

# Memorandum to the City of Markham Committee of Adjustment

January 26, 2022

**File:** A/162/21  
**Address:** 134 Dundas Way – Markham, ON  
**Applicant:** Sarveswaran Vaithyanathasarma  
**Hearing Date:** February 2, 2022

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 deck in the rear yard. The variance requested is to permit:

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

the floor of the 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; and

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

a deck with a maximum rear yard projection of 3.74 m (12.27 ft), whereas the By-law permits a deck with a maximum rear yard projection of 3.0 m (9.84 ft).

## 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 seeks to recognize an existing deck located in the rear yard at the second-storey level, which projects 3.74 m (12.27 ft) from the building wall closest to the rear lot line. Excluding the stairs, the deck has an approximate area of 16.50 m<sup>2</sup> (177.63 ft<sup>2</sup>).

## 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 permit process to confirm the variances required for the proposed development.

## **COMMENTS**

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 3.74 m (12.27 ft) from the building wall closest to the rear lot line. 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.

A site visit conducted by staff, shows that other second-storey decks have been similarly constructed within the immediate vicinity. 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 projection from the rear building wall; and
- c) the development standards of the By-law, including 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 proposed second-storey deck meets the general intent of the By-law, and that its impacts are minor in nature. Accordingly, staff do not object to the proposed development.

### **PUBLIC INPUT SUMMARY**

No written submissions were received as of January 26, 2022. It is noted that additional information may be received after the writing of this 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 subsequent conditions of approval 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

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/162/21**

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 read 'Aleks Todorovski', is written over a horizontal line.

Aleks Todorovski, Planner, Zoning and Special Projects

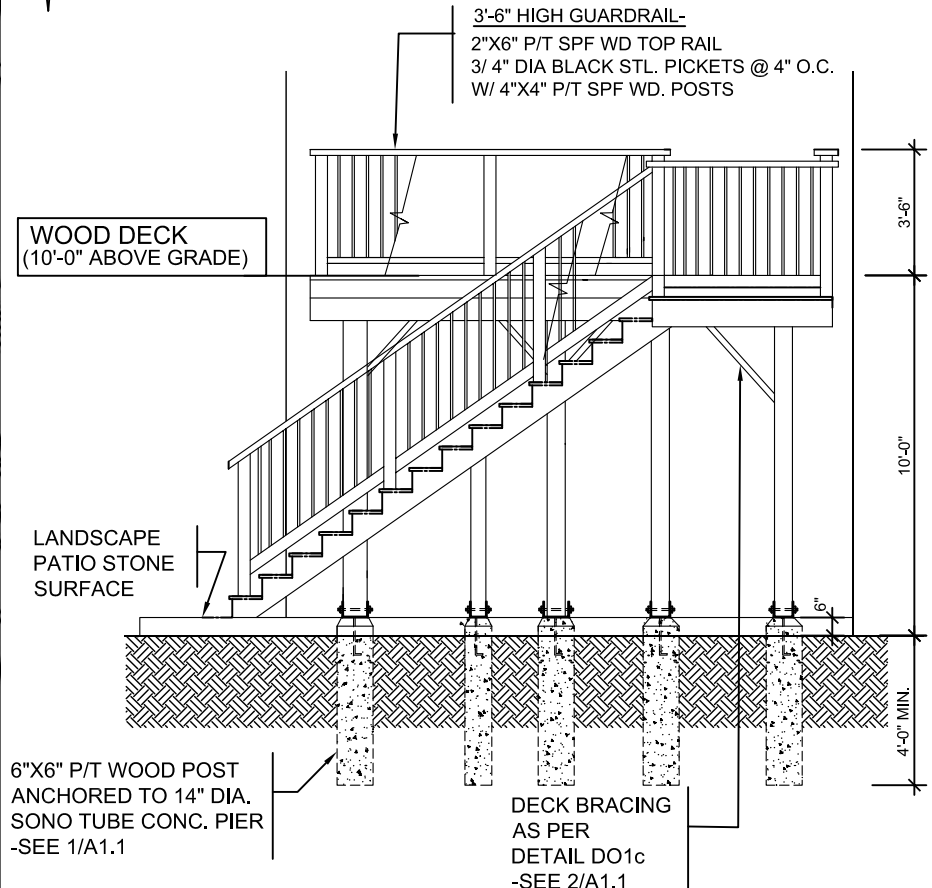
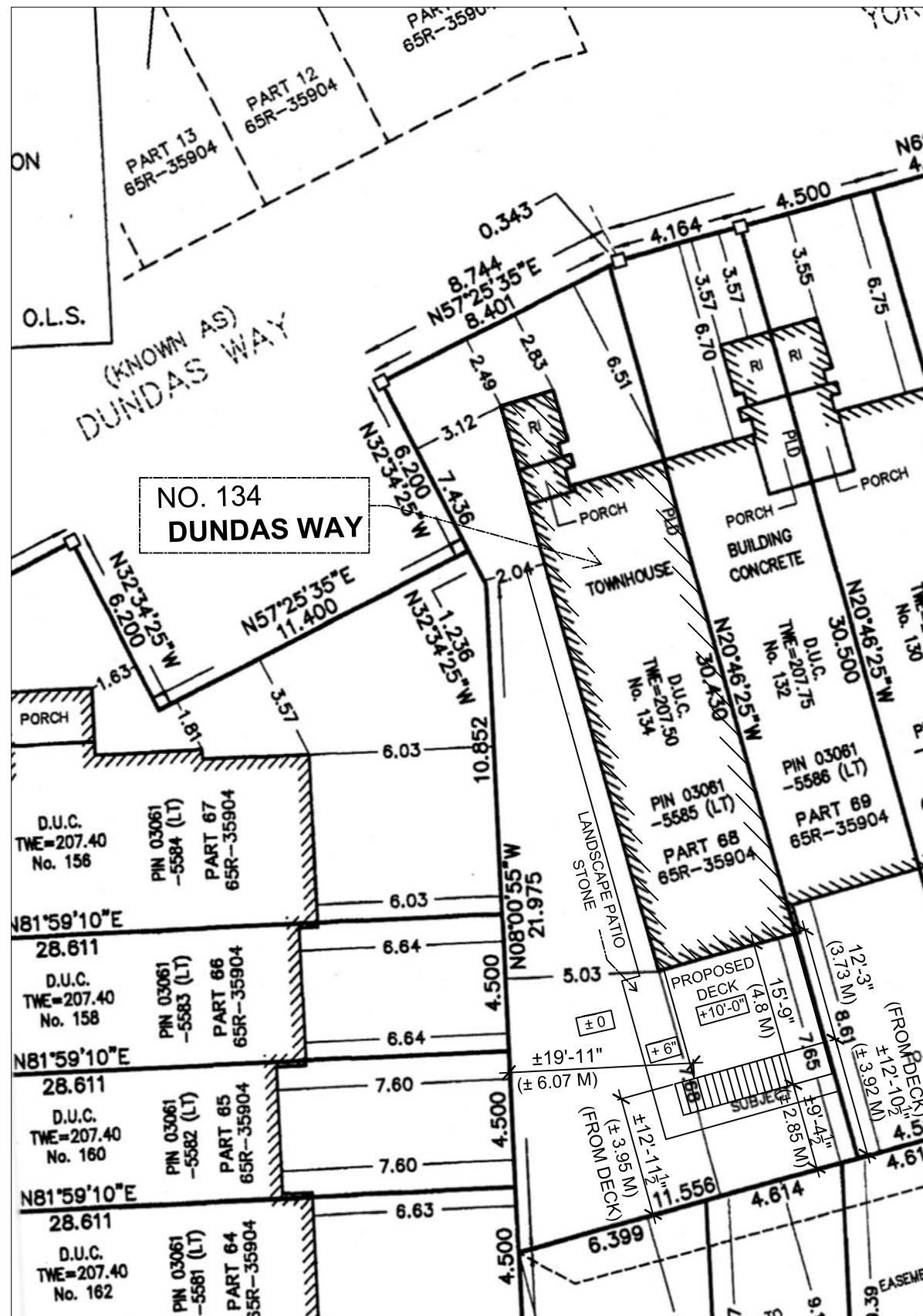
**APPENDIX "B"**  
**PLANS TO BE ATTACHED TO ANY APPROVAL OF FILE A/162/21**

# Appendix B

File: 21.142485.000.00.MNV

Date: 01/28/22  
MM/DD/YY

SURVEYOR'S REAL PROPERTY REPORT  
PART 1 PLAN OF  
PART OF BLOCK 1  
PLAN 65M-4454  
CITY OF MARKHAM  
REGIONAL MUNICIPALITY OF YORK



2 FRONT ELEVATION  
A1.0 SCALE: 3/16"=1'-0"

DECK AREA -
DECK .....177.62 SQFT (16.5 SQM)
STAIRS..... 58.36 SQFT (5.4 SQM)
TOTAL AREA 235.98 SQFT (21.9 SQM)

1 SITE PLAN  
A1.0 SCALE: 1/16"=1'-0"

NOTE:  
SITE PLAN INFORMATION TAKEN FROM  
SURVEY PLAN # 1966894  
PREPARED BY KRCMAR SURVEYORS LTD. (OLS),  
1137 CENTRE STREET, THORNHILL ON L4J 3M6  
DATED AUGUST 18, 2016



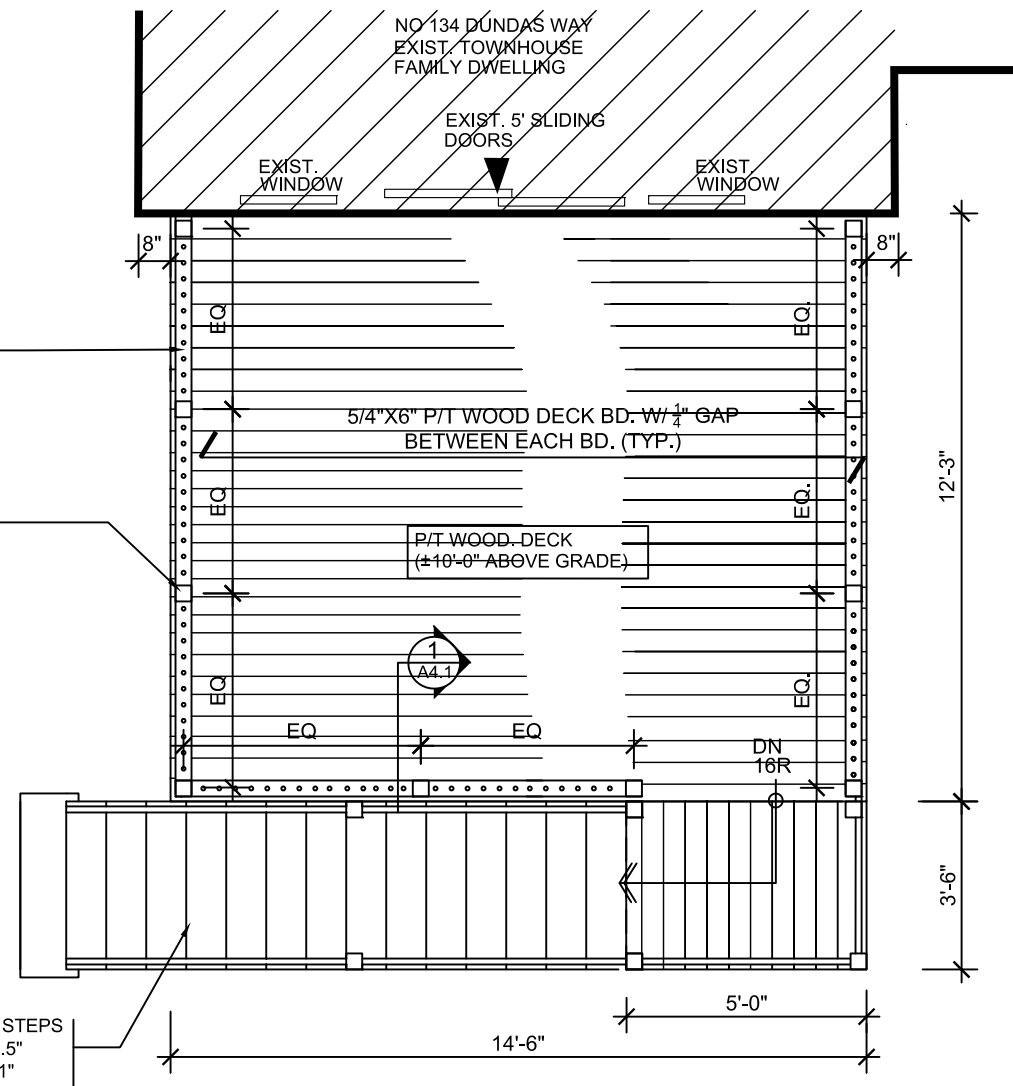
**BATTAGLIA ARCHITECT INC.**  
1050 McNICOLL AVE., UNIT 14  
SCARBOROUGH, ONT.  
M1W 2L8  
TEL.: (416) 492-7772

PROPOSED DECK AT 134 DUNDAS WAY, MARKHAM, ONTARIO	DRAWING SITE PLAN & FRONT ELEVATION
DATE: MAY 2021	DRAWING No
SCALE: AS SHOWN	<b>A1.0</b>
DRAWN: SAM P.	

# Appendix B

File: 21.142485.000.00.MNV

Date: 01/28/22  
MM/DD/YY



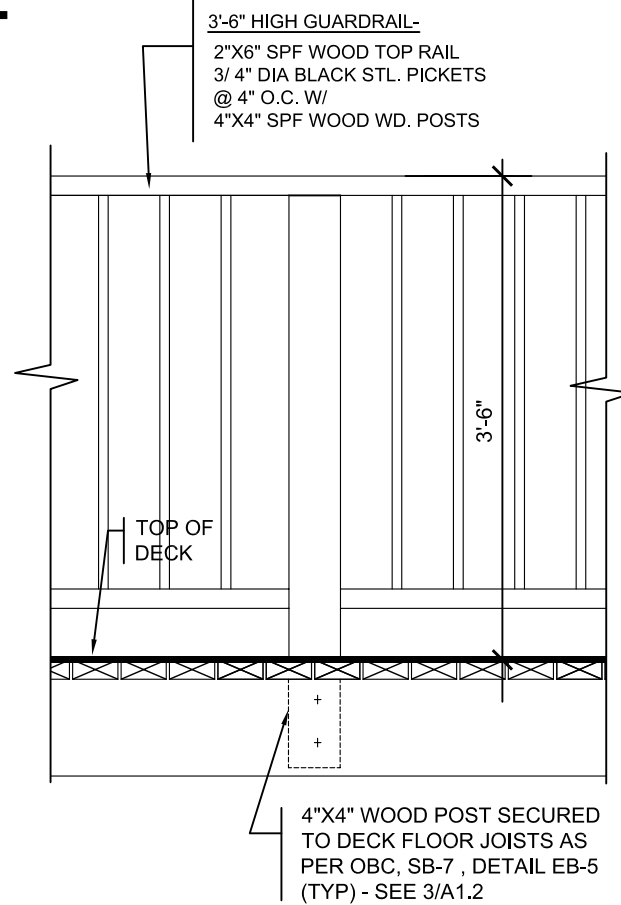
3'-6" HIGH GUARDRAIL-  
2"x6" SPF WOOD TOP RAIL  
3/4" DIA BLACK STL. PICKETS  
@ 4" O.C.  
W/ 4"x4" SPF WOOD POSTS

4X4" P/T WOOD POST @  
5'-1" MAX O.C.(TYP)  
-SEE 2/A1.2, 3/A1.2

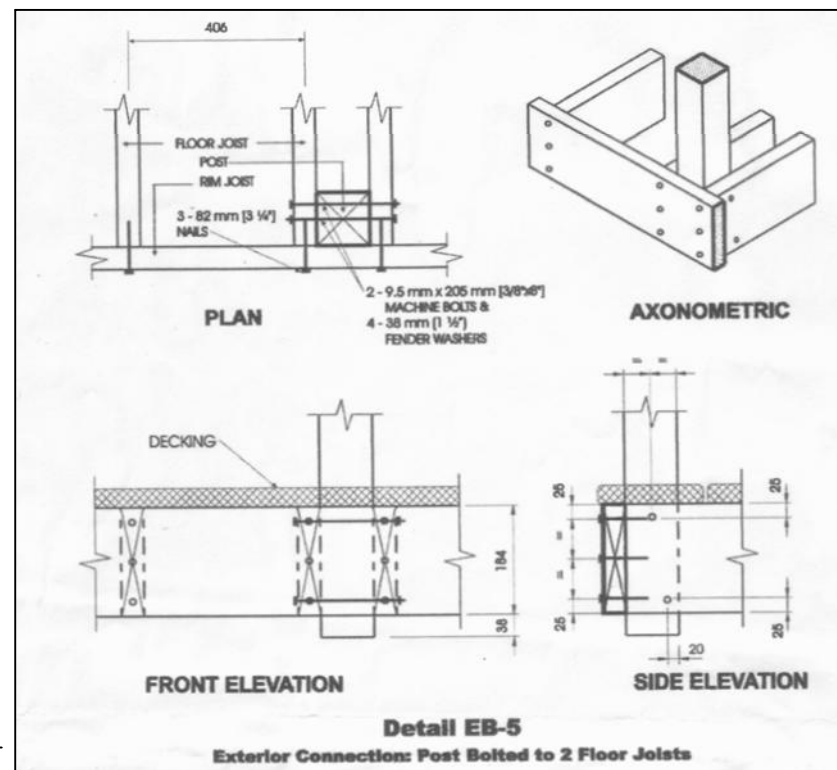
P/T WD. STEPS  
RISE ± 7.5"  
RUN ± 11"

NOTE:  
STAIRS TO BE CONSTRUCTED  
AS PER AS PER TACBOC  
DETAIL DO1c -(SEE 2/A4.1)

1 PLAN @ UPPER LEVEL  
A1.2 SCALE: 1/4"=1'-0"



2 ELEVATION- PARTIAL DECK RAILING  
A1.2 N.T.S.



3 OBC, SB 7 DETAIL- EB-5  
A1.2 N.T.S.

## BATTAGLIA ARCHITECT INC.

1050 McNICOLL AVE., UNIT 14  
SCARBOROUGH, ONT.  
M1W 2L8  
TEL.: (416) 492-7772

PROJECT  
PROPOSED DECK  
AT  
134 DUNDAS WAY,  
MARKHAM, ONTARIO

DRAWING  
UPPER LEVEL PLAN  
& DETAILS

DATE:  
MAY 2021

DRAWING No

SCALE:  
AS SHOWN

# A1.2

DRAWN:  
SAM P.

