

# Memorandum to the City of Markham Committee of Adjustment

June 29, 2022

**File:** A/043/21  
**Address:** 40 Timbers Circle, Markham  
**Applicant:** Vipul & Madhavi Upadhyay  
**Agent:** Jay Upadhyay  
**Hearing Date:** Wednesday July 6, 2022

The following comments are provided on behalf of the Central Team.

The applicant is requesting relief from the following “First Density – Street Townhouse Residential (RST1)” zone requirements under By-law 90-81, as amended, to permit:

**a) Section 6.3.1:**

a Second Dwelling Unit, whereas the By-law does not permit Second Dwelling Units in Street Townhouse Residential (RST1) Zones;

**b) Section 5.2.6:**

a door facing the interior side lot line to be setback 0.61 m from the interior side lot line, whereas the By-law requires a minimum setback of 1.20 m; and

**c) Parking By-law 28-97, Section 3.0:**

to permit a minimum of 2 parking spaces, whereas the By-law requires a minimum of 3 parking spaces;

as it relates to an existing basement apartment.

## BACKGROUND

### Property Description

The approximately 224.11 m<sup>2</sup> (2,412.3 ft<sup>2</sup>) subject property is located on the north side of Timbers Circle, west of Townley Avenue and north of Denison Street (see Appendix “A” – Aerial Photo). The property is located within an established residential neighbourhood comprised of two-storey dwellings.

A townhouse dwelling exists on the subject property, which according to assessment records was constructed in 1986. This dwelling visually appears to be detached; however, it is linked underground to adjacent dwellings at the foundation wall, and is therefore considered a townhouse dwelling by definition in the Zoning By-law.

### Proposal

The Applicant is requesting permission to legalize a secondary suite in the basement of the existing townhouse dwelling (see Appendix “B” – Plans). The secondary suite has direct and separate access provided by an existing door on the west side of the dwelling, which is setback approximately 0.61 m (2.0 ft) from the interior side lot line. The door opens internally to the building.

### **Zoning Preliminary Review (ZPR) Undertaken**

The Applicant completed a Zoning Preliminary Review (ZPR) on March 15, 2021 to confirm the initial variances required for the proposed development, which had identified the need for variances related to a reduction of soft landscaping and increased driveway width. The Applicant submitted revised drawings on March 6, 2022 eliminating the need for the previously noted landscaping and driveway width variances, and in turn, requested a variance for a reduction in parking.

The Applicant has not conducted a ZPR for the revised drawings or variance request. Consequently, it is the Applicant'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, R.S.O. 1990, c. P.13, as amended*, states that four tests must be met in order for a variance to be granted by the Committee of Adjustment (the "Committee"):

- a) The variance must be minor in nature;
- b) The variance must be desirable, in the opinion of the Committee, for the appropriate development or use of the 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.

### **Variances a) and c): Secondary Dwelling Unit and Parking Space Reduction**

Staff are satisfied that the proposed development meets the criteria under Section 8.13.8 of the Official Plan for the establishment of a secondary suite, and support its approval in accordance with the requirements under Section 16(3) of the *Planning Act, R.S.O. 1990, c. P.13, as amended*. Furthermore, the associated reduction in parking may be considered self-regulating, as the secondary suite could be of interest to an occupant that does not require a parking space. As such, Staff are of the opinion that the parking reduction is minor in nature and appropriately maintains the general intent of the By-law.

### **Variance b): Reduction in Minimum Side Yard Setback to accommodate Side Door Location**

The Applicant is requesting an interior side door setback of 0.61 m (2.0 ft) from the interior easterly side lot line, whereas the By-law requires a minimum setback of 1.20 m (3.94 ft) to accommodate an existing side door entrance. This represents a reduction of 0.59 m (1.94 ft) or 49% from the By-law requirement.

The requested variance relates to Amending By-law 2016-123, which was passed by Council on November 1, 2016. The Amending By-law requires that *"an opening for a door that provides access to the interior of a single detached, semi detached or street townhouse dwelling is not permitted in any portion of a wall facing the interior side lot*

*line that is located less than 1.2 metres from the interior side lot line*". The Amending By-law applies to all dwellings, including street townhouse dwellings, regulated under By-law 90-81. Therefore, the existing location of the door opening does not comply with this By-law requirement.

The intent of the required setback to a door is to ensure that:

- A side door does not swing onto adjacent property; and,
- Those accessing a dwelling will not trespass onto adjacent property.

Side yard setbacks of 0.61 m (2.0 ft) and 0.58 m (1.92 ft) are provided on the east side and west sides of the dwelling respectively. Staff are of the opinion that the existing side yard setbacks are already minimal, and will be further encumbered by a side door. Notwithstanding that the existing door swings internal to the dwelling, Staff are of the opinion that the requested variance does not meet the general intent of the By-law as the existing 0.61 m (2.0 ft) setback does not provide for an adequate width to access the side entrance.

Staff have received comments from the Engineering Department who have expressed concerns related to the location of the side door and associated concrete landing, as it does not permit enough room for a drainage swale.

Staff further note that the Fire Services department have also provided comments indicating that the setback to the side door will potentially hinder and obstruct accessibility of emergency personnel. An adequate secondary means of egress to and from the accessory dwelling is required.

Staff reached out to the Applicant to recommend that the secondary access be relocated to the rear (north side) of the dwelling. However, as the condition is existing, the Applicant intends to maintain the existing side door and to allow future tenants to use the main entrance as the primary means of accessing the secondary dwelling unit.

Should the variance be approved, the Applicant would need to demonstrate compliance with the Ontario Building Code (OBC) to obtain a building permit. Should Committee choose to deny this variance, the Applicant would be required to remove the existing side entrance and provide access to the secondary suite elsewhere on the property, in compliance with the By-law and all other applicable codes.

## **PUBLIC INPUT SUMMARY**

No written submissions were received as of June 29, 2022. 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 to permit a secondary suite and reduced parking meets the four tests

of the *Planning Act*. Staff have no objection to the approval of these variances subject to conditions provided in Appendix "C".

Staff are of the opinion that the requested variance to permit a 0.61 m (2.0 ft) setback for the side entrance does not maintain the intent of the By-law. Should the side entrance variance be denied, the Applicant will be required to provide access to the secondary suite elsewhere on the subject property and in compliance with the By-law and all other applicable codes.

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 "C" for conditions to be attached to any approval of this application.

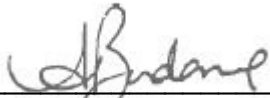
PREPARED BY:



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Melissa Leung, Planner II, Central District

REVIEWED BY:



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Sabrina Bordone, Development Manager, Central District

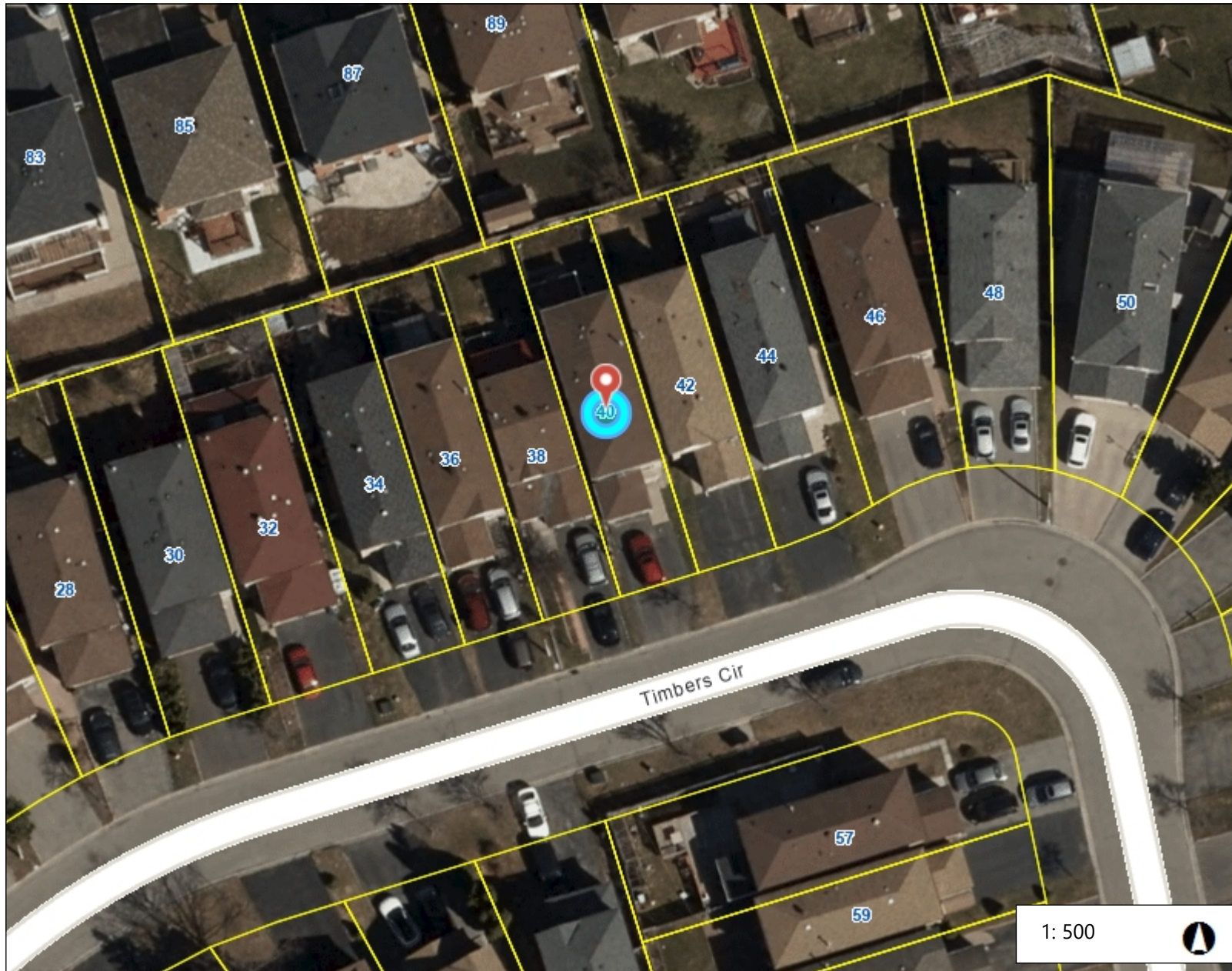
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## **APPENDICES**

Appendix "A" – Aerial Photo

Appendix "B" – Plans

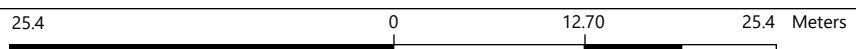
Appendix "C" – Conditions



Legend

- Parcel
- Park Facility
- Parks
  - Under Development
  - <all other values>

1: 500



NAD\_1983\_UTM\_Zone\_17N  
© City of Markham

DISCLAIMER: The information is presented on a best-efforts basis, and should not be relied upon for making financial, survey, legal or other commitments. If you have questions or comments regarding the data displayed on this map, please email [cgis@markham.ca](mailto:cgis@markham.ca) and you will be directed to the appropriate department.

Notes

A/043/21 - 40 Timbers Circle

GENERAL NOTE:  
The consultant is not responsible for the accuracy of the survey. Refer to the engineering drawings before proceeding to the work. Report any discrepancies between architectural/engineering drawings to the consultant. General contractor shall check and verify all dimensions and report all errors and omissions to the consultant. Construction must conform to all applicable codes and requirements of authorities having jurisdiction.

**Appendix B**

File: 21.115675.000.00.MNV

Date: 06/29/22  
MM/DD/YY



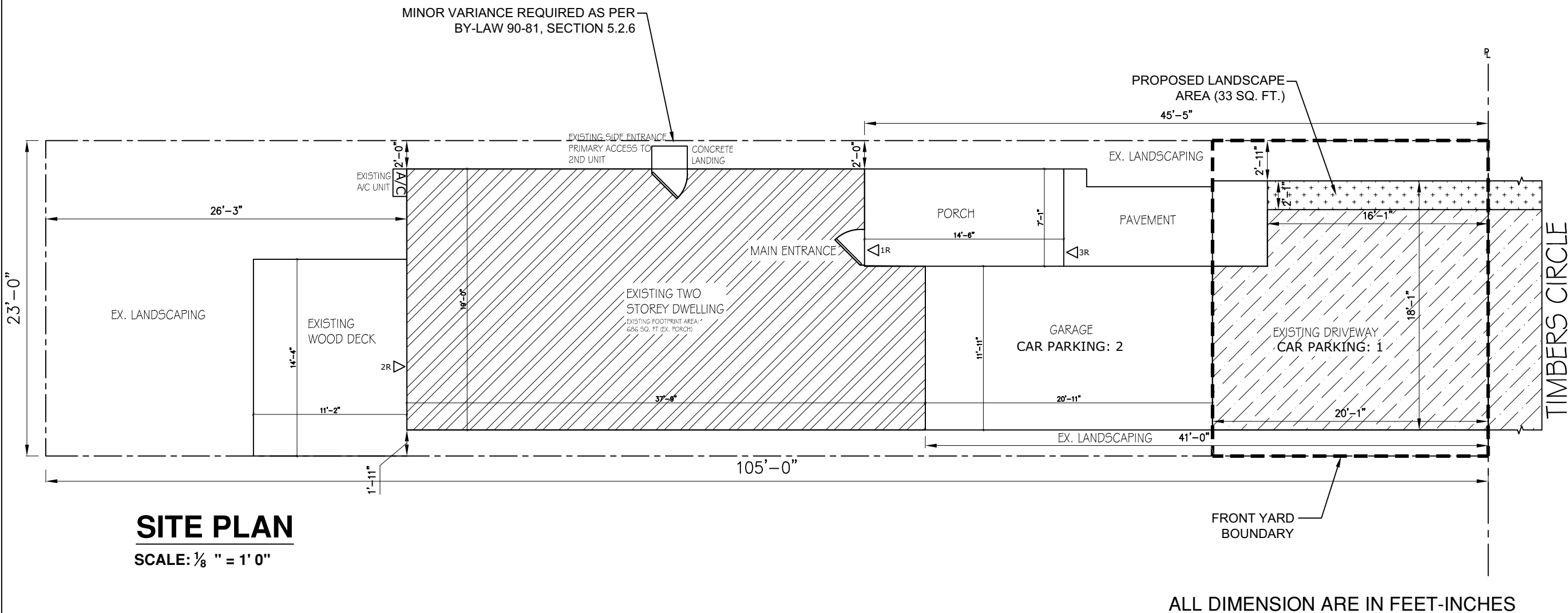
**CURRENT ZONING INFORMATION:**

**Address:** 40 TIMBERS CIR  
**Property Roll Number:** 1936030211264360000  
**Zoning Bylaw** BY-LAW 90-81 as amended  
**Zoning Designation** RST1  
**Official Plan Designation** Residential Low Rise

**PROPOSED:** Accessory Apartment in Basement  
**MINOR VARIANCE REQUIRED AS PER BY-LAW 90-81, SECTION 6.3.1**

**PARKING SPACES**  
AVAILABLE PARKING: 2 NOS  
REQUIRED PARKING: 3 NOS (2 +1)  
MINOR VARIANCE REQUIRED FOR ONE PARKING SPOT

TOTAL FRONT YARD AREA - 461 SQ. FT.  
PAVEMENT - 331 SQ. FT. (72%)  
GRASS - 130 SQ. FT. (28%)  
MINIMUM FRONT YARD LANDSCAPING REQUIRED AS PER BY-LAW 28-97, SECTION 6.1.2.(a) AND 6.2.4.2.(b): 25%



DATE	NO.	DESCRIPTION	BY
MAY 2021	1.	LANDSCAPE AND PARKING REVISION	KS

**REVISIONS:**

PROJECT:  
**CHANGE OF USE BASEMENT APARTMENT**

40 TIMBERS CIRCLE  
MARKHAM, ON

CLIENT:  
**VIPUL & MADHAVI UPADHYAY**  
40 TIMBERS CIRCLE  
MARKHAM, ON

CONSULTANT:  
**EXCEL ENGINEERING INC.**  
3 HAVENCREST DRIVE  
BOLTON, ON L7E 0A8  
CELL: 647-270-5656  
KRISHNA@EXCELENG.CA

DRAWING TITLE:  
**SITE PLAN**

DESIGN:	SCALE:	DRAWING NO:
KS	AS SHOWN	A 1.0
DRAWN:	DATE:	
DBP	OCT 2020	
CHECKED:	PROJECT NO	20106
KS	20106	

NOTE: EVERYTHING SHOWN ON THIS DRAWING IS EXISTING EXCEPT NOTED OTHERWISE

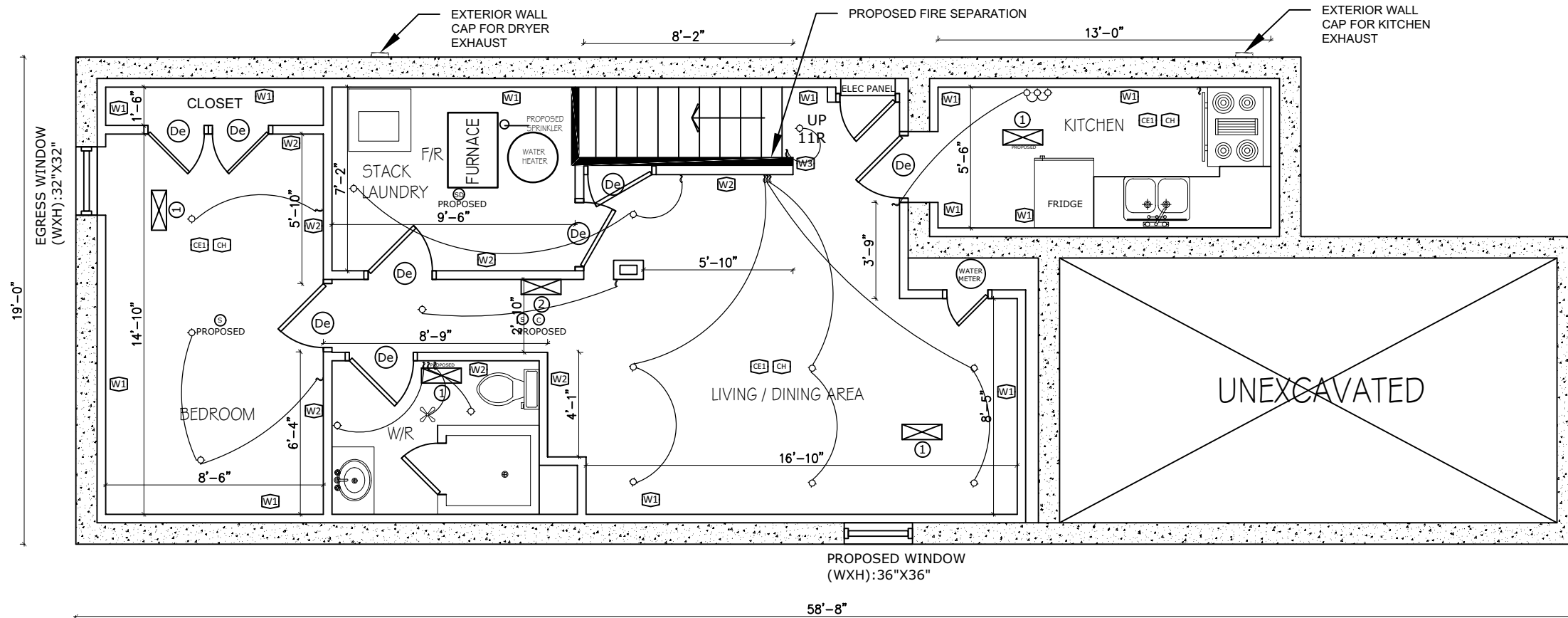


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**Appendix B**

File: 21.115675.000.00.MNV

Date: 06/29/22



DATE:	NO.	DESCRIPTION	BY	XX

REVISIONS:

PROJECT:  
**CHANGE OF USE  
BASEMENT APARTMENT**

40 TIMBERS CIRCLE  
MARKHAM, ON

CLIENT:  
**VIPUL & MADHAVI UPADHYAY**  
40 TIMBERS CIRCLE  
MARKHAM, ON

CONSULTANT:  
**EXCEL ENGINEERING INC.**  
21 GARDENBROOKE TRAIL  
BRAMPTON, ON L6P 3K9  
CELL: 647-270-5656  
KRISHNA@EXCELENG.CA

DRAWING TITLE:  
**BASEMENT PLAN**

DESIGN: KS	SCALE: AS SHOWN	DRAWING NO: <b>A 3.0</b>
DRAWN: DBP	DATE: OCT 2020	
CHECKED: KS	PROJECT NO: 20106	

- NOTE:
- REFER TO DWG A2.0 FOR GENERAL NOTES AS WELL AS WALL, CEILING AND DOOR REFERENCES
  - REFER TO DWG A2.0 FOR HVAC & ELECTRICAL DETAILS

**PROPOSED BASEMENT PLAN**

SCALE: 3/16" = 1' 0"

**One-bedroom Secondary Dwelling - Room and Window Requirements**

Dwelling Area	OBC Size Requirement	Provided (sq. ft)	Window Requirement	Min. area (sq. ft)	Provided (sq. ft)
Bedroom	95 ft <sup>2</sup> with closet	142	2.50%	2.5	7.1
Kitchen	40 ft <sup>2</sup>	71	none		
Living and Dining	153 ft <sup>2</sup>	161	5%	8.05	9.0

ALL DIMENSION ARE IN FEET-INCHES

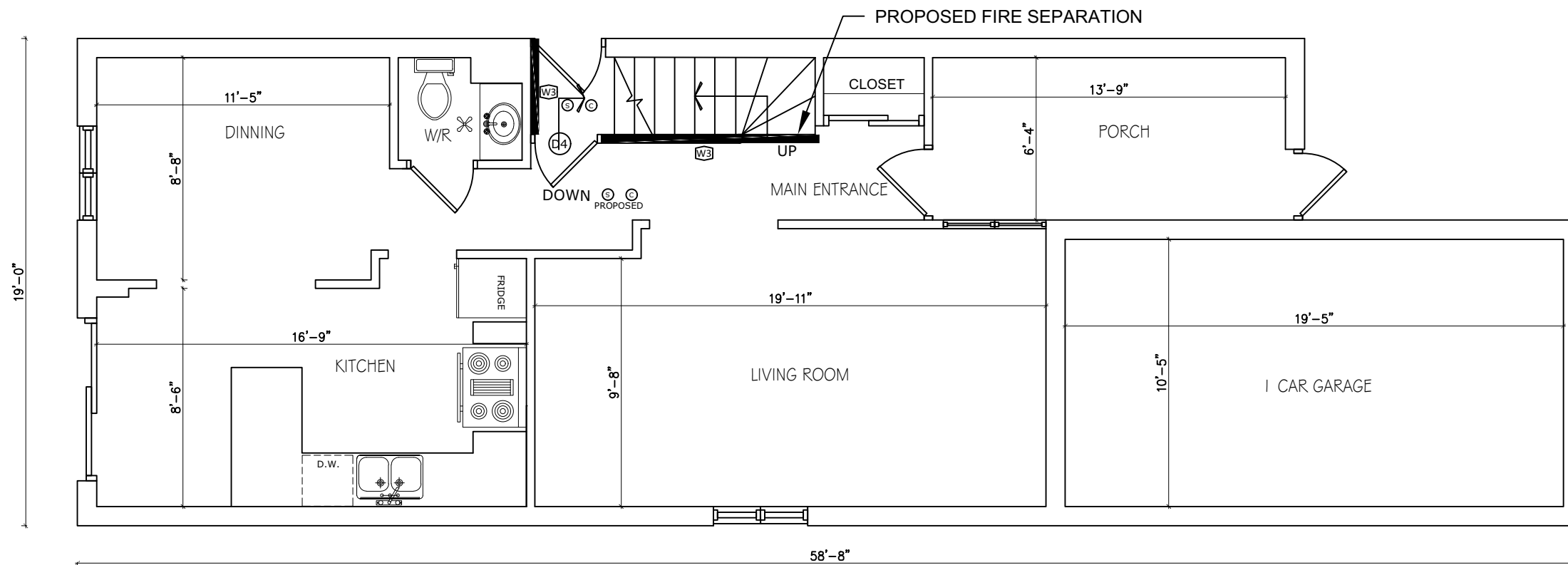


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- NOTE:
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  - REFER TO DWG A2.0 FOR HVAC & ELECTRICAL DETAILS

# FIRST FLOOR PLAN

SCALE: 3/16" = 1' 0"

ALL DIMENSION ARE IN FEET-INCHES

DATE	NO.	DESCRIPTION	BY
			XX

REVISIONS:

PROJECT:  
**CHANGE OF USE  
 BASEMENT APARTMENT**

40 TIMBERS CIRCLE  
 MARKHAM, ON

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21 GARDENBROOKE TRAIL  
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 CELL: 647-270-5656  
 KRISHNA@EXCELENG.CA

DRAWING TITLE:  
**FIRST FLOOR PLAN**

DESIGN: KS	SCALE: AS SHOWN	DRAWING NO: <b>A 4.0</b>
DRAWN: DBP	DATE: OCT 2020	
CHECKED: KS	PROJECT NO: 20106	



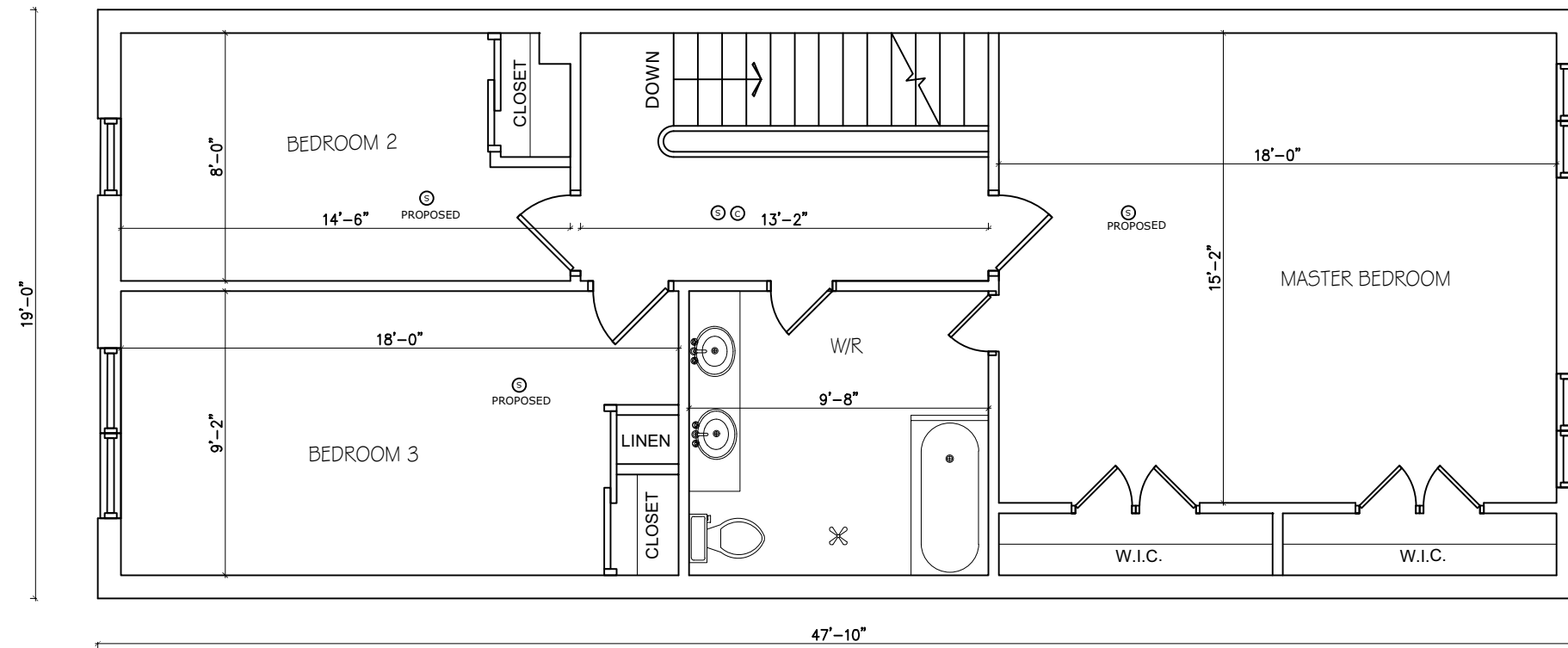


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Date: 06/29/22  
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- NOTE:
- REFER TO DWG A2.0 FOR GENERAL NOTES AS WELL AS WALL, CEILING AND DOOR REFERENCES
  - REFER TO DWG A2.0 FOR HVAC & ELECTRICAL DETAILS

## SECOND FLOOR PLAN

SCALE: 3/16" = 1' 0"

ALL DIMENSION ARE IN FEET-INCHES

DATE	NO.	DESCRIPTION	BY
			XX

REVISIONS:

PROJECT:  
**CHANGE OF USE  
 BASEMENT APARTMENT**

40 TIMBERS CIRCLE  
 MARKHAM, ON

CLIENT:  
**VIPUL & MADHAVI UPADHYAY**

40 TIMBERS CIRCLE  
 MARKHAM, ON

CONSULTANT:  
**EXCEL ENGINEERING INC.**

21 GARDENBROOKE TRAIL  
 BRAMPTON, ON L6P 3K9  
 CELL: 647-270-5656  
 KRISHNA@EXCELENG.CA

DRAWING TITLE: <b>SECOND FLOOR PLAN</b>		
DESIGN: KS	SCALE: AS SHOWN	DRAWING NO:  <b>A 5.0</b>
DRAWN: DBP	DATE: OCT 2020	
CHECKED: KS	PROJECT NO: 20106	

NOTE: EVERYTHING SHOWN ON THIS DRAWING IS EXISTING EXCEPT NOTED OTHERWISE

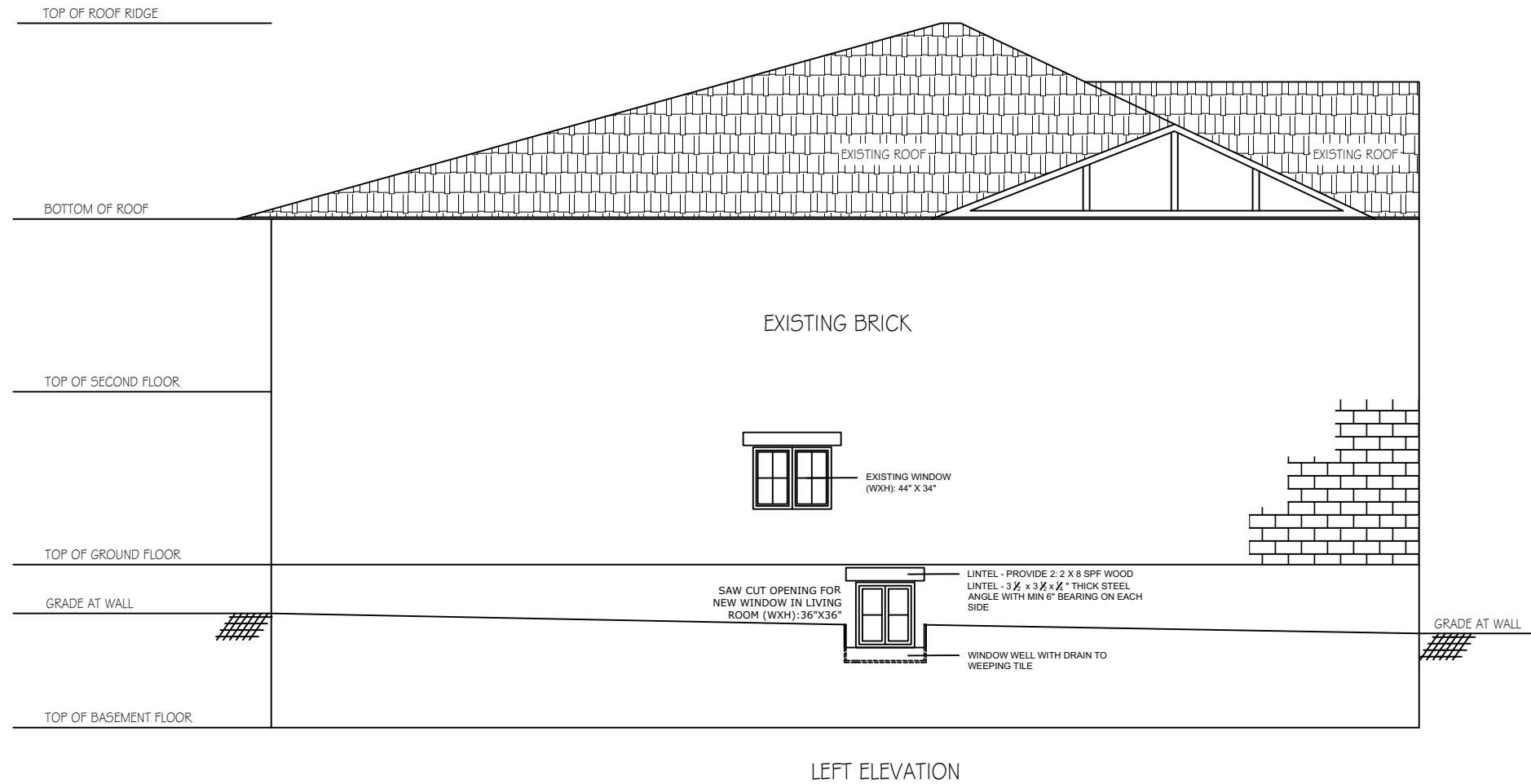


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MM/DD/YY



**LEFT ELEVATION**

SCALE: 1/8" = 1' 0"

ALL DIMENSION ARE IN FEET-INCHES

DATE	NO.	DESCRIPTION	BY
			XX

REVISIONS:

PROJECT:  
**CHANGE OF USE  
BASEMENT APARTMENT**

40 TIMBERS CIRCLE  
MARKHAM, ON

CLIENT:  
**VIPUL & MADHAVI UPADHYAY**

40 TIMBERS CIRCLE  
MARKHAM, ON

CONSULTANT:  
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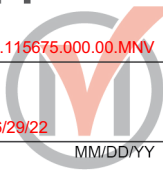
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**LEFT ELEVATION**

DESIGN: KS	SCALE: AS SHOWN	DRAWING NO: <b>A 6.0</b>
DRAWN: DBP	DATE: OCT 2020	
CHECKED: KS	PROJECT NO: 20106	

**Appendix C**

File: 21.116675.000.00.MNV

Date: 06/29/22  
MM/DD/YY



**APPENDIX "C"**  
**CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/043/21**

1. The variances apply only to the proposed development as long as it remains.
2. That an outwards swinging door located along the east side of the dwelling not be permitted.
3. That the variances apply only to the subject development, in substantial conformity with the batch stamped plans attached as Appendix "B" to this Staff Report, 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.
4. 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:



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Melissa Leung, Planner II, Central District