

Memorandum to the City of Markham Committee of Adjustment

January 17, 2025

File: A/139/24
Address: 14 Whitelaw Court, Thornhill
Agent: Einat Fishman
Hearing Date: Wednesday, January 22, 2025

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

The applicant is requesting relief from the following requirements of By-law 1767, Second Density Residential (R2), as amended, to permit:

a) By-law 1767, Section 9(i):

an encroachment of an uncovered platform into the required rear yard of 312 inches, whereas the by-law permits a maximum encroachment of an uncovered platform into the required rear yard of 18 inches;

as it relates to an existing deck.

BACKGROUND

Property Description

The 226.3 m² (2435.87 ft²) subject property is located on the west side of Whitelaw Court, north of Steeles Avenue and west of Bayview Avenue. The property is located within an established residential neighbourhood comprised of a mix of one and two-storey detached dwellings. Mature vegetation exists across the property.

It is partially within TRCA's Regulated Area as the rear portion of the site is traversed by a valley corridor associated with the Don River Watershed.

Proposal

The proposal is to seek relief from the By-law to allow for the existing deck to remain on the subject property with additional alterations. The deck is built behind an existing retaining wall for the subject property.

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" and "Greenway". The "Residential Low Rise" designation provides for low rise housing forms including single detached dwellings. The "Greenway" designation provides for the protection of valleylands and stream corridors.

Area Specific Policy 9.18.5 also applies to the Subject Property and intends to provide a set of development standards in the zoning by-law that limits the size and massing of new dwellings or additions, ensuring infill development respects the existing pattern and character of adjacent development. This includes lot coverage, building depth, floor area ratios, height, number of storeys, garage projections, and garage widths.

Zoning By-law 2024-19, as amended

The Subject Lands are zoned Residential - Established Neighbourhood Low Rise (RES-ENLR) and Greenway 1 (GWY1) under By-law 2024-19, as amended, which permits detached dwellings. By-law 2024-19, as amended, is the Comprehensive Zoning By-law (CZBL), approved by City Council on January 31, 2024. Section 1.7 of the CZBL provides transition policies allowing the former Zoning By-law to remain applicable for 'applications in process' prior to the CZBL coming into full force and effect for a period of three years. A Building Permit (23.126191 HP) was submitted in July 2023, requiring the Owner to obtain variances to By-law 1767 only. If this variance application is approved, a building permit for the Proposed Development is required to be obtained by January 31, 2027.

Zoning By-Law 1767

The subject property is zoned Second Density Residential (R2) under By-law 1767, as amended, which permits single detached dwellings. The proposal does not comply with respect to the encroachment of an uncovered platform into the required rear yard. Further details of the encroachment requirement are provided in the comment section below.

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, "*Variance required for existing deck at the rear lot line with permitted setback of 3 meters. Proposed being 1.5 meters for one corner from 3 meters due to irregular shape lot line with straight edge deck*".

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 (23.126191.000.00.HP) 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.

Increase in Maximum Encroachment Variance

The applicant is requesting to permit an encroachment of an uncovered platform into the required rear yard of 792.48 cm or 7.92 m (312 inches or 26 ft.), whereas the by-law permits a maximum encroachment of an uncovered platform into the required rear yard of 45.72 cm or 0.46 m (18 inches or 1.5 ft.).

It is the opinion of Staff that the proposed repairs for the deck do not maintain the general intent and purpose of the Official Plan. The Greenway designation provides protection for natural heritage and hydrologic features. The deck encroaches into the City's designated Greenway System, specifically the Valleylands surrounding the east branch of the Don River. Valleylands are intended to support flood protection, erosion control, and nature-based recreation uses, among other things. The policies governing Valleylands and the

Greenway designation prohibit development, redevelopment and site alteration within these subject lands.

Furthermore, this area is further regulated by the Toronto Region and Conservation Authority (TRCA) for the valley slope and floodplain buffer. For more details, please refer to TRCA's comments (Appendix C).

EXTERNAL AGENCIES

TRCA Comments

The subject property is located within Toronto Region and Conservation Authority (TRCA)'s Regulated Area. The rear portion of the site is traversed by a valley corridor associated with the Don River Watershed. TRCA provided comments on January 9th, 2025 (Appendix C), indicating that the proposed development is within natural hazards, which is not permitted under provincial and TRCA policy.

The applicant was issued a violation notice to remove the deck through the review of a Concept Development Application in July of 2023. TRCA has requested the application be refused, as the development associated with the application cannot be supported by staff.

PUBLIC INPUT SUMMARY

No written submissions were received as of January 17th, 2025. 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 does not meet the four tests of the Planning Act and recommend the application be denied. Staff is of the opinion that the proposal does not reflect the intent of the Greenway designation. 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:



Theo Ako-Manieson, Planner I, West District

REVIEWED BY:



Rick Cefaratti, MCIP, RPP, Acting-Development Manager, West District
File Path: Amanda\File\ 24 197134 \Documents\District Team Comments Memo

Appendix B

File: 24.197737.000.00.MNV

Date: 1/17/2025
MM/DD/YYYY



NO.	DATE	REVISIONS / ISSUE

GRACE ENGINEERING
 QUEENSTON DR. MISSISSAUGA, ONTARIO L5C 2G8
 TEL : 647-687-2821 FAX : 1-888-411-1719
 EMAIL: service.geng@gmail.com

BACK YARD DECK
 14 WHITELAW COURT MARKHAM, ON L3T 5E7

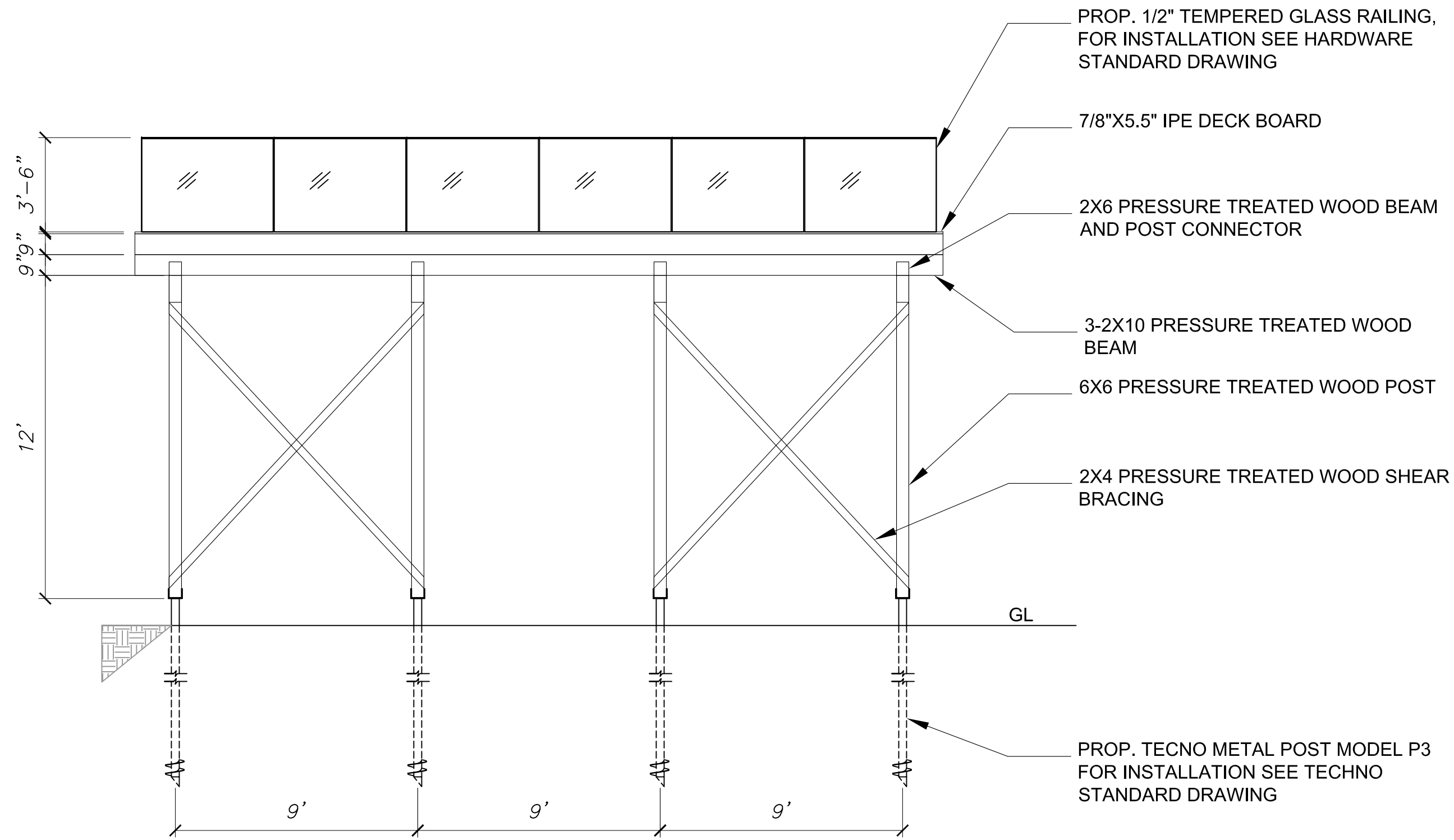
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EXISTING SURVEY PLAN

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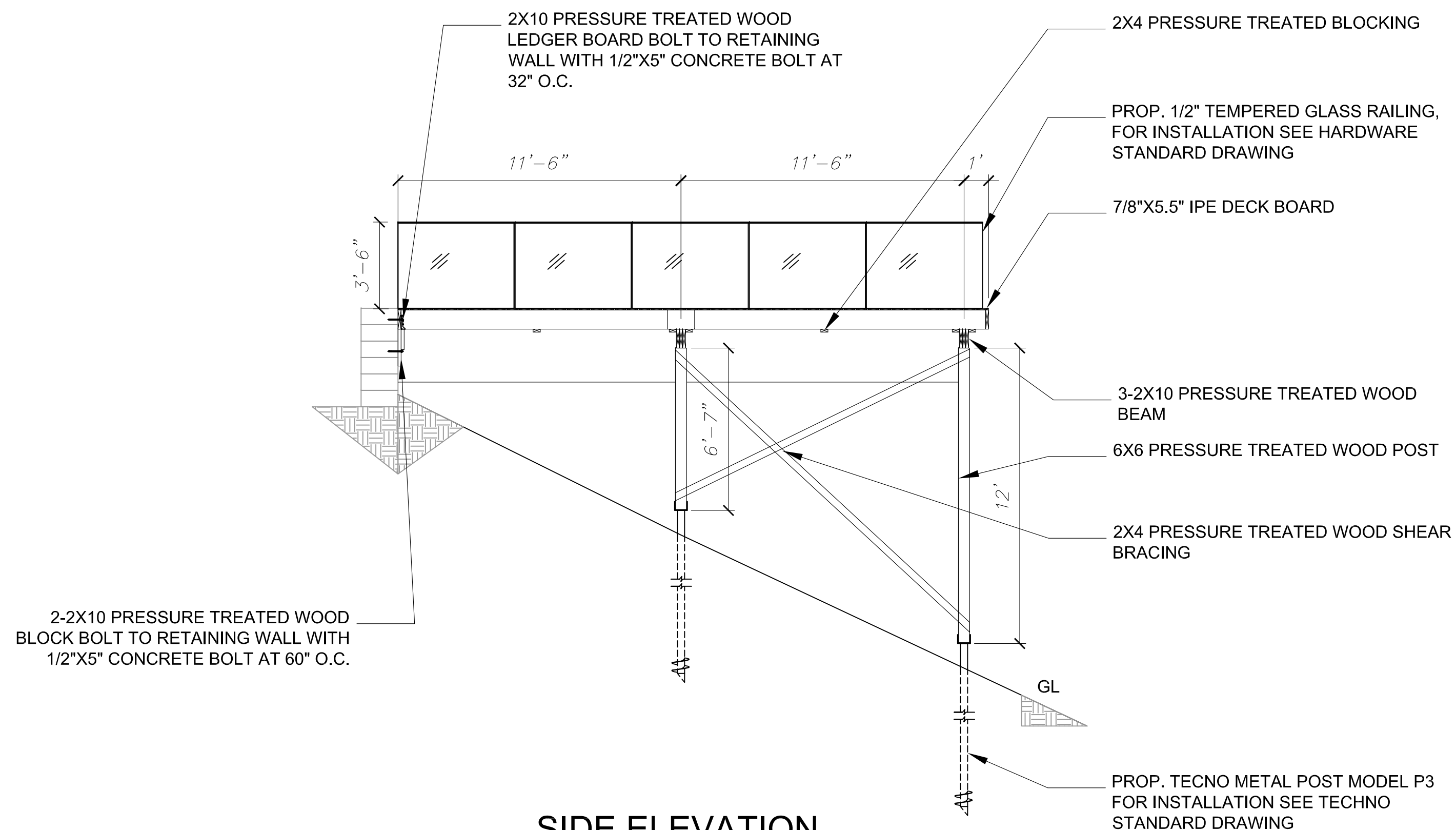
Appendix B

File: 24.197737.000.00.MNV

Date: 1/17/2025
MM/DD/YYYY



FRONT ELEVATION



SIDE ELEVATION



NO.	DATE	REVISIONS / ISSUE
1	12 APRIL 2023	ISSUED FOR PERMIT

GRACE ENGINEERING
 QUEENSTON DRIVE MISSISSAUGA
 ONTARIO L5C 2G8
 TEL : 647-687-2821 FAX : 1-888-411-1719
 EMAIL: service.geng@gmail.com

BACK YARD DECK
 14 WHITELAW COURT MARKHAM, ON.L3T 5E7

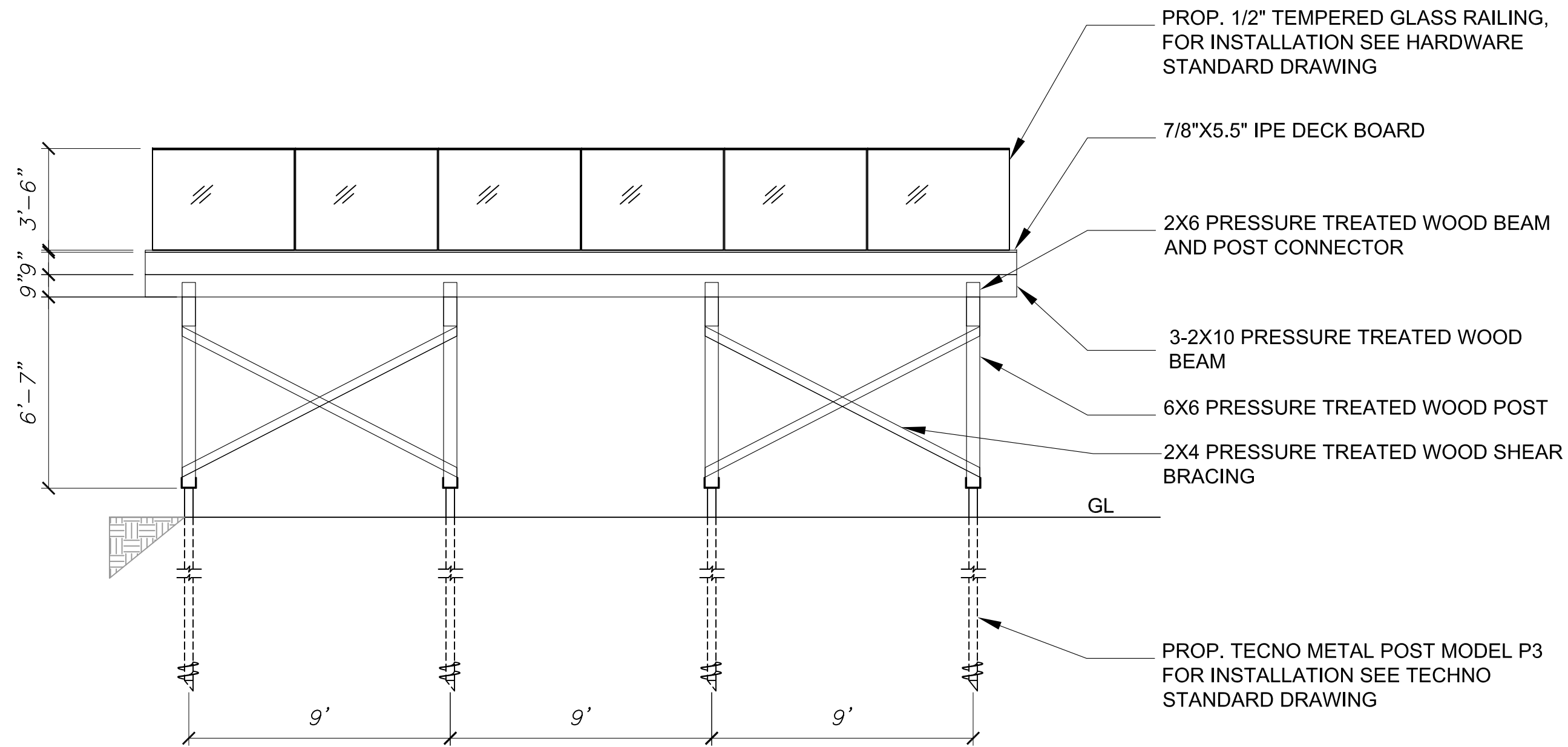
DRAWING TITLE:
ELEVATION

DRAWN BY	DATE	SCALE
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CHECKED BY	PROJECT NO.	SHEET NO.
JK	2023-014	A201

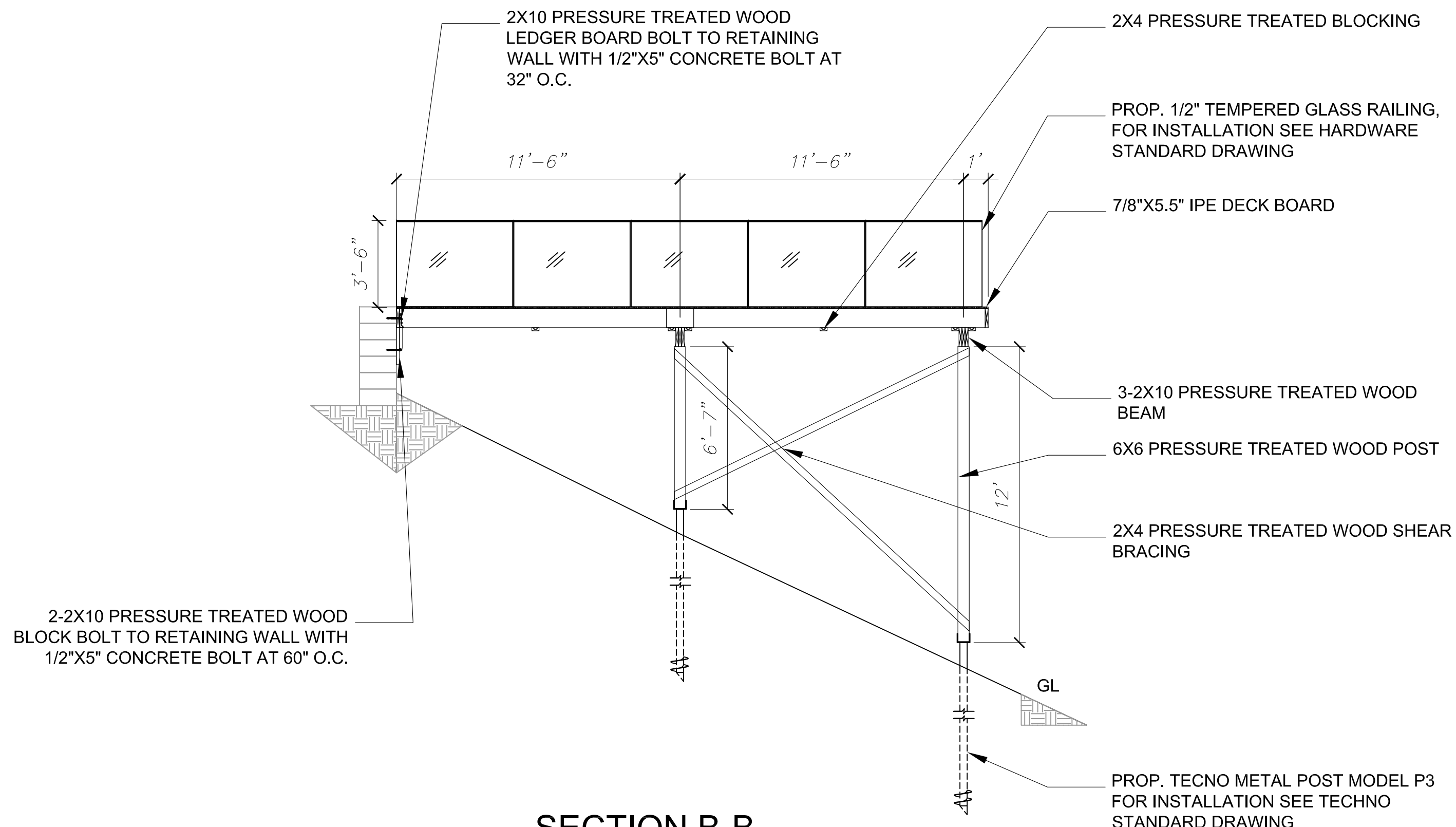
Appendix B

File: 24.197737.000.00.MNV

Date: 1/17/2025
MM/DD/YYYY



SECTION A-A



SECTION B-B

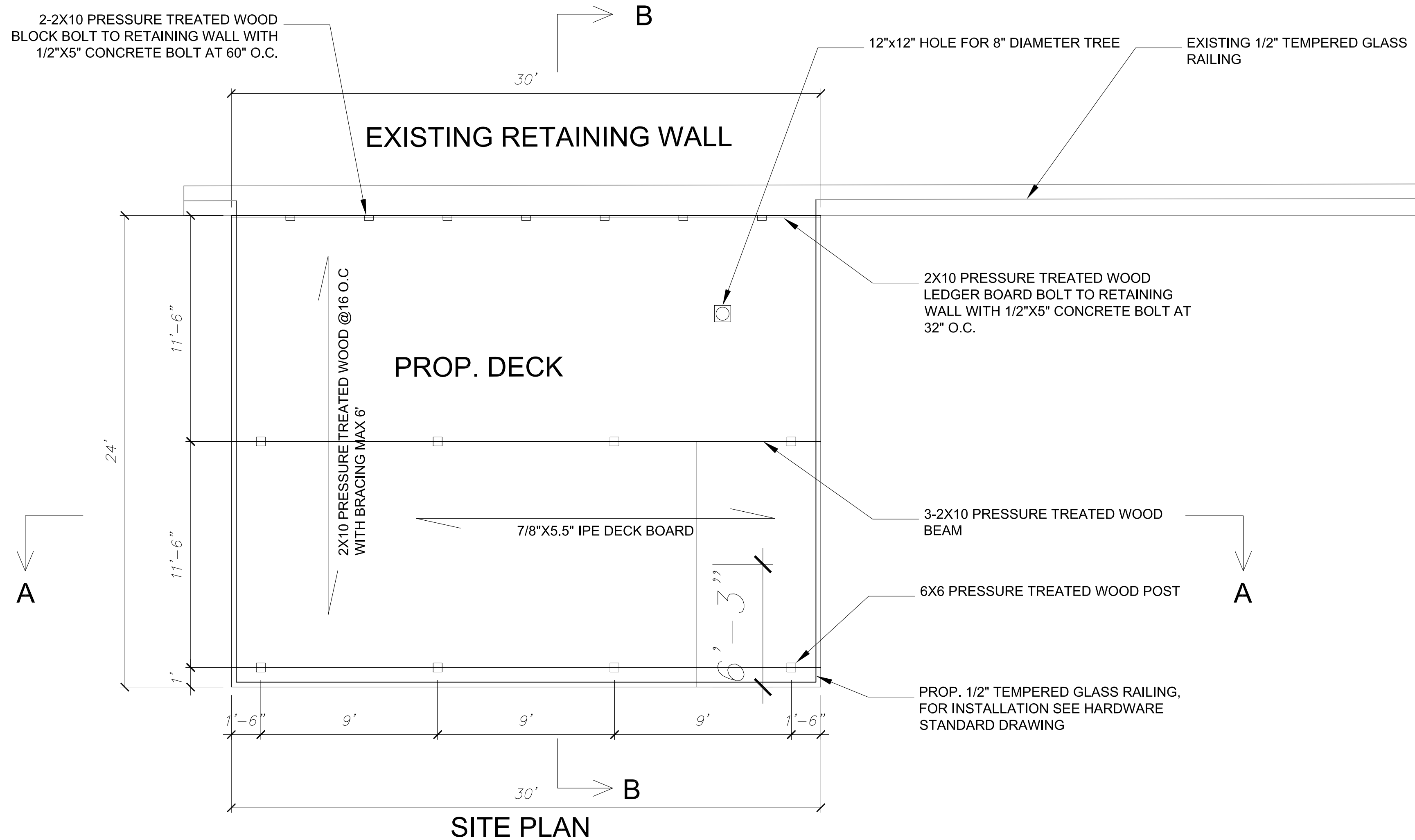


1	12 APRIL 2023	ISSUED FOR PERMIT
NO.	DATE	REVISIONS / ISSUE
GRACE ENGINEERING		
QUEENSTON DRIVE MISSISSAUGA ONTARIO L5C 2G8 TEL : 647-687-2821 FAX : 1-888-411-1719 EMAIL: service.geng@gmail.com		
BACK YARD DECK 14 WHITELAW COURT MARKHAM, ON L3T 5E7		
DRAWING TITLE: SECTION		
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CHECKED BY JK	PROJECT NO.: 2023-014	SHEET NO.: A301

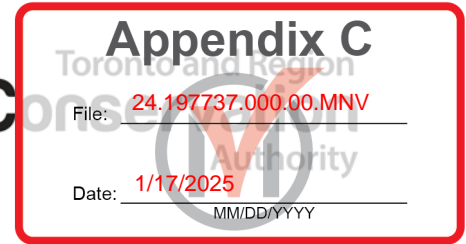
Appendix B

File: 24.197737.000.00.MNV

Date: 1/17/2025
MM/DD/YYYY



1	12 APRIL 2023	ISSUED FOR PERMIT
NO.	DATE	REVISIONS / ISSUE
GRACE ENGINEERING		
QUEENSTON DRIVE MISSISSAUGA ONTARIO L5C 2G8		
TEL : 647-687-2821 FAX : 1-888-411-1719		
EMAIL: service.geng@gmail.com		
BACK YARD DECK		
14 WHITELAW COURT MARKHAM, ON L3T 5E7		
DRAWING TITLE: DECK PLAN		
DRAWN BY GW	DATE: 12 APRIL 2023	SCALE: 1/4"=1'-0"
CHECKED BY JK	PROJECT NO.: 2023-014	SHEET NO.: A101



January 7, 2025

CFN PAR-DPP-2024-00441

VIA E-PLAN)

Dear Shauna Houser,

**Re: Minor Variance Application – (A/139/24)
14 Whitelaw Court
PLAN M1727 LOT 7, Markham
(Whitelaw Court & Bayview Ave)
Applicant: Einat Fishman
Agent: Einat Fishman**

Toronto and Region Conservation Authority (TRCA) staff provide the following comments in response to the referenced Committee of Adjustment application, received by TRCA on December 2, 2024. We provide the following in accordance with TRCA’s commenting role under the Planning Act and regulatory role under the Conservation Authorities Act (CA Act). For additional information, please see [Ontario Regulation 686/21](#).

Purpose of the Application

TRCA staff understand that the purpose of this application is to facilitate an encroachment of an uncovered platform into the required rear yard of 312 inches, whereas the by-law permits a maximum of 18 inches;

TRCA Permit Requirement

The subject lands contain erosion hazards associated with a tributary of the Don River Watershed and its adjacent regulated allowance.

Due to the presence of natural hazards and portions of the subject property located within TRCA’s Regulated Area of the Don River Watershed, the issuance of a TRCA permit pursuant to the Conservation Authorities Act is required prior to any development or site alteration within the regulated portion of the property.

Background

TRCA has been reviewing the as-built deck through a Concept Development Application (CDA). A site visit was conducted by TRCA staff on June 1st, 2023 during this review. This visit and review of the available mapping confirmed that the deck is constructed within natural hazards (i.e., erosion hazards), which is not permissible under provincial and TRCA policies. The proponent has been informed of the requirement to remove the deck and restore the affected area to its natural state and a violation notice was issued on July 2023 accordingly. As such, **the development associated with this application cannot be supported by staff.**

TRCA staff are committed to working collaboratively with the proponent to ensure the removal of the existing structure and the appropriate restoration of the affected area. We are also available to assist in identifying suitable locations outside of the natural hazards area for any future structures.

TRCA Plan Review Fee

By copy of this letter, the applicant is advised that TRCA have implemented a fee schedule for its planning application review services in accordance with applicable provincial regulations. This Minor Variance Application is subject to a \$950.00 fee (Minor Variance Application - Standard). The applicant is responsible for payment of the fee upon receipt of this letter.

Recommendation

Based on the concerns noted in this letter, TRCA staff recommend that the committee **refuse** the subject application. Detailed comments supporting this recommendation have been provided in Appendix A of this letter.

Should you have any questions or comments, please contact the undersigned.

Regards,



Matthew Pereira
Planner 1
Development Planning and Permits | Development and Engineering Services
437-880-2416
Matthew.pereira@trca.ca

Attached: Appendix A: Detailed Comments

Appendix A: Detailed Comments

#	TRCA Comment
1	<p>TRCA Staff do not support the construction of the deck within the valley corridor and the 'Natural System' as defined by TRCA's Living City Policies. The deck structure is within the erosion hazard associated with the valley corridor. As per Policy 8.5.1.8 of the Living City Policies, it states "Property improvements and non-habitable <i>accessory structures</i> associated with existing residential use such as decks, minor <i>alterations</i> to grade/landscaping, and swimming pools will not be permitted within the <i>erosion hazard of valley and stream corridors</i> but may be considered adjacent to the <i>erosion hazard</i>, where it can be demonstrated to the satisfaction of TRCA that:</p> <ul style="list-style-type: none">a) the location of the structure does not obstruct the access to and along <i>valley and stream corridors</i> for maintenance of protection works;e) the structure is set back a minimum of 6 metres from the <i>stable top of slope, stable toe of slope or meander belt</i>."