

Memorandum to the City of Markham Committee of Adjustment

June 20, 2024

File: A/158/23
Address: 11 Fierheller Court, Markham
Agent: John Chen
Hearing Date: Wednesday, July 10, 2024

The following comments are provided on behalf of the West Team:

The applicant is requesting relief from the following requirements of By-law 177-96, R2*456, as amended, to permit:

- a. **By-law 177-96, Section 7.456.2:** a minimum rear yard setback of 3.5 metres for the sunroom addition, whereas the by-law requires a minimum rear yard setback of 7 metres; and
- b. **By-law 177-96, Section 6.2.1:** a deck over 1 metre in height to project 3.6 metres to the rear lot line, whereas the by-law permits a maximum projection of 3 metres; as it relates to an existing deck and sunroom.

BACKGROUND

Property Description

The subject property is located on the south side of Fierheller Court, north of Beckett Avenue, east of Kennedy Road, and west of William Berczy Boulevard. The property is currently developed with a single detached dwelling, which has a first-storey walkout, at the rear of the property. City staff conducted a site visit on June 20, 2024, and observed that the property slopes downwards from the front of the property towards the rear of the property.

The property is located within Upper Unionville, which is primarily a low-rise residential community containing a mix of detached, semi-detached and townhouse dwellings, some of which are lane-based properties.

There is an existing deck located at the second storey, and a sunroom located at the first storey, both at the rear of the property, which according to the property owner were constructed in 2015 and 2016 respectively.

Proposal

The applicant is proposing to legalize the existing deck, which extends beyond the maximum permitted projection from the rear dwelling wall and the sunroom, which does not comply with the minimum rear yard setback.

Official Plan and Zoning

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

The Official Plan designates the subject property "Residential Low Rise", which provides for low rise housing forms including single detached dwellings. Section 8.2.3.5 of the Official Plan outlines development criteria for the "Residential Low Rise" designation with respect to height, massing and setbacks. The purpose of this development criteria is to

ensure that the development is appropriate for the site and generally consistent with the zoning requirements for adjacent properties and properties along the same street. In considering applications for development approval in a "Residential Low Rise" area, which includes variances, infill development is required to meet the general intent of these development criteria. Regard shall also be had for the retention of existing trees and vegetation, the width of proposed garages and driveways. Planning staff have had regard for the requirements of the infill development criteria in the preparation of the comments provided below.

Zoning By-Law 177-96

The subject property is zoned "Residential Two Exception (R2*456) Zone" under By-law 177-96, as amended, which permits various low rise housing forms including single detached dwellings. The proposed development does not comply with the By-law requirements with respect to the minimum setback from a rear lot line, and the maximum extension from a building wall closest to the rear lot line.

Applicant's Stated Reason(s) for Not Complying with Zoning

According to the information provided by the applicant, the reason for not complying with Zoning is, *"When I embarked on the construction project for my deck and sunroom, I was unfamiliar with the procedural requirements. I also encountered pressure from the construction workers who were eager to commence the deck construction promptly. They assured me that the deck size met the necessary specifications, which led me to trust their judgment."*

Zoning Preliminary Review (ZPR) Not Undertaken

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

COMMENTS

The Planning Act states that four tests must be met in order for a variance to be granted by the Committee of Adjustment:

- a) The variance must be minor in nature;
- b) The variance must be desirable, in the opinion of the Committee of Adjustment, 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.

Site photos of the property provided by City Staff, in combination with a site visit conducted by staff, show that the property is at a higher elevation than properties to the south (rear).

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 minor variance application is based on whether the development as it is proposed, meets the four tests under the Planning Act. In the event the application is denied, the applicant would be required to address any existing non-compliances with the By-law, which may include full removal of the existing deck.

Reduction in Rear Yard Setback

The applicant is requesting relief to permit a minimum rear yard setback of 3.5 metres (11.48 feet), whereas the By-law requires a minimum front yard setback of 7.0 metres (22.96 feet). This represents a reduction of approximately 3.5 metres (11.48 feet). The variance is entirely attributable to the rear sunroom. The main rear wall of the building is generally consistent with the established rear yard setback pattern on the street. Staff are of the opinion that the requested variance is minor in nature and would not negatively impact the surrounding neighbourhood.

Maximum Deck Projection Variance

The applicant is requesting a variance to permit an existing raised rear yard deck to remain with a maximum projection of 3.6 metres (11.81 feet) from the rear dwelling wall, whereas a maximum projection of 3.0 metres (9.84 feet) is permitted. Staff are of the opinion that the requested variance is minor in nature and would not negatively impact the surrounding neighbourhood.

Development Engineering Comments

Engineering staff have reviewed the application and commented that they have no drainage concern with respect to the requested variances.

PUBLIC INPUT SUMMARY

No written submissions were received as of June 26th, 2024. 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.

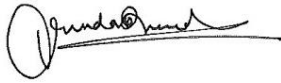
CONCLUSION

Planning Staff have reviewed the application with respect to Section 45(1) of The Planning Act, R.S.O. 1990, c. P.13, as amended, and are of the opinion that the variance request meets the four tests of the Planning Act and have no objection. Staff recommend that the Committee consider public input in reaching a decision.

The onus is ultimately on the applicant to demonstrate why they should be granted relief from the requirements of the zoning by-law, and how they satisfy the tests of the Planning Act required for the granting of minor variances.

Please refer to Appendix "A" for conditions to be attached to any approval of this application.

PREPARED BY:



Vrinda Bhardwaj, Development Technician, Planning and Urban Design Department

REVIEWED BY:



Rick Cefaratti, MCIP, RPP, Senior Planner, West District

File Path: Amanda\File\ 23 139639 \Documents\District Team Comments Mem

APPENDICES

Appendix "A" - A/158/23 Conditions of Approval


Appendix "B" – Architectural Plans

APPENDIX "A"

CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/158/23

1. The variances apply only to the proposed development as long as it remains;
2. That the variances apply only to the subject development, in substantial conformity with the plan(s) attached as 'Appendix B' to this Staff Report and received by the City of Markham on May 13th, 2024, and that the Secretary-Treasurer receive written confirmation from the Supervisor of the Committee of Adjustment or designate that this condition has been fulfilled to their satisfaction;

CONDITIONS PREPARED BY:

A handwritten signature in black ink, appearing to read 'Vrinda Bhardwaj', with a horizontal line extending to the right from the end of the signature.

Vrinda Bhardwaj, Development Technician, Planning and Urban Design Department

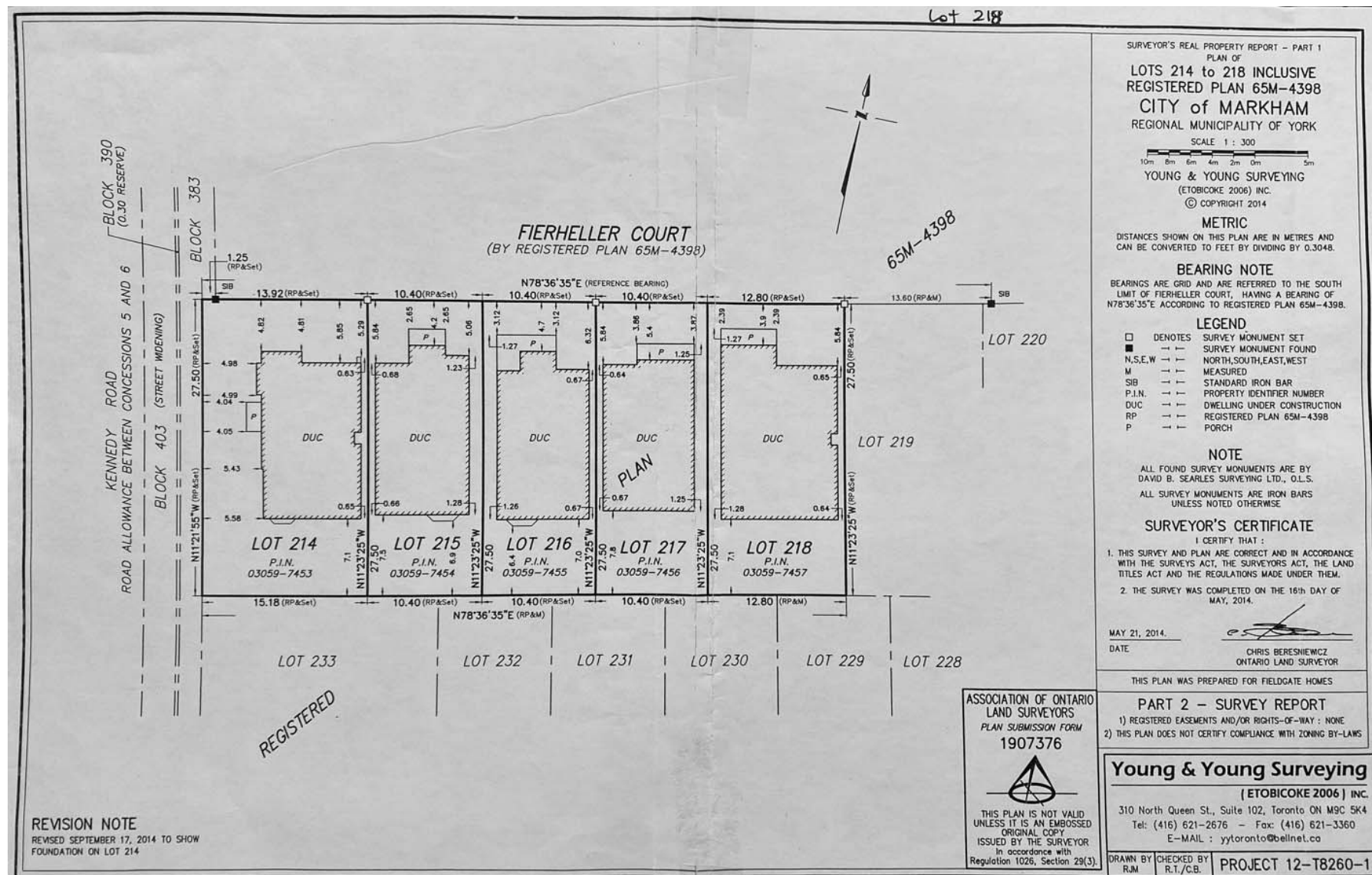
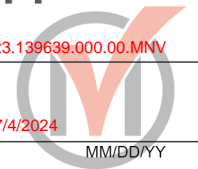


1 KEY PLAN
N.T.S.

Appendix B

File: 23.139639.000.00.MNV

Date: 7/4/2024
MM/DD/YY



ISSUE RECORD

1	Issued For Permit	2022/05/13

JHD Engineering Inc.

7181 Yonge Street, Unit 290
Thornhill, ON
L3T 0C7



Rear Deck Construction

11 Fierheller Crt, Markham, ON L6C 0W6

for SHENGNAN ZHAO

220423 PROJECT	N.T.S. SCALE	JC DRAWN	JC REVIEWED
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SURVEY

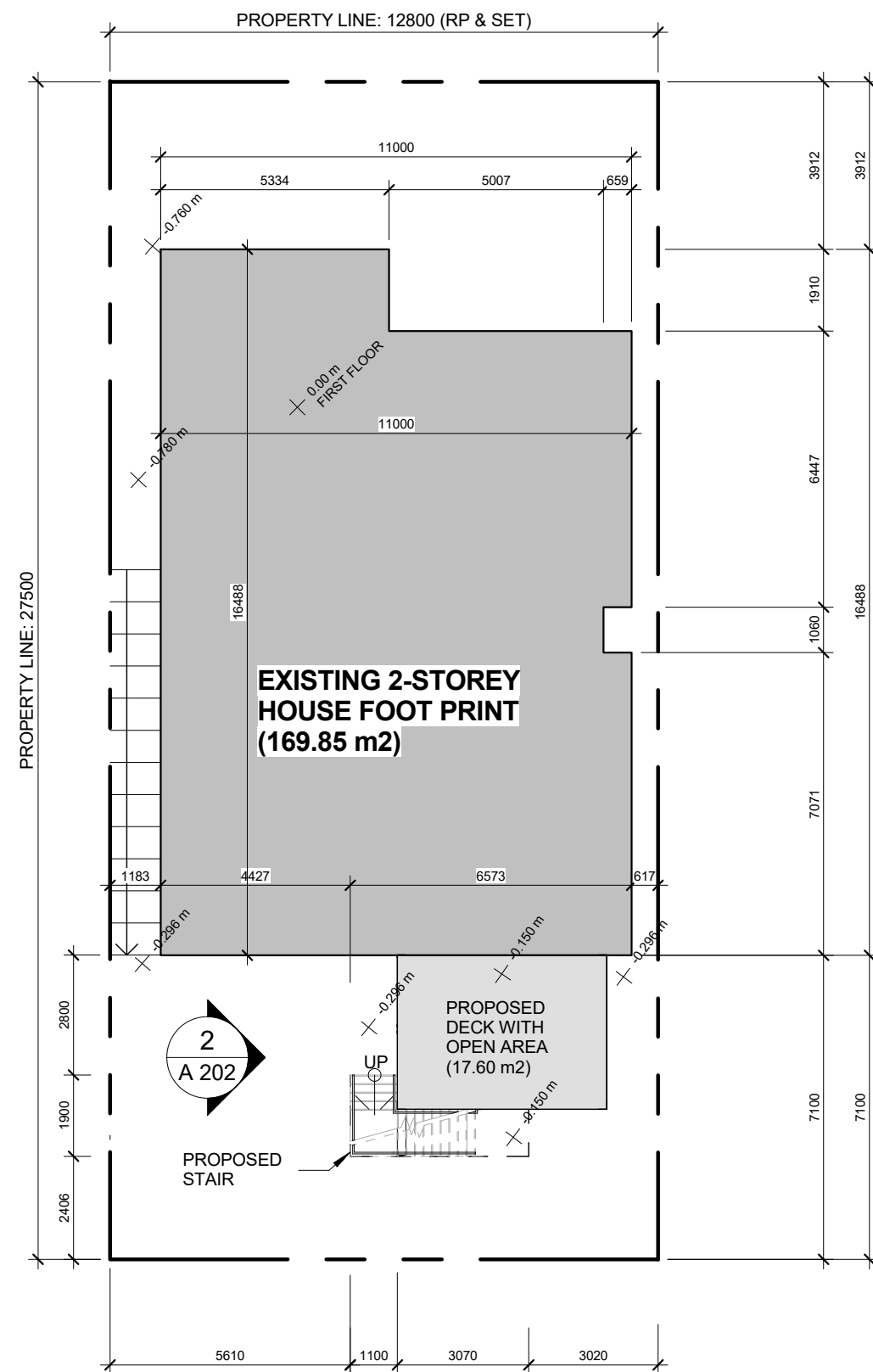
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Appendix B

File: 23.139639.000.00.MNV

Date: 7/4/2024
MM/DD/YY



① Back Yard
1 : 150

ISSUE RECORD

1	Issued For Permit	2022/05/13

JHD Engineering Inc.

7181 Yonge Street, Unit 290
Thornhill, ON
L3T 0C7



Rear Deck Construction

11 Fierheller Crt, Markham, ON L6C 0W6
for SHENGNAN ZHAO

220423 PROJECT 1 : 150 SCALE JC DRAWN JC REVIEWED

SITE PLAN

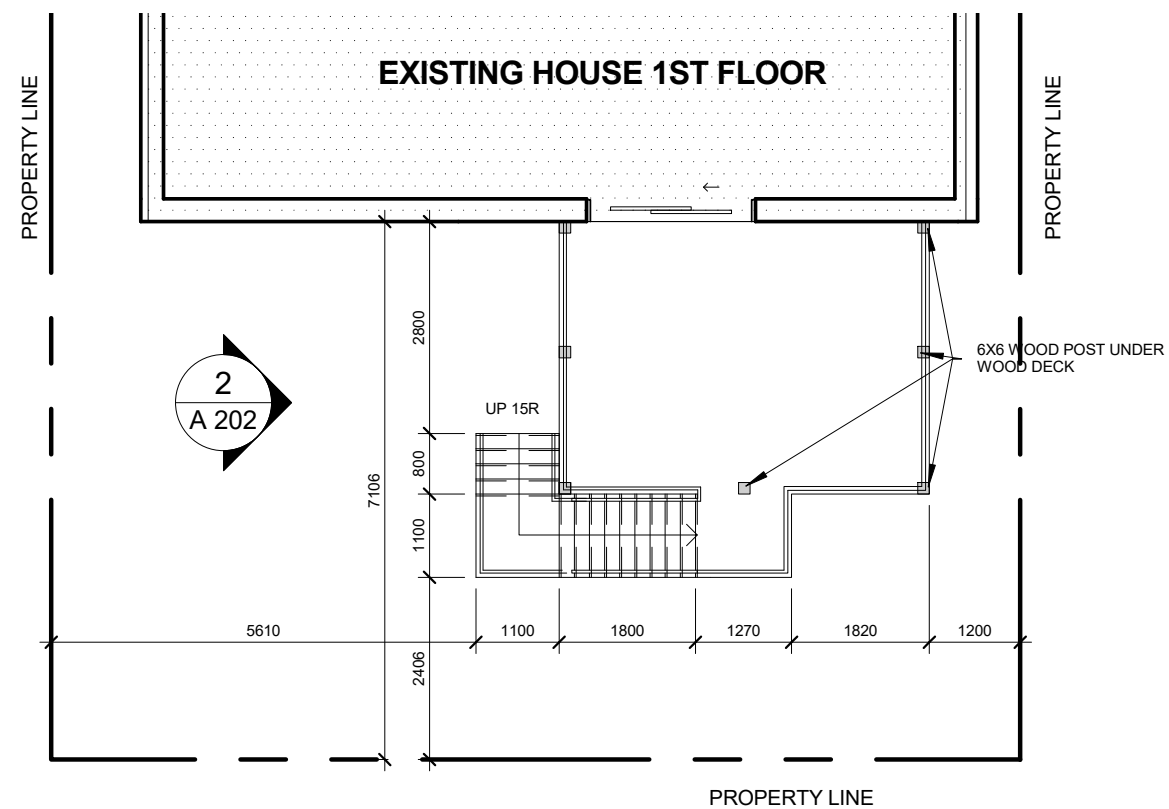
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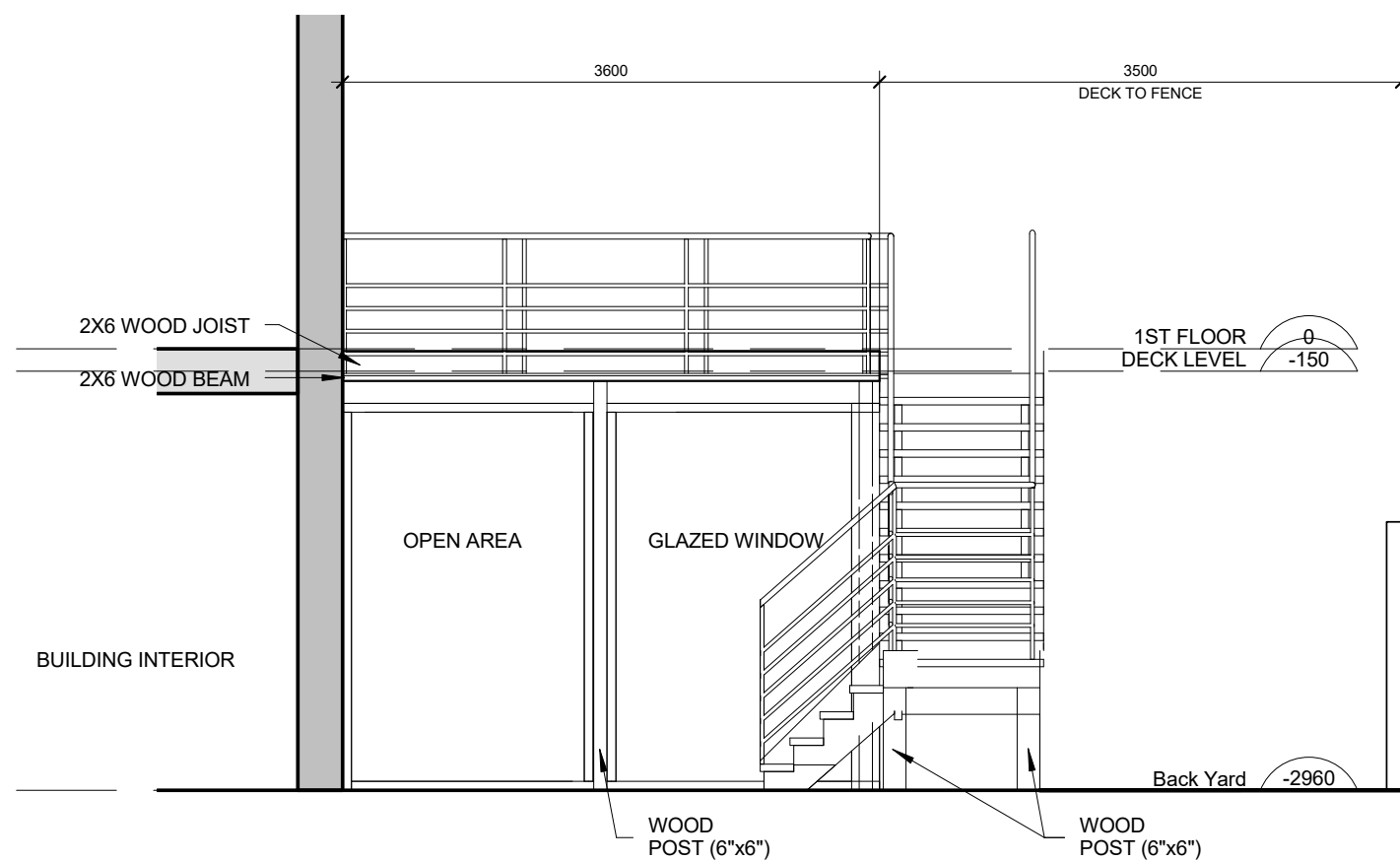
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File: 23.139639.000.00.MNV

Date: 7/4/2024
MM/DD/YY



1 DECK PLAN
1 : 100



2 ELEVATION
1 : 50

ISSUE RECORD

1	Issued For Permit	2022/05/13

JHD Engineering Inc.

7181 Yonge Street, Unit 290
Thornhill, ON
L3T 0C7



Rear Deck Construction

11 Fierheller Crt, Markham, ON L6C 0W6
for SHENGNAN ZHAO

220423 PROJECT As indicated SCALE JC DRAW JC REVIEWED

DECK PLAN & ELEVATION

A 202

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