

Memorandum to the City of Markham Committee of Adjustment

February 26, 2020

File: A/019/20
Address: 1 Kruger Rd – Markham, ON
Applicant: Thirunavukarasu & Kohuladevi Sivapalan
Agent: Nishanthan Sivapalan
Hearing Date: Wednesday March 18, 2020

The following comments are provided on behalf of the East District Team. The applicant is requesting relief from the Fourth Density – Semi-detached Residential (RSD4) Zone requirements of By-law 90-81, as amended, as they relate to an existing accessory dwelling unit and side yard entrance, to permit:

a) Section 4.6(a):

An uncovered platform with steps to project a distance of not more than 1.07 m (3.51 ft) into the required flanking yard, whereas the By-law permits a distance of not more than 0.45 m (1.48 ft);

b) Section 5.2.1:

A Second Dwelling Unit, whereas the By-law permits no more than one (1) semi-detached dwelling on one (1) lot.

BACKGROUND

Property Description

The 384.0 m² (4,133.34 ft²) subject property is located on the northeast corner of Kruger Road and Golden Avenue, east of Middlefield Road, south of Highglen Avenue, and west of Markham Road. A semi-detached dwelling, mature trees, and vegetation exist on the subject property. The dwelling visually appears to be single detached; however, the dwelling is linked underground to the adjacent dwelling by the foundation wall, and is therefore, considered a semi-detached dwelling by definition in the Zoning By-law. The property is located within an established residential neighbourhood comprised of a mix of two-storey single detached, semi-detached, and townhouses dwellings.

Proposal

The applicant proposes to legalize the existing accessory dwelling unit in the basement of the dwelling (basement apartment), as shown in the plans attached in Appendix “B”. The proposed basement apartment has direct and separate access at the south side of the building within the exterior side yard (flankage yard) for which the above noted variances are being requested. No changes are being proposed to the exterior of the dwelling or the property.

Provincial Policies

Strong Communities through Affordable Housing Act - Province of Ontario

In 2011, the *Strong Communities through Affordable Housing Act* amended various sections of the *Planning Act* to facilitate the creation of second units by:

- Requiring municipalities to establish Official Plan policies and Zoning By-law provisions allowing secondary units in detached, semi-detached and row houses, as well as in ancillary structures;

- Providing authority for the Minister of Municipal Affairs and Housing to make regulations authorizing the use of, and prescribing standards for, second units.

Under the *Strong Communities through Affordable Housing Act*, “Second Units” also known as secondary suites are defined as *“self-contained residential units with kitchen and bathroom facilities within dwellings or within structures accessory to dwellings.”*

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

The 2014 Official Plan designates the subject property “Residential Low Rise”, which provides for low rise housing forms including town house dwellings. The 2014 Official Plan provides the following definition for a “Secondary Suite”:

“a second residential unit in a detached house, semi-detached house or rowhouse that consists of one or more rooms designed, occupied or intended for use, including occupancy, by one or more persons as an independent and separate residence in which a facility for cooking, sleeping facilities and sanitary facilities are provided for the exclusive use of such person or persons.”

Section 8.13.8 states that it is the policy of Council that in considering an application to amend the zoning by-law to permit the establishment of a secondary suite where provided for in the 2014 Official Plan, that Council shall be satisfied that an appropriate set of development standards are provided for in the zoning by-law including:

- a) the building type in which the secondary suite is contained;
- b) the percentage of the floor area of the building type devoted to the secondary suite;
- c) the number of dwelling units permitted on the same lot;
- d) the size of the secondary suite;
- e) the applicable parking standards; and
- f) the external appearance of the main dwelling.

As part of the City initiated zoning by-law consolidation project, Council recently considered the issue of second suites within the City. As of May 29, 2018, Council resolved not to permit second suites as of right in any single detached, semi-detached, or townhouse dwelling.

Zoning By-Law 90-81

The subject property is zoned Fourth Density – Semi-detached Residential (RSD4) under By-law 90-81, as amended, which permits either one (1) semi-detached dwelling, or one (1) single detached dwelling per lot in accordance with the uses permitted in the Ninth Density – Single Residential (R9) Zone. The proposed development does not comply with the permitted encroachment for steps, and the permitted use of one semi-detached dwelling on a lot.

Applicant’s Stated Reason for Not Complying with Zoning

According to the information provided by the applicant, the reason for not complying with Zoning is because, *“the basement and below grade stairs were constructed without knowing a variance was required”*.

Zoning Preliminary Review (ZPR) Undertaken

The owner has completed a ZPR on February 22, 2020 to confirm the variances required for the proposed development.

COMMENTS

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

- a) The variance must be minor in nature;
- b) The variance must be desirable, in the opinion of the Committee of Adjustment, for the appropriate development or use of land, building or structure;
- c) The general intent and purpose of the Zoning By-law must be maintained;
- d) The general intent and purpose of the Official Plan must be maintained.

Secondary Suites

Fire and Emergency Services Department has no objections provided the secondary suite is registered with the City and complies with Building and Fire Codes. Should this application be approved, the applicant will be required to obtain a building permit which ensures the secondary suite will be in compliance with Building and Fire Code regulations, and will be required to register their second suite with the Fire Department prior to the occupancy of the unit.

The City of Markham is committed to promoting affordable and shared housing opportunities. Secondary suites assists the City by increasing the availability of affordable housing forms and provide support to achieve its affordable housing target required by the Province. Planning staff are of the opinion that the application meets the criteria under Section 8.13.8 of the 2014 Official Plan for the establishment of a secondary suite, and therefore have no objections.

Increase in Maximum Permitted Yard Encroachment

The applicant is requesting a maximum encroachment of 1.07 m (3.51 ft) into the required flanking yard for the uncovered platform and steps, whereas the By-law permits a maximum encroachment of 0.45 m (1.48 ft) for platforms or steps. The walk-up stairs are located within the flankage yard and are below grade. Staff have no concerns with the variance as the proposed encroachment is within the flankage yard which would have negligible impacts on the surrounding lands.

PUBLIC INPUT SUMMARY

No written submissions were received as of February 28, 2020. It is noted that additional information may be received after the writing of the report, and the Secretary-Treasurer will provide information on this at the meeting.

CONCLUSION

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

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

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

APPENDICES

Appendix "A" – Conditions of Approval


Appendix "B" – Plans

PREPARED BY:



Aleks Todorovski, Planner, Zoning and Special Projects

REVIEWED BY:



Stephen Corr, Senior Planner, East District

File Path: Amanda\File\20 108102 \Documents\District Team Comments Memo

APPENDIX "A"

CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/019/20

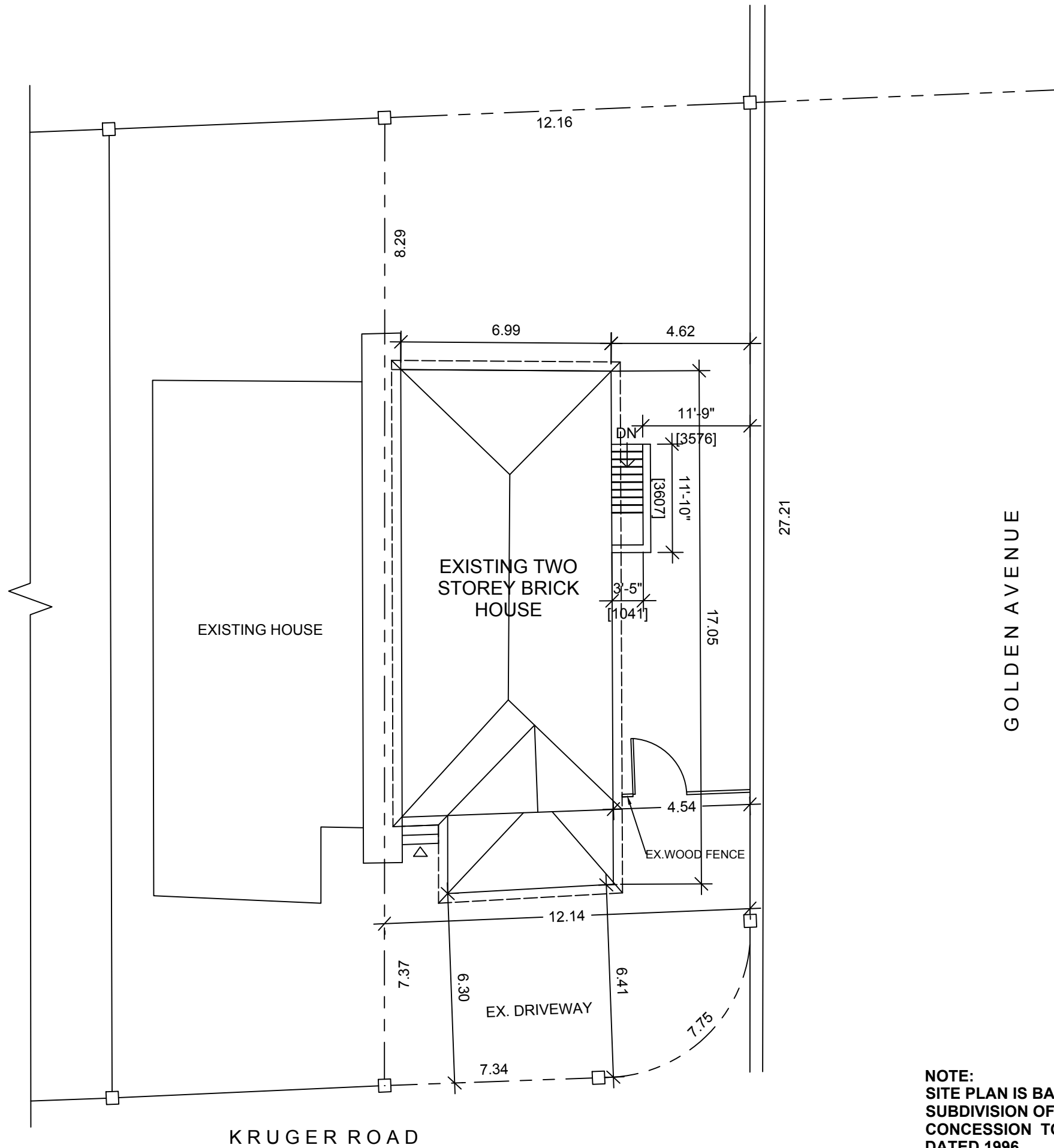
1. The variances apply only to the proposed development as long as it remains;
2. That the variances apply only to the subject development, in substantial conformity with the plans attached as Appendix "B" to this Staff Report and received by the City of Markham on February 5, 2020, and that the Secretary-Treasurer receive written confirmation from the Director of Planning and Urban Design or designate that this condition has been fulfilled to his or her satisfaction.
3. That the owner submit, if required by the Chief Building Official, a third-party report prepared by an architect or professional engineer licensed in the Province of Ontario, to assess compliance of existing construction with the provisions of the Ontario Building Code, and in particular relating to the change of use from a dwelling containing a single suite to a dwelling containing more than one suite.

CONDITIONS PREPARED BY:

A handwritten signature in black ink, appearing to read 'Aleks Todorovski', written over a horizontal line.

Aleks Todorovski, Planner, Zoning and Special Projects

APPENDIX "B"
PLANS TO BE ATTACHED TO ANY APPROVAL OF FILE A/019/20



A0.1 Existing Site Plan
1 : 150

NOTE:
SITE PLAN IS BASED ON THE PLAN
SUBDIVISION OF LOT 3 AND 4
CONCESSION TOWN OF MARKHAM
DATED 1996

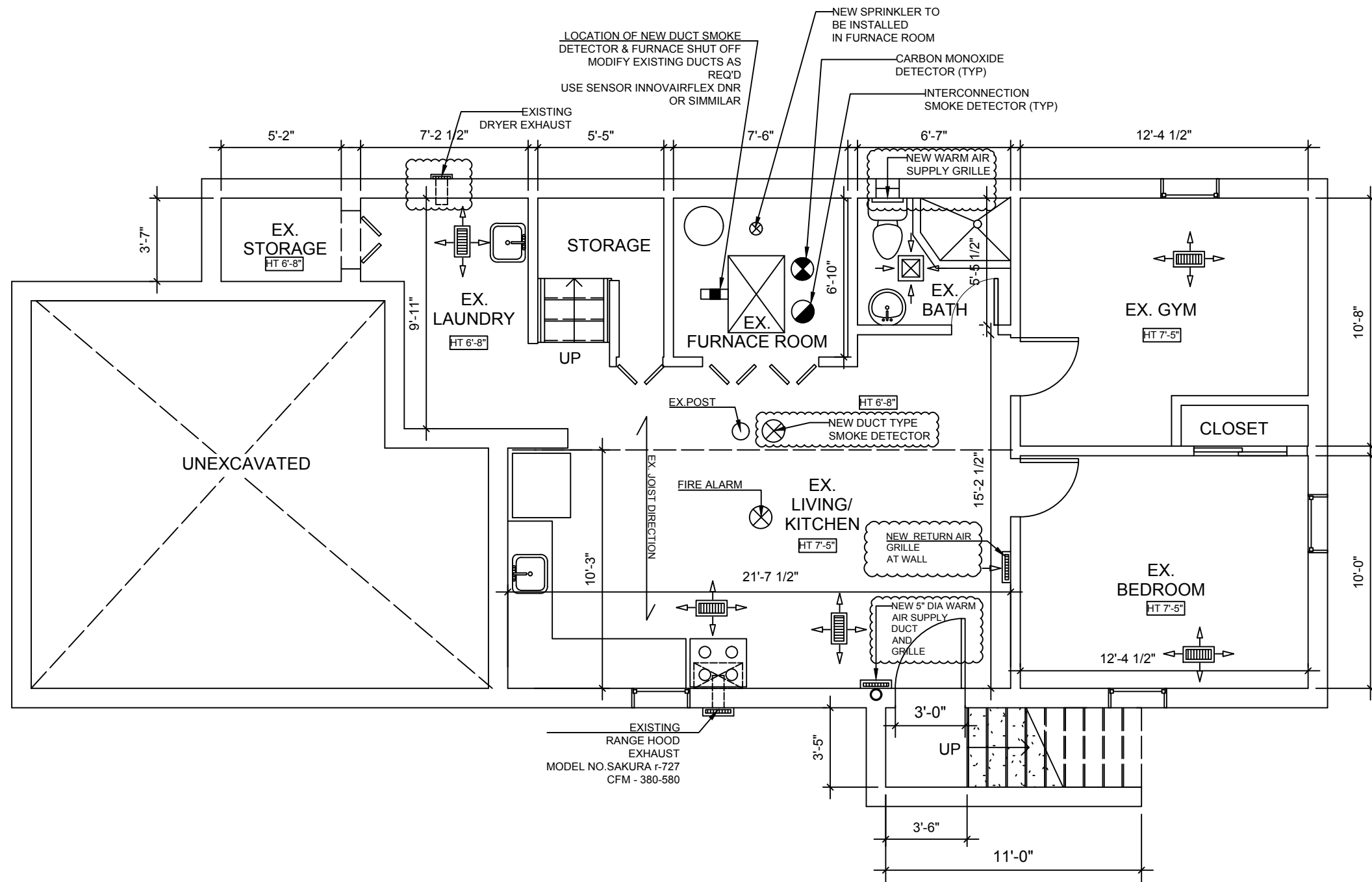


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NORTH YORK, ONTARIO, M2J 4G8
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NO.	BY	DATE	REVISIONS	CHECKED
6	ACMENG	20-11-2019	ISSUE FOR PERMIT	IA
5	ACMENG	28-10-2019	ISSUE FOR PERMIT	IA
4	ACMENG	30-09-2019	ISSUE FOR PERMIT	IA
3	ACMENG	10-09-2019	ISSUE FOR PERMIT	IA
2	ACMENG	28-08-2019	ISSUE FOR PERMIT	IA
1	ACMENG	28-08-2019	CLIENT REVIEW	IA



PROJECT:	00-00-2018		
ADDRESS:	1- KRUGER ROAD, MARKHAM		
DESCRIPTION:	Existing Site Plan		
PROJECT:	1- KRUGER ROAD MARKHAM ON		
SURVEYED BY:	DATE:	CONTRACT NO.:	SHEET NO.:
DRAWN BY:	CHECKED BY: MP	FILE NO.:	A0.1
DESIGNED BY:	CHECKED BY: MP		
SCALE: AS NOTED	DATE: 08/04/19		



NOTE: THERE IS A 1" GAP UNDER ALL THE DOORS FOR RETURN AIR

AREA STATEMENT	
TOTAL COVERED AREA OF BASEMENT (WITHOUT WALLS)	797.09 SQ.FT
TOTAL COVERED AREA OF MAIN FLOOR + SECOND FLOOR (WITHOUT WALLS)	806.71 SQ.FT + 985.55 SQ.FT = 1792.26 SQ.FT
TOTAL AREA OF GARAGE	289.70 SQ.FT



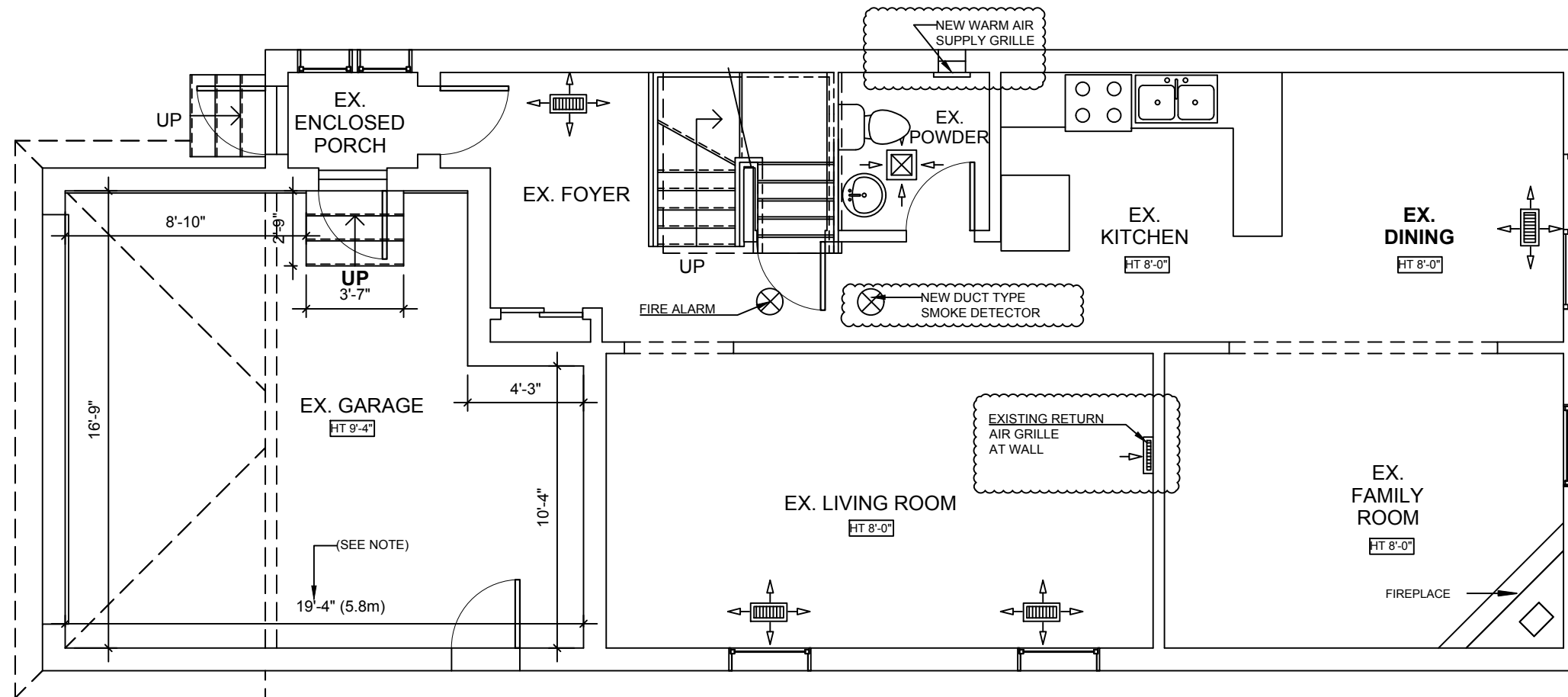
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2	ACMENG	28-08-2019	ISSUE FOR PERMIT	IA
1	ACMENG	28-08-2019	CLIENT REVIEW	IA



00-00-2018	PROJECT DWG. NO.		
ADDRESS: 1- KRUGER ROAD, MARKHAM			
DESCRIPTION: Existing Basement Plan			
PROJECT: 1- KRUGER ROAD MARKHAM ON			
SURVEYED BY:	DATE:	CONTRACT NO.	SHEET NO.
DRAWN BY:	CHECKED BY: MP	FILE NO.	A1.4
DESIGNED BY:	CHECKED BY: MP	DATE: 08/04/19	
SCALE: AS NOTED			

A1.4 Existing Basement Floor
 3/16" = 1'-0"



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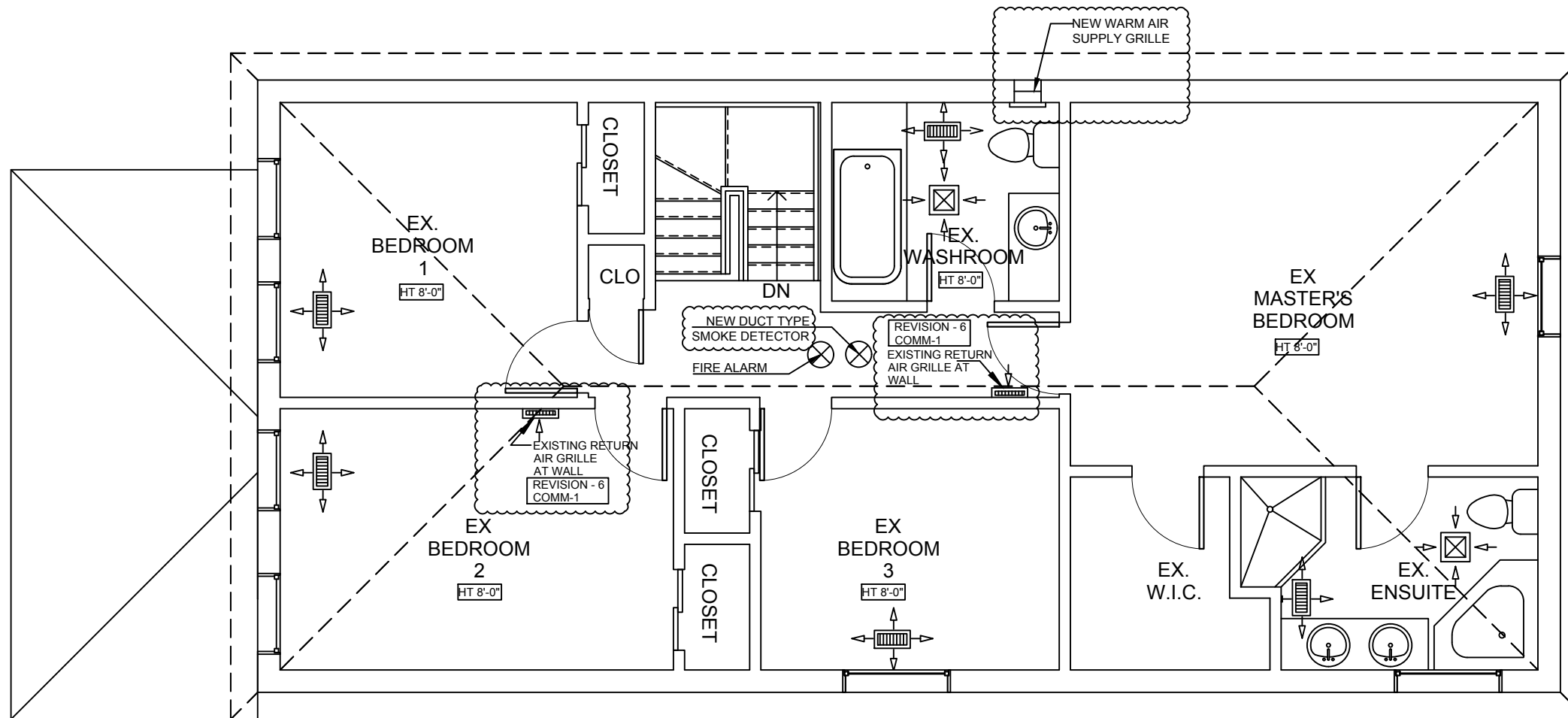
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3	ACMENG	12-09-2019	ISSUE FOR PERMIT	LA
2	ACMENG	28-08-2019	ISSUE FOR PERMIT	LA
1	ACMENG	26-08-2019	CLIENT REVIEW	LA
NO.	BY	DATE	REVISIONS	CHECKED



00-00-2018	PROJECT DWG. NO.		
ADDRESS: 1- KRUGER ROAD, MARKHAM			
DESCRIPTION: Existing Ground Floor			
PROJECT: 1- KRUGER ROAD MARKHAM ON			
SURVEYED BY:	DATE:	CONTRACT NO.:	SHEET NO.:
DRAWN BY:	CHECKED BY: MP	FILE NO.:	A1.5
DESIGNED BY:	CHECKED BY: MP		
SCALE: AS NOTED	DATE: 06/04/19		

A1.5 Existing Ground Floor
3/16" = 1'-0"

- NOTE:
- 1) THERE IS A 1" GAP UNDER ALL THE DOORS FOR RETURN AIR.
 - 2) GARAGE DEPTH WITHOUT DRY WALL IS 19'-4"(5.8m)



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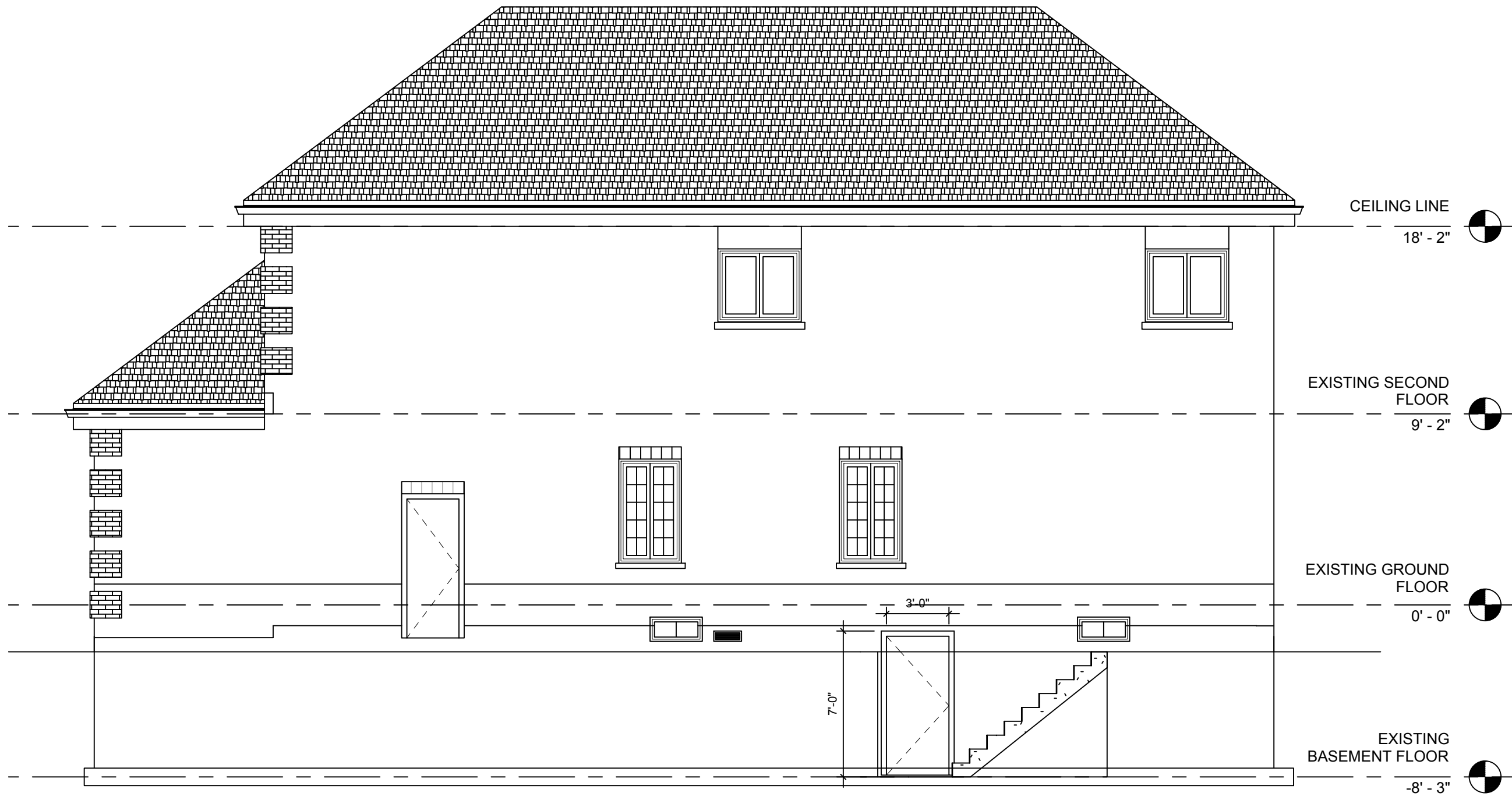
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5	ACMENG	28-10-2019	CLIENT REVIEW	IA
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3	ACMENG	10-09-2019	ISSUE FOR PERMIT	IA
2	ACMENG	28-08-2019	ISSUE FOR PERMIT	IA
1	ACMENG	28-08-2019	CLIENT REVIEW	IA
NO.	BY	DATE	REVISIONS	CHECKED



00-00-2018	PROJECT DWG. NO.		
ADDRESS: 1- KRUGER ROAD, MARKHAM			
DESCRIPTION: Existing Second Floor			
PROJECT: 1- KRUGER ROAD MARKHAM ON			
SURVEYED BY:	DATE:	CONTRACT NO.	SHEET NO.
DRAWN BY:	CHECKED BY: MP	FILE NO.	A1.6
DESIGNED BY:	CHECKED BY: MP		
SCALE: AS NOTED	DATE: 08/04/19		

A1.6 Existing Second Floor
 3/16" = 1'-0"

NOTE: THERE IS A 1" GAP UNDER ALL THE DOORS FOR RETURN AIR



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NO.	BY	DATE	REVISIONS	CHECKED
6	ACMENG	28-11-2019	CLIENT REVIEW	LA
5	ACMENG	28-10-2019	CLIENT REVIEW	LA
4	ACMENG	30-09-2019	ISSUE FOR PERMIT	LA
3	ACMENG	13-09-2019	ISSUE FOR PERMIT	LA
2	ACMENG	28-08-2019	ISSUE FOR PERMIT	LA
1	ACMENG	28-08-2019	CLIENT REVIEW	LA



PROJECT: 00-00-2018		CONTRACT NO.		SHEET NO.	
ADDRESS: 1- KRUGER ROAD, MARKHAM		FILE NO.		A2.1	
DESCRIPTION: Existing Side Elevation					
PROJECT: 1- KRUGER ROAD MARKHAM ON					
SURVEYED BY:	DATE:	CHECKED BY: MP	CONTRACT NO.	SHEET NO.	
DRAWN BY:		CHECKED BY: MP	FILE NO.	A2.1	
DESIGNED BY:		CHECKED BY: MP			
SCALE: AS NOTED	DATE: 08/04/19				

A2.1 Existing Side Elevation
 3/16" = 1'-0"