

Memorandum to the City of Markham Committee of Adjustment

October 25, 2019

File: A/106/19
Address: 36 Lady Fern Drive, Markham
Applicant: Syeda Tahira Asif & Asif Rehman
Agent: Vin Engineering Inc. (Sunil Shah)
Hearing Date: Wednesday November 13, 2019

The following comments are provided on behalf of the East Team:

The applicant is requesting relief from the following requirements of the 'Residential Two' (R2*64) zone in By-law 177-96, as amended, as it relates to proposed basement apartment.

a) **Table A1 & Section 6.5:**

To permit an accessory basement dwelling unit, whereas the By-law permits no more than one single detached dwelling/dwelling unit on a lot, unless otherwise specified.

BACKGROUND

Property Description

The 260.78 m² (2,807 ft²) subject property is located on the north side of Lady Fern Drive, which is south of Russel Jarvis Drive and west of Legacy Drive. The property is located within a residential neighbourhood comprised of two-storey single detached dwellings. There is an existing two-storey single detached dwelling on the property, which according to assessment records was constructed in 1999. The existing dwelling has an attached two-car garage. Vehicle access is provided via a driveway to Lady Fern Drive, which is wide enough to accommodate two parking spaces in accordance with City of Markham Parking Standards By-law 28-97, as amended.

Proposal

The applicant is requesting permission for a secondary suite in the basement of the existing dwelling as shown in Appendix A. The proposed secondary suite would have direct and separate access through an existing door at the east side of the house, which is accessed via stairs and a door to the basement level. No other 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 Ontario 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."

Official Plan and Zoning

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

The 2014 Official Plan designates the subject property “Residential – Low Rise”, which provides for low rise housing forms including single detached dwellings. The definition of a “Secondary Suite” in the 2014 Official Plan is “a second residential unit in a detached house, semi-detached house or row house 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. On May 29th, 2018, Council voted not to permit second suites as of right in any single detached, semi-detached, or townhouse dwelling.

Zoning By-Law 177-96

The subject property is zoned ‘Residential Two’ (R2*64) under By-law 177-96, as amended, which permits a single detached dwelling. Exception 64 provides for zone standards for minimum setbacks for detached private garages and for roofed porches on corner lots, a well as site specific provision related to another property (1 Wood Thrush avenue).

The proposal for a secondary suite relates to an existing two-storey detached dwelling to which the aforementioned exception (*64) is not applicable. Section 6.5 of the By-law only permits one dwelling on a lot, and the applicant has therefore submitted a variance to permit a secondary suite within the dwelling.

Applicant’s Stated Reason(s) for Not Complying with Zoning

According to the information provided by the applicant, the reason for not complying with Zoning is, “*zoning R2-64 [does] not allow the basement apartment*”.

Zoning Preliminary Review (ZPR) Not Undertaken

The owner has confirmed that a Zoning Preliminary Review (ZPR) has not been conducted. It is the owner’s responsibility to ensure that the application has accurately identified all the variances to the Zoning By-law required for the proposed development. If the variance request in this application contains errors, or if the need for additional variances is identified during the Building Permit review process, further variance application(s) may be required to address the non-compliance.

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

Engineering staff confirmed that the existing sanitary sewer system has adequate capacity to accommodate the secondary suite and the 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 Code and Fire Code regulations.

The City of Markham is committed to promoting affordable and shared housing opportunities. Secondary suites help the City increase 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.

PUBLIC INPUT SUMMARY

No written submissions were received as of October 25th, 2019. 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. 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.

PREPARED BY:

Aqsa Malik, Planner, East District

REVIEWED BY:

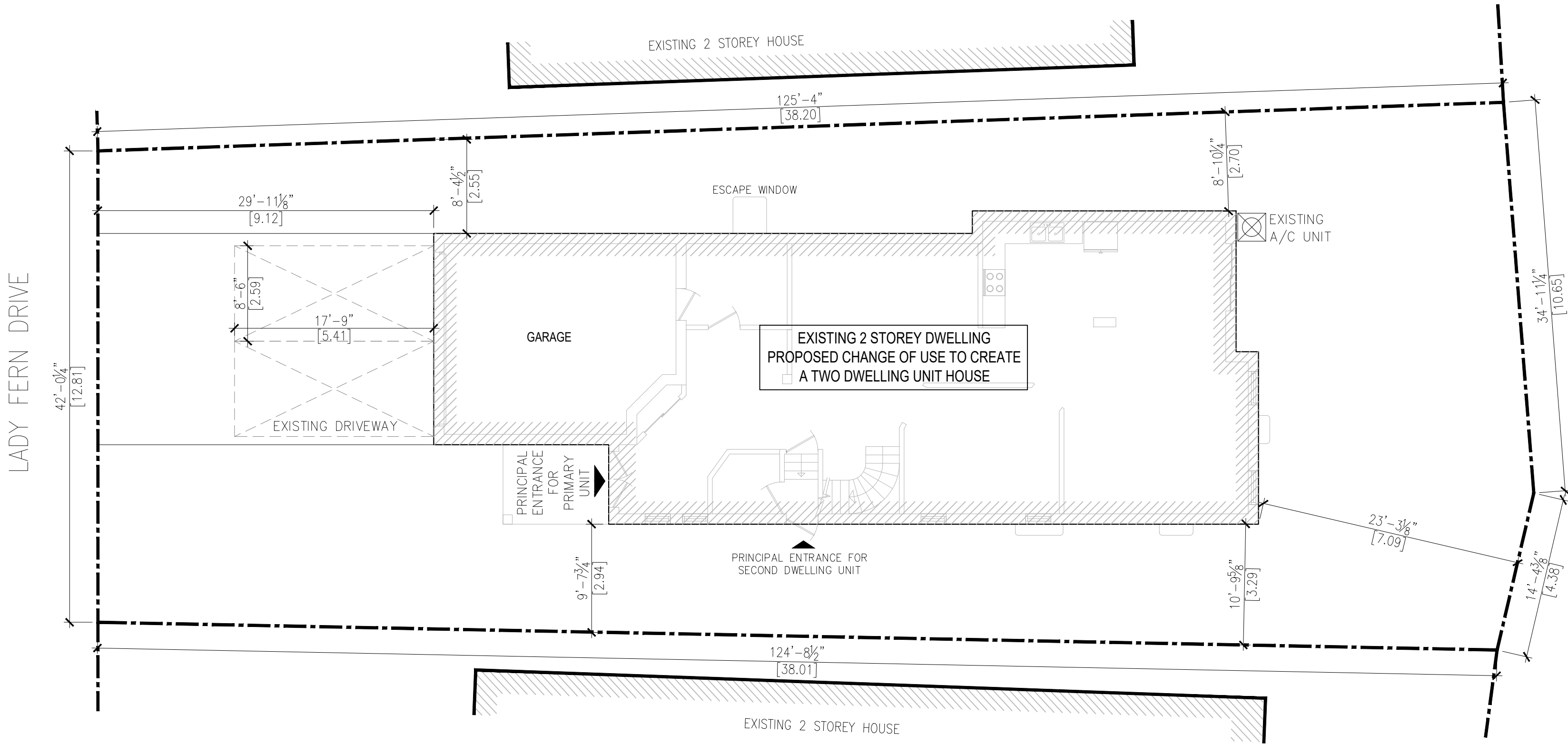
APPENDIX “B”

CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/106/19

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 plan(s) attached as 'Appendix A' to this Staff Report and received by the City of Markham on October 3rd, 2019, 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; and
4. That the Owner register the home as a two-unit house with the City of Markham Fire & Emergency Services Department, and satisfy any and all conditions for registration, to the satisfaction of the Fire Chief.

CONDITIONS PREPARED BY:

Aqsa Malik, Planner, East District



DESIGN CONSULTANTS

SACHIN TRIVEDI
SACHINTRARCH@GMAIL.COM
647.907.4139

ENGINEERING CONSULTANTS

VIN ENGINEERING INC.
SUNILS@VINCCINC.COM
416.270.3933

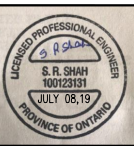
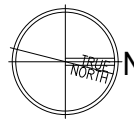
1	JULY 08, 2019	ISSUED FOR BUILDING PERMIT
No	Date	Revisions
DRAWN BY:	ST	DATE: JULY 05, 2019
CHECKED BY:	SS	SCALE: 3/16": 1'-0"

PROJECT:

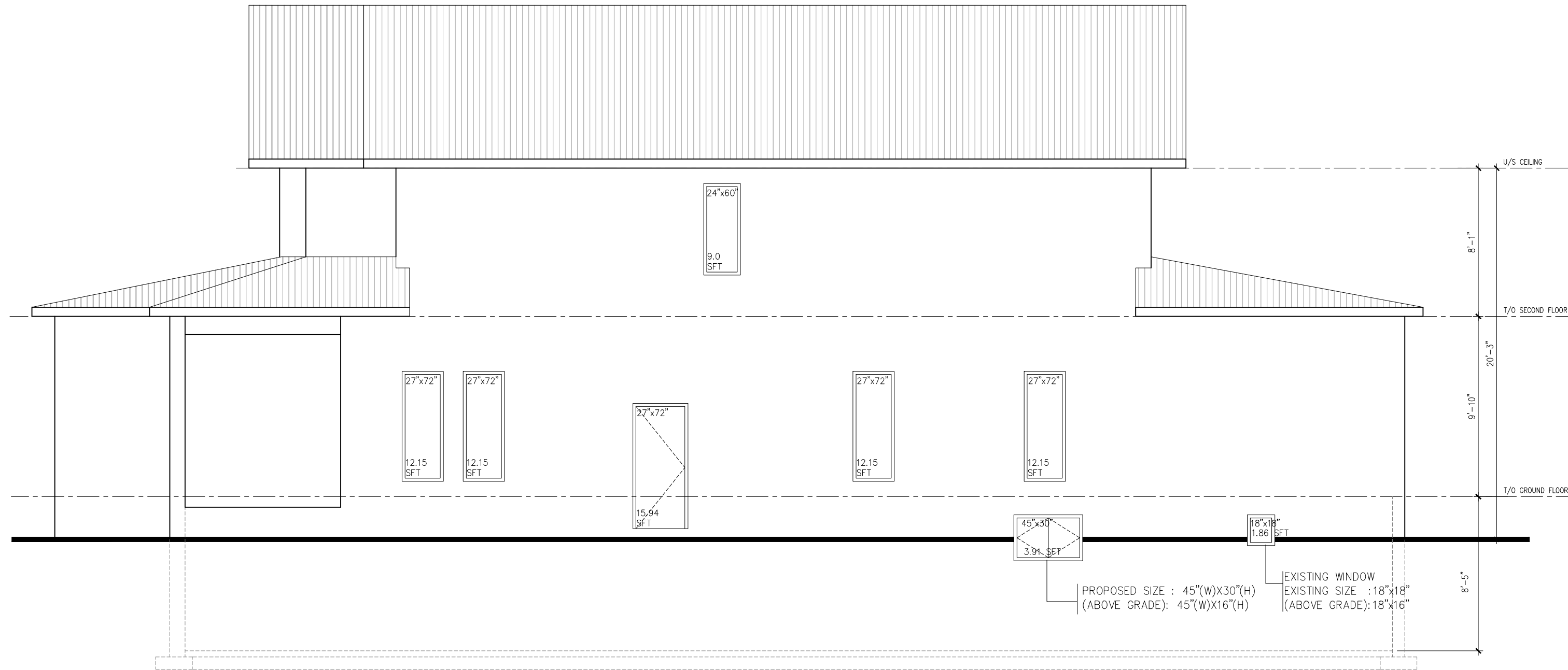
PROPOSED BASEMENT APARTMENT
36 LADY FERN DR, MARKHAM, ON L3S 4C2

DRAWING TITLE :

SITE PLAN

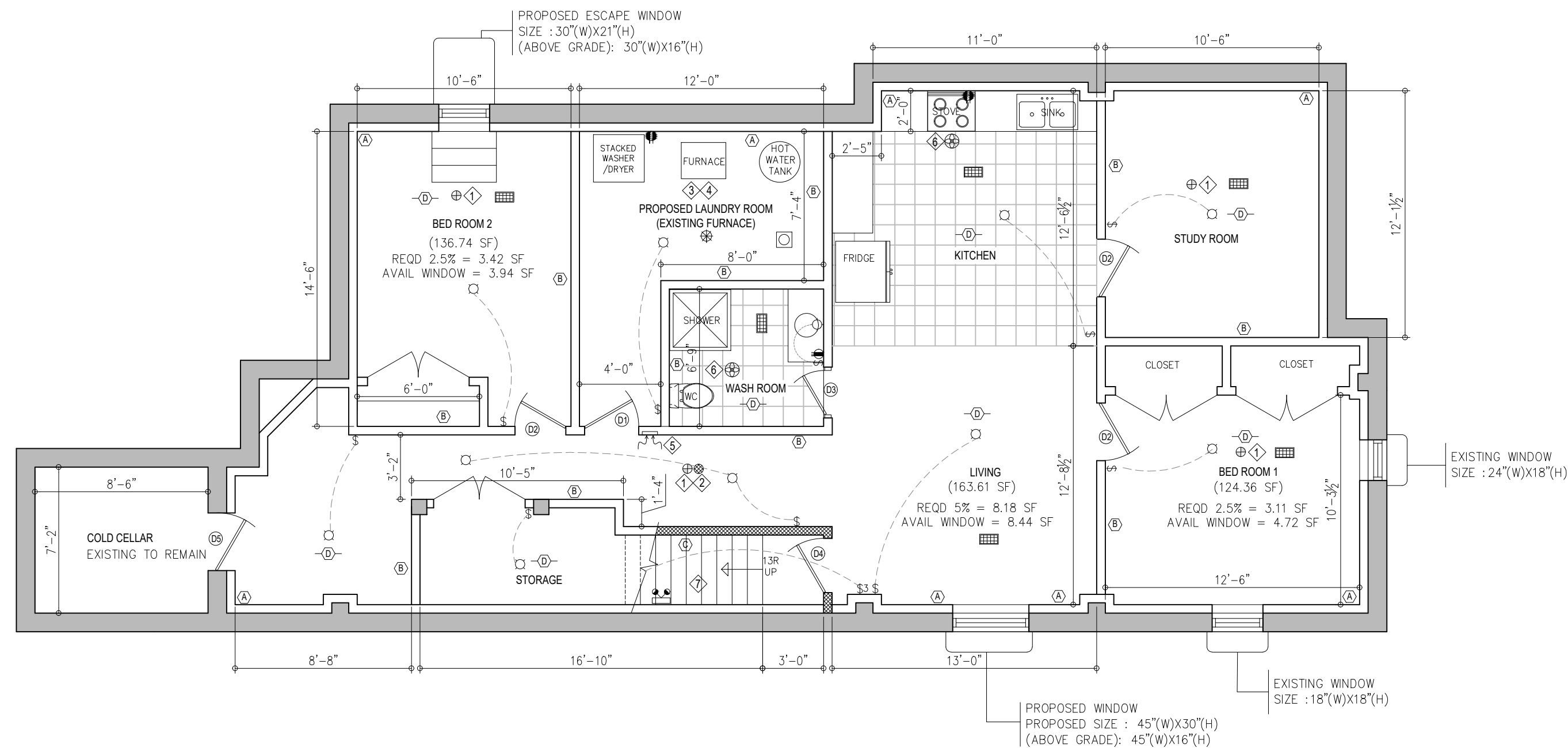


A 02

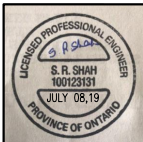


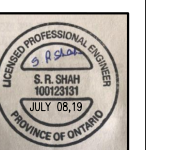
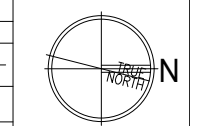
EXPOSING BLDG FACE AREA : 1038.61 SFT (96.49 m²)
OPENING AREA : 63.9 SFT (5.94 m²) [BASEMENT (6.30 SFT) + FIRST FLOOR (48.60 SFT) + SECOND FLOOR (9.00 SFT)]
: 6.15% OF TOTAL EXPOSING BLDG FACE AREA

SIDE ELEVATION

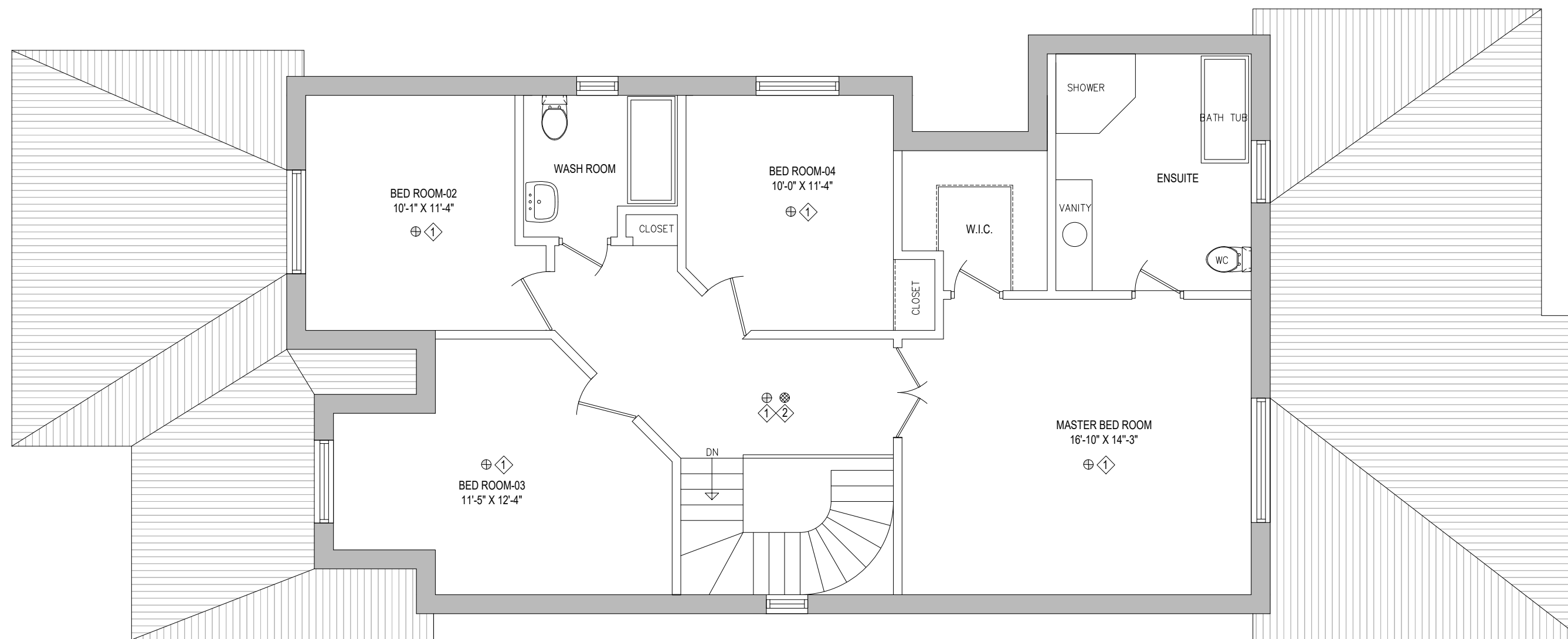


BASEMENT FLOOR PLAN

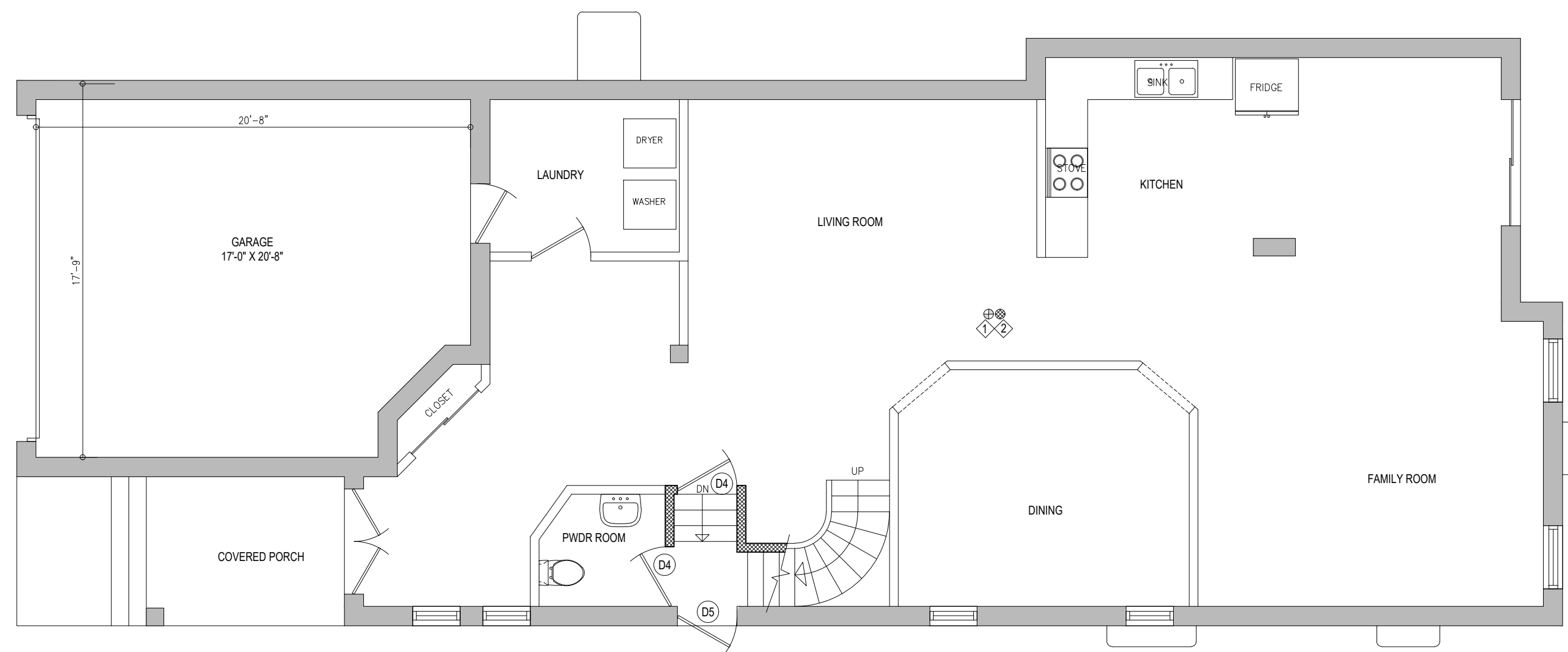
DESIGN CONSULTANTS		ENGINEERING CONSULTANTS	
SACHIN TRIVEDI SACHINTRARCH@GMAIL.COM 647.907.4139		VIN ENGINEERING INC. SUNILS@VINGCNC.COM 416.270.3933	
1 JULY 08, 2019		ISSUED FOR BUILDING PERMIT	
No Date		Revisions	
DRAWN BY: ST		DATE: JULY 05, 2019	
CHECKED BY: SS		SCALE: 3/16": 1'-0"	
PROJECT:			
PROPOSED BASEMENT APARTMENT 36 LADY FERN DR, MARKHAM, ON L3S 4C2			
DRAWING TITLE :			
GROUND FLOOR PLAN & SIDE ELEVATION		A 03	



A 03



SECOND FLOOR PLAN



GROUND FLOOR PLAN

DESIGN CONSULTANTS		ENGINEERING CONSULTANTS	
SACHIN TRIVEDI SACHINTRIVEDI@GMAIL.COM 647.907.4139		VIN ENGINEERING INC. SUNILS@VINCCINC.COM 416.270.3933	
1 JULY 08, 2019		ISSUED FOR BUILDING PERMIT	
No	Date	Revisions	
DRAWN BY: ST		DATE: JULY 05, 2019	
CHECKED BY: SS		SCALE: 3/16" = 1'-0"	
PROJECT:			
PROPOSED BASEMENT APARTMENT 36 LADY FERN DR, MARKHAM, ON L3S 4C2			
DRAWING TITLE :			
GROUND FLOOR PLAN & SECOND FLOOR PLAN			
		<div style="font-size: 2em; font-weight: bold;">A 04</div>	