



AGENDA OF THE PLANNING
COMMISSION
CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
November 20th, 2024
7:00 P.M.

CALL TO ORDER

PUBLIC FORUM

APPROVE AGENDA

REGULAR AGENDA

- A. Approve October 24, 2024, PC Meeting Minutes* (pp. 2-3)
- B. Appeal Regarding Approval of the Building Permit at 483 Lake
 - 1. Review of Appeal
 - a. Appeal* (pp. 4-8)
 - b. Building Permit* (pp. 9-28)
 - c. City Planner Response to Appeal* (pp. 29-31)
 - d. Revised Plans from Building Inspector* (pp. 32-55)
 - e. Letter from Residents at 483 Lake* (pp. 56-63)
 - 2. Recommendation on the Appeal for the City Council

ADJOURN

* Denotes items that have supporting documentation

MEETING MINUTES (Draft)

Birchwood Planning Commission Regular Meeting

City Hall - 7:00 PM Regular Meeting 10/24/2024

Submitted by Michael Kraemer – secretary

COMMISSIONERS PRESENT: – Andy Sorenson - Chairperson, Michael Kraemer, Casey Muhm, Michael McKenzie, Michelle Maiers-Atakpu

COMMISSIONERS ABSENT: None

OTHERS PRESENT: Suzie Mahoney, Larry Mahoney, Emily Morehead

1. TO ORDER: Sorenson called meeting to order at 7:00 PM.
2. PUBLIC FORUM
 - a. Larry and Suzie Mahoney 479 Lake Ave spoke about their concern over the deck modification permit granted to 483 Lake Ave. The Mahoney's indicated they had filed a complaint with the City Council on October 8, 2024 about the deck modification permit. The Mahoneys inquired if the Planning Commission had any recommendations on how they could contest the permit and stop the current construction. Planning Commission Chairman Andy Sorenson informed the Mahoneys that the Planning Commission had no jurisdiction over the matter since the Commission had no involvement in the review and approval of the any element of the permit.
3. APPROVE AGENDA
 - a. Motion by Maiers-Atakpu, 2nd by Muhm, 2nd to approve agenda. Vote: Yes -5, No – 0. Motion passed.
4. REGULAR AGENDA
 - a. Item A – Review/Approve August 22, 2024 Planning Commission Meeting Minutes.
 - i. Motion by Muhm, 2nd by Maiers-Atakpu to approve the minutes. Vote: Yes – 5, No – 0, Motion passed.
 - b. Item B – 4 Five Oaks Lane Concept Plan Review.
 - i. Planning Commission was asked to provide preliminary comments on a concept plan to extend the garage/master bedroom addition from the face of the walkout garage 30' to within 21' – 4" of the city street ROW. The face of the current structure is 51' – 4" from the ROW. City Code 302.020 STRUCTURE LOCATION REQUIREMENTS dated 09/02/2023 sets structure set back from city streets at 30'.
 - ii. **Action Taken:** The Planning Commission not finding circumstances of code imposed undo hardship suggested current plan was not in compliance with City Code and that the property owners work with

their architect to bring the proposed addition design in compliance with existing City Code.

c. Item C – Ordinance 2024-11-01 (302.055) Run Off Changes

- i. Planning Commission was asked to review draft language of Ordinance 2024-11-01 LAND DISTURBANCE ACTIVITY STANDARDS related to site runoff considerations. The previous ordinance cited *“No increase in runoff **rate** shall occur.”* The proposed language changed that threshold to *“in the opinion of the City Engineer, the construction or modifications do not cause significant adverse effects on adjacent properties (including City property) due to stormwater runoff, including but not limited to erosion, flooding, or damage to structures or landscaping. Calculations for this section shall be based on a 24-hour, 10-year storm event as defined by local meteorological data.”*
- ii. **Action Taken/ Recommendation:** The Planning Commission accepted the language modification with the caveat that the engineer’s analysis on properties lying within or effecting land locked basins (i.e. no outlet) shall include an evaluation of the potential impacts to surrounding property from a 48 hr – 100 year probability event. Advisory Vote: Yes – 4, No – 0.

ADJOURN 7:49 PM

- d. Motion by Maiers-Atakpu , 2nd by Muhm to adjourn meeting. Vote: Yes - 5, No – 0. Motion passed.

October 24, 2024

Rebecca Kellen
City Administer
207 Birchwood Ave.
Birchwood Village, MN 55110

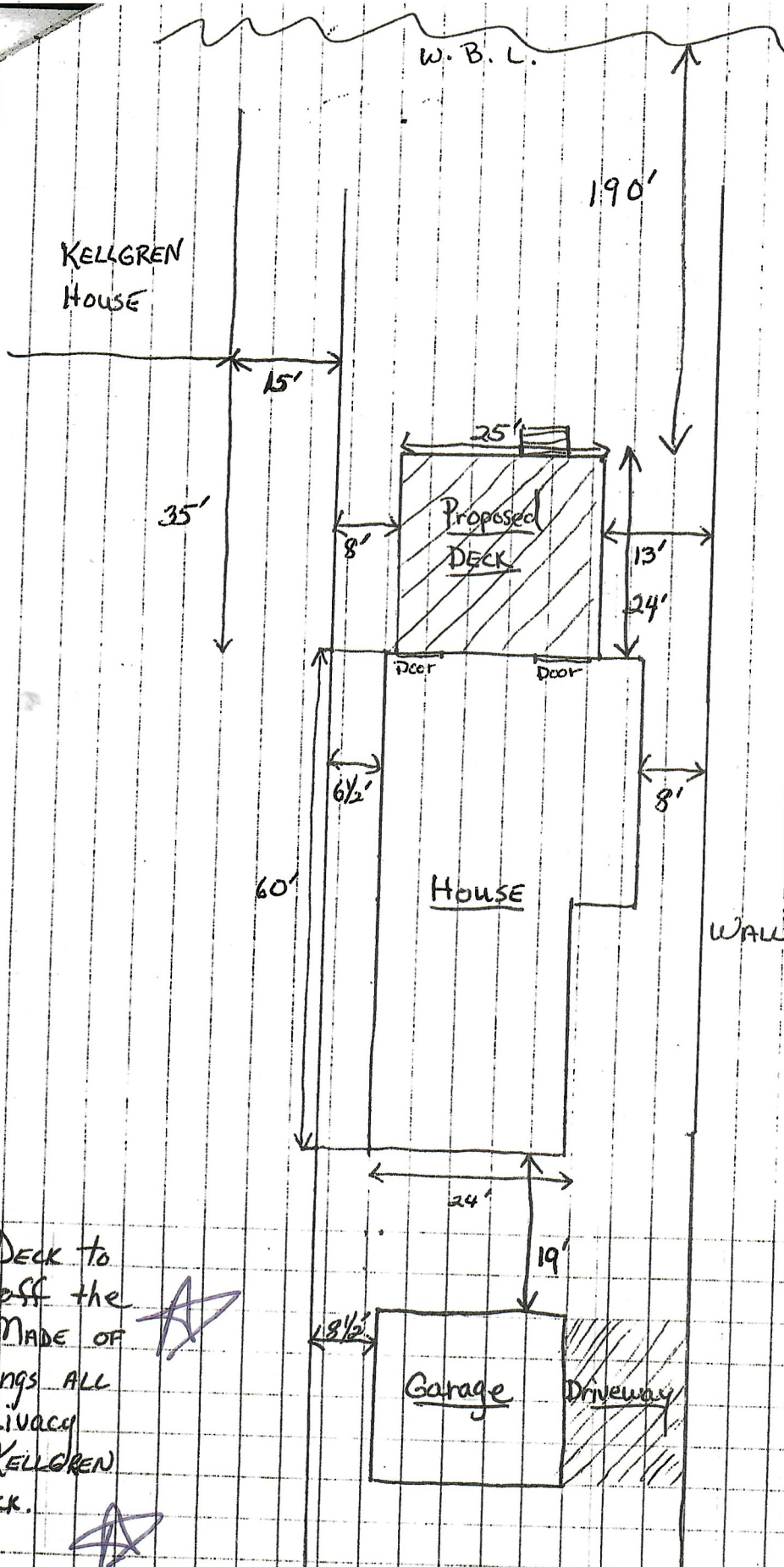
Rebecca,

I am writing to let you know that [REDACTED] want to make an "administrative appeal" of the decision by the City to allow the Harrods at 483 Lake Ave to construct their pergola and wall. To begin with [REDACTED] were never notified of the Harrod's plan to reconstruct their non-conforming deck and to add a wall to their deck as well as a pergola complete with a roof. The Zoning code requires that [REDACTED] be notified of this construction.

I have been looking at the Village of Birchwood City ordinances with a particular interest to the land and zoning use. To begin with the wall that the Harrods intend to build will not be a continuation of what they already had. Although your letter date October 17, 2024 said, that a like structure is allowed for replacement, the fence they had was something that could be seen through, it was a privacy fence. The Harrods themselves labeled it as a fence in their 2009 plan they submitted to the city when they added on to their home. The wall they intend to build will be solid and will add another 20 feet of siding, [REDACTED]. Making the amount of siding of the Harrod's house 104 feet running 5 feet from the lot line. The wall they are having constructed will anchor the pergola they are also building. The pergola is a structure which will have walls and a roof. The pergola is not a continuation of a former structure rather is a new structure on a non-conforming deck. The roof will add 332 square feet of impervious surface to their impervious surface ratio that is most likely now over the allowed surface ratio of 25 percent since their addition in 2009 also added 1472 square feet to their impervious surface. The roof will also direct rain that formerly went through the deck slats and down to the ground, [REDACTED]. Since the pergola is being built on a non-conforming deck this is a new non-conforming structure which requires a variance.

I feel that [REDACTED] have a very strong case for the appeal of the decision made by the city. On October 8th, 2024 [REDACTED] asked for a "cease and desist" order for this construction. The Harrods have previously ignored the city ordinances. When they built a fence in June of 2016, the ordinance and their permit allowed for a six-foot fence. They put up a seven-foot fence. When [REDACTED] appealed to the city council they concluded that the fence was built and they couldn't ask the Harrods to take it down. [REDACTED] chose not to bring any legal action at that time. I would be very concerned that they build the pergola and again it would be allowed although not legal. This time [REDACTED] will not be averse to taking legal action.

[REDACTED]



Copy of Nicholson
plan for original
deck.

Look at St

One change:
The length of
deck will be
20 ft. instead
of 24 ft.

POSED DECK to
3-3 1/2' off the
WIND. MADE OF
WOOD. RAILINGS ALL
WOOD. PRIVACY
SCREEN ON KELGREN
SIDE OF DECK.

MEASUREMENTS:
DECK 24' X 25'

483 LAKE AVE.

ROBERT/ROBIN NICHOLSON
426-4074

1 SQ. = 5 FT.





260'

Foundation

24'

12'

New Garage

23'6"

Driveway

12'

11'6"

6'6"

50'

Lake Ave

Ther description

FENCE

FENCE

POLE

steps

fire door

Harrod's

Kay Beach

#24-0095

City of Birchwood Village

BUILDING PERMIT INSPECTION RECORD CARD

--- Do Not Remove ---

SITE ADDRESS 483 Lake Ave
 NATURE OF WORK Pergola-Deck
 USE OF BUILDING RES
 BUILDING PERMIT NO. 24-0095 DATE ISSUED 8/29/24
 CONTRACTOR _____ OWNER _____

INSPECTIONS REQUIRED	APPROVED BY INSPECTOR	DATE APPROVED	COMMENTS
FOOTINGS			
<u>ROUGH-INS</u> DO NOT PLACE CONCRETE UNTIL ABOVE HAS BEEN SIGNED			
FOUNDATION			
ELECTRICAL			
PLUMBING INTERIOR			
HEATING			
FRAMING			
DO NOT INSULATE OR COVER WALLS UNTIL ABOVE ARE SIGNED			
INSULATION			
DO NOT COVER WALLS UNTIL ABOVE IS SIGNED			
LATH/WALLBOARD			
DO NOT TAPE OR PLASTER UNTIL ABOVE IS SIGNED (INTERIOR OR EXTERIOR)			
<u>FINALS</u>			
ELECTRICAL			
PLUMBING			
HEATING			
MECHANICAL			
GAS LINE AIR TESTS			
SEPTIC/SEWER			
BUILDING FINAL			CERTIFIED - DATE SUBMITTED:
DO NOT OCCUPY UNTIL ABOVE IS SIGNED			

NOTICE

This card must be posted near electrical service cabinet prior to rough-in inspections and maintained until all inspections have been approved. On buildings and additions where no service cabinet is available, card shall be placed near main entrance.

PLEASE CALL 24 HOURS PRIOR TO INSPECTIONS
 PHONE: 651-351-5051 EMAIL: inspjack@msn.com
 CELL: 651-269-5633



Permit#: 24-0095

Permit

Application Date: August 26, 2024**Permit#:** 24-0095**Location:** 483 LAKE AVE, CITY OF BIRCHWOOD**Applicant Name:** Debbie Harrod**Email:** debbielharrod@gmail.com**Property Owner Name:** HARROD JAMES J & DEBRA L**Property Owner Email:** debbielharrod@gmail.com**Contractor:** Keller Construction**Contractor Email:** No Available**Contractor License:** BC787590**Expiration Date:** February 26, 2025**Parcel #:** 3003021130027**Permit Type/use:** Building Permit**Address:** 483 Lake Ave**Phone:** 6122464612**Address:** 483 LAKE AVE, WHITE BEAR LAKE MN 55110**Phone:****Address:** 1444 2nd Ave, Newport, MN 55055**Phone:****Project Valuation:** \$15,000**License Expires on:** 3 / 31 / 25

DESCRIPTION OF WORK: Original permit applied for in 2020--Extended per JK but will provide updated design. Permit was paid in 2020 but additional fees will apply due to changes in scope. Work to be done: Replace existing deck and wall due to rotting footings and wood. Add a screen perogola on top of deck.

Fees

Date	Description	Paid Date	Amount	Paid	Balance
September 6, 2024	Building Permit Fee		\$111.25		
September 9, 2024	Plan Check Fee		\$72.31		
September 9, 2024	State Surcharge		\$2.40		
TOTAL: Permit Fees			\$185.96		\$185.96

Inspectors

Please allow 24 hours minimum notice for inspection requests.

Inspection Type	Inspector Name	Contact Information
Building /HVAC/ Plumbing	Jack Kramer	Phone: 651-351-5051 Email: inspjack@msn.com
Sewer Water	John Manship	Phone: 651-426-9386
Electrical	Don Edel	Phone: 507-210-8233

Birchwood Village Contacts

Main Phone# 651-426-3403

Email Address:

therese.bellinger@cityofbirchwoodvillage.com

Permit Approved On: 8 / 27 / 24
By the City of Birchwood Village

JK approved
Jack Kramer - Building Official

Ben Wikstrom - City Planner

Date

Marcus Johnson - City Engineer

Date

City of Birchwood Village

Intellipay <noreply@intellipay.com>

Tue 9/3/2024 1:09 PM

To:City of Birchwood Village <info@cityofbirchwood.com>

City of Birchwood Village

Payment Receipt

Debbie Harrod

483 Lake Ave

Unit 10

Cape Coral MN 33904

6122464612

debbielharrod@gmail.com

Your payment was successfully processed.

Thank you. Your payment has been received.

Customer Account:

Buliding

Invoice:

C44637006

Payment Amount: **\$185.96**

Service Fee: **\$5.58**

Payment Total: **\$191.54**

Payment Date: 09/03/2024

Card Number: 4..7806

Name on Card: Debbie Harrod

Card Type: Visa Card

Authorization Code: 05553D

Reference Number C44637006P77556534

Comments:

Payment Origin: Online Payment Terminal

Agent: Online Payment Page

Merchant#: M8145

Building/Planning/Zoning Permit

Permit Type: Buliding

Permit Number: 23-0095

Thank you,
City of Birchwood Village



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
09/03/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Rooke Johnson & Renslow Insurance 10050 Crosstown Circle Suite #105 Eden Prairie MN 55344-3349		CONTACT NAME: Lisa Wendell CISR PHONE (A/C, No, Ext): (952) 931-9999 E-MAIL ADDRESS: lisaw@rjinsurance.com FAX (A/C, No): (952) 931-0096	
INSURED Daniel James Keller 1444 2nd Ave Newport MN 55055-1117		INSURER(S) AFFORDING COVERAGE INSURER A: West Bend Mutual Insurance INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	
		NAIC # 15350	

COVERAGES

CERTIFICATE NUMBER: CL2411224121

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR VWD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC OTHER:			0969012	02/13/2024	02/13/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Additional Insured \$
A	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☒ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			0969012	02/13/2024	02/13/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ PIP-Basic \$ 10,000
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED \$ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ PER STATUTE ☐ OTH-ER ☐
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ Y/N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A					E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificateholder is Additional Insured on above General Liability Policy

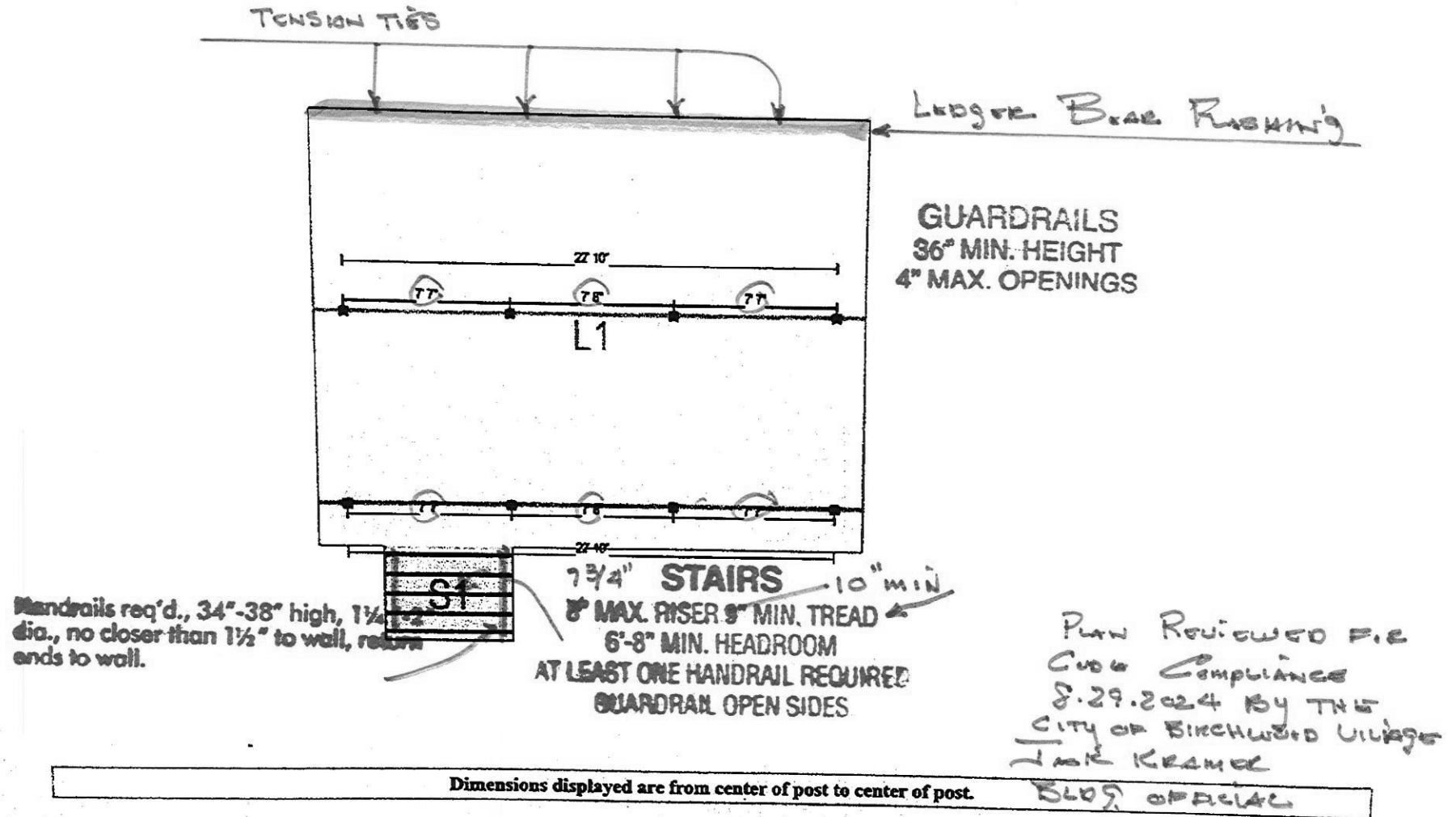
CERTIFICATE HOLDER

CANCELLATION

City of Birchwood 207 Birchwood Ave St Paul MN 55110	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Lisa Wendell</i>
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L1 - Posts and Footings



L1 - Framing Posts

Label

A

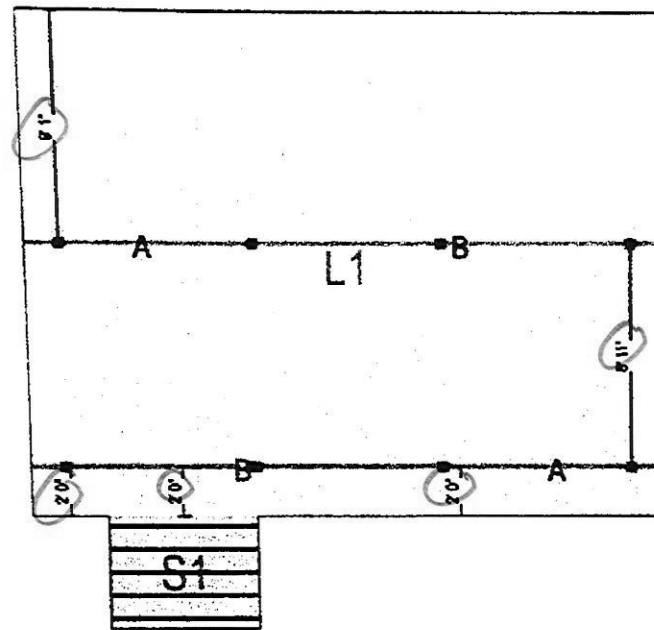
Post Size

6x6

Count

8

L1 - Beams

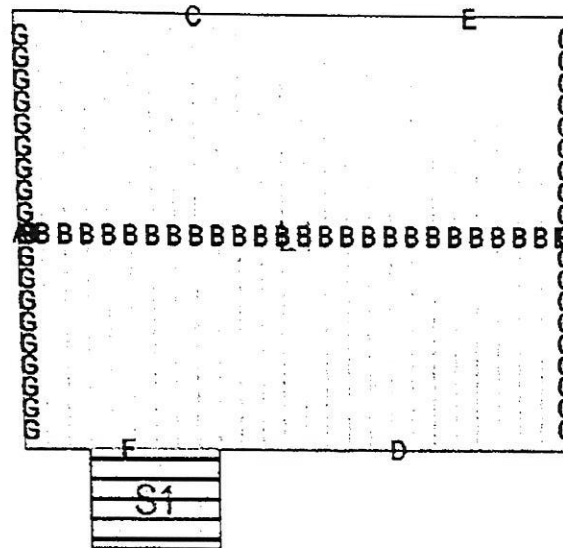


2 boards nailed together is 2 ply

L1 - Lumber: 2 ply - 2 x 10 AC2

Label	Length	Count
A	8' 11"	2 ✓
B	16' 7"	2 ✓

L1 - Joists



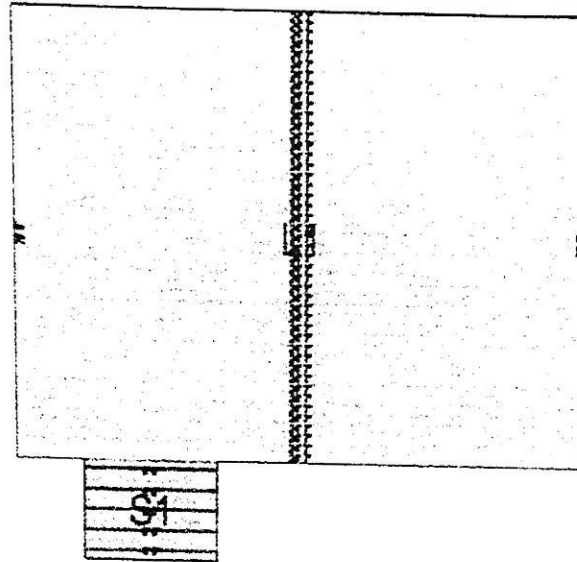
Lumber: 2 x 10 AC2

Joist Spacing: 12" on center

Label	Length	Count
A	20' 0"	2
B	19' 9"	26
C	16' 0"	1
D	16' 0"	1
E	9' 3"	1
F	9' 3"	1
G	4"	38

Usage
Rim Joist ✓
Internal Joist ✓
Ledger Joist ✓
Rim Joist ✓
Ledger Joist ✓
Rim Joist ✓
Picture Frame Joist ✓

L1 - Deck Boards and Treads



Decking over 240" is shown as one length and decking must be spliced - multiple lengths of decking may be estimated. The deck board lengths and/or quantities may need to be adjusted based on framing or the deck board splice pattern you prefer. Please review the deck board lengths and quantities prior to the start of your project. A divider board may be added to improve the look and eliminate splices. To add dividers, recall the design and add a divider on the Design>Decking tab in the program.

Deck Board

Length	Count
24' 7"	43

Pictureframe

Length	Count	Length	Count
20' 0"	2	24' 7"	2

L1 - Railing Posts

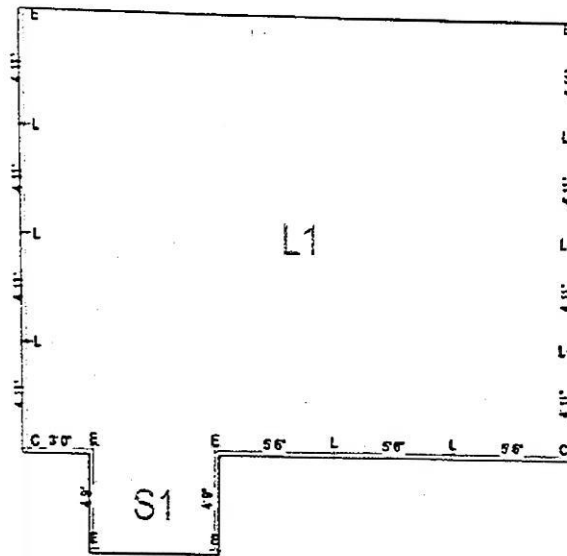


Illustration does not represent all available railing post placement options.
Railing post dimensions are on center.

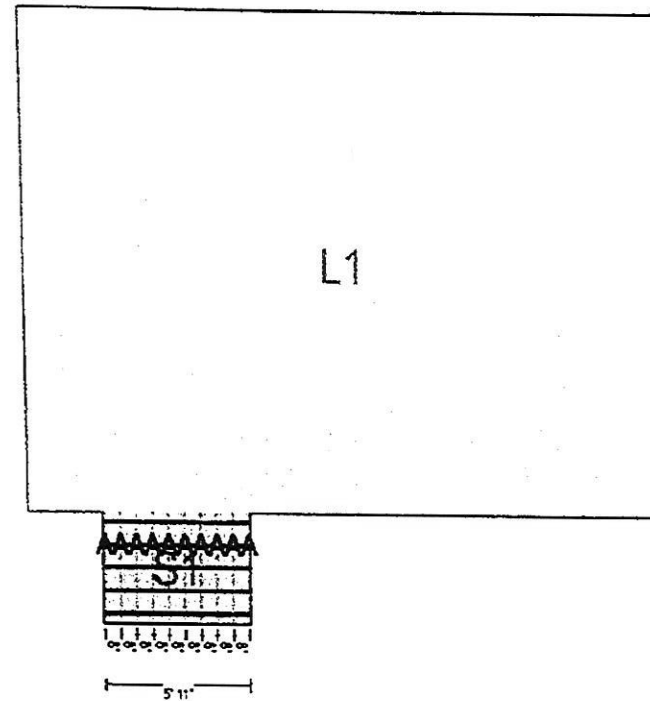
L1

Label	Count
C - Corner Post	2 ✓
E - End Post	4 ✓
L - Line Post	8 ✓

S1

Label	Count
E - End Post	2 ✓

L1 - Stair Framing



S1 - Stringer

Label
A

Length
4' 8"

Count
10 ✓

Goal is to replace existing deck and privacy wall that has deteriorated with same size and add a screened in 16'6" x 20' pergola. ✓

Plans are drawn as 1/4"=1'

Actual sizes will vary to conform to actual existing deck dimensions

Deck

Decking material will be composite and built to Menards plan. ✓

Footings will be diamond pier type footings with 60" rods. ✓

Railing will be Westbury Verticable railing. ✓

All framing will be replaced and treated lumber will be used. ✓

Pergola

Rough cut dimensional cedar will be used ✓

6x6 posts

2x10 double header (see detail A) ✓

2x8 pergola rafters 2' on center ✓

2x4 screen supports ✓

Ornamental wood ties rafters clips will be used at both header and wall side ✓

All fasteners will be ACQ rated ✓

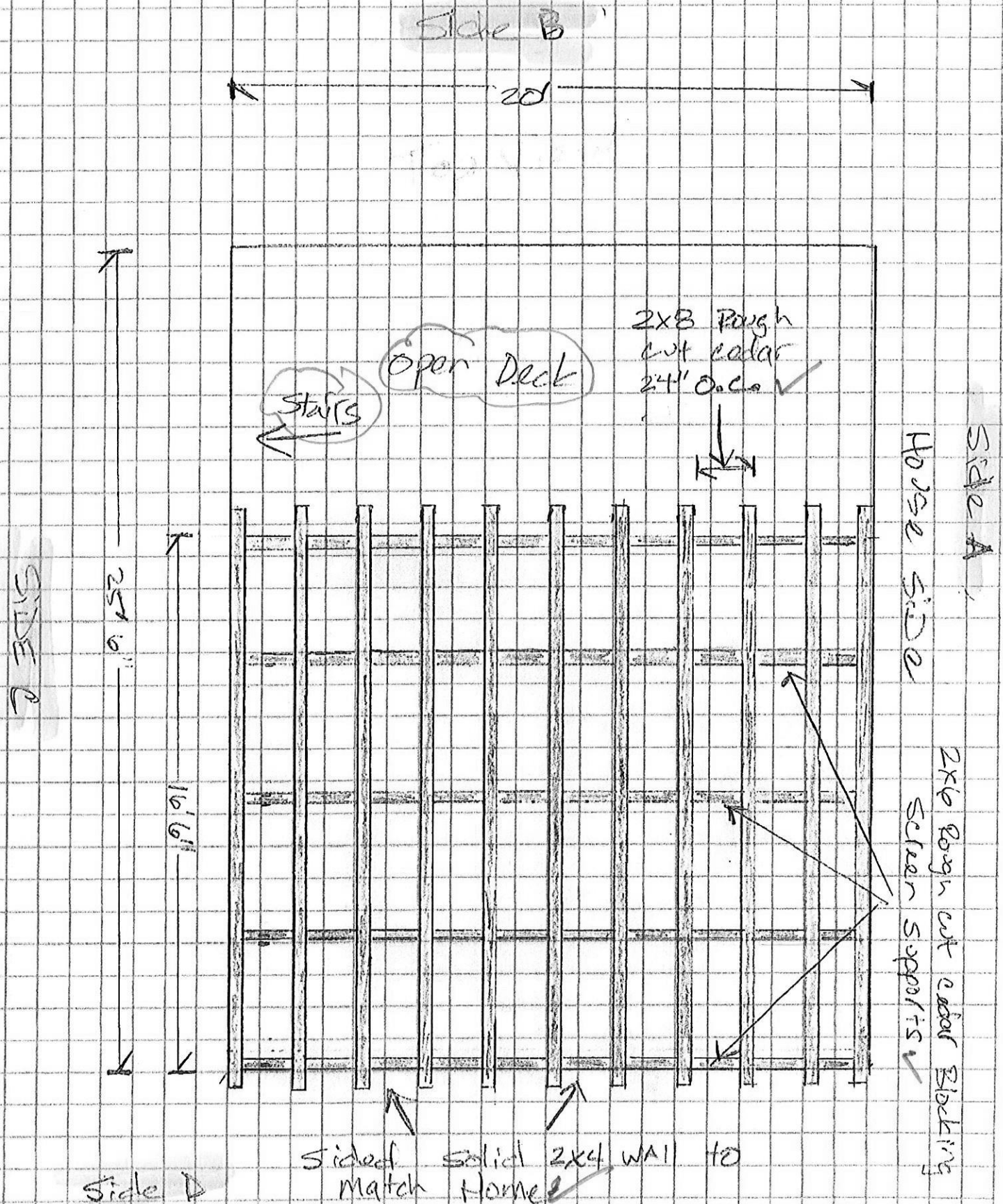
A screen door will be added on side B, location to be determined ✓

Inside of side D wall will be finished with reclaimed cedar on top 2/3 and

bottom 1/3 will be corrugated galvanized steel ✓

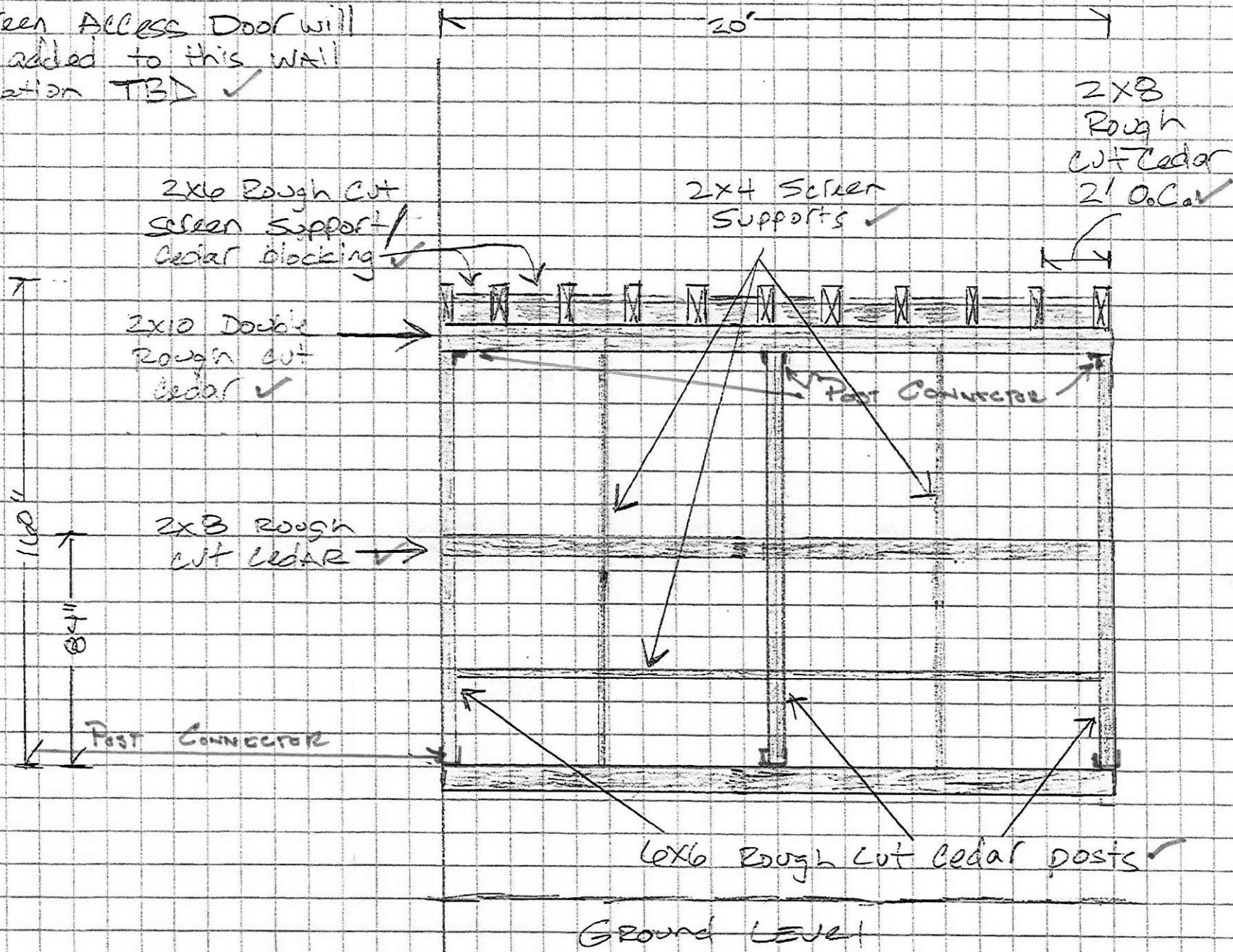
Outside of side D wall will be finished with siding to match home ✓

Side D wall will be framed 16" on center with green treated materials. The top will be flashed with steel or aluminum and slightly pitched away to prevent standing water ✓



Screen Access Door will
Be added to this wall
Location TBD ✓

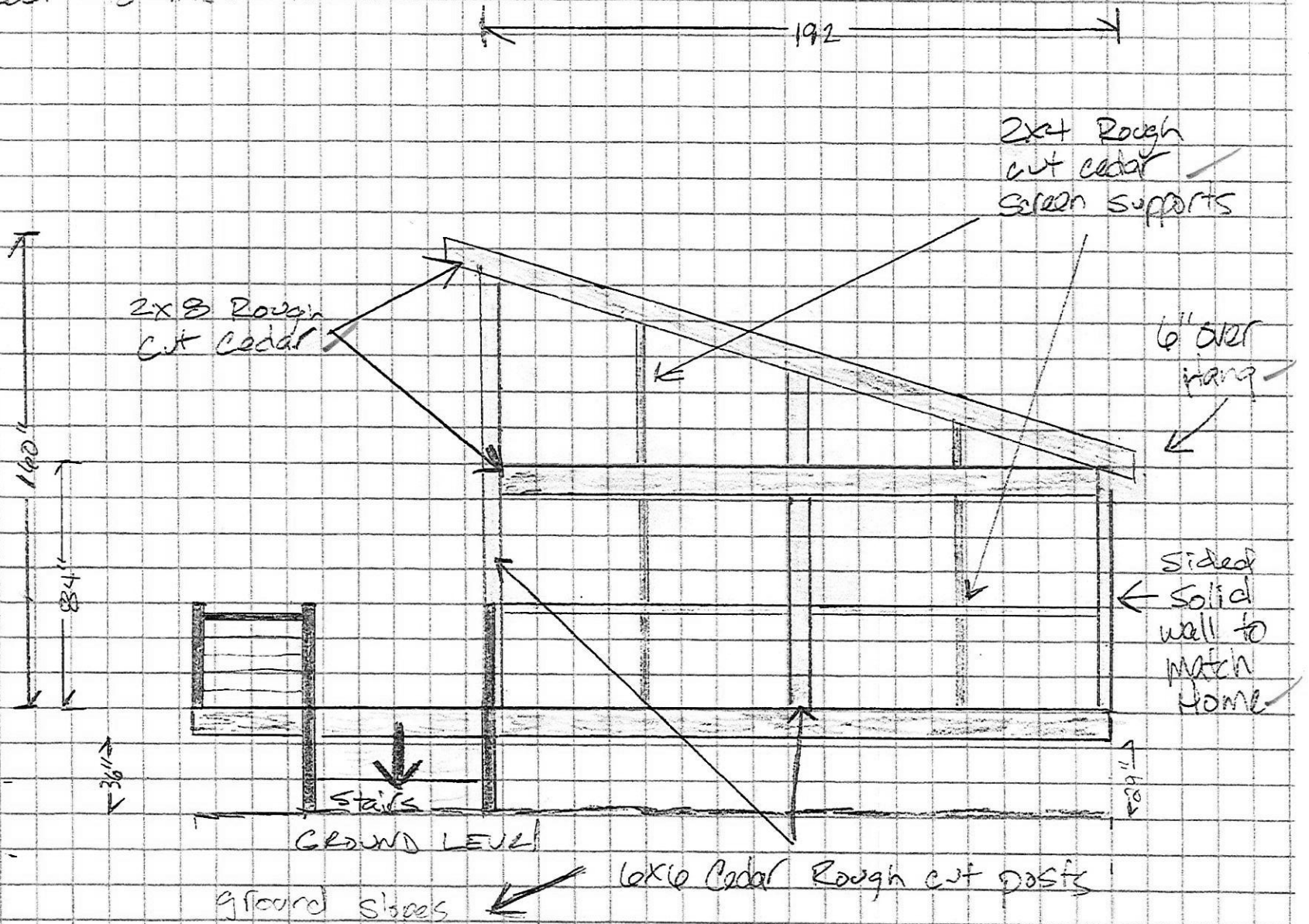
Side B



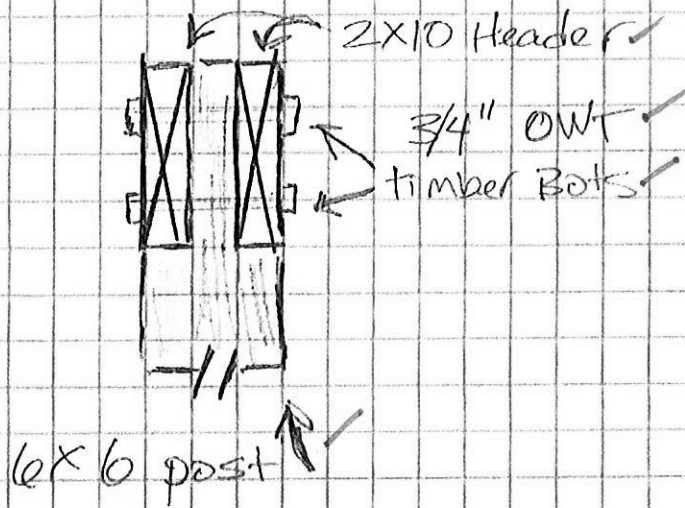
View from Lake / Side C

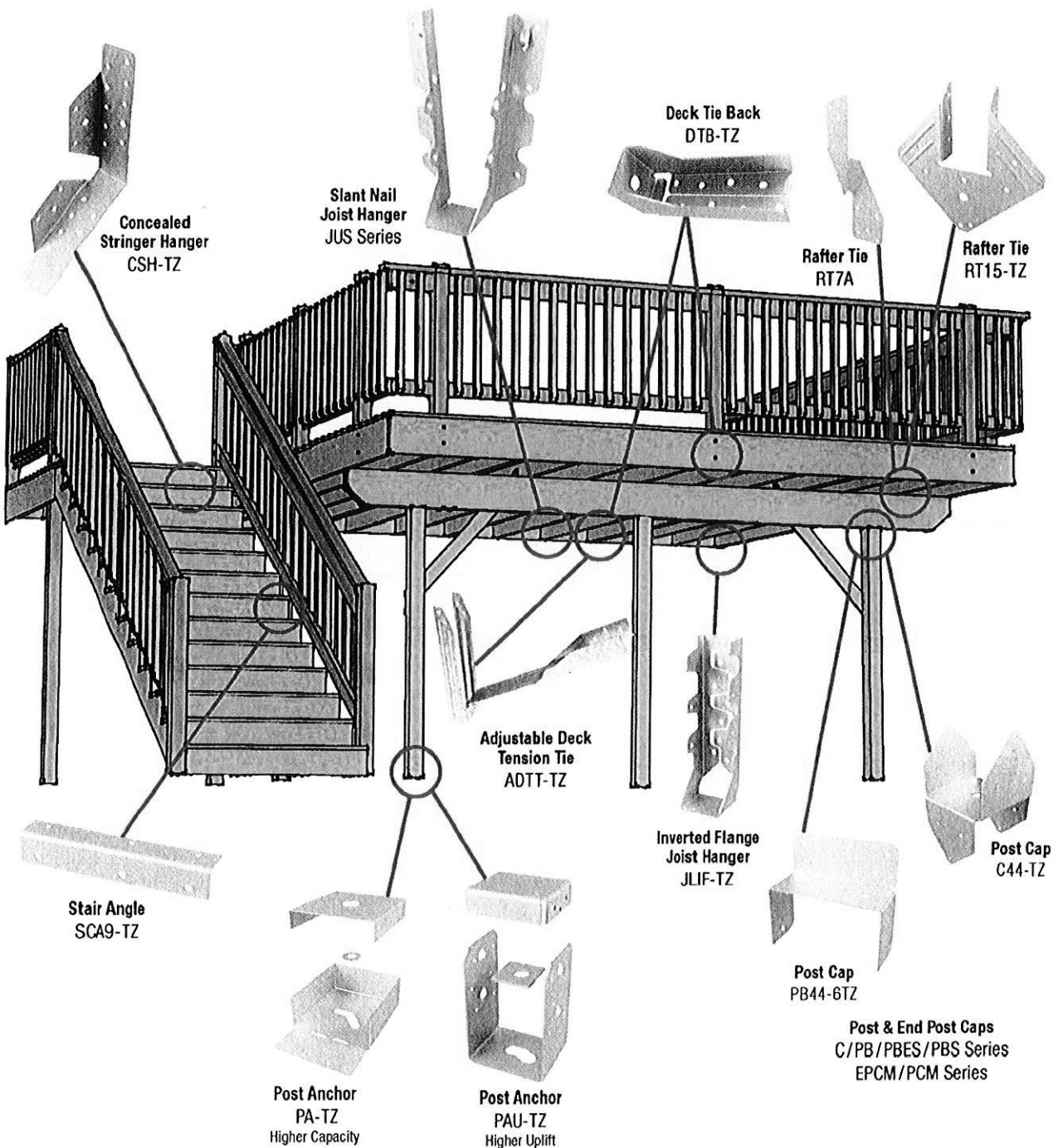
1/4" = 1 foot

4/12 roof to match Home



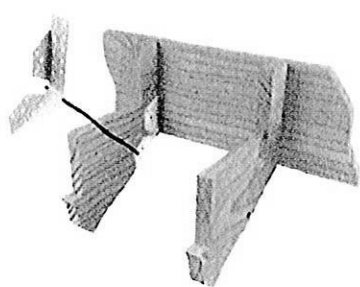
Detail A



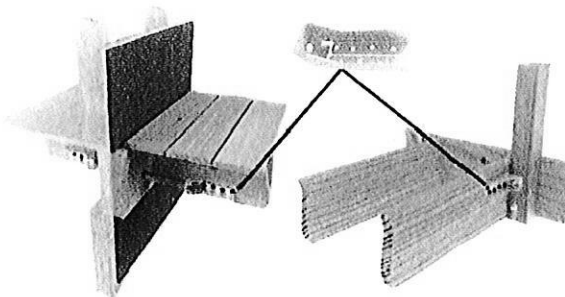


Disclaimer: Some of the products displayed are optional and not estimated

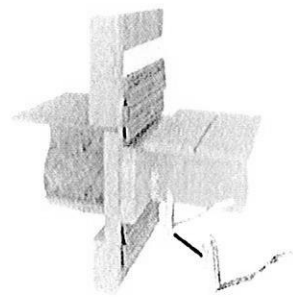
Customer Service 1-800-328-5934 • MiTek-US.com



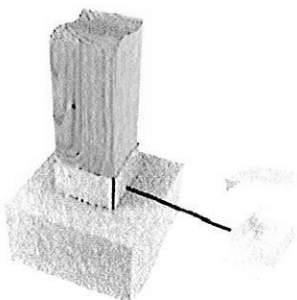
Typical CSH-TZ installation



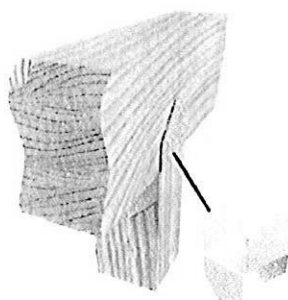
Typical DTB-TZ installations



Typical ADTT-TZ installation



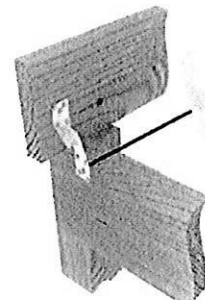
Typical PA-TZ installation



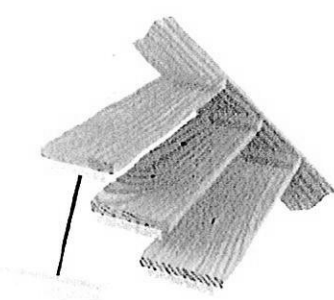
Typical C44-TZ installation



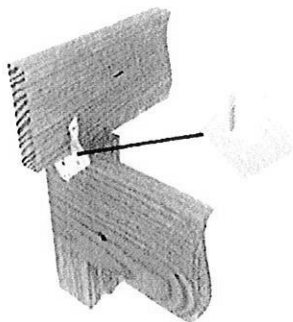
Typical PB44-6TZ installation



Typical RT7A installation



Typical SCA9-TZ installation



Typical RT15-TZ installation

The type and quantity of fasteners used to install MiTek products is critical to connector performance. MiTek has a full range of structurally-rated fasteners for wood frame structures. Hot-dip galvanized, stainless steel, and Gold Coat corrosion resistant finishes are available for exterior applications.



MiTek Deck Hardware is available in Triple Zinc (TZ) and Gold Coat (GC).



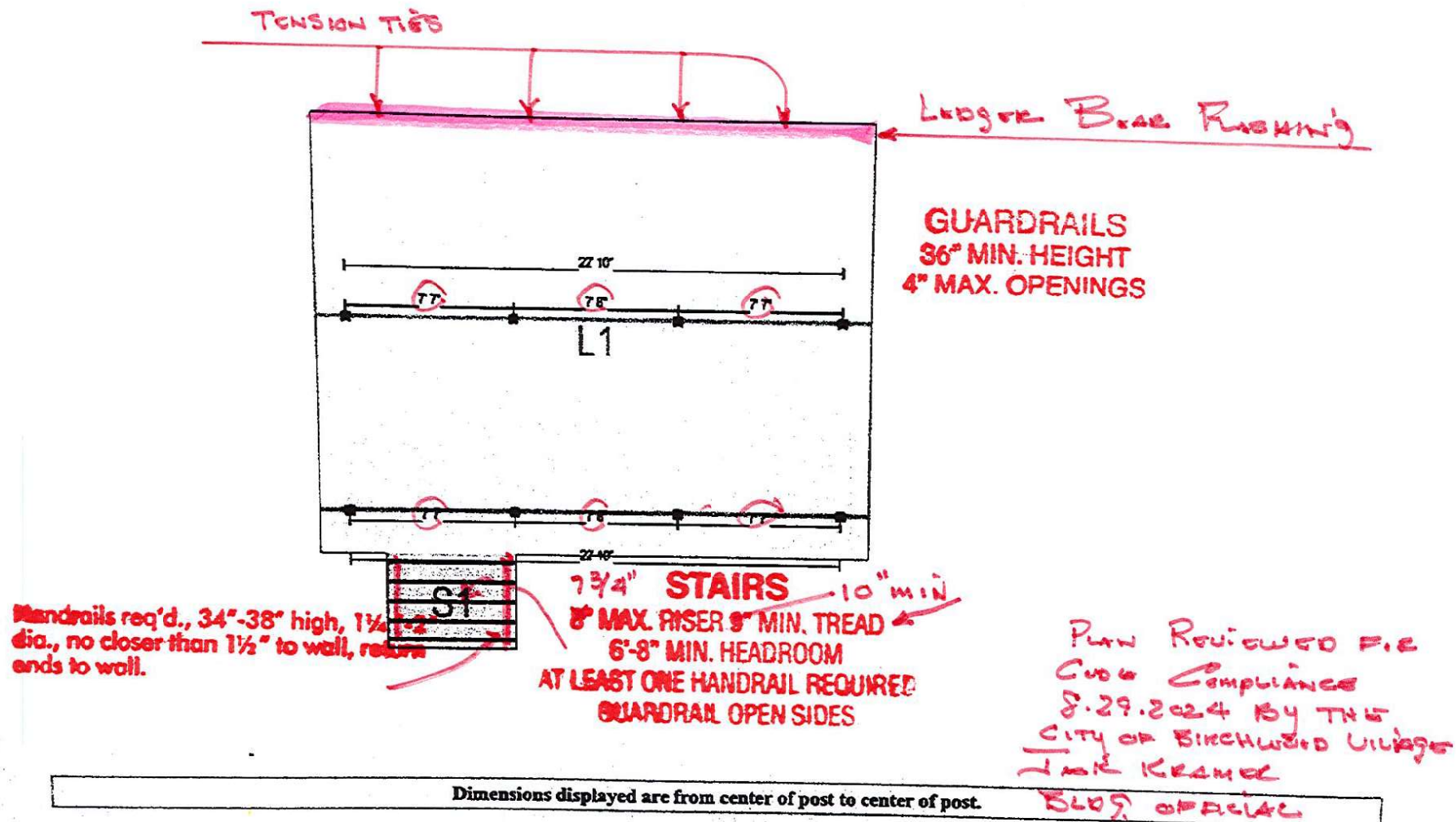
TZ galvanizing provides a prefabrication coating of 1.85 (G-185) ounces of zinc per square foot of surface area (both sides) measured in accordance with ASTM A 653. Use with Hot-dip galvanized fasteners.



Gold Coat is a proprietary multi-layer protection system. It is comprised of an organic top coat barrier layer and a zinc layer placed over a steel substrate. Use with Gold Coat or Hot-dip galvanized fasteners.

Customer Service 1-800-328-5934 • MiTek-US.com

L1 - Posts and Footings



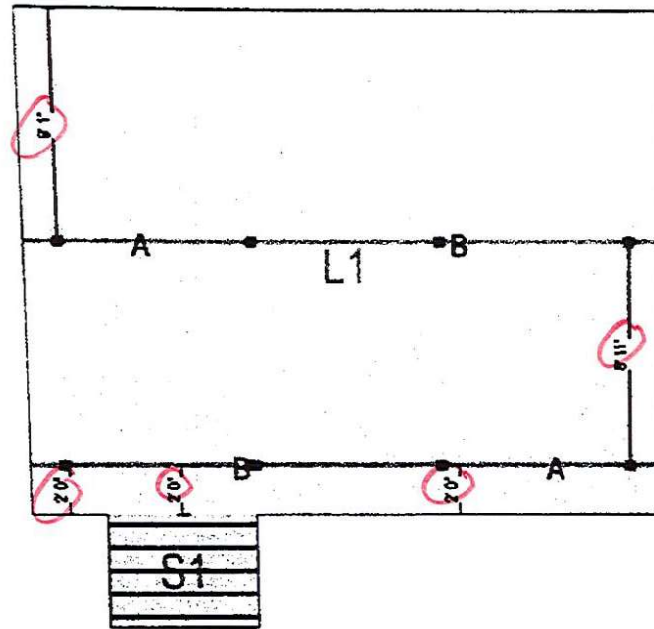
L1 - Framing Posts

Label
A

Post Size
6x6

Count
8

L1 - Beams



2 boards nailed together is 2 ply

L1 - Lumber: 2 ply - 2 x 10 AC2

Label	Length	Count
A	8' 11"	2 ✓
B	16' 7"	2 ✓

memo

To: Mayor Ford and Birchwood Village City Council
Chair Sorenson and Birchwood Village Planning Commission
Rebecca Kellen, City Administrator

From: Ben Wikstrom, Planning Consultant

CC:

Date: November 20 PC Meeting; December 10 CC Meeting

Re: Planner Response to 483 Lake Avenue Appeal by Larry and Susie Mahoney

Each claim made in the appeal letter is summarized below, followed by my response as the Planning Consultant to the City. I will not include any of the “back-and-forth” since the letter was submitted.

Claim: Zoning code requires neighbors to be notified of construction

Response: The zoning ordinance requires notification of neighbors with whom a property line is shared when a fence is being constructed along that line; a building permit does not require notification of neighbors.

Claim: Wall being constructed is not a continuation or like replacement of what was previously a privacy fence and labeled as such on previous plans

Response: What was previously on the site and what is being constructed in no way meets the ordinance definition of a fence. What someone labeled it on a building permit sketch previously has no bearing on the definition or determination. It is a structure built onto a deck, as it was before. Whether or not it is a like replacement is the purpose of this hearing, and will be discussed further at the end of this response.

Claim: This will add 20 feet of siding, 5 feet from line, making 104 feet of continuous siding

Response: Part of this is the appeal to the City; the question is whether the siding is an expansion of a legal, non-conforming structure. The length of the siding has no bearing on the decision. For clarification, the house may be 5’ from the property line, but the deck and wall are not. Based on information from previous permits and court decisions, the deck is estimated to be 7.75’ from the property line.

Claim: Pergola will be “anchored” by the wall

Response: This is false. The “ceiling” joists of the pergola may be tacked to the wall to allow the screen to be secured or for general stability, but the building inspector and I ensured that the pergola was not supported by the wall.

Claim: Pergola will have a roof and increase impervious

Response: This is false; the pergola has screen material on all sides, including the ceiling/roof. There will be no increase in impervious, and the amount of impervious on the subject property has not been investigated.

Claim: Pergola is a non-conforming structure built on a non-conforming deck, so a variance is required

Response: The building inspector and I ensured that the pergola is not supported by the wall. It is supported by footings below and inside the footprint of the deck. Other types of construction may have been possible – such as a pergola kit one would place on the deck, or using post base anchors on the surface of the deck or notched construction on the deck joists, etc. – but this construction type makes the most sense and isn’t non-conforming.

Claim: A 7-foot fence was erected in 2016, when 6’ is allowed by ordinance

Response: This has no bearing on the current appeal.

General response to appeal and pertinent subjects

I have spoken twice to the appellants and twice (since the appeal) to the landowners. There has been much made of the history between these properties and owners, both in the appeal letter and in my conversations with each. Most of that is not germane to the code interpretation and the decision you will make. However, it is my understanding that the deck setback was made non-conforming by a court decision to allow an “adverse possession” of approximately 3.5 feet of property along the shared boundary. (The deck is approximately 47 years old, while the court decision was in the past 15 years.) While still not a critical component of this case, much of the appeal letter was written to suggest that this is a “non-conforming deck,” or an expansion of a non-conforming situation. Officially, that is true, and is the reason we are holding this hearing; the deck and the wall on it are “legally non-conforming” structures because of the side yard setback of approximately 7.75’. That setback came about by a court decision rendered without the setback ramification in mind. This may be pertinent to some of the findings of this case. The City Attorney, in one response to questions about the appeal, agreed that this is important to this case, regarding the setback issue.

In general, the appellants argue that the structure in question is a wall, when it used to be a fence. As stated above, the structure in no way would meet the definition of a fence. I assume the appellant is talking about the opacity from a certain angle, but that has no bearing on the definition of the structure. Here is the question that should end all discussion about what the structure is: if the wall (or fence, according to the appellant) that was torn down was proposed today for the first time, what kind of permit would be required? A fence permit or a building permit? It would be a building permit, no question.

While the level of opacity does not define the structure, the fact that it is a wall rather than a fence is important, as a wall has no opacity requirement, regardless of height, placement, setback, etc. The focus of this appeal is only whether the addition of siding onto the wall is an expansion of a legally, non-conforming structure (expansion is not allowed by statute). The previous wall could be seen

through from a certain angle, and the siding would not allow that. Whether you would consider that an expansion is the reason we are here. My contention upon first hearing of a complaint is that a wall by definition is a wall, and if the size is the same, then it is not being expanded; when this became an appeal, it is our responsibility to allow the appellant to be heard, to present the facts, and to render a decision through the process.

I will be available for questions at the meeting, and may have further comment or a verbal presentation, depending on the order of things.

Note: It was stated at one point that the siding is closer to the property line than the old wall. While siding is not among the exceptions to setbacks listed in the ordinance, that may be because it is even less of an encroachment than those exceptions listed. Additionally, a setback is measured to the foundation or lowest side wall of a structure, not to the siding. Considering these factors, I contend that the siding width is negligible when considering the setback, and would not constitute a further encroachment. Finally, the wall that was built of 2"x6" framing is now a 2"x4" frame, meaning the overall width is less, even with the addition of siding. It is true that the outside edge of the wall is at the same setback as previously, meaning the siding does overhang the edge of the deck by the width of the siding; this is the measurement I believe should be considered negligible due to the fact that setbacks are measured to the foundation (or lowest wall if the foundation is not exposed), and would match with the intent of listing exceptions to the setback in the zoning ordinance. Put another way, if a survey for a building permit showed the outside edge of a house/wall/deck/etc., it would show the measurement on the ground, not a measurement to the elevation of any siding, railing, exterior window sill, etc.

FW: Revisions

From JOHN T Kramer <INSPJACK@msn.com>

Date Sat 10/26/2024 1:45 PM

To dkeller99@gmail.com <dkeller99@gmail.com>

Cc Rebecca Kellen <Rebecca.Kellen@cityofbirchwood.com>; H.A.Kantrud <hakantrud@protonmail.com>

 2 attachments (7 MB)

Harrod 10_21_24.pdf; 428_24-0095, 483 lake ave PERMIT-.pdf;

Hi Dan,

The City has received an appeal on Friday regarding this project. The appeal is with regard to the siding that you planning to install on the wall ,which adjoins the neighboring property.

Based the appeal process the city requires you not to install the siding on the wall. The remainder of the work can continue, however the siding issue will need to be addressed by the Planning Commission.

Thank you, for your anticipated cooperation.

Jack Kramer

Building Official

From: Dan Keller <dkeller99@gmail.com>

Sent: Monday, October 21, 2024 7:46 PM

To: inspjack@msn.com; benwikstrom@gmail.com; Debbie Harrod <debbielharrod@gmail.com>

Subject: Revisions

Attached are the revisions as we discussed today.

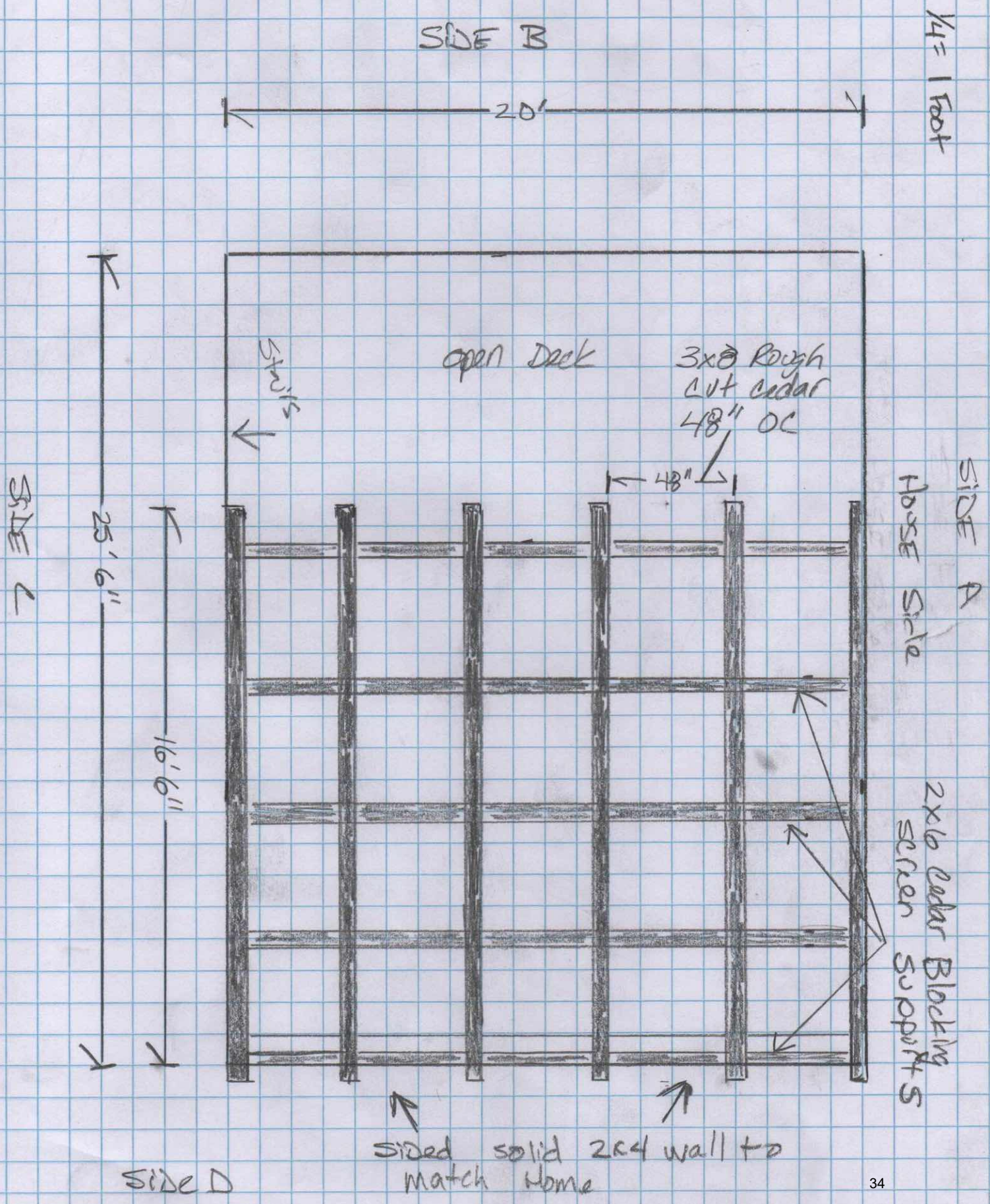
Jack there is choices on how to notch the 6x6 bottom at the wall on page 7. I feel that two smaller notches equaling 1 1/2" bilaterally would be more stable than 1 1/2" notch on one side. Thoughts?

Dan Keller

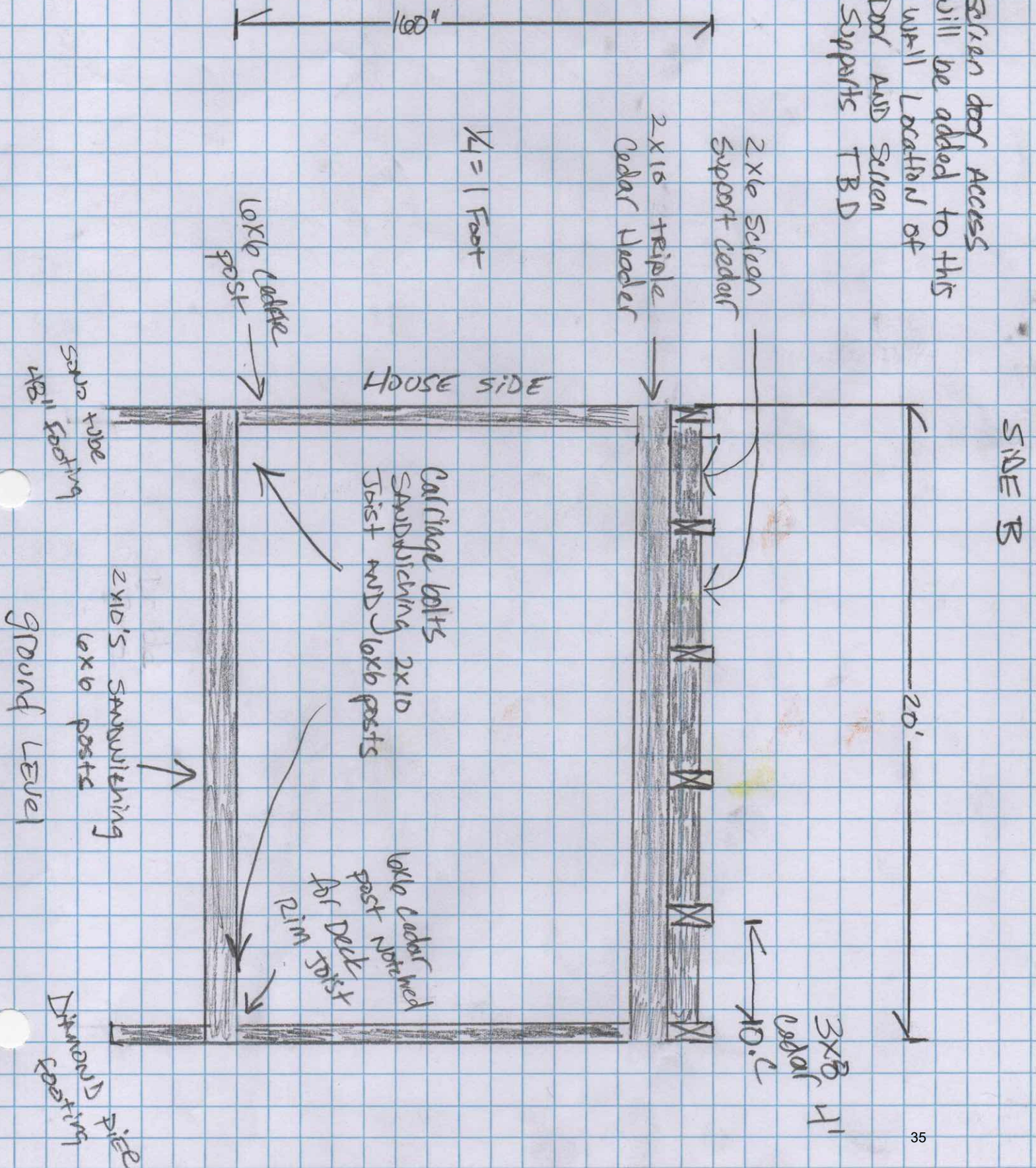
651.775.4014

Changes made

- Center posts removed from side B and side C
- Header for B will change from Double 2x10 to a Triple 2x10 to accommodate load.
- Rafter will no longer be supported by side D wall, they will be supported by Header inside Pergola (page 5)
- Rafter spacing will increase from 2' O.C. to 4' O.C.
- Screen supports will be added as needed to walls
- Railing changed to 4x4 Cedar posts with cable system



Screen door Access
will be added to this
wall Location of
Door and Screen
Supports TBD

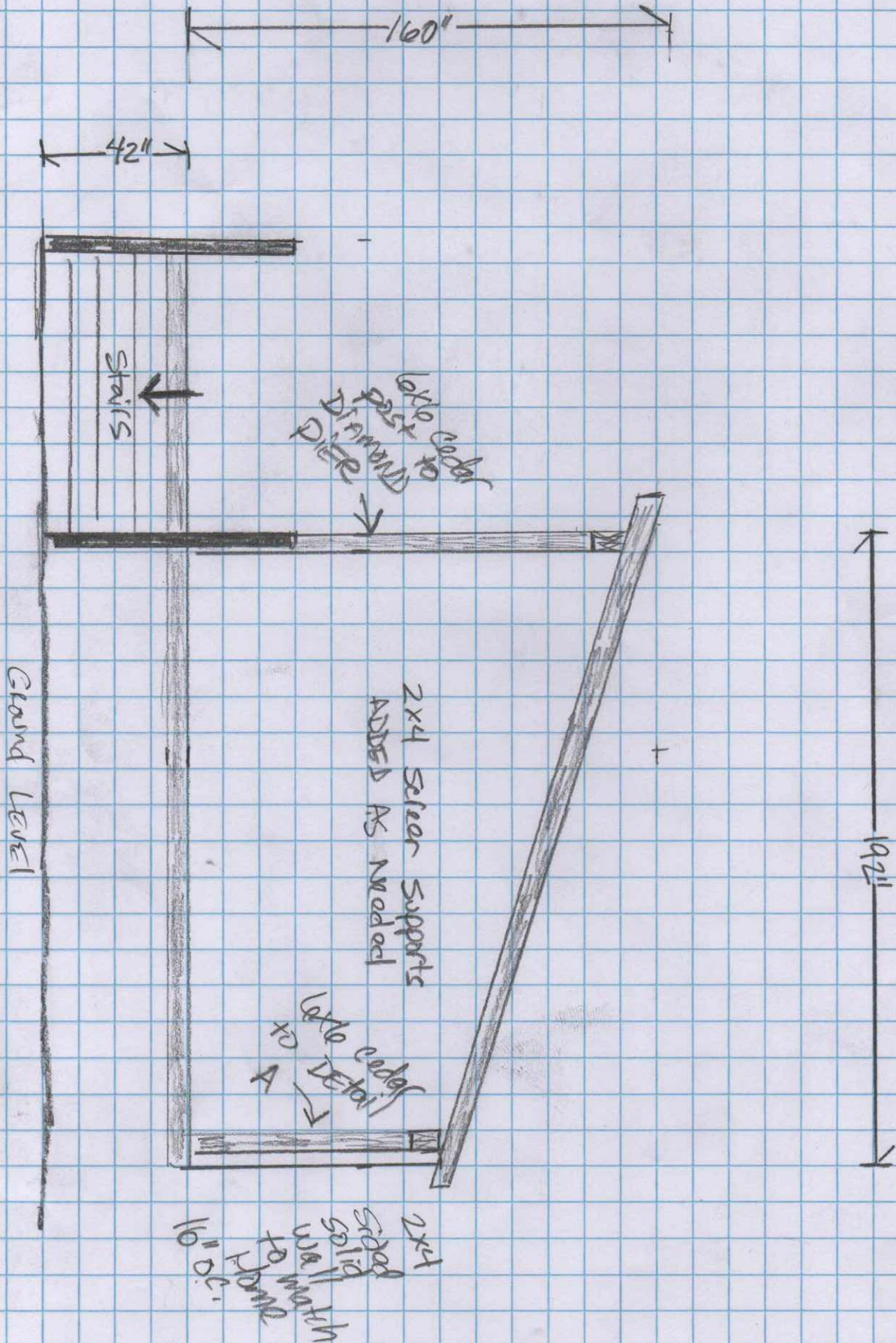


Debbie Harrod / Keller Construction

REVISION 10/21/24
page 4

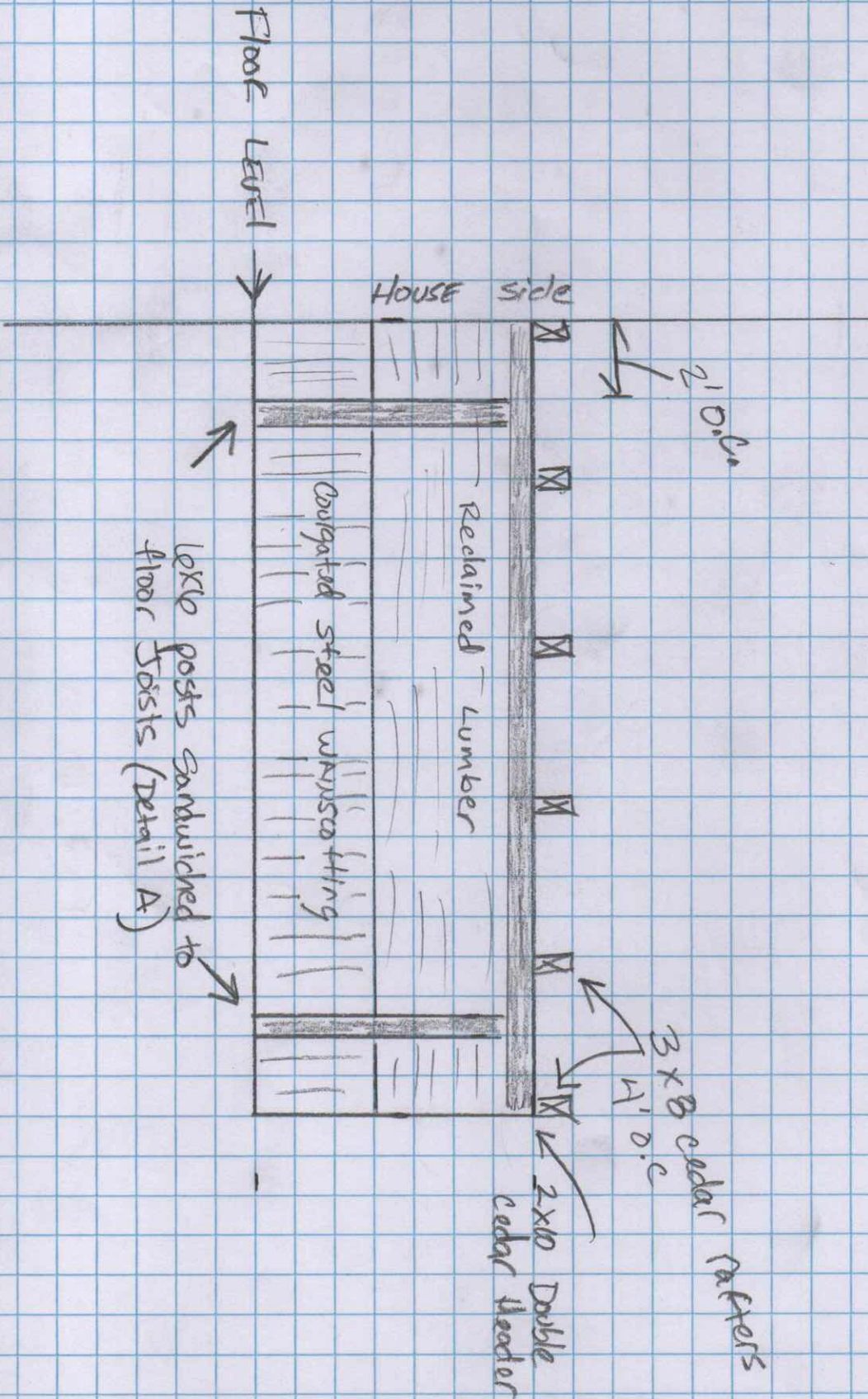
1/4" = 1 Foot

VIEW FROM LAKE / SIDE C



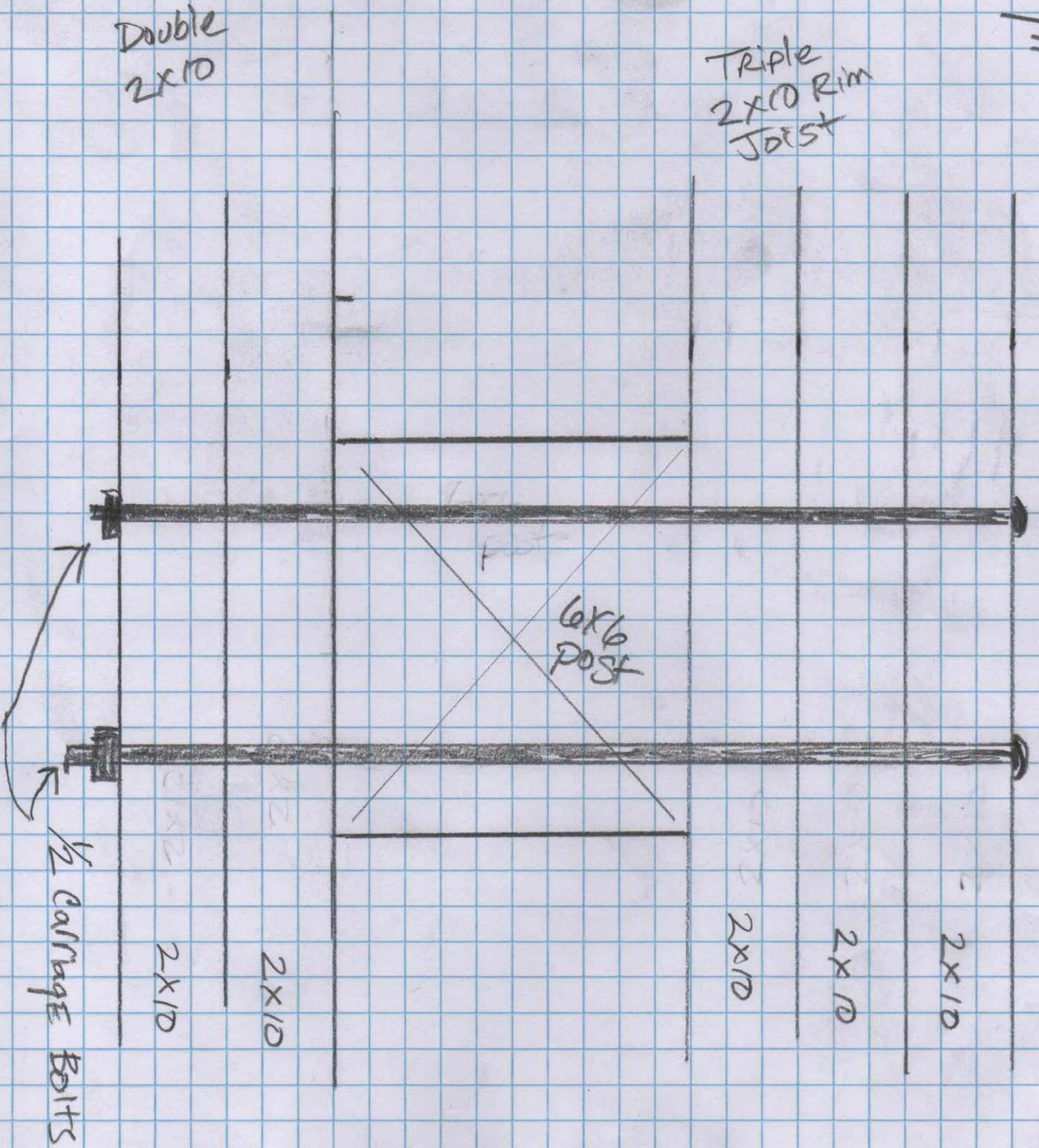
1/4" = 1 Foot

Side D / View From Inside



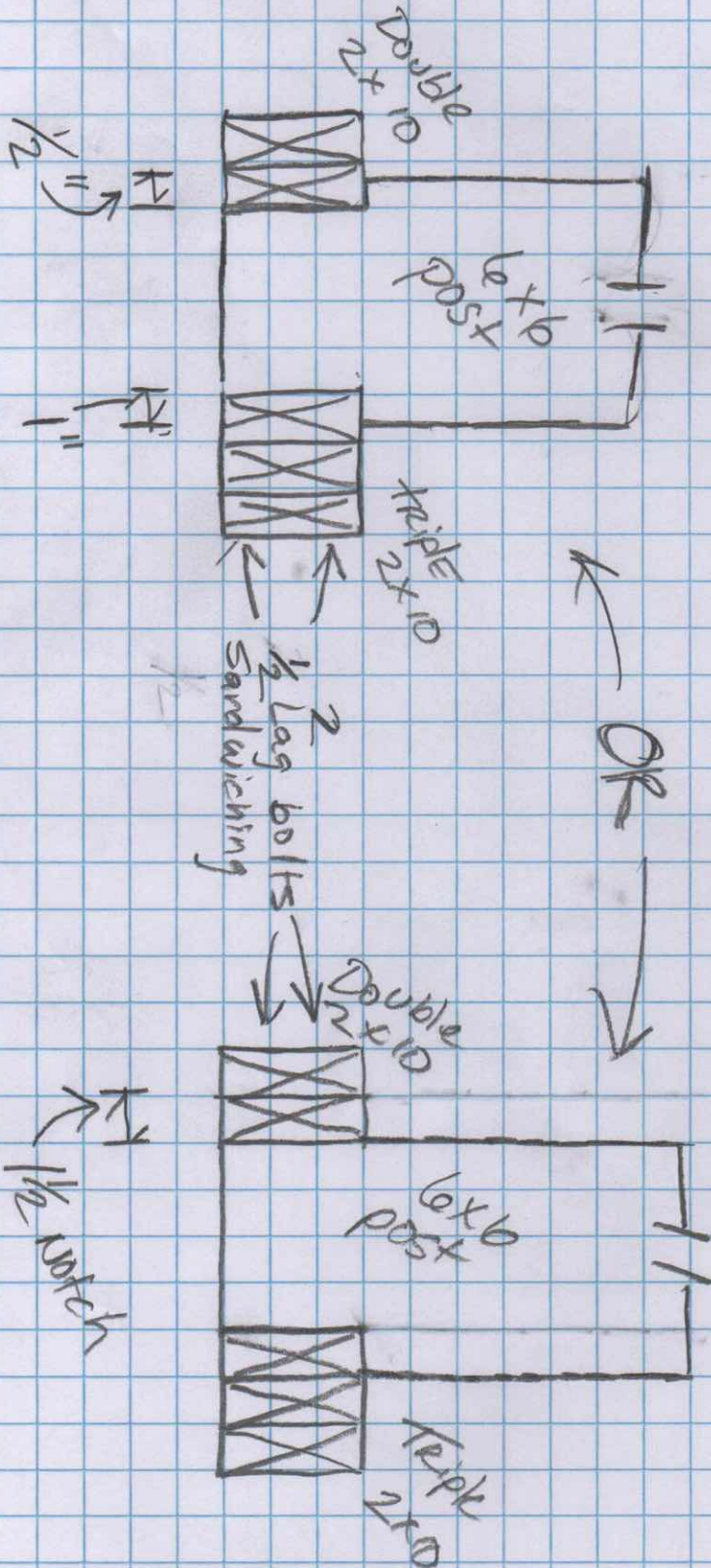
$\frac{1}{2}''$

Detail A View From Above



6x6 Post Notch at wall
SIDE VIEW

Would it be better to notch the 6x6
1/2" on one side or 1/4" on the outboard
side





Permit#: 24-0095

Permit

Application Date: August 26, 2024

Permit#: 24-0095

Location: 483 LAKE AVE, CITY OF BIRCHWOOD

Applicant Name: Debbie Harrod

Email: debbielharrod@gmail.com

Property Owner Name: HARROD JAMES J &
DEBRA L

Property Owner Email debbielharrod@gmail.com

Contractor: *Homeowner*

Contractor Email: debbielharrod@gmail.com

Contractor License:

License Expires on: *Homeowner*

Expiration Date: February 26, 2025

Parcel #: 3003021130027

Permit Type/use: Building Permit

Address: 483 Lake Ave

Phone: 6122464612

Address: 483 LAKE AVE, WHITE BEAR LAKE MN
55110

Phone:

Address:

Phone: 6122464612

Project Valuation: \$\$15,000

DESCRIPTION OF WORK: Original permit applied for in 2020--Extended per JK but will provide updated design. Permit was paid in 2020 but additional fees will apply due to changes in scope. Work to be done: Replace existing deck and wall due to rotting footings and wood. Add a screen perogola on top of deck.

Fees

Date	Description	Paid Date	Amount	Paid	Balance
September 3, 2024	Plan Check Fee		\$72.31		
September 3, 2024	State Surcharge		\$2.40		
September 3, 2024	Building Permit Fee		\$111.25		
	TOTAL: Permit Fees		\$185.96		\$185.96

Inspectors

Please allow 24 hours minimum notice for inspection requests.

Inspection Type	Inspector Name	Contact Information
Building /HVAC/ Plumbing	Jack Kramer	Phone: 651-351-5051 Email: inspjack@msn.com
Sewer Water	John Manship	Phone: 651-426-9386
Electrical	Don Edel	Phone: 507-210-8233

Birchwood Village Contacts

Main Phone# 651-426-3403

Email Address:

therese.bellinger@cityofbirchwoodvillage.com

Permit Approved On: ____ / ____ / ____
By the City of Birchwood Village_____
Jack Kramer - Building Official_____
Ben Wikstrom - City Planner_____
Date_____
Marcus Johnson - City Engineer_____
Date

City of Birchwood Village

Intellipay <noreply@intellipay.com>

Tue 9/3/2024 1:09 PM

To:City of Birchwood Village <info@cityofbirchwood.com>

City of Birchwood Village

Payment Receipt

Debbie Harrod

483 Lake Ave

Unit 10

Cape Coral MN 33904

6122464612

debbielharrod@gmail.com

Your payment was successfully processed.

Thank you. Your payment has been received.

Customer Account:

Buliding

Invoice:

C44637006

Payment Amount: **\$185.96**

Service Fee: **\$5.58**

Payment Total: **\$191.54**

Payment Date: 09/03/2024

Card Number: 4..7806

Name on Card: Debbie Harrod

Card Type: Visa Card

Authorization Code: 05553D

Reference Number C44637006P77556534

Comments:

Payment Origin: Online Payment Terminal

Agent: Online Payment Page

Merchant#: M8145

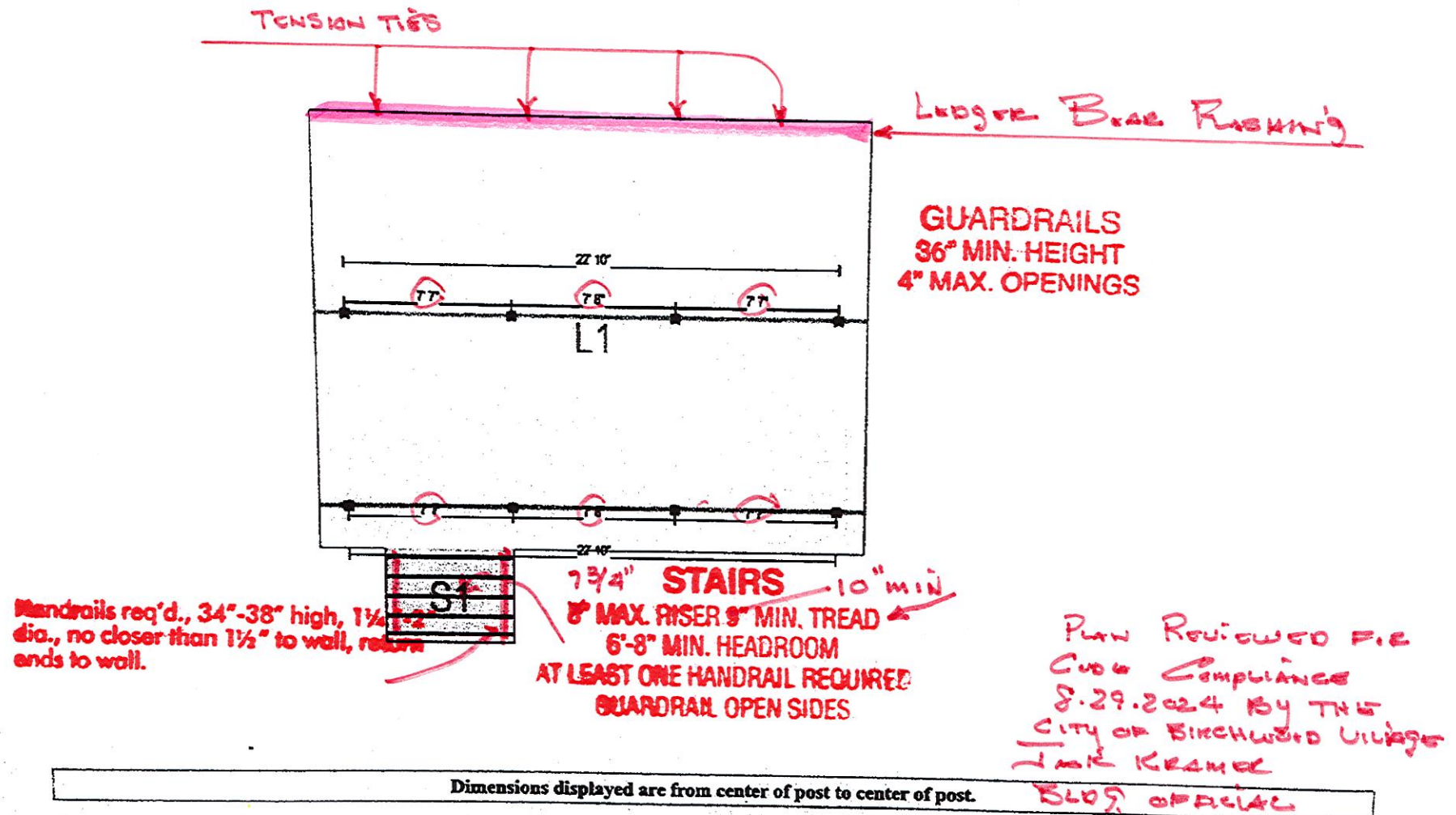
Building/Planning/Zoning Permit

Permit Type: Buliding

Permit Number: 23-0095

Thank you,
City of Birchwood Village

L1 - Posts and Footings



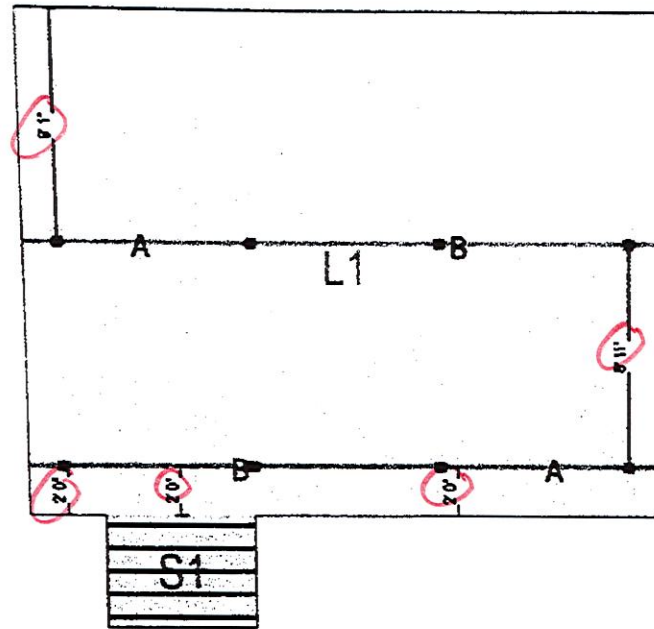
L1 - Framing Posts

Label
A

Post Size
6x6

Count
8

L1 - Beams



2 boards nailed together is 2 ply

L1 - Lumber: 2 ply - 2 x 10 AC2

Label

A

B

Length

8' 11"

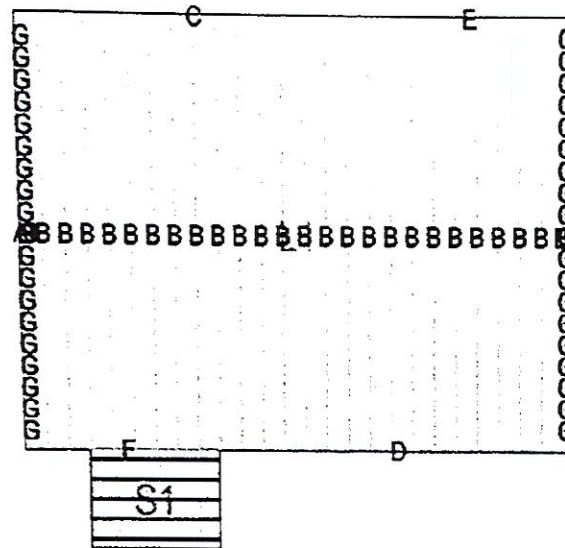
16' 7"

Count

2 ✓

2 ✓

L1 - Joists



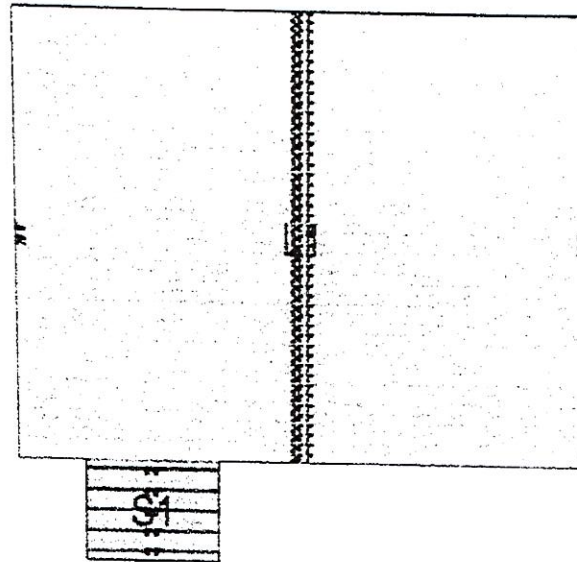
Lumber: 2 x 10 AC2

Joist Spacing: 12" on center

Label	Length	Count
A	20' 0"	2
B	19' 9"	26
C	16' 0"	1
D	16' 0"	1
E	9' 3"	1
F	9' 3"	1
G	4"	38

Usage
Rim Joist ✓
Internal Joist ✓
Ledger Joist ✓
Rim Joist ✓
Ledger Joist ✓
Rim Joist ✓
Picture Frame Joist ✓

L1 - Deck Boards and Treads



Decking over 240" is shown as one length and decking must be spliced - multiple lengths of decking may be estimated. The deck board lengths and/or quantities may need to be adjusted based on framing or the deck board splice pattern you prefer. Please review the deck board lengths and quantities prior to the start of your project. A divider board may be added to improve the look and eliminate splices. To add dividers, recall the design and add a divider on the Design>Decking tab in the program.

Deck Board

Length	Count
24' 7"	43

Pictureframe

Length	Count	Length	Count
20' 0"	2	24' 7"	2

L1 - Railing Posts

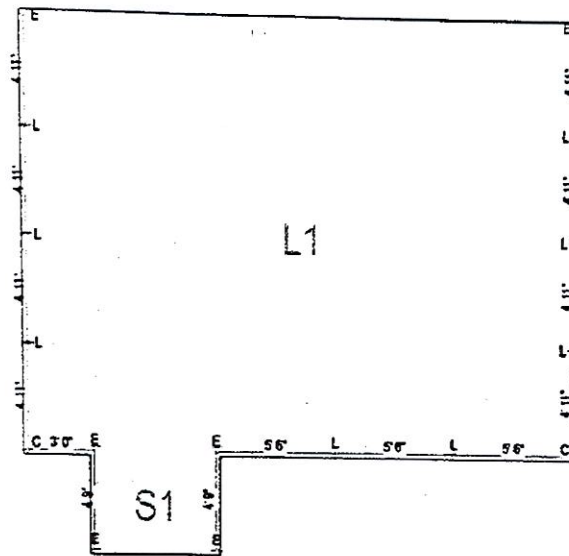


Illustration does not represent all available railing post placement options.
Railing post dimensions are on center.

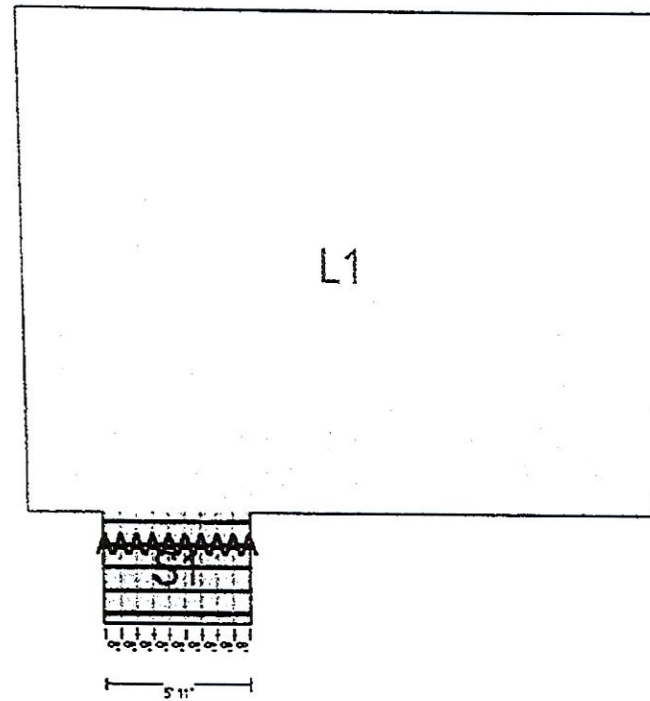
L1

Label	Count
C - Corner Post	2 ✓
E - End Post	4 ✓
L - Line Post	8 ✓

S1

Label	Count
E - End Post	2 ✓

L1 - Stair Framing



S1 - Stringer

Label
A

Length
4' 8"

Count
10 ✓

Goal is to replace existing deck and privacy wall that has deteriorated with same size and add a screened in 16'6" x 20' pergola. ✓✓

Plans are drawn as 1/4"=1'

Actual sizes will vary to conform to actual existing deck dimensions

Deck

Decking material will be composite and built to Menards plan. ✓✓

Footings will be diamond pier type footings with 60" rods. ✓✓

Railing will be Westbury Verticable railing. ✓✓

All framing will be replaced and treated lumber will be used. ✓✓

Pergola

Rough cut dimensional cedar will be used ✓✓

6x6 posts

2x10 double header (see detail A) ✓✓

2x8 pergola rafters 2' on center ✓✓

2x4 screen supports ✓✓

Ornamental wood ties rafters clips will be used at both header and wall side ✓✓

All fasteners will be ACQ rated ✓✓

A screen door will be added on side B, location to be determined ✓✓

Inside of side D wall will be finished with reclaimed cedar on top 2/3 and

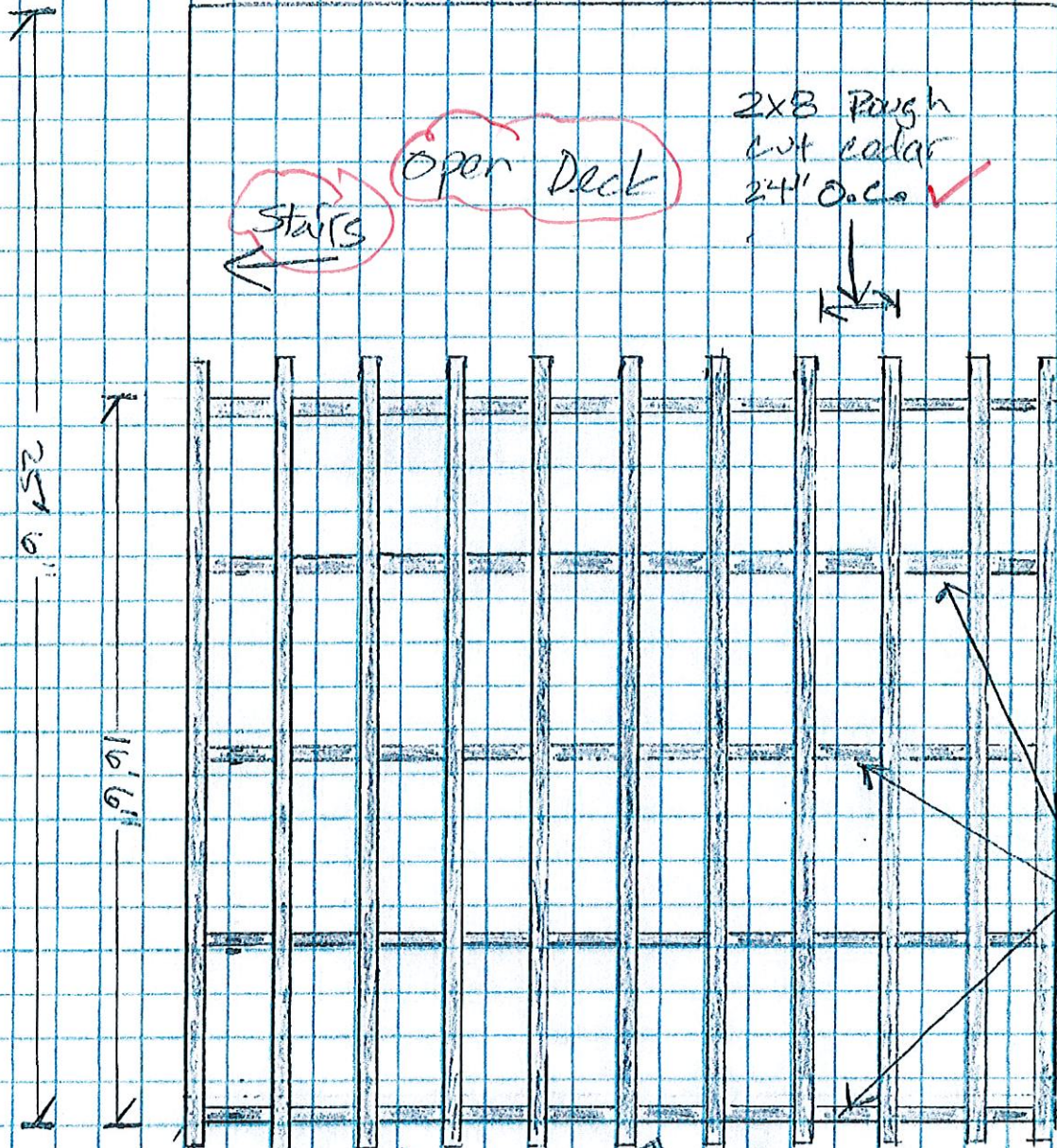
bottom 1/3 will be corrugated galvanized steel

Outside of side D wall will be finished with siding to match home

Side D wall will be framed 16" on center with green treated materials. The top will be flashed with steel or aluminum and slightly pitched away to prevent standing water

Side B

20'



2x8 Rough
cut cedar
24" O.C. ✓

Stairs

Open Deck

Side A
Horse Side

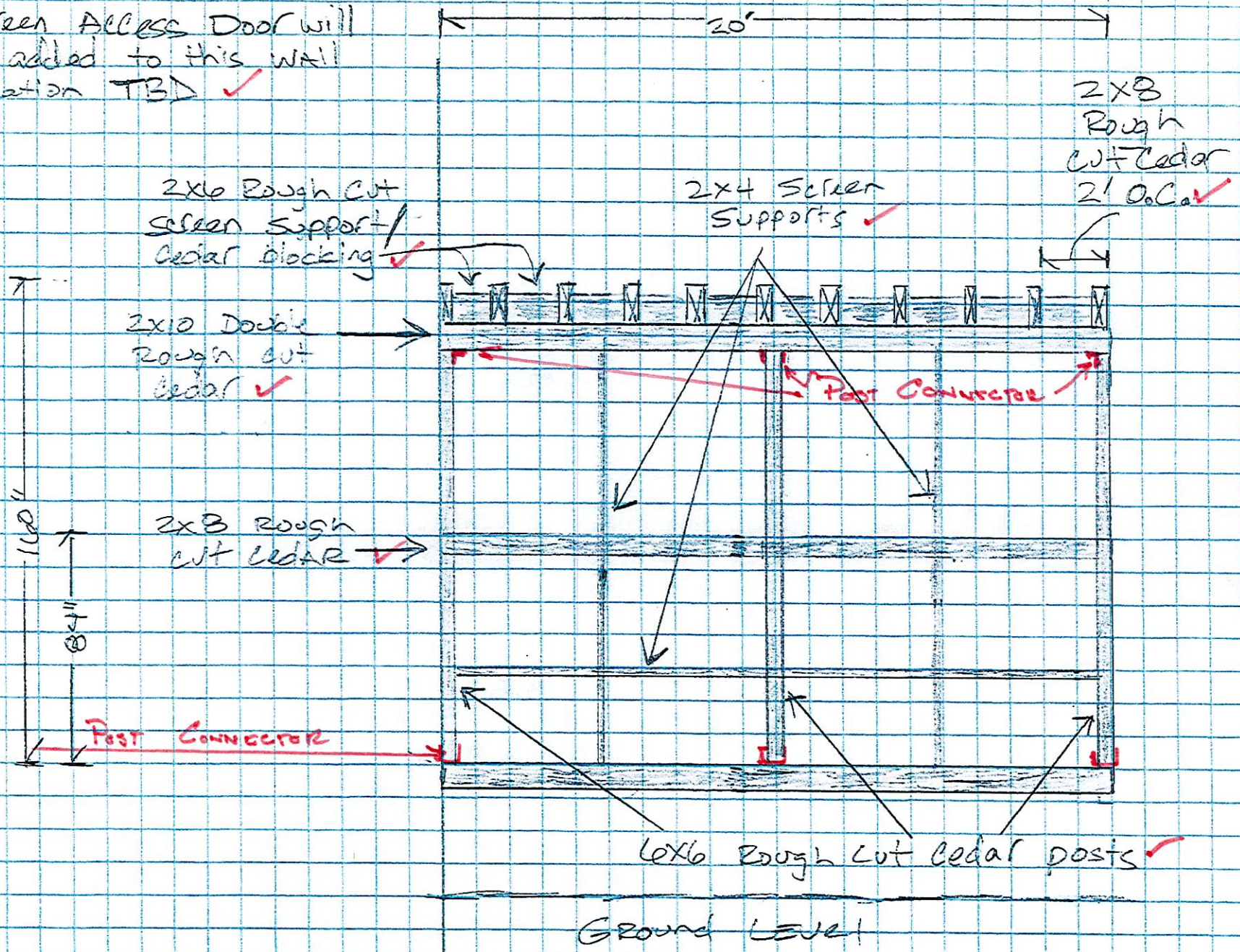
2x6 Rough cut cedar Blocking
Screen supports ✓

Sided solid 2x4 wall to
match home ✓

Side D

Screen Access Door will
Be added to this wall
Location TBD ✓

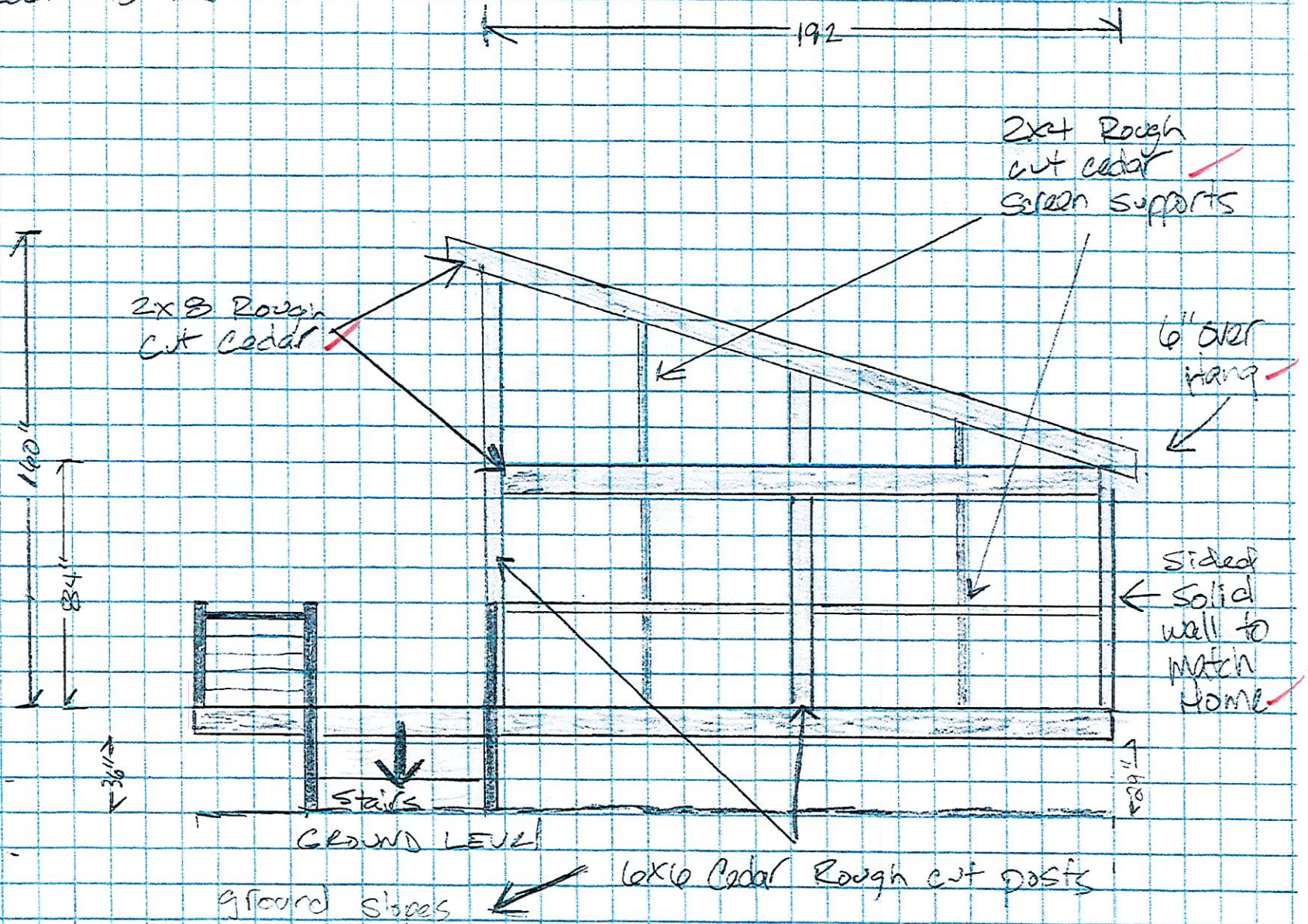
Side B



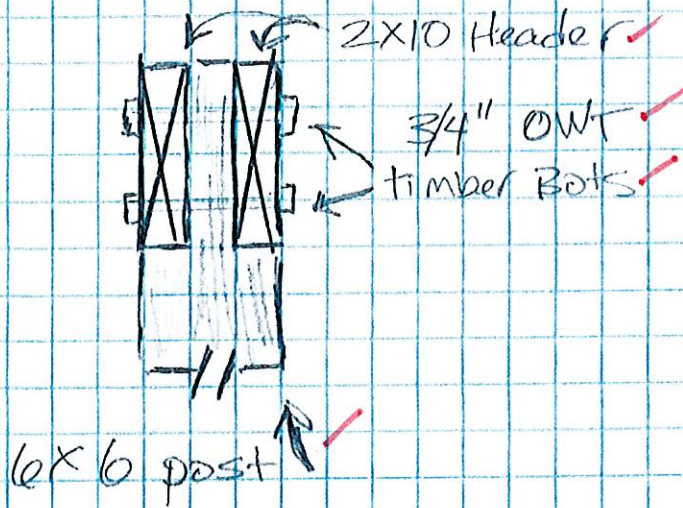
View from Lake / Side C

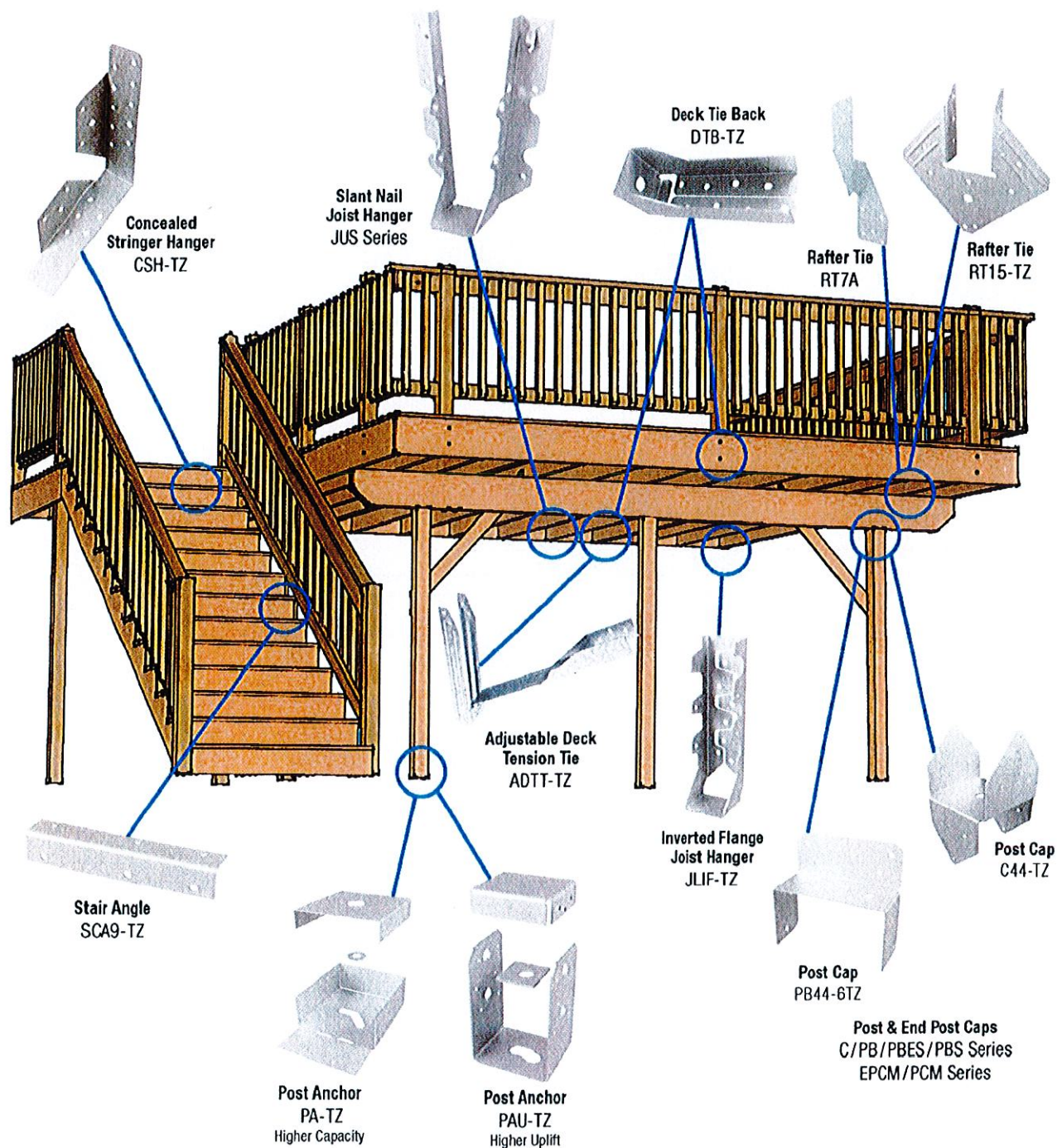
$\frac{1}{4}" = 1 \text{ foot}$

4/12 roof to match Home



Detail A

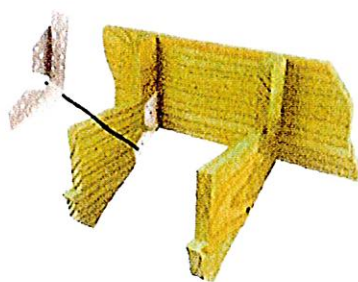




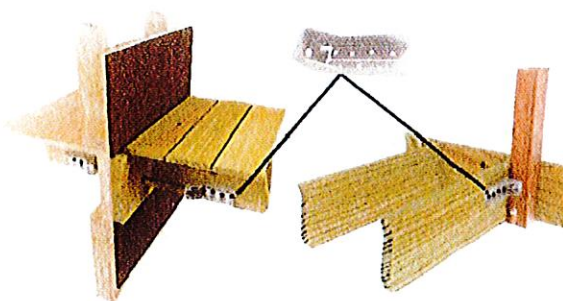
Disclaimer: Some of the products displayed are optional and not estimated

Customer Service 1-800-328-5934 • MiTek-US.com

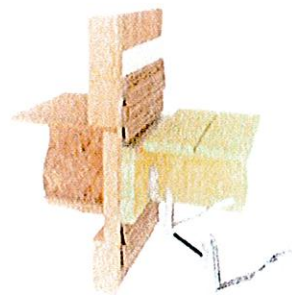
Deck Hardware Installation



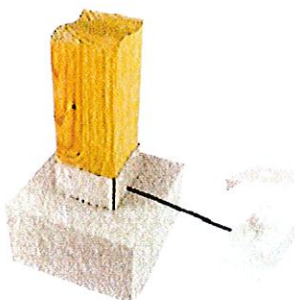
Typical CSH-TZ installation



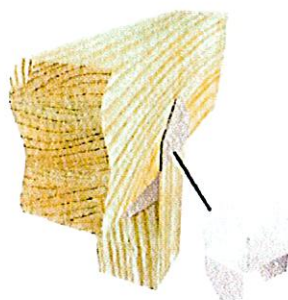
Typical DTB-TZ installations



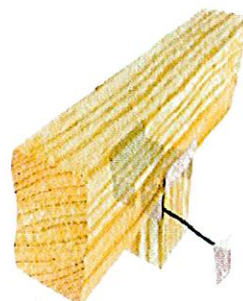
Typical ADTT-TZ installation



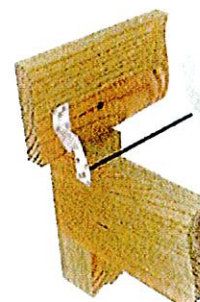
Typical PA-TZ installation



Typical C44-TZ installation



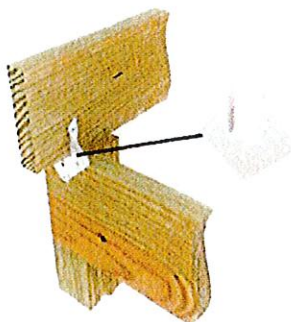
Typical PB44-6TZ installation



Typical RT7A installation



Typical SCA9-TZ installation



Typical RT15-TZ installation

The type and quantity of fasteners used to install MiTek products is critical to connector performance. MiTek has a full range of structurally-rated fasteners for wood frame structures. Hot-dip galvanized, stainless steel, and Gold Coat corrosion resistant finishes are available for exterior applications.



MiTek Deck Hardware is available in Triple Zinc (TZ) and Gold Coat (GC).



TZ galvanizing provides a prefabrication coating of 1.85 (G-185) ounces of zinc per square foot of surface area (both sides) measured in accordance with ASTM A 653. Use with Hot-dip galvanized fasteners.



Gold Coat is a proprietary multi-layer protection system. It is comprised of an organic top coat barrier layer and a zinc layer placed over a steel substrate. Use with Gold Coat or Hot-dip galvanized fasteners.

Customer Service 1-800-328-5934 • MiTek-US.com

Permit # 24-0095

We applied for a permit with the city to rebuild our 47 year old deck/wall in 2020. The city issued us a permit. It was during covid and building supplies were not readily available, so we waited.

In the summer of '24 we decided to do the project. We worked with the city personnel, building inspector, city planner, building commission to update the plan that was approved on 9/3/24. We updated the plan again to include more construction detail. That plan was approved on 10/21/24. The plan was approved 3 times by the city without a variance. (2020, Sept. of 2024 and Oct. 2024).

We explained to all people involved that there would be a complaint. We asked the city planner if he needed to come out to look at the deck and wall before we tore it down. He stated in an email August 14th, 2024. **"Bottom line-looking at this from my perspective as the planner, I don't need to review anything further based on our conversations and what you sent."** (see email)

The builder tore the deck and wall down.

We diligently worked with city staff and building officials to make sure this plan was in compliance throughout the planning process.

Facts in response to the initial complaints:

- The deck plan was approved 3 times without a variance by city officials.
- The deck, wall and pergola are constructed per the approved building permit.
- **The wall has already been determined to be a wall NOT a fence.**(See city response, Oct 24th, 24)
- City response **"The new wall does not have to match the appearance or construction of the previous wall"** (Oct 24th, 2024).
- The building inspector, Jack Kramer, explained to us why the pre- existing structure (the wall) does not meet the definition of a fence; it was attached to the house and built on the top of the deck.
- The wall can be constructed in the same size and height as it was previously built. We built it smaller and more conforming...
- The wall was a 2" by 6" wall and is now a 2" by 4" wall.
- The wall is 2 inches narrower, and 1 inch shorter making it more conforming.
- The wall had vertical louvered slats. We asked the building inspector if we could build a solid wall and he said **"I don't believe a solid wall vs open makes a difference"**. (See email Aug 14th, 24). This is considered an improvement, since the wall was 47 years old and not structurally sound.
- We planned a solid wall with siding. Two **approved** plans state **"siding to match the house"**.
- The builder (a small business owner) purchased all the materials to construct the deck, pergola and wall with siding. (special order non returnable).
- The builder suggested matching the wall with the house siding to make it look nice for the Mahoneys side, even though they state it is **"Impossible"** to see the wall from their lot. (see attached pic and court case, #82-CV-20-3615).

- We were told by the city planner we could rebuild the wall with “like” materials. We are building the wall with wood, the same material. We have been told by the city planner multiple times that a **“wall is a wall and can be solid”**.
- We want a solid wall because our neighbors, the Mahoneys’, have cameras with microphones attached to their garage which is very close to our deck. They also sit in chairs that are right next to our deck. They can hear **everything** we say. This is an invasion of privacy and harassment.

The wall has **ZERO** effect on the Mahoney’s as they cannot even see the wall. (See pic). They even admit in court case (#82-cv-20-3615 dated 4/21/21 see attached) **“that they (the Mahoneys) planted over 30 evergreen trees for year round privacy....making it nearly impossible to see the Harrod’s home.”** Yet the Mahoneys say they don’t want to look at our long house structure even though it is **“IMPOSSIBLE TO SEE”**. There is **NO NEGATIVE** impact or hardship to the Mahoney’s or their property.

Response for additional complaints from the appeal:

- In their appeal Mahoney’s added that we labeled it as a “fence on the plan from the 2009 garage plan”. This is incorrect. This was a totally different structure that was back by the road and it was in the ground.
- Mahoney’s claim that the wall is 5 feet from the lot line, which is also incorrect. It’s greater than 7.75 feet and this can be verified by our registered survey.
- Our 47 year old deck was in compliance with current code setbacks until the Mahoney’s **adverse possessed** (stole) 3.5 feet of our property on 11-24-2015 (court case # 82-CV-13-301) which caused our deck to be non-conforming with current code. Now, in Oct 2024 they are complaining about an issue **they created by adverse possessing (stealing) 3.5 feet of our property, in a court of law.** (See attached judges decision from 11/24/2015).
- The impervious surface complaint is irrelevant because there is no roof.
- “The Harrod’s have previously ignored city ordinances” is not true and slanderous. We never put up a 7 foot fence. We built a 6 foot fence per city code and our issued building permit.

We have documented over 22 unsubstantiated complaints by the Mahoneys, since 2008 using the city, courts, police, and White Bear Lake conservation district etc... as venues of harassment towards us, making it **IMPOSSIBLE** for us to enjoy our own property.

The Mahoney’s are once again using the city to **harass** us, and invade our privacy. This is a **frivolous** complaint and appeal.

State statue #394.36 says.....Any non-conformity can be continued through, repair, replacement, restoration, maintenance or improvement. Putting siding on a wall is simply an improvement.

Please support our city building officials and staff’s decision on our building permit, which has already been approved 3 times.

Regards,

The Harrods, 483 Lake Ave



207 Birchwood Avenue
Birchwood Village, MN 55110
651-426-3403 (tel) / 651-426-7747 (fax)
Info@CityofBirchwood.com
www.CityofBirchwood.com

[REDACTED]

October 17, 2024

Re: Complaint Regarding 483 Lake Permit

Dear [REDACTED]

The City has investigated your complaint regarding the building permit issued for 483 Lake dated October 8th, 2024.

The valuation of the project on the permit that was issued was \$15,000, as indicated by the applicant. The City does not police this issue specifically as it does not directly impact the planning, zoning and building that the City does concern itself with. In these cases, the role of the City's Assessor is to review all Birchwood Village's issued building permits and ensure that increases in property values are applied if construction work raises the property value of a given property as a result of the work. The Assessor, in fact, has assured me that he does his own valuation despite what an applicant may write on a permit; so project valuations and their effect on property values, for assessment purposes, are determined independently by the City's Assessor, with the permit as a guide more than anything.

The other concern in your complaint was the possible need for a variance due to the replacement of a structural divider that you suspect of being converted into a wall. Our City Building Official and City Planner have investigated this issue based on your complaint. To that end, here is an email I received from our City Planner, Ben Wickstrom, regarding your concern that the structure that existed is being converted into a wall.

"After reviewing the submitted materials and a letter sent by a complainant, and discussing the matter with the City Attorney, it is my opinion that the structure in question (that has been removed and is planned to be replaced) did not meet the ordinance definition of a "fence," and was, by definition, a wall. This allows replacement of the wall in the same location and to the same dimensions. The new wall does not have to match the appearance or construction of the previous wall; a "like" structure is what is allowed as a replacement. The important thing when considering the state statute and the local ordinance related to legally non-conforming

structures is that the wall is not increased in size or placed in a location that changes (increases) the non-conforming aspect."

Based on this assessment, the City will not order work to stop on the project. The City Planner and City Building Official are continuing to monitor the project for compliance.

Per the City Code: if you want to make a formal, "administrative appeal," of the decision to issue the building permit, pursuant to Section 310, that window of time runs from the date of the decision out 30 days at which point the opportunity to, "appeal," a decision on the matter closes.

If you elect to appeal the decision regarding the issuance of the building permit, your appeal will be heard by the Planning Commission and ultimately by the City Council. A decision will be rendered by the Council either upholding the decision or overturning it. In the case of the propriety of the issuance of a building permit: the Council may uphold the issuance in its entirety, suspend the permit for other/additional information, modify the permit with additional requirements or rescind the permit entirely. Please make any administrative appeal you would like regarding this decision within 30 days of the date of this letter.

Thank you for your concern regarding this matter and please contact the City if other matters are observed that require further review of this project.

Regards,



Rebecca Keilen
City Administrator
City of Birchwood Village



483 Lake Ave Birchwood Deck Permit #2020.57

1 message

Ben Wikstrom <benwikstrom@gmail.com>

Wed, Aug 14, 2024 at 5:02 PM

To: Debbie Harrod <debbielharrod@gmail.com>

Cc: Jim Cell <jharrod444@gmail.com>

Debbie,

Thank you for sending these. I think I understand the location of the wall by your description and the aerial I looked at. If you are replacing that in the exact dimensions (or smaller) than existing, that is not a problem. I don't believe a solid wall vs. open makes a difference. As for the pergola, I don't have any concerns from a planning and zoning perspective and wouldn't require a separate permit for that. It might be worth checking with the building inspector if the fees for the permit will need to be changed since, as I mentioned, the permit fee is based on valuation of the project. I don't know if that is of any concern to him or the City, or if his inspections change (which would require a higher fee based on what he bills the City).

I hope that all makes sense. Bottom line - looking at this from my perspective as the planner, I don't need to review anything further based on our conversation and what you sent.

Thank you.

Ben Wikstrom
Planning Consultant
City of Birchwood Village

[Quoted text hidden]



Harvord's ~~Deck~~ Deck

View From Mahoney's Lot

Third, Mrs. Mahoney does not even handle the video security cameras, Mr. Mahoney does. Mr. Mahoney testified he occasionally charges them in his upstairs office. He advised the Harrods in November 2019 the camera was not connected. (Resp't Ex. No. 106, p. 1 ("The camera you mentioned upstairs is not even connected.")). The Mahoney home also sits entirely in front of the Harrod home. There is a fence and over thirty evergreen trees the Mahoneys planted for year-round privacy at the property boundary making it nearly impossible to see the Harrod home. Yet, despite this reality, Mrs. Harrod perceives this as harassment.

Fourth, the water cover on the detached garage by Lake Avenue was believed to be

17. As described above in detail, until the Harrods' 2012 Lake & Land survey, for all intents and purposes, the Mahoney property consisted of the land immediately north of the stone/cement wall along the streetside of their property, in a straight line up to the edge of wooden retaining wall on the lakeside of the property. The Mahoneys made improvements on the land, maintained the land, planted trees and grass on the land, erected permanent benches on the land, and paid taxes for the land.

18. As a matter of law, the Mahoneys have established that they have acquired title by adverse possession for a boundary at the edge of the stone/cement wall and continuing down to the end of the wooden wall by the lake and legally described by Mr. Thurmes as follows:

That part of Lots 18, 19 and 20, Block 1, LAKEWOOD PARK THIRD DIVISION and that part of Government Lot 2, Section 30, Township 30, Range 21, Washington County, Minnesota, described as follows:

COMMENCING at the southwest corner of the Southeast Quarter of said Section 30; thence on an assumed bearing of North 89 degrees 44 minutes 40 seconds East along the south line of the Southeast Quarter of said Section 30 a distance of 749.36 feet; thence North 00 degrees 15 minutes