

Memorandum to the City of Markham Committee of Adjustment

June 9, 2020

File: A/019/20
Address: 1 Kruger Rd – Markham, ON
Applicant: Thirunavukarasu & Kohuladevi Sivapalan
Agent: Nishanthan Sivapalan
Hearing Date: Tuesday June 23, 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 flankage yard (exterior side 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 applicant 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 June 9, 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.

APPLICATION PROCESSING

This application was initially scheduled to be heard on March 18, 2020; however, this hearing date was scheduled prior to the Province of Ontario's decision to suspend *Planning Act* timelines for the consideration of a consent and minor variance application, as well as any appeal of an application to the Local Planning Appeal Tribunal. The City and the Committee of Adjustment have the discretion to continue the processing of applications, so long as the procedural requirements of the *Planning Act* can be met (e.g.

sending of notices, holding electronic or written public hearings, etc.). Revisions to the initial report include an update on matters related to application processing. At the time of this update to the initial staff memorandum, matters respecting finalization of approvals and appeals are still being resolved. The City's Clerk, Legal Services and Development Services are working together to address the mandatory requirements and any technical issues that arise as a result of the emergency.

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

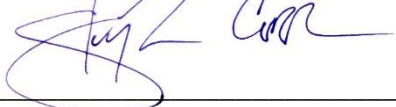
Appendix "B" – Plans

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.

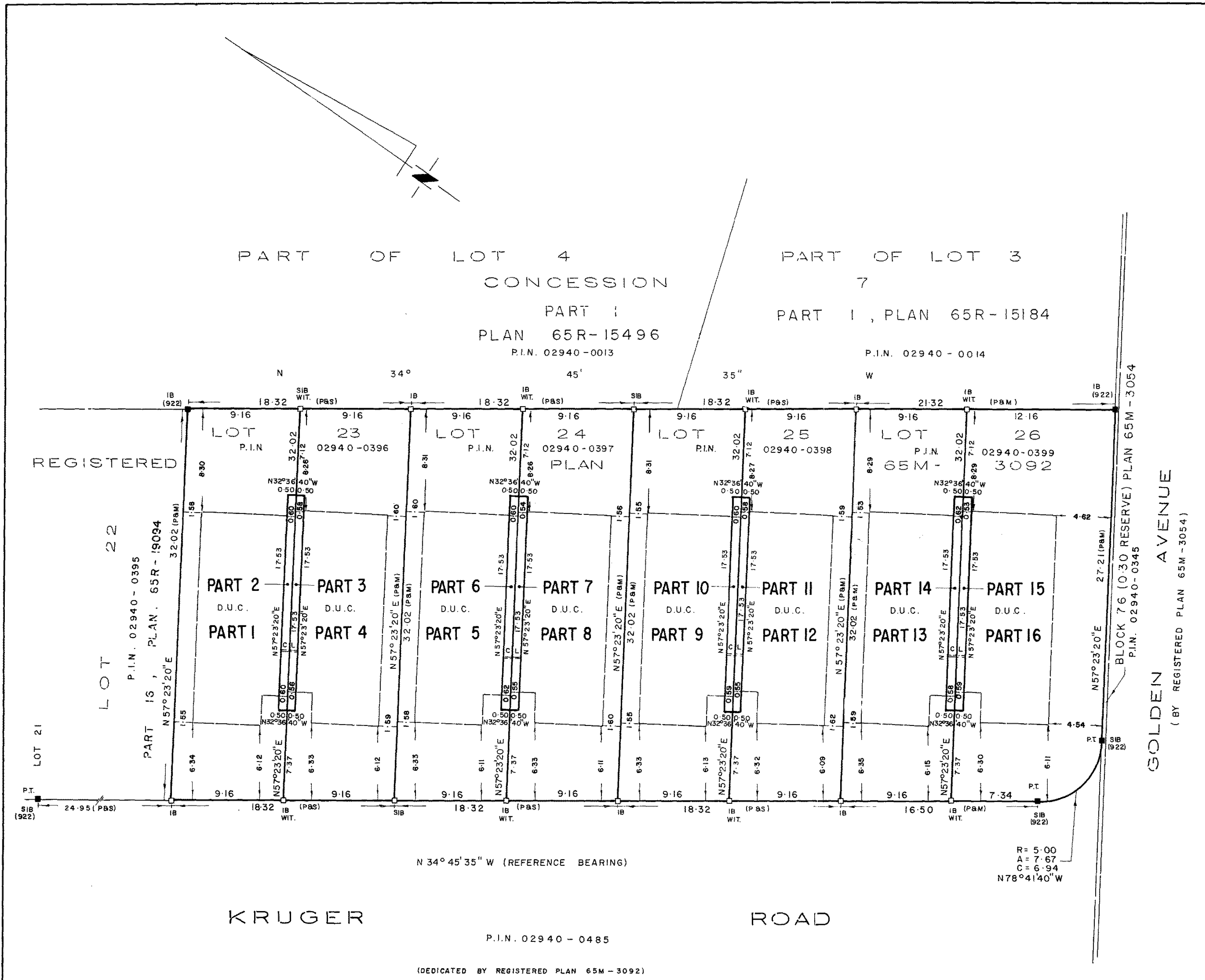
CONDITIONS PREPARED BY:

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



I REQUIRE THIS PLAN TO BE DEPOSITED UNDER THE LAND TITLES ACT.

DATE: March 31, 1997

A. Kikas
ANTON KIKAS - O.L.S.

PLAN 65R- 19123

RECEIVED AND DEPOSITED

DATE: 8 APRIL, 1997

ASS'T DEP S. COLES

LAND REGISTRAR FOR THE LAND TITLES DIVISION OF YORK REGION (Nº 65)

PARTS	LOT	REG'D PLAN	ALL OF P.I.N.
1,2,3 AND 4	23	65M-3092	02940 - 0396
5, 6, 7 AND 8	24		02940 - 0397
9, 10, 11 AND 12	25		02940 - 0398
13, 14, 15 AND 16	26		02940 - 0399

PLAN OF SURVEY OF
LOTS 23, 24, 25 AND 26
REGISTERED PLAN 65M-3092
TOWN OF MARKHAM
REGIONAL MUNICIPALITY OF YORK
SCALE - 1:250



ANTON KIKAS LIMITED
ONTARIO LAND SURVEYORS
1997

CAUTION: THIS PLAN IS NOT A PLAN OF SUBDIVISION
WITHIN THE MEANING OF THE PLANNING ACT.

METRIC: DISTANCES SHOWN ON THIS PLAN ARE IN METRES AND
CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048.

- NOTES**
- BEARINGS ARE ASTRONOMIC AND ARE REFERRED TO THE NORTHEASTERLY
LIMIT OF KRUGER ROAD AS SHOWN ON REGISTERED PLAN 65M-3092 HAVING
A BEARING OF N 34° 45' 35" W.
- DENOTES SURVEY MONUMENT FOUND
 - DENOTES SURVEY MONUMENT PLANTED
 - S.I.B. DENOTES STANDARD IRON BAR
 - I.B. DENOTES IRON BAR
 - WIT. DENOTES WITNESS
 - DUC DENOTES DWELLING UNDER CONSTRUCTION
 - P.T. DENOTES POINT OF TANGENCY
 - 922 DENOTES SCHAEFFER & REINTHALER, O.L.S.
 - CL DENOTES UNDERGROUND CONCRETE LINK
 - PBS DENOTES REGISTERED PLAN 65M-3092 & SET
 - P&M DENOTES REGISTERED PLAN 65M-3092 & MEASURED
 - P.I.N. DENOTES PROPERTY IDENTIFICATION NUMBER

TIES ARE TAKEN TO CONCRETE FOUNDATION UNLESS NOTED OTHERWISE

SURVEYOR'S CERTIFICATE

I CERTIFY THAT:
1. THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE
SURVEYS ACT, THE SURVEYORS ACT AND THE LAND TITLES ACT AND THE
REGULATIONS MADE UNDER THEM;
2. THE SURVEY WAS COMPLETED ON THE 9th DAY OF March, 1997
DATE: March 31, 1997. A. Kikas
ANTON KIKAS
ONTARIO LAND SURVEYOR

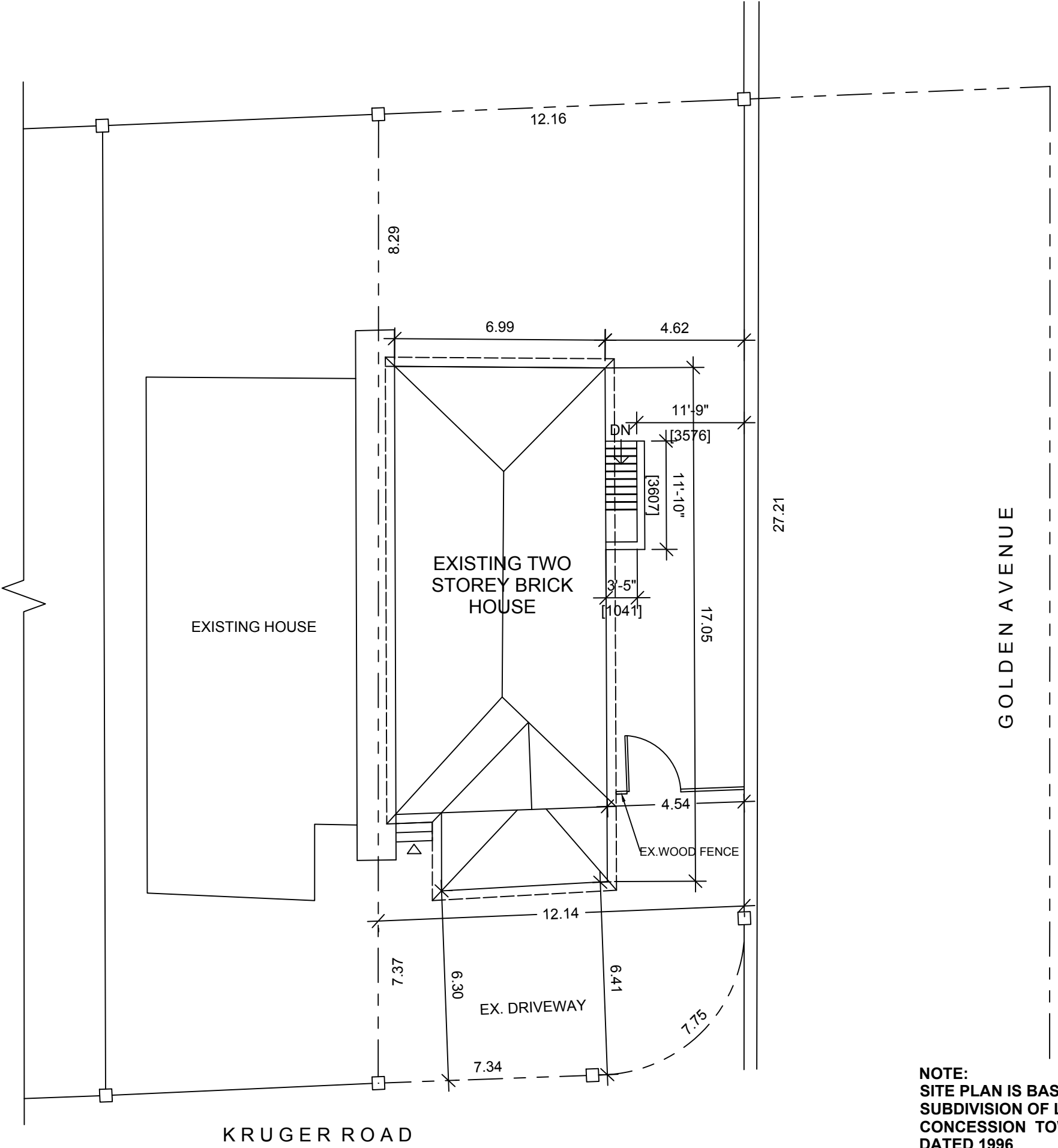
Anton Kikas Limited
Consulting Engineers
Ontario Land Surveyors - Planners
168 Bridgeland Avenue, Toronto M6A 1Z4 Tel. 787-0303

DRAWN BY: V.J.

CHECKED BY: T.M. / A.K.

JOB Nº

96-19-20



A0.1 Existing Site Plan
1 : 150

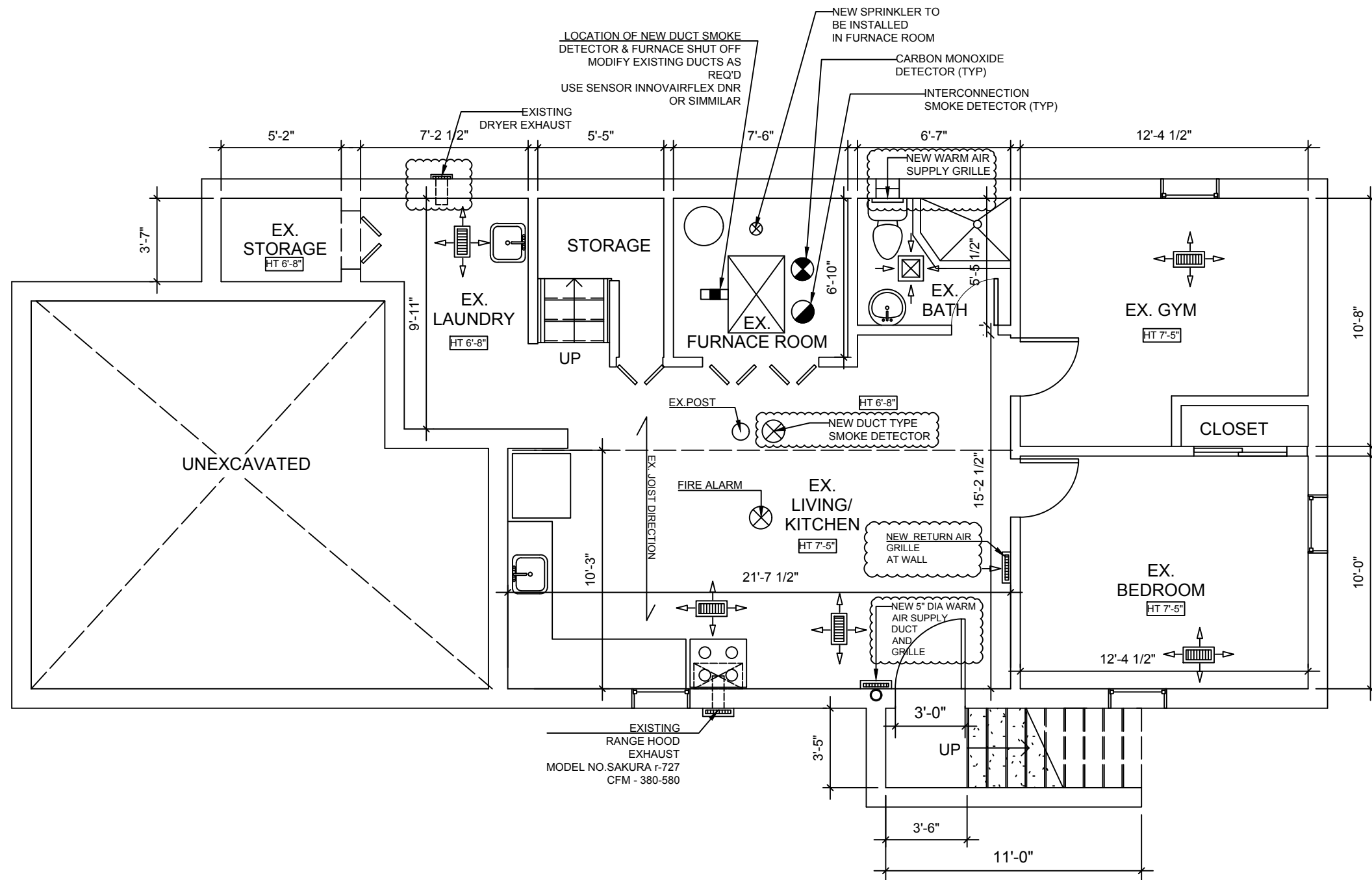
NOTE:
SITE PLAN IS BASED ON THE PLAN
SUBDIVISION OF LOT 3 AND 4
CONCESSION TOWN OF MARKHAM
DATED 1996



AcmEng Engineering Consultants Inc.
ADDRESS: SUITE NO. 203-211 CONSUMERS RD.
NORTH YORK, ONTARIO, M2J 4G8
TEL: 647 889-4768
EMAIL: acmeng.design@gmail.com
WEB: www.Acmeng.ca

6.	ACMENG	20-11-2019	ISSUE FOR PERMIT	1A
5.	ACMENG	28-10-2019	ISSUE FOR PERMIT	1A
4.	ACMENG	30-09-2019	ISSUE FOR PERMIT	1A
3.	ACMENG	12-09-2019	ISSUE FOR PERMIT	1A
2.	ACMENG	28-08-2019	ISSUE FOR PERMIT	1A
1.	ACMENG	28-08-2019	CLIENT REVIEW	1A
NO.	BY	DATE	REVISIONS	CHECKED

00-00-2018			
PROJECT DWG. NO.			
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: 06/04/19		



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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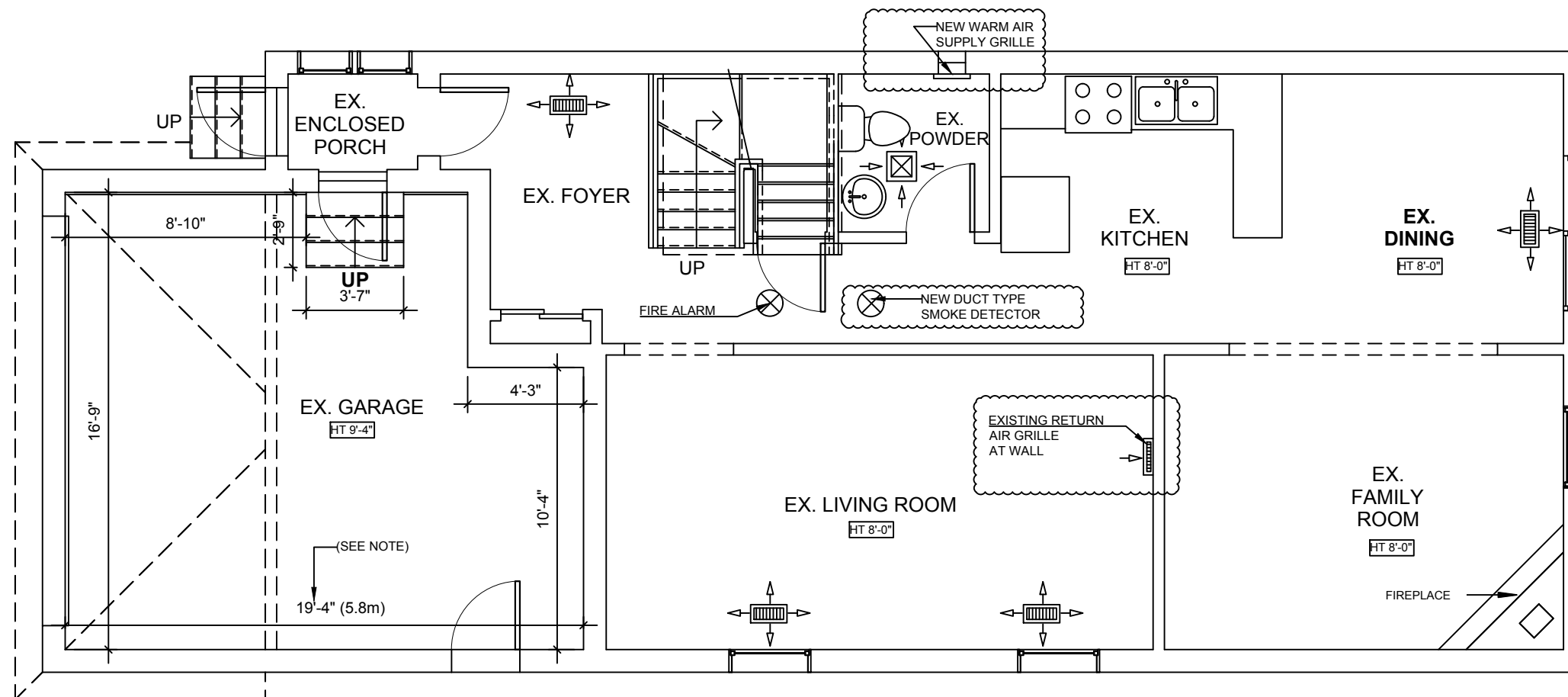
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4.	ACMENG	30-09-2019	ISSUE FOR PERMIT	1A
3.	ACMENG	12-09-2019	ISSUE FOR PERMIT	1A
2.	ACMENG	26-08-2019	ISSUE FOR PERMIT	1A
1.	ACMENG	26-08-2019	CLIENT REVIEW	1A
NO.	BY	DATE	REVISIONS	CHECKED



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.
DRAWN BY:	CHECKED BY: MP	FILE NO.
DESIGNED BY:	CHECKED BY: MP	
SCALE: AS NOTED	DATE: 06/04/19	SHEET NO.
		A1.4

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



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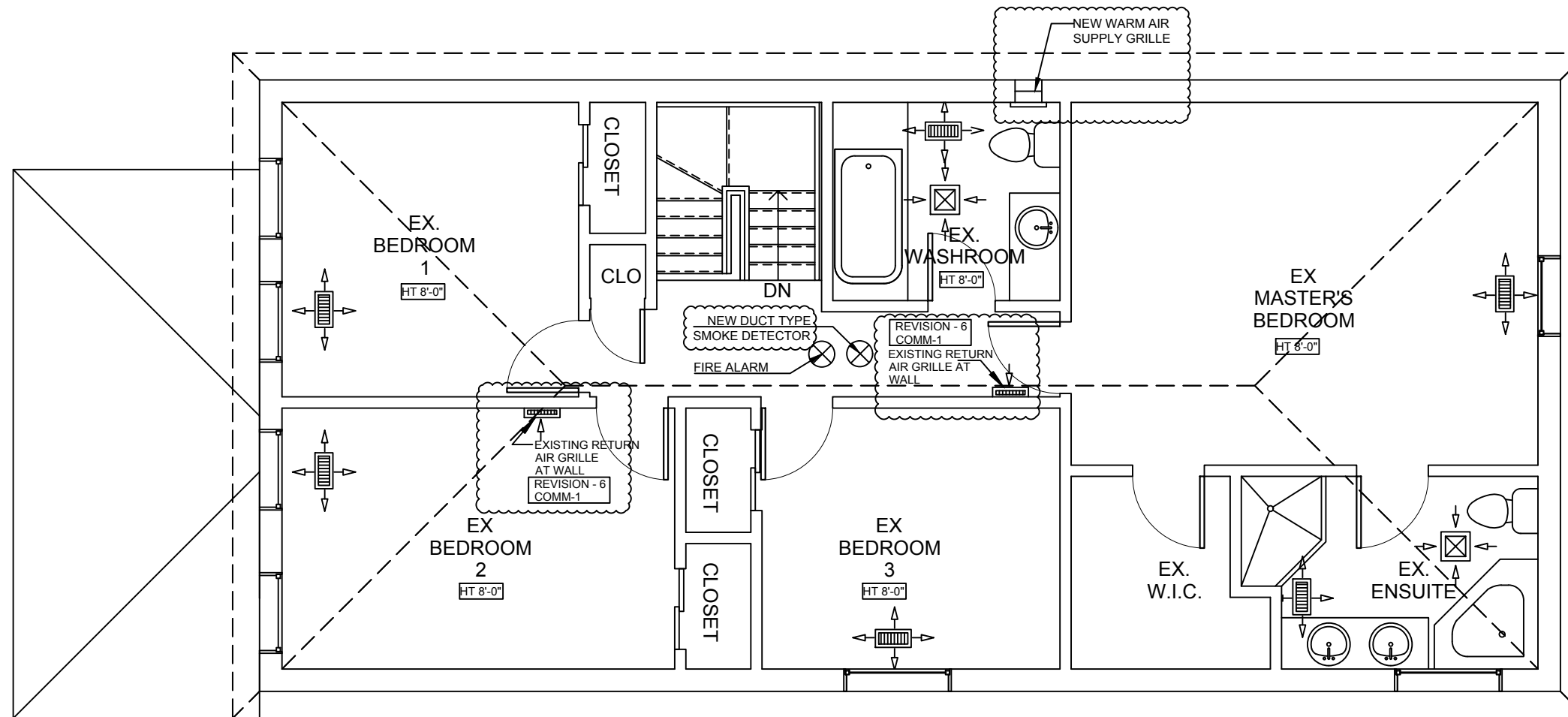
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7.	ACMENG	30-12-2019	CLIENT REVIEW	LA
6.	ACMENG	20-11-2019	CLIENT REVIEW	LA
5.	ACMENG	28-10-2019	CLIENT REVIEW	LA
4.	ACMENG	30-09-2019	ISSUE FOR PERMIT	LA
3.	ACMENG	12-09-2019	ISSUE FOR PERMIT	LA
2.	ACMENG	28-08-2019	ISSUE FOR PERMIT	LA
1.	ACMENG	26-08-2019	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.
DRAWN BY:	CHECKED BY: MP	FILE NO.
DESIGNED BY:	CHECKED BY: MP	SHEET NO. A1.5
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)



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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5.	ACMENG	20-10-2019	CLIENT REVIEW	1A
4.	ACMENG	30-09-2019	ISSUE FOR PERMIT	1A
3.	ACMENG	12-09-2019	ISSUE FOR PERMIT	1A
2.	ACMENG	26-08-2019	ISSUE FOR PERMIT	1A
1.	ACMENG	26-08-2019	CLIENT REVIEW	1A
NO.	BY	DATE	REVISIONS	CHECKED



00-00-2018

PROJECT DWG. NO.

ADDRESS:

1- KRUGER ROAD, MARKHAM

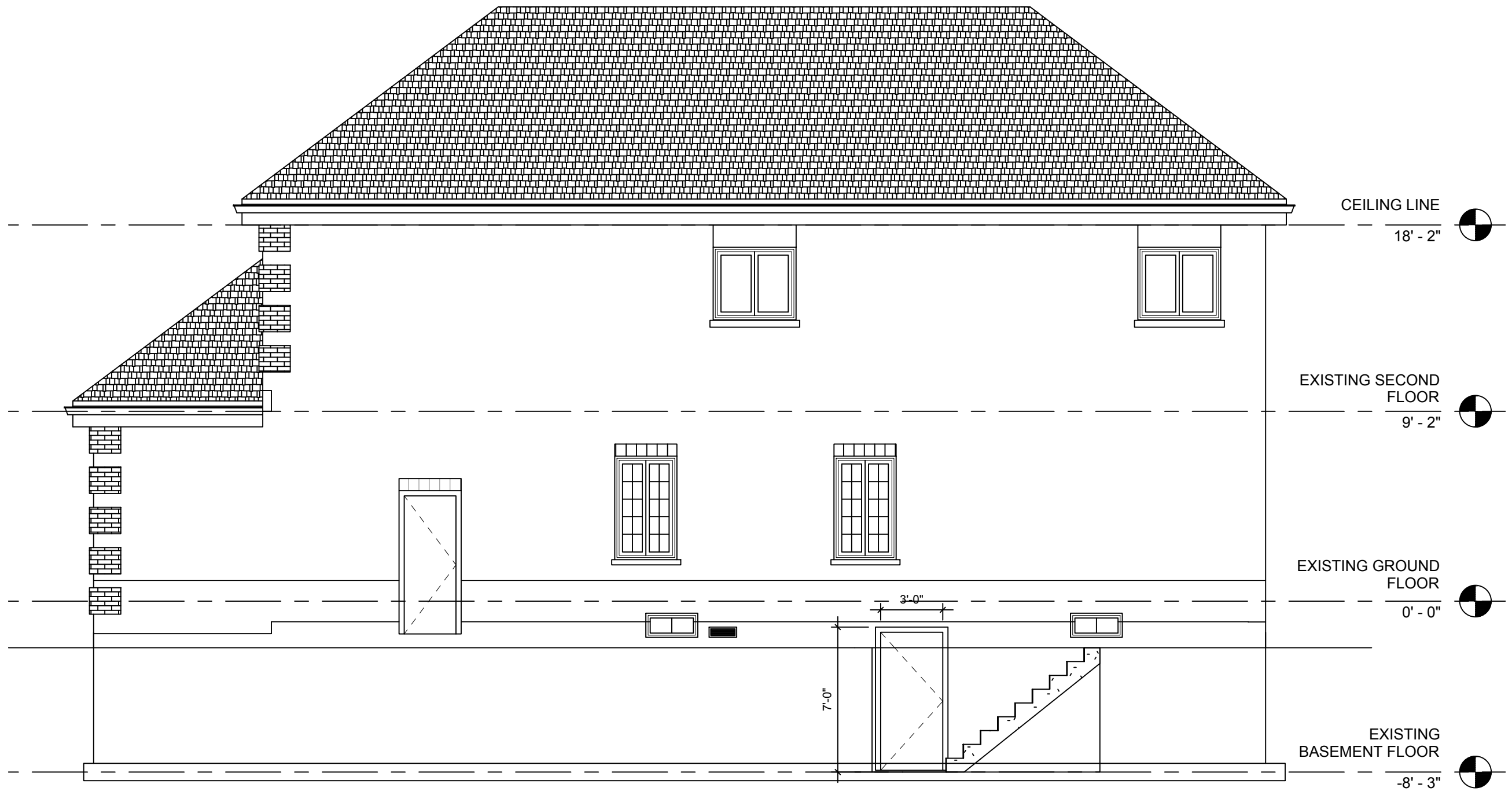
DESCRIPTION:

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: 06/04/19		




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



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NO.	BY	DATE	REVISIONS	CHECKED
6.	ACMENG	20-11-2019	CLIENT REVIEW	LA
5.	ACMENG	20-10-2019	CLIENT REVIEW	LA
4.	ACMENG	30-09-2019	ISSUE FOR PERMIT	LA
3.	ACMENG	12-09-2019	ISSUE FOR PERMIT	LA
2.	ACMENG	26-08-2019	ISSUE FOR PERMIT	LA
1.	ACMENG	26-08-2019	CLIENT REVIEW	LA



00-00-2018
PROJECT DWG. NO.

ADDRESS:
1- KRUGER ROAD, MARKHAM

DESCRIPTION:
Existing Side Elevation

PROJECT:
1- KRUGER ROAD
MARKHAM ON

SURVEYED BY:	DATE:	CONTRACT NO.	SHEET NO.
DRAWN BY:	CHECKED BY: MP	FILE NO.	A2.1
DESIGNED BY:	CHECKED BY: MP		
SCALE: AS NOTED	DATE: 06/04/19		