

NOTICE OF PUBLIC HEARING **Minor Variance**

You are receiving this notice because you are either:

- Assessed owner of a property located within 60 metres of the subject property
 - Applicant/agent on file, or
 - Person likely to be interested in this application
-

APPLICATION NO.: HM/A-20:169

APPLICANTS: Agent Charles Linsey & Associates Ltd. c/o Lisa Cockwell
Owner Wade Zacharias

SUBJECT PROPERTY: Municipal address **234 Napier St., Hamilton**

ZONING BY-LAW: Zoning By-law 6593, as Amended

ZONING: D/S-1787 (Urban Protected Residential) district

PROPOSAL: To permit the construction of a new roofed-over unenclosed porch in the front yard of the existing two family dwelling notwithstanding that:

1. The roofed-over unenclosed porch shall be permitted to project a maximum of 6.0m into the required front yard and provide a minimum setback of 0.0m from the front lot line instead of the maximum 3.0m projection permitted and minimum 1.5m setback required from the front lot line.

NOTE:

- i. The current zone requires a minimum front yard depth of 6.0m.

This application will be heard by the Committee as shown below:

DATE: Thursday, October 1st, 2020

TIME: 2:00 p.m.

PLACE: Via video link or call in (see attached sheet for details)

To be streamed at www.hamilton.ca/committeeofadjustment
for viewing purposes only

PUBLIC INPUT

Written: If you would like to submit written comments to the Committee of Adjustment you may do so via email or hardcopy. Please see attached page for complete instructions, including deadlines for submitting to be seen by the Committee.

Orally: If you would like to speak to this item at the hearing you may do so via video link or by calling in. Please see attached page for complete instructions, including deadlines for registering to participate.

MORE INFORMATION

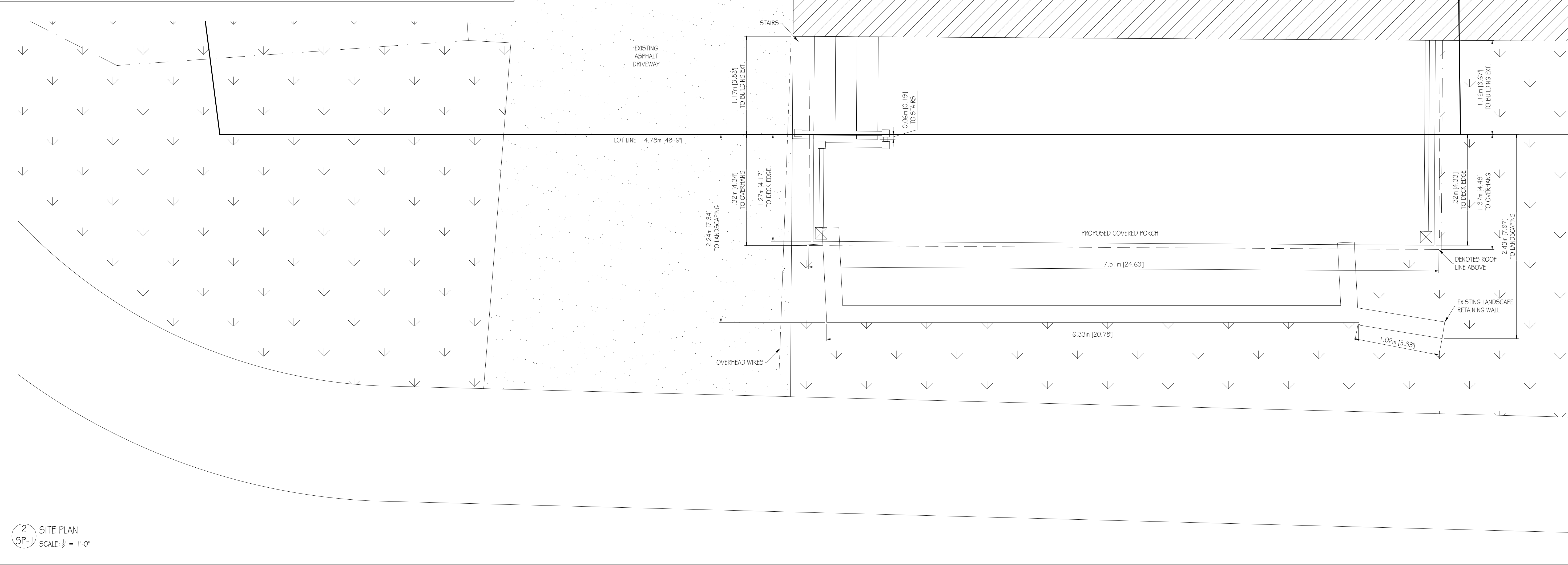
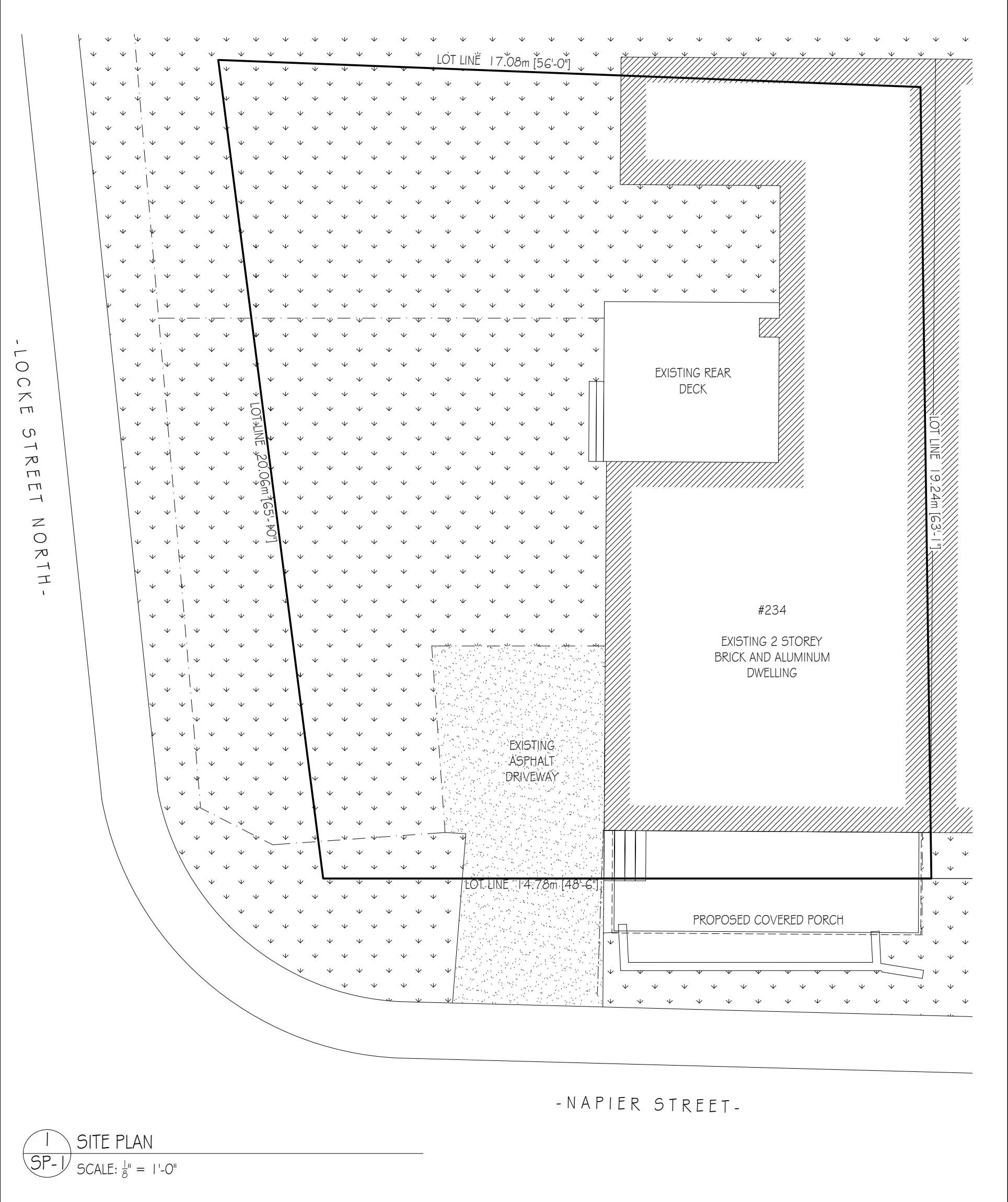
For more information on this matter, including access to drawings illustrating this request:

- Visit www.hamilton.ca/committeeofadjustment
- Call 905-546-CITY (2489) or 905-546-2424 extension 4221, 4130, or 3935
- Email Committee of Adjustment staff at cofa@hamilton.ca

DATED: September 14th, 2020.

Jamila Sheffield,
Secretary-Treasurer
Committee of Adjustment

Information respecting this application is being collected under the authority of the Planning Act, R.S.O., 1990, c. P. 13. All comments and opinions submitted to the City of Hamilton on this matter, including the name, address, and contact information of persons submitting comments and/or opinions, will become part of the public record and will be made available to the Applicant and the general public.



CHARLES LINSEY
& ASSOCIATES LIMITED
37 MAIN STREET SOUTH
PO BOX 1479
WATERLOO, ON L0R 2H0
TEL: (800) 548-7607
INFO@CHARLESLINSEY.COM
WWW.CHARLESLINSEY.COM

THIS DRAWING IS NOT
TO BE USED AS PART OF A
BUILDING PERMIT
APPLICATION

THIS DRAWING IS FOR
DISCUSSION PURPOSES
ONLY

REV.	DESCRIPTION	DATE
A	FOR ENCROACHMENT AGREEMENT	MAR 24/20
B	REVISED AS PER COMMENTS	APR 06/20
client		
HOME OWNER		
project		
234 NAPIER STREET HAMILTON, ONTARIO PROJECT No. 20-027		
title		
SITE PLAN		
drawn	L.C.	checked C.M.
date	MARCH 2020	scale AS NOTED
revision number	B	drawing number SP-1

DRAWINGS FOR EXTERIOR ALTERATIONS
234 NAPIER STREET
HAMILTON, ONTARIO

- 1 GENERAL NOTES:
1. ALL CONSTRUCTION TO COMPLY WITH THE 2012 ONTARIO BUILDING CODE, AS AMENDED, AND ALL APPLICABLE LOCAL AND MUNICIPAL BY-LAWS AND REGULATIONS.
 2. PART 9, "HOUSING AND SMALL BUILDINGS" IS APPLICABLE TO THIS CONSTRUCTION.
 3. THESE DRAWINGS DO NOT INCLUDE ELECTRICAL OR MECHANICAL WORK, IF REQUIRED.
 4. THE CONTRACTOR SHALL FIELD VERIFY ALL DIMENSIONS AND EXISTING CONDITIONS AND NOTIFY THE DESIGNER OF ANY CONTEMPLATED DEVIATIONS FROM THESE DRAWINGS TO SUIT SITE CONDITIONS PRIOR TO MAKING CHANGES.
 5. ANY PROPOSED DEVIATION FROM THESE DRAWINGS THAT WOULD BE CONSIDERED A MATERIAL CHANGE SHALL BE SUBMITTED TO THE DESIGNER FOR REVIEW AND APPROVAL, AND THEN TO THE AUTHORITY HAVING JURISDICTION FOR REVIEW AND APPROVAL, PRIOR TO THE CHANGES BEING CARRIED OUT.
 6. REQUIRED INSPECTIONS BY THE AUTHORITIES HAVING JURISDICTION TO BE ARRANGED BY THE CONTRACTOR. ALL INSPECTIONS TO BE CARRIED OUT, AND THE CONSTRUCTION APPROVED, BEFORE PROCEEDING TO THE NEXT STAGE.
 7. ALL DEBRIS SHALL BE REMOVED FROM THE SITE AND LEGALLY DISPOSED OF.

- 2 CONSTRUCTION NOTES:
1. IT IS THE CONTRACTOR'S RESPONSIBILITY TO ENSURE THAT ANY NECESSARY SHORING OR TEMPORARY SUPPORTS THAT MAY BE REQUIRED ARE INSTALLED PRIOR TO THE START OF ANY WORK.
 2. CONCRETE TO BE DESIGNED, MIXED, PLACED, CURED AND TESTED IN ACCORDANCE WITH THE REQUIREMENTS FOR "R" CLASS CONCRETE STATED IN CLAUSE 8.13 OF CSA A23.1, "CONCRETE MATERIALS AND METHODS OF CONCRETE CONSTRUCTION".
 3. CONCRETE TO HAVE MINIMUM 20MPa 28 DAY COMPRESSIVE STRENGTH.
 4. ALL CONCRETE TO HAVE A SLUMP OF 100 MM (4") MAX.
 5. SAWN LUMBER TO BE S-P-F No. 2 OR BETTER.
 6. ANY WOOD THAT WILL BE IN CONTACT WITH CONCRETE OR MASONRY TO BE PRESSURE TREATED OR SEPARATED WITH 6mil. POLY. OR EQUIV.
 7. SHEATHING TO MEET THE REQUIREMENTS OF CSA O15.1, "CANADIAN SOFTWOOD PLYWOOD".
 8. FASTENING AS PER OBC ARTICLE 9.23.3.4 & 9.23.3.5. U.N.O.
 9. BUILT-UP WOOD MEMBERS TO BE FASTENED TOGETHER WITH A DOUBLE ROW OF 3/2" NAILS SPACED @ 17 1/2" WITH END NAILS LOCATED 4" AND 5/8" FROM EACH END.
 10. ANY DAMAGED EXISTING FINISHES ARE TO BE REPLACED TO MATCH EXISTING PERFORMANCE LEVELS.
 11. SEE DRAWINGS FOR ADDITIONAL NOTES.

- NEW STAIRS (AS PER O.B.C. 9.8)
- RISE - MIN. 4 1/2", MAX. 7 3/8"
 - RUN - MIN. 6 1/2", MAX. 14"
- NEW HANDRAILS (AS PER O.B.C. 9.8.7)
- MIN. 2'-10" HIGH, MAX. 3'-2" HIGH
 - OPENINGS BETWEEN PICKETS TO BE LESS THAN 4"
- NEW GUARDS (AS PER O.B.C. 9.8.8)
- MIN. 2'-11" HIGH, U.N.O.
 - OPENINGS BETWEEN PICKETS TO BE LESS THAN 4"

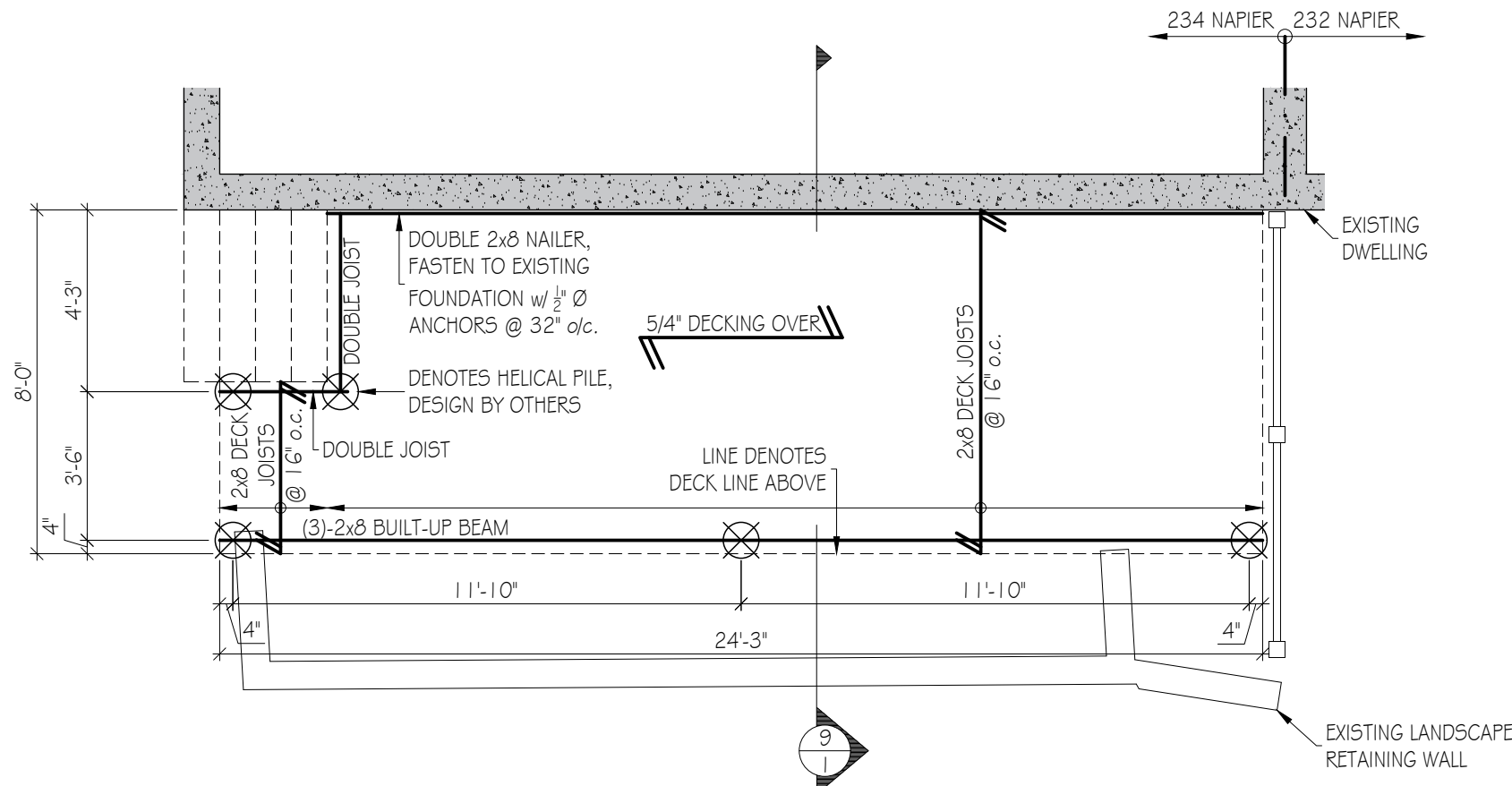
OPERATION: BUILD NICE PORCH - PHASE 2



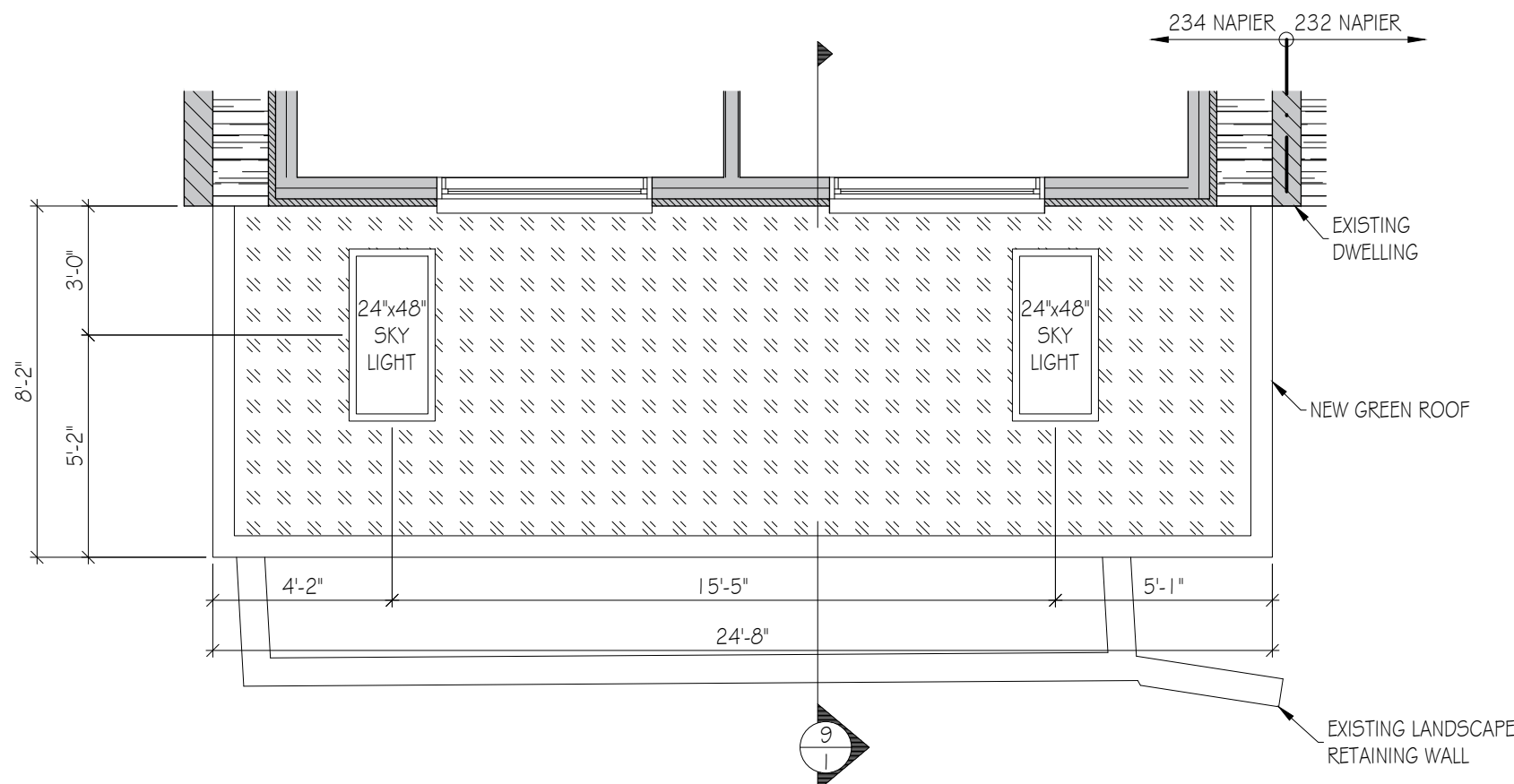
3 RENDERING
1 SCALE: N.T.S.



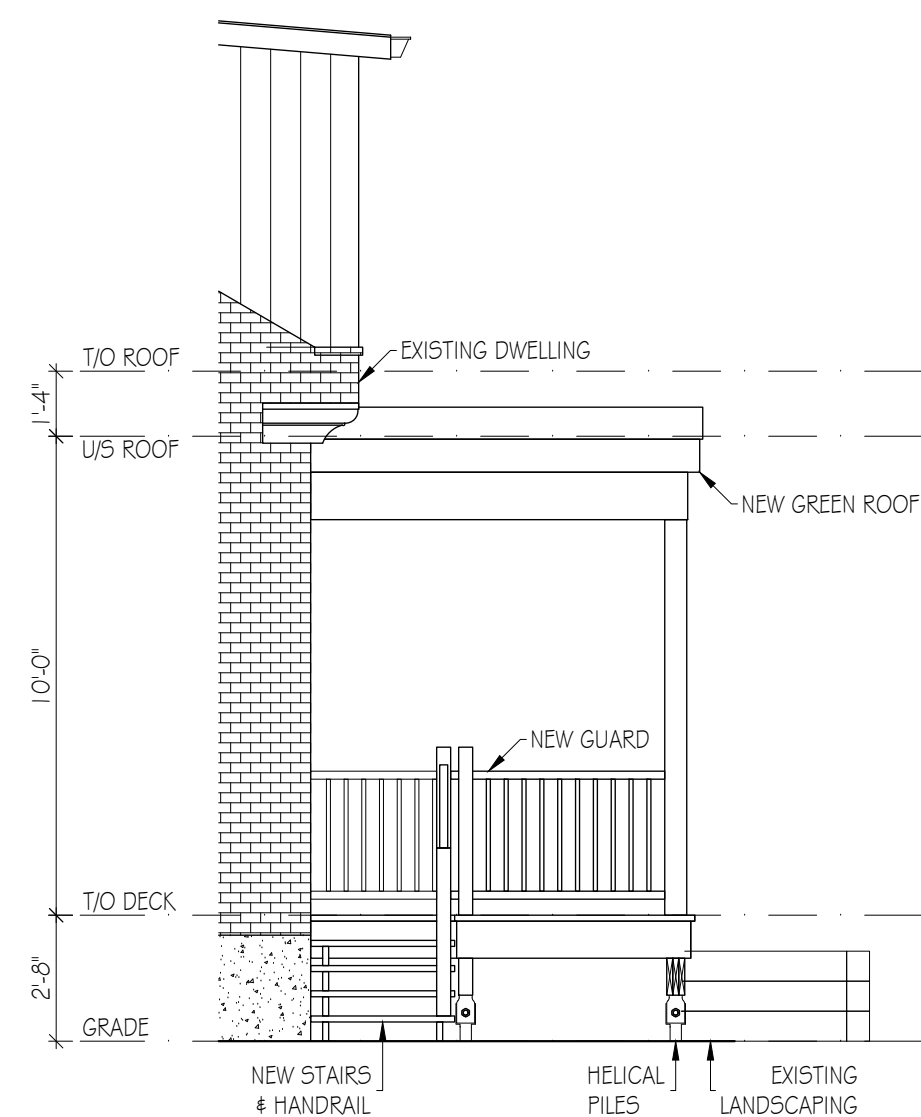
4 FRONT ELEVATION
1 SCALE: 1/4" = 1'-0"



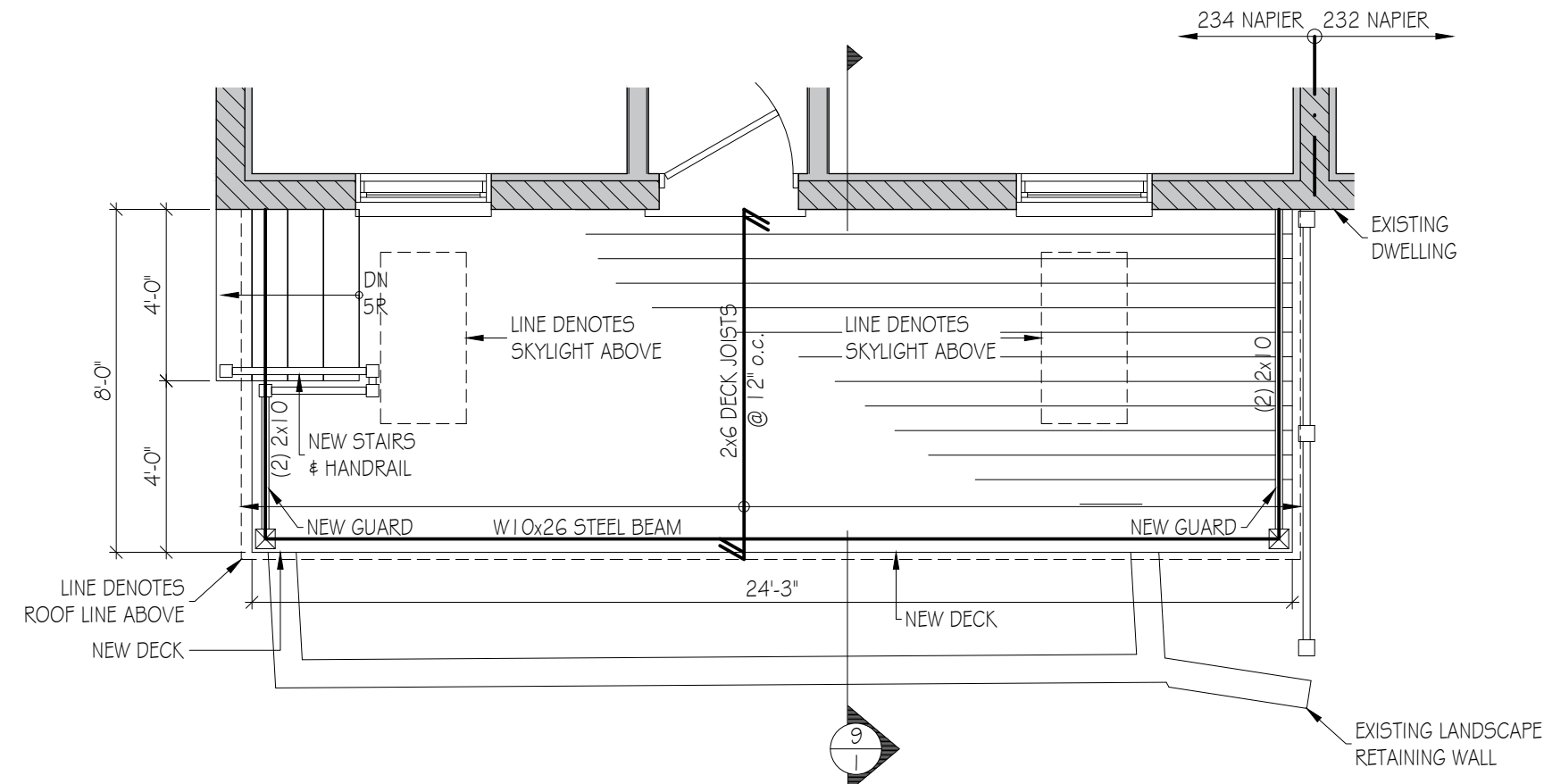
6 DECK FRAMING PLAN
1 SCALE: 1/4" = 1'-0"



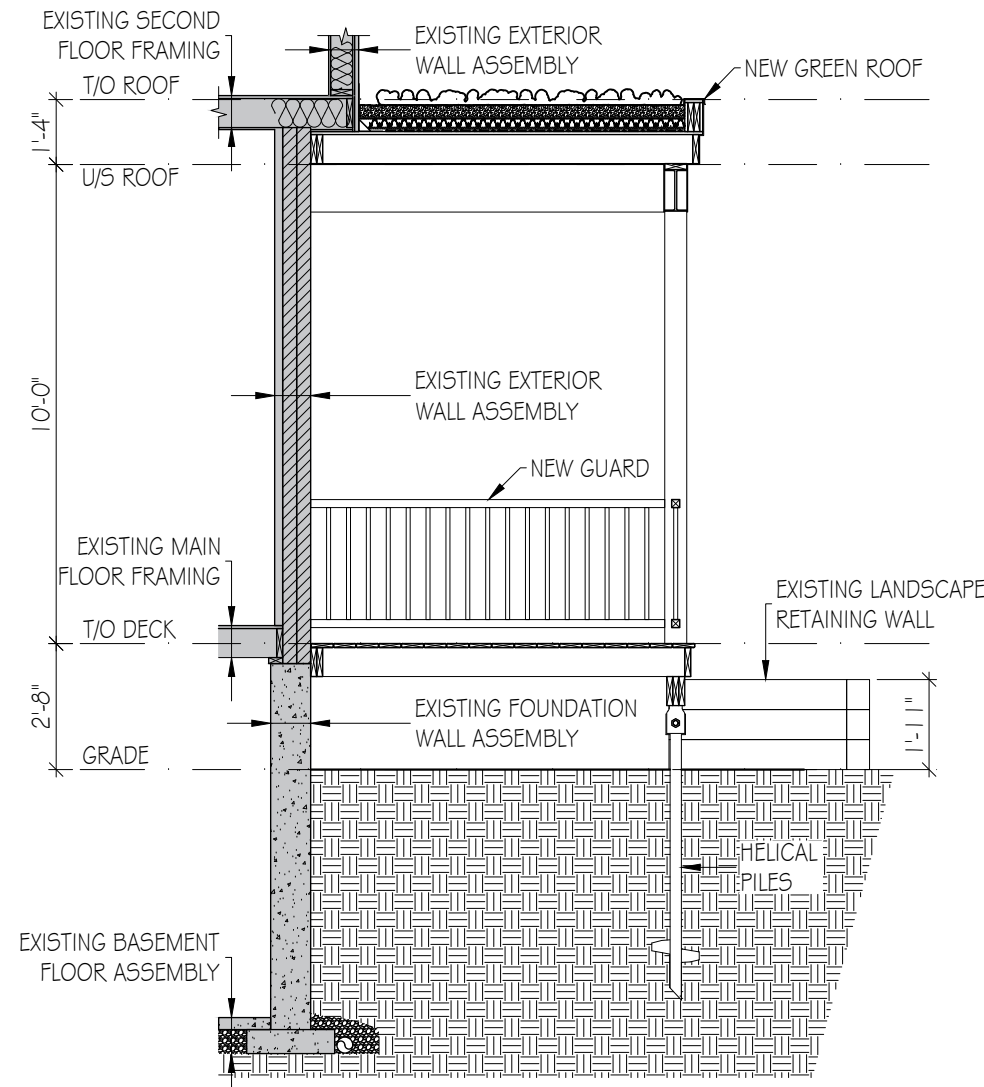
8 ROOF PLAN
1 SCALE: 1/4" = 1'-0"



5 SIDE ELEVATION
1 SCALE: 1/4" = 1'-0"



7 DECK PLAN
1 SCALE: 1/4" = 1'-0"



9 SECTION DETAIL
1 SCALE: 1/4" = 1'-0"



CHARLES LINSEY
& ASSOCIATES LIMITED
37 MAIN STREET SOUTH, TEL: (905) 549-7607
PO BOX 1479, INFO@CHARLESLINSEY.COM
WATERLOO, ON L0R 2P0, WWW.CHARLESLINSEY.COM

THIS DRAWING IS NOT
TO BE USED AS PART OF A
BUILDING PERMIT
APPLICATION

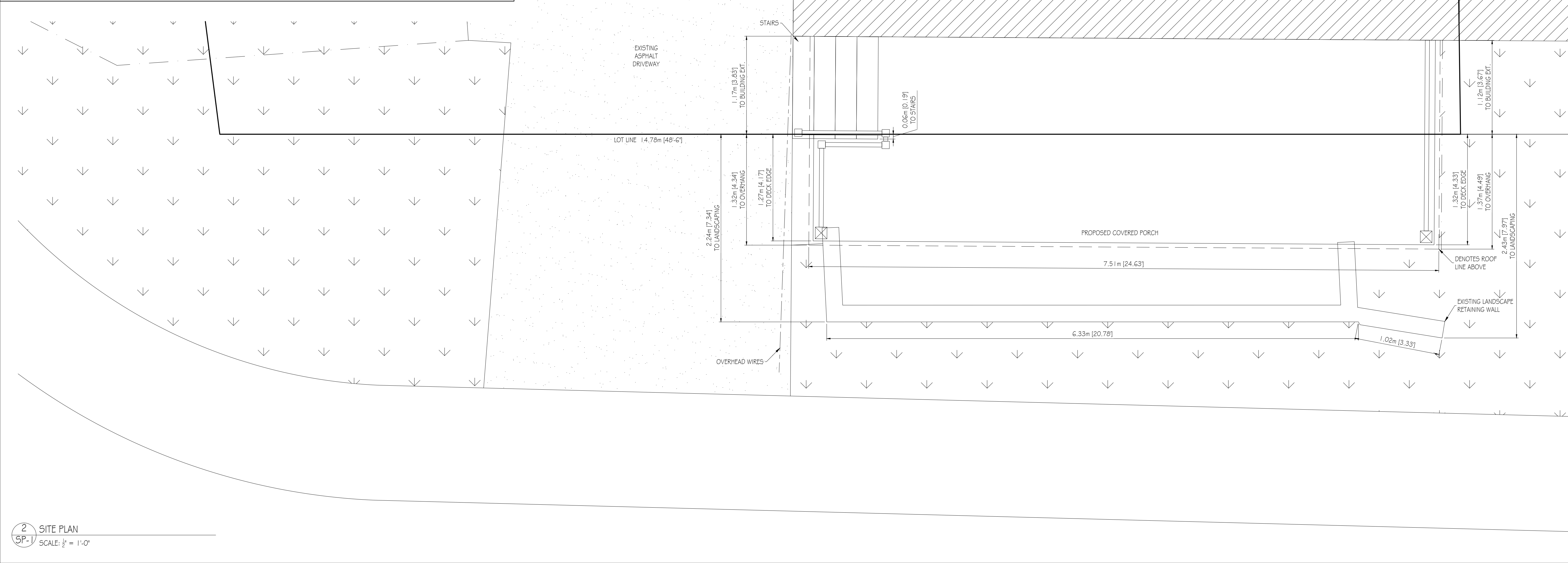
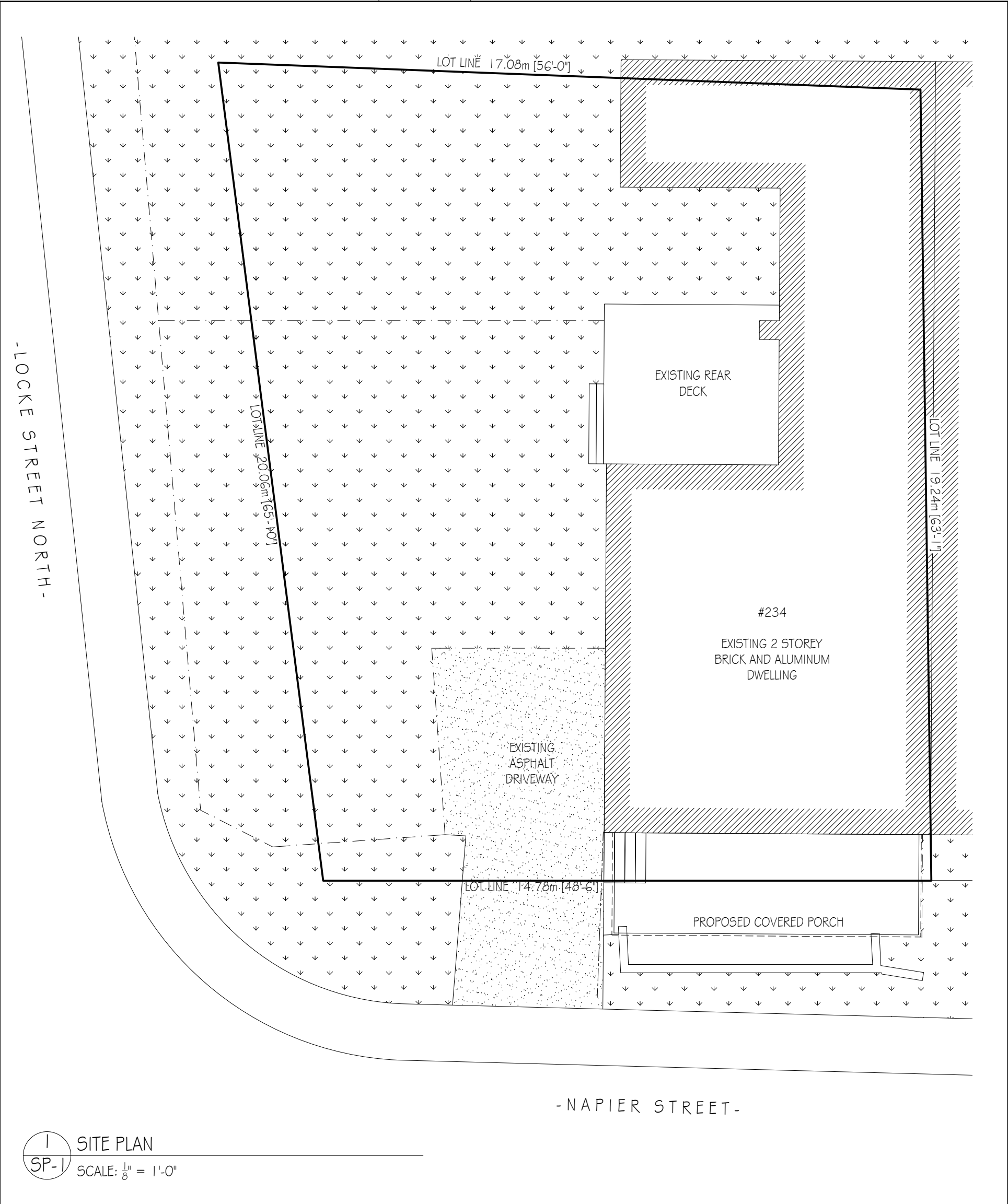
THIS DRAWING IS FOR
DISCUSSION PURPOSES
ONLY

LEGEND

- EXISTING ASSEMBLY TO REMAIN
- DENOTES FRM. FRAMING ASSEMBLY

REV./DESCRIPTION	DATE
A FOR ENCROACHMENT AGREEMENT	MAR 24/20
B REVISED AS PER COMMENTS	APR 06/20

client	HOME OWNER		
project	234 NAPIER STREET HAMILTON, ONTARIO PROJECT No. 20-027		
title	GENERAL & CONSTRUCTION NOTES, RENDERING, ELEVATIONS, PLANS AND DETAILS		
drawn	L.C.	checked	C.M.
date	MARCH 2020	scale	AS NOTED
revision number	B	drawing number	1



CHARLES LINSEY
& ASSOCIATES LIMITED
37 MAIN STREET SOUTH
PO BOX 1479
WATERLOO, ON L0R 2H0
TEL: (800) 548-7607
INFO@CHARLESLINSEY.COM
WWW.CHARLESLINSEY.COM

THIS DRAWING IS NOT
TO BE USED AS PART OF A
BUILDING PERMIT
APPLICATION

THIS DRAWING IS FOR
DISCUSSION PURPOSES
ONLY

REV.	DESCRIPTION	DATE
A	FOR ENCROACHMENT AGREEMENT	MAR 24/20
B	REVISED AS PER COMMENTS	APR 06/20
client		
HOME OWNER		
project		
234 NAPIER STREET HAMILTON, ONTARIO PROJECT No. 20-027		
title		
SITE PLAN		
drawn	L.C.	checked C.M.
date	MARCH 2020	scale AS NOTED
revision number	B	drawing number SP-1

DRAWINGS FOR EXTERIOR ALTERATIONS
234 NAPIER STREET
HAMILTON, ONTARIO

- 1
- GENERAL NOTES:
1.

ALL CONSTRUCTION TO COMPLY WITH THE 2012 ONTARIO BUILDING CODE, AS AMENDED, AND ALL APPLICABLE LOCAL AND MUNICIPAL BY-LAWS AND REGULATIONS.
2.

PART 9, "HOUSING AND SMALL BUILDINGS" IS APPLICABLE TO THIS CONSTRUCTION.
3.

THESE DRAWINGS DO NOT INCLUDE ELECTRICAL OR MECHANICAL WORK, IF REQUIRED.
4.

THE CONTRACTOR SHALL FIELD VERIFY ALL DIMENSIONS AND EXISTING CONDITIONS AND NOTIFY THE DESIGNER OF ANY CONTEMPLATED DEVIATIONS FROM THESE DRAWINGS TO SUIT SITE CONDITIONS PRIOR TO MAKING CHANGES.
5.

ANY PROPOSED DEVIATION FROM THESE DRAWINGS THAT WOULD BE CONSIDERED A MATERIAL CHANGE SHALL BE SUBMITTED TO THE DESIGNER FOR REVIEW AND APPROVAL, AND THEN TO THE AUTHORITY HAVING JURISDICTION FOR REVIEW AND APPROVAL, PRIOR TO THE CHANGES BEING CARRIED OUT.
6.

REQUIRED INSPECTIONS BY THE AUTHORITIES HAVING JURISDICTION TO BE ARRANGED BY THE CONTRACTOR. ALL INSPECTIONS TO BE CARRIED OUT, AND THE CONSTRUCTION APPROVED, BEFORE PROCEEDING TO THE NEXT STAGE.
7.

ALL DEBRIS SHALL BE REMOVED FROM THE SITE AND LEGALLY DISPOSED OF.

- 2
- CONSTRUCTION NOTES:
1.

IT IS THE CONTRACTORS RESPONSIBILITY TO ENSURE THAT ANY NECESSARY SHORING OR TEMPORARY SUPPORTS THAT MAY BE REQUIRED ARE INSTALLED PRIOR TO THE START OF ANY WORK.
2.

CONCRETE TO BE DESIGNED, MIXED, PLACED, CURED AND TESTED IN ACCORDANCE WITH THE REQUIREMENTS FOR "R" CLASS CONCRETE STATED IN CLAUSE 8.13 OF CSA A23.1, "CONCRETE MATERIALS AND METHODS OF CONCRETE CONSTRUCTION".
3.

CONCRETE TO HAVE MINIMUM 20MPa 28 DAY COMPRESSIVE STRENGTH.
4.

ALL CONCRETE TO HAVE A SLUMP OF 100 MM (4") MAX.
5.

SAWN LUMBER TO BE S-P-F No. 2 OR BETTER.
6.

ANY WOOD THAT WILL BE IN CONTACT WITH CONCRETE OR MASONRY TO BE PRESSURE TREATED OR SEPARATED WITH 6mil. POLY. OR EQUIV.
7.

SHEATHING TO MEET THE REQUIREMENTS OF CSA O151, "CANADIAN SOFTWOOD PLYWOOD".
8.

FASTENING AS PER OBC ARTICLE 9.23.3.4 & 9.23.3.5. U.N.O.
9.

BUILT-UP WOOD MEMBERS TO BE FASTENED TOGETHER WITH A DOUBLE ROW OF 3/2" NAILS SPACED @ 17 1/2" WITH END NAILS LOCATED 4" AND 5/8" FROM EACH END.
10.

ANY DAMAGED EXISTING FINISHES ARE TO BE REPLACED TO MATCH EXISTING PERFORMANCE LEVELS.
11.

SEE DRAWINGS FOR ADDITIONAL NOTES.

- NEW STAIRS (AS PER O.B.C. 9.8)
- RISE - MIN. 4 1/2", MAX. 7 3/8"

• RUN - MIN. 6 1/2", MAX. 14"
- NEW HANDRAILS (AS PER O.B.C. 9.8.7)
- MIN. 2'-10" HIGH, MAX. 3'-2" HIGH

• OPENINGS BETWEEN PICKETS TO BE LESS THAN 4"
- NEW GUARDS (AS PER O.B.C. 9.8.8)
- MIN. 2'-11" HIGH, U.N.O.

• OPENINGS BETWEEN PICKETS TO BE LESS THAN 4"

OPERATION: BUILD NICE PORCH - PHASE 2



3

RENDERING

1

SCALE: N.T.S.

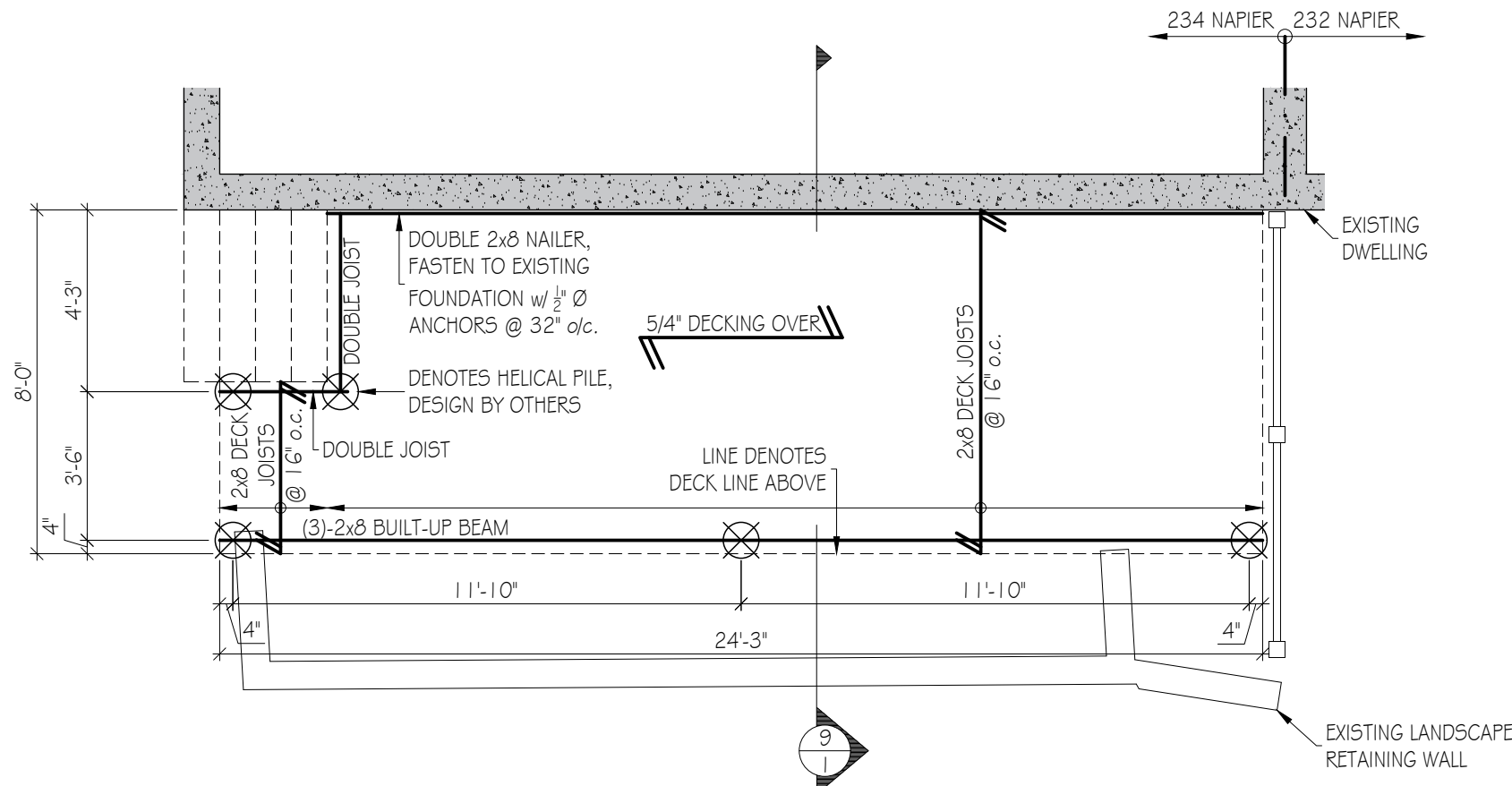


4

FRONT ELEVATION

1

SCALE: 1/4" = 1'-0"

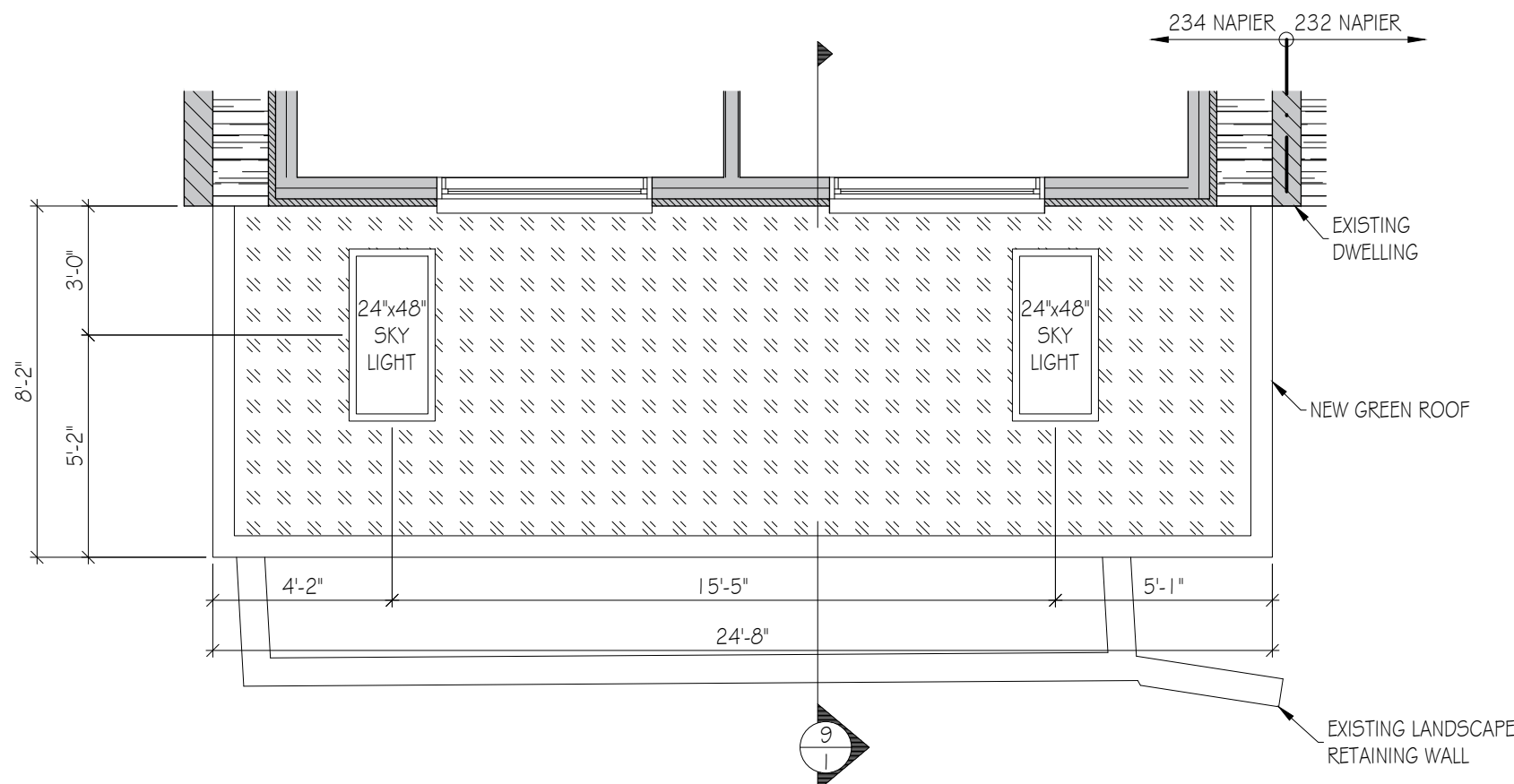


6

DECK FRAMING PLAN

1

SCALE: 1/4" = 1'-0"

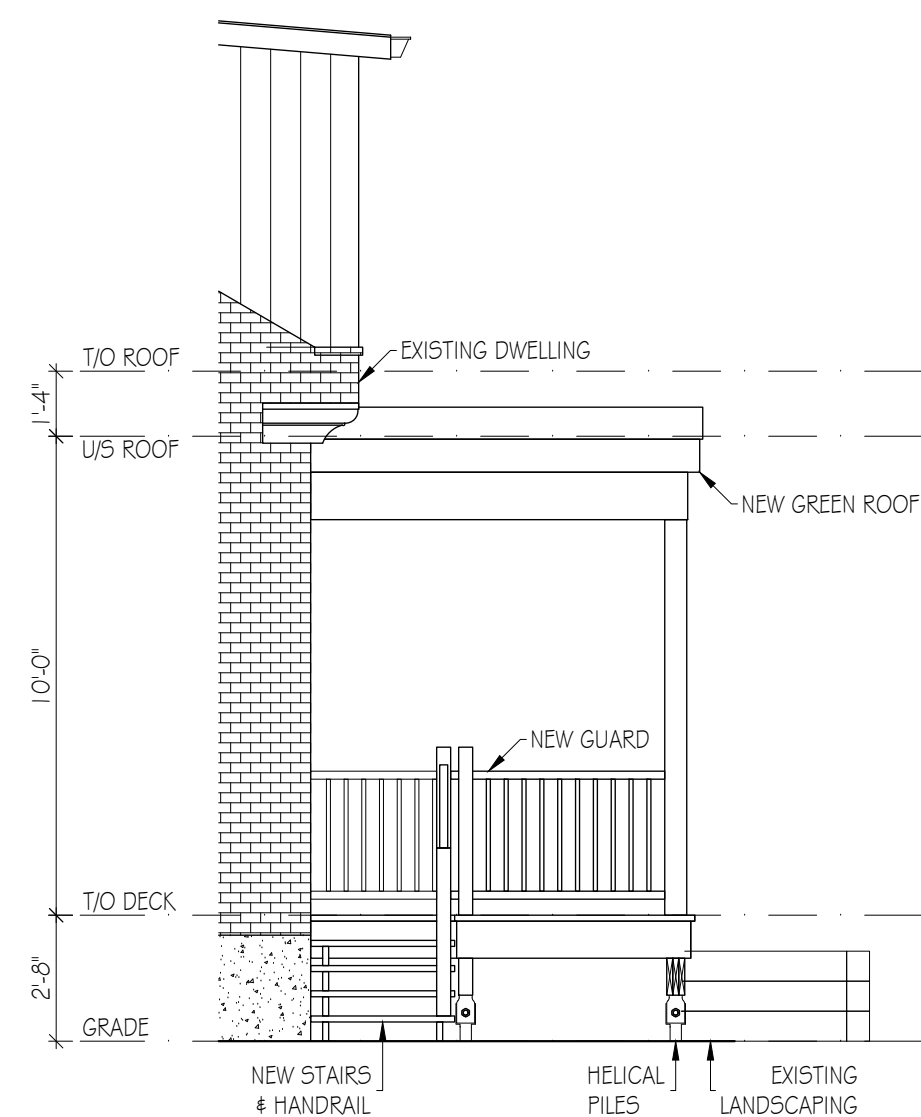


8

ROOF PLAN

1

SCALE: 1/4" = 1'-0"

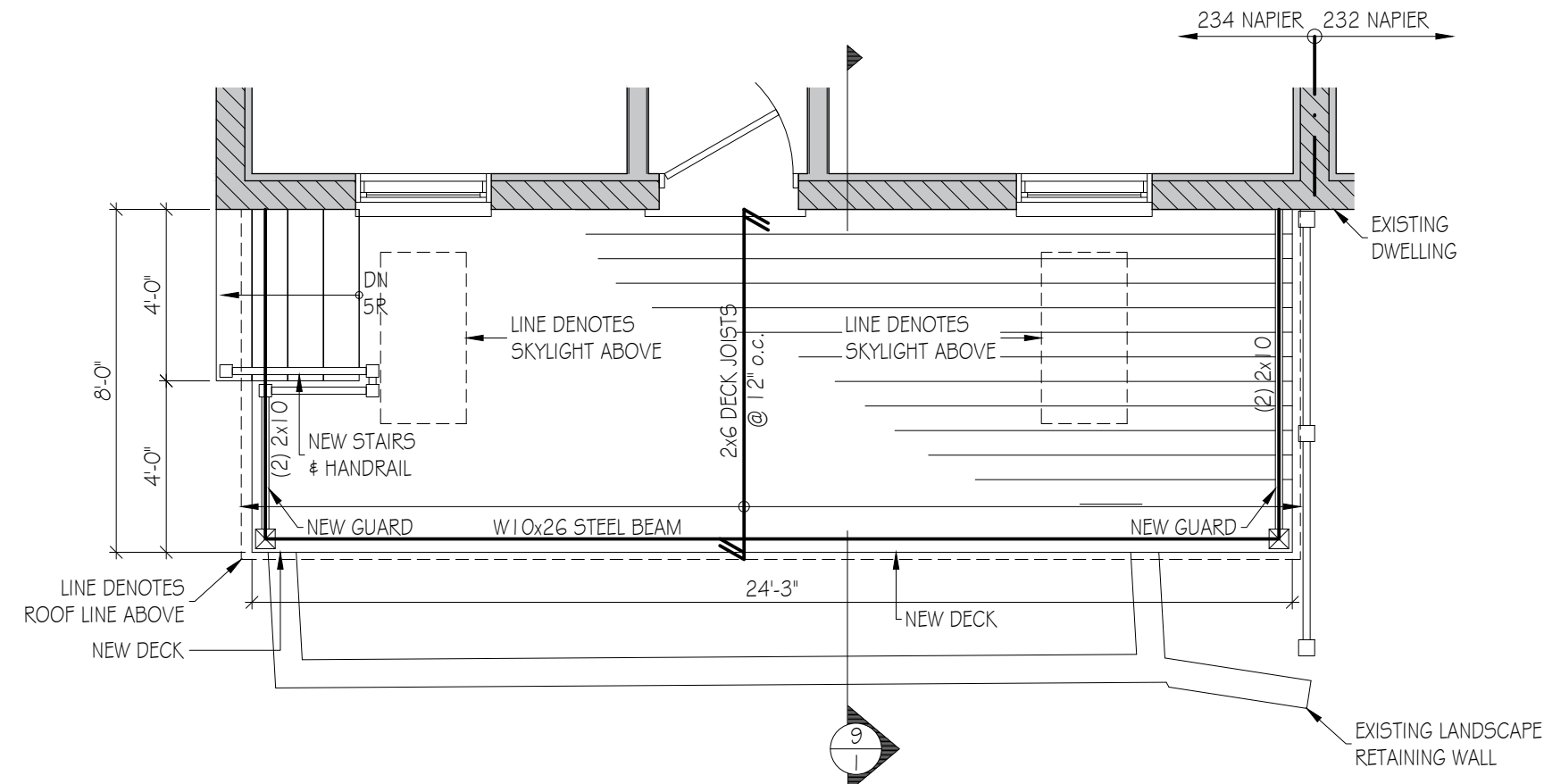


5

SIDE ELEVATION

1

SCALE: 1/4" = 1'-0"

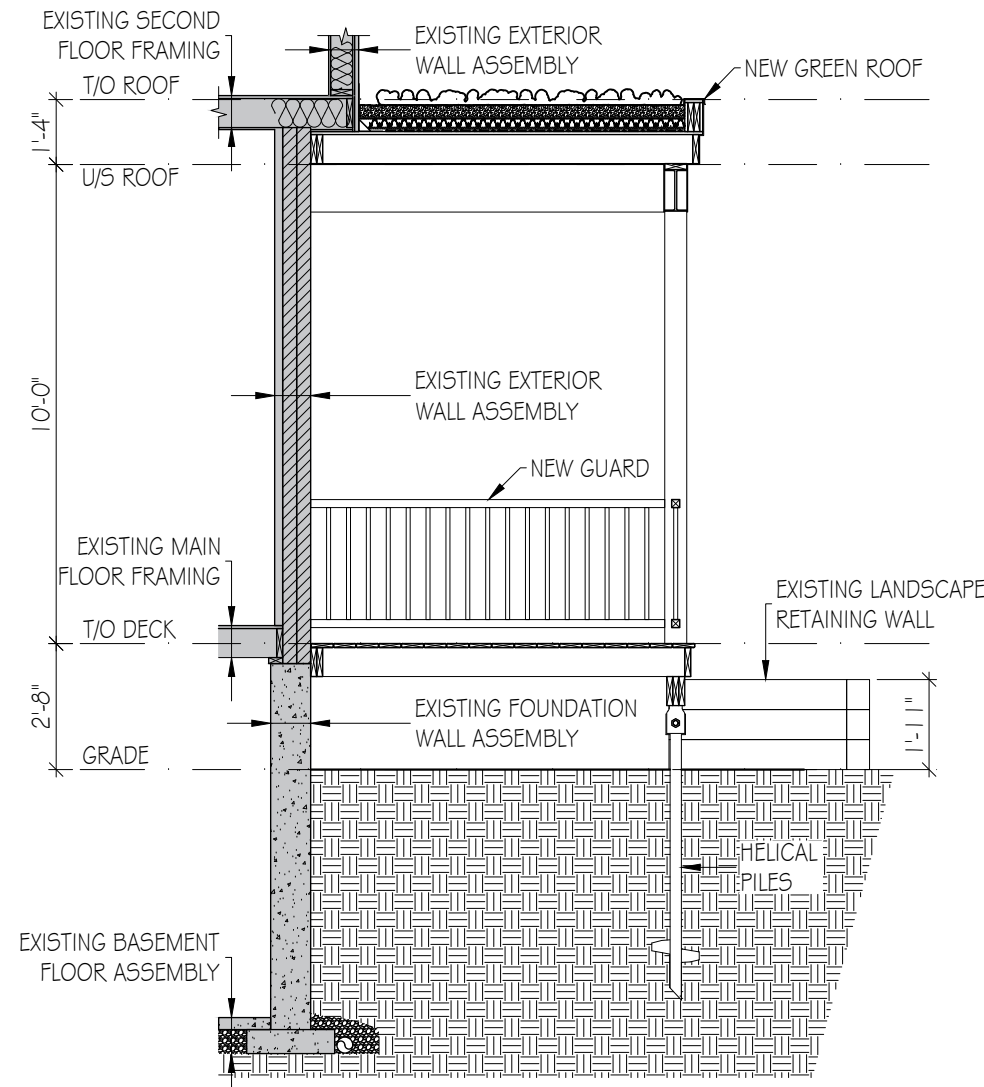


7

DECK PLAN

1

SCALE: 1/4" = 1'-0"



9

SECTION DETAIL

1

SCALE: 1/4" = 1'-0"



CHARLES LINSEY
& ASSOCIATES LIMITED
37 MAIN STREET SOUTH, TEL: (905) 549-7607
PO BOX 1479, INFO@CHARLESLINSEY.COM
WATERLOO, ON L0R 2P0, WWW.CHARLESLINSEY.COM

THIS DRAWING IS NOT
TO BE USED AS PART OF A
BUILDING PERMIT
APPLICATION

THIS DRAWING IS FOR
DISCUSSION PURPOSES
ONLY

LEGEND
EXISTING ASSEMBLY TO REMAIN
DENOTES FR. FRAMING ASSEMBLY

REV./DESCRIPTION	DATE
A FOR ENCROACHMENT AGREEMENT	MAR 24/20
B REVISED AS PER COMMENTS	APR 06/20
client	HOME OWNER
project	234 NAPIER STREET HAMILTON, ONTARIO PROJECT No. 20-027
title	GENERAL & CONSTRUCTION NOTES, RENDERING, ELEVATIONS, PLANS AND DETAILS
drawn	L.C.
checked	C.M.
date	MARCH 2020
scale	AS NOTED
revision number	B
drawing number	1



Planning and Economic Development Department
Planning Division

Committee of Adjustment
City Hall
5th floor 71 Main Street West
Hamilton, Ontario L8P 4Y5

Phone (905) 546-2424 ext.4221
Fax (905) 546-4202

**PLEASE FILL OUT THE FOLLOWING PAGES AND
RETURN TO THE CITY OF HAMILTON PLANNING
DEPARTMENT.**

FOR OFFICE USE ONLY.

APPLICATION NO. _____ DATE APPLICATION RECEIVED _____

PAID _____ DATE APPLICATION DEEMED COMPLETE _____

SECRETARY'S
SIGNATURE _____

**CITY OF HAMILTON
COMMITTEE OF ADJUSTMENT
HAMILTON, ONTARIO**

The Planning Act

Application for Minor Variance or for Permission

The undersigned hereby applies to the Committee of Adjustment for the City of Hamilton under Section 45 of the *Planning Act*, R.S.O. 1990, Chapter P.13 for relief, as described in this application, from the Zoning By-law.

1. Name of Owner Wade Zacharias Telephone No. _____

2. _____

3. Name of Agent Lisa Cockwell Telephone No. _____

4. _____

Note: Unless otherwise requested all communications will be sent to the agent, if any.

5. Names and addresses of any mortgagees, holders of charges or other encumbrances:

TD Bank (Mortgage)

Postal Code _____

Postal Code _____

6. Nature and extent of relief applied for:

The construction of a 'green' roof covered porch located at the front of the house.

7. Why it is not possible to comply with the provisions of the By-law?

The existing position of the house is located very close to the road.

8. Legal description of subject lands (registered plan number and lot number or other legal description and where applicable, street and street number):

234 Napier Street, Hamilton

9. PREVIOUS USE OF PROPERTY

Residential ☒ Industrial ☐ Commercial ☐

Agricultural ☐ Vacant ☐

Other

9.1 If Industrial or Commercial, specify use

9.2 Has the grading of the subject land been changed by adding earth or other material, i.e. has filling occurred?

Yes ☐ No ☒ Unknown ☐

9.3 Has a gas station been located on the subject land or adjacent lands at any time?

Yes ☐ No ☒ Unknown ☐

9.4 Has there been petroleum or other fuel stored on the subject land or adjacent lands?

Yes ☐ No ☒ Unknown ☐

9.5 Are there or have there ever been underground storage tanks or buried waste on the subject land or adjacent lands?

Yes ☐ No ☒ Unknown ☐

9.6 Have the lands or adjacent lands ever been used as an agricultural operation where cyanide products may have been used as pesticides and/or sewage sludge was applied to the lands?

Yes ☐ No ☒ Unknown ☐

9.7 Have the lands or adjacent lands ever been used as a weapon firing range?

Yes ☐ No ☒ Unknown ☐

9.8 Is the nearest boundary line of the application within 500 metres (1,640 feet) of the fill area of an operational/non-operational landfill or dump?

Yes ☐ No ☒ Unknown ☐

9.9 If there are existing or previously existing buildings, are there any building materials remaining on site which are potentially hazardous to public health (eg. asbestos, PCB's)?

Yes ☐ No ☒ Unknown ☐

9.10 Is there any reason to believe the subject land may have been contaminated by former uses on the site or adjacent sites?

Yes ☐ No ☒ Unknown ☐

9.11 What information did you use to determine the answers to 9.1 to 9.10 above?
Owner's Knowledge

9.12 If previous use of property is industrial or commercial or if YES to any of 9.2 to 9.10, a previous use inventory showing all former uses of the subject land, or if appropriate, the land adjacent to the subject land, is needed.

Is the previous use inventory attached? Yes ☐ No ☒

ACKNOWLEDGEMENT CLAUSE

I acknowledge that the City of Hamilton is not responsible for the identification and remediation of contamination on the property which is the subject of this Application – by reason of its approval to this Application.

Aug 21, 2020
Date


Signature Property Owner

Wade Zacharias
Print Name of Owner

10. Dimensions of lands affected:

Frontage	<u>14.8 Meters</u>
Depth	<u>19.4 Meters</u>
Area	<u>311.8 Meters Squared</u>
Width of street	<u>6.4 Meters</u>

11. Particulars of all buildings and structures on or proposed for the subject lands: (Specify ground floor area, gross floor area, number of stories, width, length, height, etc.)

Existing: House - 2 Stories, 18.8m Long, 7.9m Wide, 120.3 Meters Squared

Ground Floor Area, 191.7 Meters Squared Gross Floor Area

Proposed: House - 2 Stories, 18.8m Long, 7.9m Wide, 120.3 Meters Squared

Ground Floor Area, 191.7 Meters Squared Gross Floor Area

12. Location of all buildings and structures on or proposed for the subject lands; (Specify distance from side, rear and front lot lines)

Existing: Front Porch - 7.5m from Side Lot Line, 3.1m from Side Lot Line, 0.2m+ over

Front Lot Line, 18.2m from Rear Lot Line

Proposed: Front Porch - 6.9m from Side Lot Line, 0.2m from Side Lot Line, 1.4m+ over Front Lot Line, 18.1m from Rear Lot Line

13. Date of acquisition of subject lands:
2006
14. Date of construction of all buildings and structures on subject lands:
1882
15. Existing uses of the subject property: Residential
16. Existing uses of abutting properties: Residential
17. Length of time the existing uses of the subject property have continued:
Always
18. Municipal services available: (check the appropriate space or spaces)
Water ☒ Connected ☐
Sanitary Sewer ☒ Connected ☐
Storm Sewers ☒
19. Present Official Plan/Secondary Plan provisions applying to the land:
20. Present Restricted Area By-law (Zoning By-law) provisions applying to the land:
CITY OF HAMILTON ZONING BY-LAW NO. 6593
21. Has the owner previously applied for relief in respect of the subject property?
Yes ☐ No ☒
If the answer is yes, describe briefly.
22. Is the subject property the subject of a current application for consent under Section 53 of the *Planning Act*?
Yes ☐ No ☒
23. The applicant shall attach to each copy of this application a plan showing the dimensions of the subject lands and of all abutting lands and showing the location, size and type of all buildings and structures on the subject and abutting lands, and where required by the Committee of Adjustment such plan shall be signed by an Ontario Land Surveyor.

NOTE: It is required that two copies of this application be filed with the secretary-treasurer of the Committee of Adjustment together with the maps

THIS ENCROACHMENT AGREEMENT made this *[Note to Draft: City will insert date]*
22nd day of July, 2020.

B E T W E E N:

CITY OF HAMILTON

("City")

- and -

[NAME OF OWNER]

Emily Beglietto Jewer & Wade Allan Zacharias

("Owner")

WHEREAS:

The Owner is the registered owner of the property known municipally as

[MUNICIPAL ADDRESS]

234 Napier Street, Hamilton, ON

in the City of Hamilton further described in Schedule "A" attached ("Owner's Property");

The City is the registered owner of a road allowance or other property abutting the Owner's
Property, being

[NOTE TO DRAFT: INSERT PIN # AND MUNICIPAL ADDRESS OR STREET NAME OF CITY PROPERTY.]

Municipal Address/Street Name: Napier Street, Hamilton

PIN #: 17145-0181 (LT)

("City's Property");

The Owner wishes to establish and/or maintain an Encroachment in, on or above the City's
Property, in the manner and to the extent described in Schedule "B" attached ("Encroachment");

Sections 8, 9 and 10 of the *Municipal Act, 2001*, S.O. 2001, c. 25 authorize the City to act as is necessary or desirable for municipal purposes, and in particular paragraphs 4, 6 and 7 of subsection 10(2) authorize the municipality to act with respect to: public assets of the municipality acquired for the purpose of exercising its authority under the *Municipal Act, 2001*, S.O. 2001, c. 25 or any other Act; the health, safety and well-being of persons; and the provision of any service or thing that it considers necessary or desirable for the public;

The *Municipal Act, 2001*, S.O. 2001, c. 25 further authorizes the City, amongst other things, to delegate its authority and to impose fees or charges on persons for services or activities provided or done by or on behalf of it;

The Council of the City ("Council") has authorized agreements to permit certain Encroachments in, on or above City road allowances or other City property in accordance with Encroachments on City Property – Policy and Procedure (PW11024) – (City Wide) adopted by Council on April 4, 2011; and

The City has agreed to permit the Encroachment subject to the terms and conditions set out below.

NOW THEREFORE the City and the Owner agree as follows:

1.0 Definitions:

- 1.1 "City Authority" means the Public Works, Engineering Services Division or such other City department, division, section, official or person(s) designated from time to time by Council.
- 1.2 "Encroachment" means an improvement, such as a building, structure, planted area or Outdoor Boulevard Café, made to City Property that is located entirely or partly in, on, under or above the City's Property.
- 1.3 "Outdoor Boulevard Café" means an outdoor café/patio that is situated either partly or wholly within City Property.

2.0 Establishing and Maintaining the Encroachment:

- 2.1 The Owner may establish and maintain the Encroachment in, on, under or above the City's Property in the manner and to the extent described in Schedule "B" attached.
- 2.2 The design, construction, and location of the Encroachment shall be authorized by the City Authority in advance and the Encroachment shall be erected and maintained in all respects by the Owner to the satisfaction of the City Authority. The fact that the City Authority shall have authorized the design, location and construction of the Encroachment shall in no way affect, discharge or modify any liability; any requirement or obligation of the Owner under this Agreement.
- 2.3 Except as required for Outdoor Boulevard Cafes that require a Building Permit, as set out in 3.1 below, the Owner shall on being requested by the City, provide to the City Authority copies of an "as constructed" plan and profile drawings which locate the Encroachment with respect to the Owner's Property and the City's Property including exact measurements and offsets to property lines and existing property bars.
- 2.4 The Owner shall ensure that the Encroachment does not interfere with the free and safe passage of persons using the road allowance.
- 2.5 The Owner shall at all times maintain the Encroachment in a good and safe condition.
- 2.6 The Owner and any successors, heirs and assigns shall notify the City Authority of any changes in ownership of the Owner's Property.

3.0 Outdoor Boulevard Café Encroachments:

- 3.1 If a Building Permit is required the Owner shall apply for and obtain a minor site plan application, which will include a patio layout plan, to the satisfaction of the General Manager, Planning and Economic Development or their designate, which shall illustrate seating layout, capacities, conformity with the Zoning By-law and other relevant design requirements of the City, prior to acceptance of an Encroachment Agreement application. The Owner may be asked to alter the patio layout plan at the discretion of the General Manager, Planning and Economic Development or the General Manager, Public Works or their designate(s).
- 3.2 Live or amplified music is not permitted to be located within the Encroachment, the operation of which shall conform with the City of Hamilton Noise By-law No. 03-020, as

amended from time to time.

- 3.3 No part of the Encroachment may be used by the Owner for any purpose or use, at any time, other than for that of an Outdoor Boulevard Café.
- 3.4 The Owner shall ensure that only food and non-alcoholic beverages prepared and served from the abutting eating establishment is permitted on the Encroachment unless it is in compliance with Sections 3.11 and 3.12 below. No outdoor food preparation such as barbeques shall be permitted within the Encroachment.
- 3.5 The Owner shall ensure that facilities of the abutting restaurant to the Encroachment provides food preparation, garbage storage, and washrooms satisfactory to the Alcohol and Gaming Commission of Ontario and any applicable City departments including Public Health Services, Business Licensing, and Zoning.
- 3.6 Capacity for the Encroachment has been calculated based on Gross Floor Area ("GFA") rate of 1.1 square meters per person. The approved capacity for this Outdoor Boulevard Café is n/a persons.
- 3.7 The Encroachment shall be used and designed for seating.
- 3.8 Any Encroachments such as decks, planters, canopies, etc. which are not included in the approved "as constructed" plan and/or profile drawings and/or patio layout plan for the Outdoor Boulevard Café Encroachment shall require the Owner to submit a separate application and obtain an Encroachment Agreement for the additional Encroachments and to pay any fees associated with the additional Encroachments.
- 3.9 In no case whatsoever shall compensation be payable to the Owner for improvements (if any) to the road allowance.
- 3.10 For the purpose of winter control operations, where required, the Owner shall remove any and all installations and appurtenances related to the operation of the Outdoor Boulevard Cafe from the road allowance during the period of November 1st to April 30th inclusive of each year and shall restore the road allowance to the satisfaction of the General Manager, Public Works.

Where alcohol is to be served on the Owner's Property, the following shall apply:

- 3.11 Where the Owner intends to serve alcohol on the property, to provide a copy of their

Alcohol and Gaming Commission ("AGCO") Liquor application and/or existing AGCO Licence.

- 3.12 The Owner shall ensure that, the hours of operation and the hours during which alcohol service is permitted, if applicable, at either the Owner's Property and on the Encroachment complies with any established for the Owner's Property and the Encroachment by the City under any by-law, resolution or agreement and/or as may be established by the AGCO in any liquor license(s) associated with the Owner's Property or the Encroachment.

4.0 Fees:

- 4.1 The Owner shall pay the following fees to the City during the term of this Agreement:

4.1.1 an application fee of \$ plus H.S.T. shall be payable by the Owner at the time of filing an Encroachment Agreement Application. The application/initial fee shall be payable by cheque or bank draft to "City of Hamilton" clearly marked with the address of the Owner's Property, municipal tax roll number and the purpose of the cheque or bank draft;

4.1.2 an annual fee of \$ plus H.S.T. for the first year of the Encroachment Agreement, which fee has not been prorated. This first annual fee will be paid by the Owner at the time that the Encroachment Agreement is approved and signed copies are submitted by the Owner to the City for its execution; and

4.1.3 an annual fee of \$ plus H.S.T. for subsequent years shall become payable on January 1st in each subsequent year and shall be added to the property tax roll as set out in article 4.2 below. The annual fee shall be subject to change from time to time as determined by the City's User Fees and Charges by-law and any notice that may be required for the passage of such by-law shall be sufficient for the purposes of this section.

- 4.2 The Owner authorizes the Treasurer to add annual fees on a yearly basis to the tax roll for the Owner's Property as provided for in article 4.1.3 and the Treasurer shall collect them in the same manner as municipal taxes.

- 4.3 Owners whose properties are tax exempt shall pay their annual fees by cheque or bank draft payable to "City of Hamilton" clearly marked with the address of the Owner's Property, municipal tax roll number and the purpose of the cheque or bank draft.

- 4.4 The fees under article 4.1.1, 4.1.2 and 4.3 shall be delivered personally to:

City of Hamilton

Public Works Department – Engineering Services Division

Suite 320, City Centre, 77 James Street North

Hamilton, ON L8R 2K3

or by mail in accordance with section 9.3 below.

- 4.5 In addition to paying the fees set out in 4.1 above, the Owner agrees to pay the City upon demand any additional expenses incurred by the City as may be provided for in this Agreement and which fees and expenses shall become a debt of the Owner. The Treasurer shall add any unpaid fees and expenses payable by the Owner to the City under this Agreement to the tax roll for the Owner's property and shall collect them in the same manner as municipal taxes.

- 4.6 The Owner acknowledges that it is liable to pay all fees, expenses, taxes, charges, duties, rates or levies, if any, assessed in respect of the Encroachment as, when and if any of these become due and payable.

5.0 Registration of Agreement:

- 5.1 The Owner consents to the registration of this Agreement against title to the Owner's Property by the Owner's solicitor and at the Owner's expense. In so doing, the Owner shall direct its Solicitor to provide a copy of the registered document to the City immediately following its registration.

6.0 Indemnity and Insurance:

- 6.1 The Owner agrees to defend, indemnify and save harmless the City from and against all actions, causes of action, interest, claims, demands, costs, damages, expenses, or loss howsoever arising which the City or the Owner may bear, suffer or be put to by reason of any damage to property or injury or death to any person as a result of the Encroachment.

6.2

6.2.1 Commercial

Throughout the term of the Agreement (including where applicable, any renewal thereof), the Owner shall obtain and maintain at its own expense, including the cost of any applicable deductible, a Commercial General Liability insurance policy for third party bodily injury and property damage arising out of the granting

of the privilege set out in this Agreement to a limit of not less than Five Million Dollars (\$5,000,000.00) per occurrence or such other amount that may be required by the City from time to time. This policy shall include a cross-liability and waiver of subrogation clause in respect of each named insured and shall be endorsed to include the City of Hamilton as additional insured. The policy shall provide that at least 30 days prior written notice (10 days in the event of non-payment of premiums) shall be given to the City by the Insurer before the Insurer or Owner takes any steps to cancel, terminate, fail to renew, amend or otherwise change or modify the insurance or any part thereof.

6.2.2 Residential

Throughout the term of the Agreement (including where applicable, any renewal thereof), the Owner shall obtain and maintain at its own expense, including the cost of any applicable deductible, Third Party Liability Insurance for bodily injury and property damage arising out of the granting of the privilege set out in this Agreement to a limit of not less than One Million Dollars (\$1,000,000.00) per occurrence. At the time of the execution of this Agreement, and thereafter during the term of the Agreement, no later than 20 Business Days after the renewal date of the policy, the Owner shall delivery to the City evidence of such insurance by way of a copy of the Personal Lines policy declarations page or a Certificate of Insurance showing thereon relevant coverage and referencing the Owner's property. At the City's election, the Owner shall provide a certified copy of the insurance policy required herein. Certificate Holder will be addressed as the City of Hamilton, City Centre, 71 Main Street West, Hamilton, Ontario, Canada, L8P 4Y5. All evidence of insurance shall be mailed to this address to the attention of Road Programming Technician, Geomatics and Corridor Management, Engineering Services, Public Works.

- 6.3 At the time of the execution of this Agreement, and thereafter during the term of the Agreement, no later than 20 Business Days prior to the renewal date of the policy the Owner shall deliver to the City an original Certificate of Insurance originally signed by an authorized insurance representative and confirming thereon relevant coverage information including but not limited to a reference to the Encroachment Agreement including the address of the applicable location and showing the City of Hamilton as additional insured. At the City's election, the Owner shall provide a certified copy of insurance policy required herein.

- 6.4 Certificate Holder will be addressed as the City of Hamilton, 71 Main Street West, Hamilton, Ontario Canada L8P 4Y5. All certificates, cancellation, non-renewal or adverse change notices shall be mailed to this address to the attention of Public Works, Engineering Services Division.

7.0 Alteration, Repair or Removal of Encroachment:

7.1 If with respect to the Encroachment:

7.1.1 any act or thing is contrary to a requirement of the City Authority;

7.1.2 any act or thing is done of which the City Authority disapproves;

7.1.3 in the opinion of the City Authority, the Owner has failed to maintain the Encroachment in a safe condition,

then the City Authority may verbally or in writing require the Owner to alter or repair the Encroachment or to remove the Encroachment and restore the City's Property to a condition acceptable to the City Authority. If the Encroachment is not altered or repaired within forty-eight hours or if the Encroachment is not removed and the City's Property restored within thirty (30) days after such requirement then the City Authority may cause the alteration or repair or the removal and restoration to be done either by its own employees or by some other person at the expense of the Owner.

7.2

7.2.1 This Agreement is subject to all rights now or that may hereafter be vested in the City or in any gas, water, telephone, electric, light or other company, in respect of the care and improvement of the City's Property or the construction, repair replacement or removal of sewers, culverts, drains, water or gas pipes or the placing of poles or wires (the "services") therein. The City expressly reserves to itself the right to construct services or permit services to be constructed.

7.2.2 The City expressly reserves to itself the right to temporarily or permanently remove an encroachment (or a portion of an encroachment) and suspend all rights extended to the Owner under this Agreement where urgent, exceptional or emergency circumstance arises requiring a response by the City.

Where such circumstances arise, the City may take whatever steps it determines to be necessary, including removing an encroachment or a portion of an

encroachment; preventing an encroachment from being used; or taking steps that would prohibit or hinder an encroachment from being used in its usual manner. The City shall not be responsible for any damages arising from its exercise of this reserved privilege and may exercise this privilege without notice to the Owner. Where possible, the City will provide notice to the Owner, however such notice may be less than that otherwise provided for by this Agreement.

- 7.2.3 The Owner shall not be entitled to any compensation of any type by reason of the exercise of the rights contained in this section and the Owner shall, at its own expense, carry out such alteration or repair of the Encroachment or removal of the Encroachment and restoration of the City's Property as the City Authority may require.

8.0 Termination:

- 8.1 This Agreement may be terminated at any time:

- 8.1.1 by the City for any reason after the delivery to the Owner of written notice of the City's intention to terminate at least thirty (30) days prior to such termination. Within thirty (30) days of the delivery by the City of notice of its intention to terminate this Agreement, the Owner shall remove the Encroachment, restore the City's Property to a condition acceptable to the City Authority and notify the City Authority in writing when this has occurred;
- 8.1.2 on the mutual consent of the City and the Owner by means of a written agreement. Within sixty (60) days of the execution of the written agreement, or such other time as may be mutually agreed upon, the Owner shall remove the Encroachment, restore the City's Property to a condition acceptable to the City Authority and shall notify the City Authority in writing when this has occurred;
- 8.1.3 the Owner ceasing to be the registered owner of the premises described as the Owner's Property herein;
- 8.1.4 the Owner fails to comply with any other provision in this Agreement;
- 8.1.5 in the case of Outdoor Boulevard Café Encroachments only, changes occur to the liquor licence issued by the AGCO; or

8.1.6 where urgent, emergency and exceptional situations occur and will include the ability of the City Authority to take action to remove and restore by its own forces when and where necessary.

8.2 On the happening of any of the following this Agreement will terminate immediately:

8.2.1 changes are made to either the Owner's Property such that it impacts on the Encroachment or changes are made to the Encroachment that deviate from the approved plan submitted for this Agreement;

8.2.2 in the case of Outdoor Boulevard Café Encroachments only, changes are made to the Business Licence in effect at the time that this Agreement was entered into that impact on the Encroachment;

8.2.3 in the case of Outdoor Boulevard Café Encroachments only, the Owner ceasing to be the registered owner of the premises described as the Owner's Property herein.

If the Encroachment is not removed and the City's Property restored in accordance with clause 8.1.1 or 8.1.2 then the City Authority may cause the removal and restoration to be done either by its own employees or by some other person at the expense of the Owner.

8.3 On Termination of an Agreement, the City or the Owner, at the City's direction shall register a discharge of this Agreement on title to the Owner's Property. Registration of the discharge shall in no way affect any requirement or obligation of the Owner under this Agreement up to the time of the termination. The Owner shall bear the cost of this discharge.

9.0 General Provisions:

9.1 The Owner shall observe and comply with all applicable Federal and Provincial statutes and regulations and with all by-laws, policies and guidelines of the City and all requirements of the City given through the City Authority respecting the Encroachment.

9.2 Schedules "A" and "B" attached to this Agreement form part of it. Unless otherwise indicated, any notice or other document to be given under this Agreement shall be given in writing and delivered personally, transmitted by facsimile or by prepaid registered mail addressed to:

City: Attention: City of Hamilton
Public Works,
Engineering Services Division,
Corridor Management Section
Suite 320,
City Centre, 77 James Street North
Hamilton, ON Canada L8R 2K3

Telephone: (905) 546-2489
Facsimile: (905) 540-5926

AND TO

Attention: City of Hamilton, City Clerk
71 Main Street West Hamilton,
ON Canada L8P 4Y5

or such other address as may hereafter be assigned.

Owner: Attention: [NOTE TO DRAFT: INSERT LEGAL ADDRESS OF OWNER FOR SERVICE.]

<p>Wade Allan Zacharias & Emily Beglietto Jewer 234 Napier Street Hamilton, ON L8R 1S7 Tel#: 905-541-2336 Fax #:</p>
--

All notices delivered by facsimile shall be deemed received upon mechanical confirmation of transmittal. All notices mailed hereunder shall be deemed to have been given and received by the addressee seventy-two (72) hours following mailing. In the event of actual or threatened postal interruption, all notices shall be delivered personally or by facsimile.

- 9.3 This Agreement is to be read with all the changes made necessary by the gender, number or corporate status of the Owner. Where the Owner is comprised of more than, it is agreed that the Owner's obligations under this Agreement are joint and several.
- 9.4 The headings in this Agreement are inserted for convenience of reference only and do not form part of the Agreement.
- 9.5 If any term, clause or provision of this Agreement shall be judged to be invalid for any

reason whatsoever, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to have been deleted from this Agreement.

- 9.6 Despite section 8 herein, this Agreement is binding upon the Owner and the Owner's Property, the Owner's heirs, executors, administrators, successors, tenants and assigns and the person in possession of the Owner's Property. Sections 6.1 and 9.1 shall survive the termination of this Agreement.
- 9.7 No length of time or of enjoyment by the Owner shall enure to give any right, title or interest to the Owner, or their successors in title, in the subject lands or to maintain the said works on, under across or above, as the case may be, the said road allowance or shall deprive the City by the operation of any limitation period or otherwise of any right to require the removal thereof and restoration of the road allowance.
- 9.8 Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

[Signing page to immediately follow]

IN WITNESS WHEREOF the City and the Owner have affixed their respective corporate seals under the hands of their officers duly authorized in that behalf, or under their hands and seals, as the case may be, as of the date first above written.

Approved as to form and content by Public Works:

CF

Approved as to form by Legal Services:

AK

Authority to enter into Agreement delegated to Staff as a routine real estate matter in accordance with Item 21, Committee of the Whole Report 01-029 adopted by Council September 18, 2001 as amended.

Precedent approved by Legal Services.

CITY OF HAMILTON

By: _____

A. Mayor

By: _____

Lisa Barraso A. City Clerk

(for corporate Owner):

[LEGAL NAME OF OWNER]

Per: _____

Title: _____

Per: _____

Title: _____

I/We have the authority to bind the corporation.

(for individual Owner(s)):

SIGNED, SEALED and DELIVERED

In the presence of)

Witness (Print))

Witness (Sign))

Name: Wade Allan Zacharias

Name: Emily Beglietto Jewer

SCHEDULE "A"

LEGAL DESCRIPTION OF
OWNER'S PROPERTY

PT LT 4 BLK 3 RANGE 3 PL 1435 (AKA JAMES MILLS SURVEY BTN NAPIER ST,
LOCKE ST, PETER ST & PEARL ST) AS IN VM268185, S/T SPOUSAL INTEREST
IN VM254177; CITY OF HAMILTON

City of Hamilton

PIN # 17145-0023 (LT)

SCHEDULE "B"

THE ENCROACHMENT

Encroachment permitted on the City's Property for:

[PROVIDE DETAILED INFORMATION REGARDING THE ENCROACHMENT THIS SHOULD INCLUDE A GENERAL LABEL FOR THE ENCROACHMENT AS WELL AS ENOUGH DETAIL ABOUT THE ENCROACHMENT, IT'S SIZE AND IT'S LOCATION AS IT RELATES TO THE CITY'S PROPERTY TO FULLY IDENTIFY ITS PARAMETERS. THIS SHOULD ALSO INCLUDE ADVISING WHETHER THE ENCROACHMENT IS COMMERCIAL OR RESIDENTIAL IN NATURE]

Portion of front porch and porch roof overhang consisting of concrete, wood, and metal, occupying substantially the southerly face of the building municipally known as 234 Napier Street, Hamilton, encroaches onto the road allowance of Napier Street, Hamilton, 7.51m in length x 1.32m/1.37m in width.

Portion of landscaping bed with rock retaining wall, soil and plantings, occupying substantially the southerly face of the building municipally known as 234 Napier Street, Hamilton, encroaches onto the road allowance of Napier Street, Hamilton, 7.35m in length x 2.24m/2.43m in width.

These encroachments are residential in nature.

on Part , Reference Plan 62R-, PIN 17145-0181 (LT)