JURISDICTION INDICATING THAT THE WORK IS COMPLETE AND THE PERMIT IS SIGNED OFF.
3. THE CONTRACTOR SHALL GIVE ALL REQUIRED NOTICES FOR INSPECTIONS AS REQUIRED BY THE BUILDING PERMIT AND ALL AUTHORITIES HAVING JURISDICTION.
4. THE ARCHITECT WILL ABIDE BY THE MECHANIC'S LIEN ACT IN HIS/HER REV1EW OF ALL PROGRESS INVOICES ON THE PROJECT.

COOPERATION & PROTECTION:

1. EACH CONTR ACTOR IS RESPONSIBLE FDR ALL NECESSARY CUTTING AND PATCHING REQUIRED BY THEIR RESPECTIVE TRADES.
2. PROTECTION: THE GENER AL CONTRACTOR SHALL PROTECT ALL FINISHED WORK FROM CONSTRUCTION. ANY DAMAGE ARISING FROM ANY CAUSE SHALL BE MADE GOOD BY THE GENER AL CONTRACTOR TO THE SATISFACTION OF THE ARCHITECT.
3. PROTECTION: CONTRACTOR TO PROVIDE PROTECTION OV1ER AN Y BASE BUILDING EQUIPMENT DURING ALL PHASES OF CONSTRUCTION.

SITE STAFF & COMMUNICATIONS:

1. THE GENERAL CONTRACTOR WILL DO THE FOLLOWING DURING THE CONSTRUCTION PHASE:

• CALL, CHAIR, AND MINUTE WEEKLY CONSTRUCTION MEETINGS

• REVIEW, UPDATE AND COMMUNICATE WITH ARCHITECT / CLIENT ON PROJECT BUDGET ON A WEEKLY BASIS.

• REVIEW, UPDATE AND COMMUNICATE WITH ARCHITECT / CLIENT ON PROJECT SCHEDULE ON A WEEKLY BASIS.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR RECORDING AND DISTR IBUTING MINUTES OF THESE MEETINGS.
3. IF THERE ARE NO SITE MEETINGS DURING ANY GIVEN WEEK, THE CONTRACTOR IS TO ISSUE A WIEEKLY REPORT

ADDRESSING THE FOLLOWING ITEMS:

- PROJECT BUDGET

• PROJECT SCHEDULE

• COMPLETED ACTIVITIES FOR THE PREVIOUS WEEK

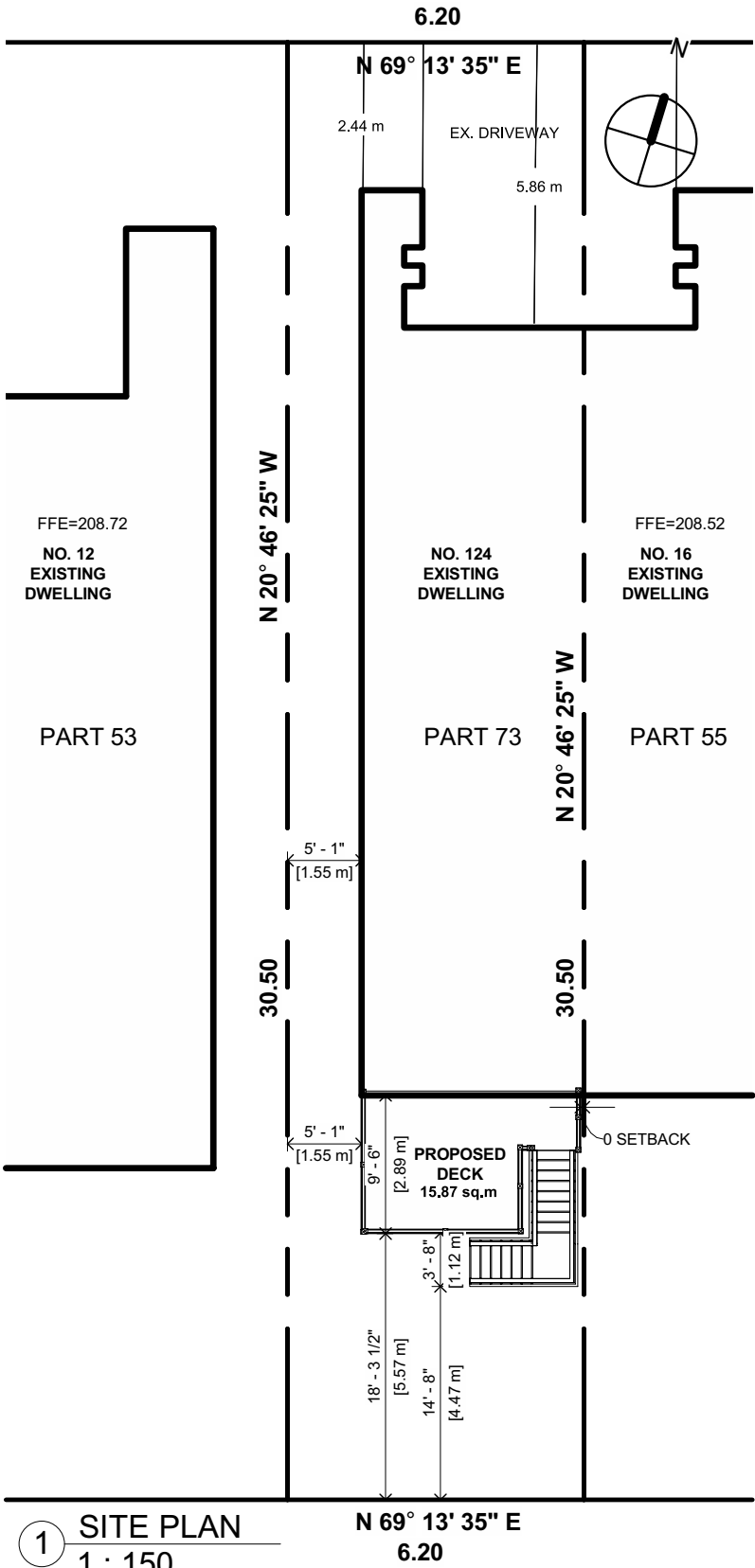
• PLANNED ACTIV1TIES FOR THE COMING WEEK

SUBSTITUTIONS:

1. NO SUBSTITUTION FOR ANY PRODUCT OR MATERIAL WILL BE ACCEPTED UNLESS AUTHORIZED BY THE DESIGNER IN THE FORM OF AN ADDENDUM.

LEGAL:

DRAWING(S) ISSUED BY KCCL Architect Inc. ARE FOR ILLUSTRATION AND DESIGN INTENT PURPOSES ONLY. ALL ARCH+MECH+ELEC+PLUMB+STRUCTURAL,SPRINKLER.SUPPRESSION SYSTEM(S) AND LIFE SAFETY ITEMS ARE TO BE AS PER OUTLINED IN MUNICIPAL PERMIT APPROVED DRAWING AS PER ISSUED BY ASSOCIATED PROFESSIONAL ENGINEERS AND RESPECTIVIE TRADES.



1 SITE PLAN  
1 : 150



NOTE: ALL PROPOSED WOOD TO BE PRESSURE TREATED

Appendix B

File: 21.126635.000.00.MNV

Date: 09/17/21  
MM/DD/YY

KCCL  
Architect

348 Hemlock Drive, Witchurch  
Stouffville ON L4A 5A7  
email: info@kcclarchitect.ca  
mobile: 416-602-9616

CONTRACTOR SHALL  
VERIFY SITE DIMENSIONS

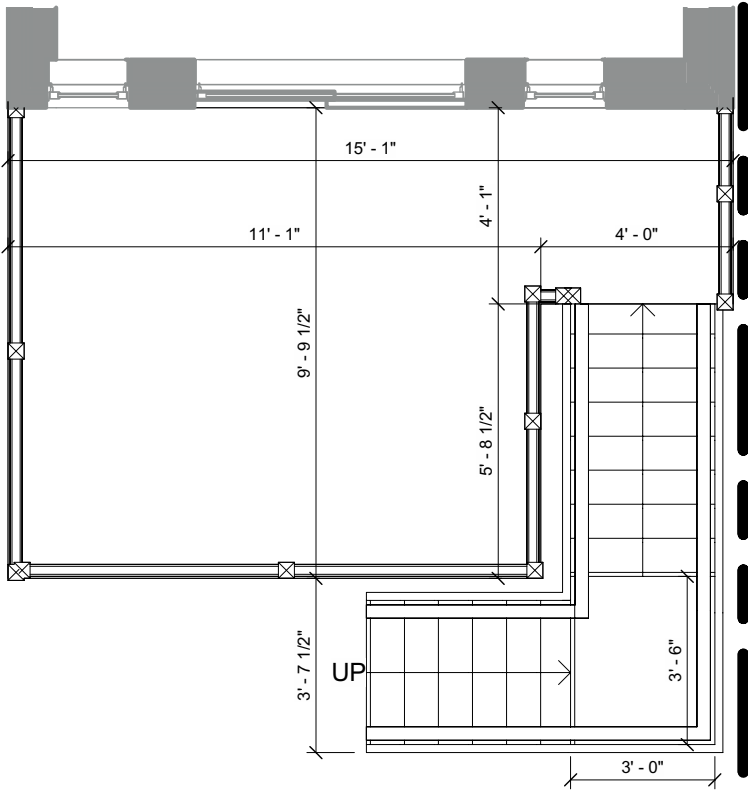
NO.	DESCRIPTION	DATE	BY
1	Building Permit Application	2020-10-07	KL

Drawn by	KL
Date	2021-04-17
Scale	1 : 150
Project Number	21099

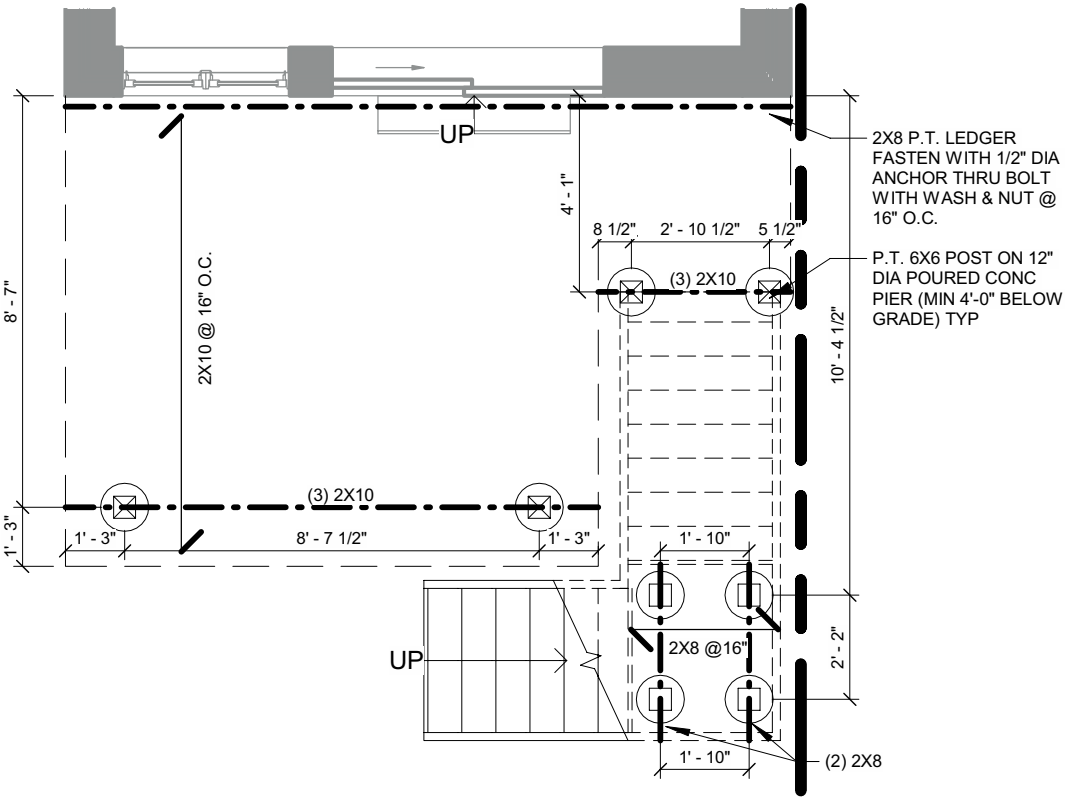
DRAWING NAME	SITE PLAN
--------------	-----------

SHEET NUMBER	A1
--------------	----

PROPOSED REAR YARD DECK  
124 DUNDAS WAY  
Markham, ON L6E 0T1



2 DECK PLAN  
1/4" = 1'-0"



1 FOUNDATION PLAN  
1/4" = 1'-0"



## Appendix B

File: 21.126635.000.00.MNV

Date: 09/17/21  
MM/DD/YY

**KCCL**  
Architect

348 Hemlock Drive, Witchurch  
Stouffville ON L4A 5A7  
email: info@kcclarchitect.ca  
mobile: 416-602-9616

CONTRACTOR SHALL  
VERIFY SITE DIMENSIONS

NO.	DESCRIPTION	DATE	BY
1	Building Permit Application	2020-10-07	KL

Drawn by **Author**

Date **2021-04-17**

Scale **1/4" = 1'-0"**

Project Number **21099**

DRAWING NAME

**DECK PLAN**

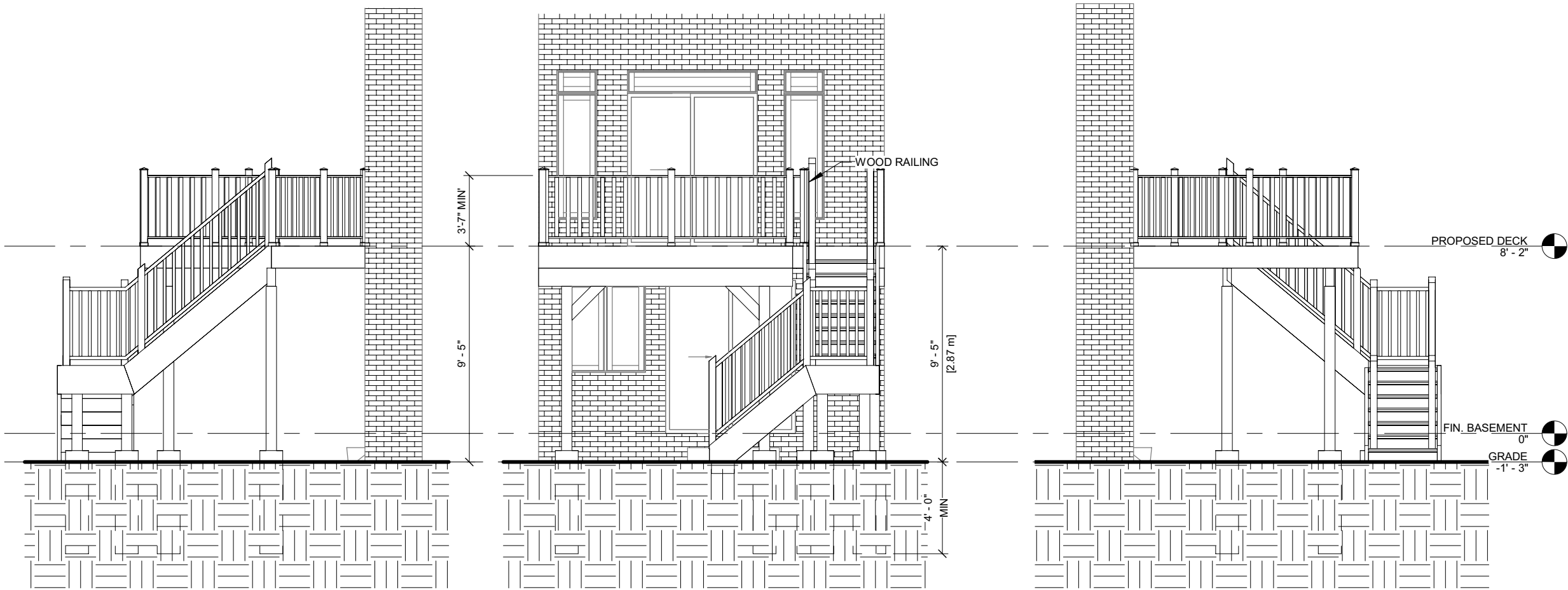
SHEET NUMBER

**A2**

PROPOSED REAR YARD DECK

**124 DUNDAS WAY**

Markham, ON L6E 0T1



2 PROPOSED WEST ELEVATION  
3/16" = 1'-0"

1 PROPOSED NORTH ELEVATION  
3/16" = 1'-0"

3 PROPOSED EAST ELEVATION  
3/16" = 1'-0"



## Appendix B

File: 21.126635.000.00.MNV

Date: 09/17/21  
MM/DD/YY

**KCCL**  
Architect

348 Hemlock Drive, Witchurch  
Stouffville ON L4A 5A7  
email: info@kcclarchitect.ca  
mobile: 416-602-9616

CONTRACTOR SHALL  
VERIFY SITE DIMENSIONS

NO.	DESCRIPTION	DATE	BY
1	Building Permit Application	2020-10-07	KL

Drawn by	--
Date	2021-04-17
Scale	3/16" = 1'-0"
Project Number	21099

DRAWING NAME	PROPOSED DECK ELEVATION
--------------	----------------------------

SHEET NUMBER	A3
--------------	----

PROPOSED REAR YARD DECK

124 DUNDAS WAY

Markham, ON L6E 0T1



**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](mailto:cgis@markham.ca) and you will be directed to the appropriate department.