

Memorandum to the City of Markham Committee of Adjustment

April 29, 2022

File: A/001/22
Address: 82 Morgan Avenue – Markham, ON (Thornhill)
Applicant: Neil Alfred
Hearing Date: May 4, 2022

The following comments are provided on behalf of the West District team. The applicant is requesting relief from the following “Fourth Density Single Family Residential – (R4)” zone requirements under By-law 2237, as amended, as they relate to a proposed two-storey detached dwelling. The variances requested are to permit:

- a) **Infill By-law 101-90, Section 1.2 (i):**
a maximum height of 9.14 m (29.99 ft), whereas the By-law permits a maximum height of 8.60 m (28.22 ft);
- b) **Infill By-law 101-90, Section 1.2 (vii):**
a maximum floor area ratio of 51.66%, whereas the By-law permits a maximum floor area ratio of 50.0%; and
- c) **Section 6.1:**
a minimum front yard setback of 6.70 m (21.98 ft), whereas the By-law requires a minimum front yard setback of 8.23 m (27.0 ft).

NOTE: The applicant submitted revised drawings and a new application form on April 29, 2022, requesting the above noted variances. The Notice of Hearing (see Appendix “C”) outlines three variances originally requested. Staff recommend that the applicant confirm the variances with the Committee of Adjustment (the “Committee”) to ensure that the correct variances, if approved, are issued based on the most recent submission.

PROPERTY DESCRIPTION

The 603.87 m² (6,500.0 ft²) subject property is located on the north side of Morgan Avenue, east of Yonge Street, south of Elgin Street, and west of Henderson Avenue. An existing one storey detached dwelling and garage currently exist on the property. According to assessment records, both buildings were constructed circa 1952.

The surrounding area contains a mix of one and two-storey detached dwellings, and is undergoing a gradual transition with larger two-storey detached dwellings being developed as infill developments. The majority of the property is within the Toronto and Region Conservation Authority’s (TRCA) Regulated Area, as it is partially within the flood plain associated with a tributary of the Don River.

PROPOSAL

The applicant is proposing to demolish the existing detached dwelling and garage, and construct a new two-storey detached dwelling with a first floor area of approximately 152.96 m² (1,646.45 ft²) and, a second floor area of 152.96 m² (1,646.45 ft²), for a total gross floor area of 305.92 m² (3,292.90 ft²). The applicant proposes a height of 9.14 m (29.99 ft), and a front yard setback of approximately 6.70 m (21.98 ft).

OFFICIAL PLAN AND ZONING

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

The subject property is designated “Residential Low Rise”, which provides for low rise housing forms including single detached dwellings. Infill development is required to meet the general intent of the Official Plan with respect to height, massing, and setbacks to ensure that the development is appropriate for the site and generally consistent with the zoning requirements for adjacent properties, and properties along the street, while accommodating a diversity of building styles. Regard shall also be had for the retention of existing trees and vegetation, as well as the proposed width of garages and driveways.

Zoning By-Law 2237

The subject property is zoned “Fourth Density Single Family Residential – (R4)” under By-law 2237, as amended, which permits one single detached dwelling per lot. The proposed development does not comply with the By-law requirement with respect to the minimum front yard setback.

Residential Infill Zoning By-law 101-90

The subject property is also subject to the Residential Infill Zoning By-law 101-90. The intent of this By-law is to ensure the built form of new residential construction will maintain the character of existing neighbourhoods. It specifies development standards for building depth, garage projection, garage width, floor area ratio, height, yard setbacks, and number of storeys. The proposed development does not comply with the Infill By-law requirements with respect to maximum height and maximum floor area ratio.

ZONING PRELIMINARY REVIEW (ZPR) NOT UNDERTAKEN

City records indicate that a ZPR has not been completed. Staff advise that it is the owner’s responsibility to ensure that the application has accurately identified all required variances to the Zoning By-law for the proposed development. If the variance request in this application contains errors, or if the need for additional variances are identified at the Building Permit stage, further variance application(s) may be required to address any non-compliances.

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:

- 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 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.

Increase in Maximum Building Height

The applicant is requesting a maximum building height of 9.14 m (29.99 ft), whereas the By-law permits a maximum building height of 8.60 m (28.22 ft).

The By-law calculates building height using the vertical distance of building or structure measured between the level of the crown of the street and highest point of the ridge of a gable, hip, gambrel, or other type of pitched roof. Staff are of the opinion that the requested increase of 0.54 m (1.77 ft) is minor in nature, and have no concerns.

Increase in Maximum Floor Area Ratio

The applicant is requesting a maximum floor area ratio of 51.66%, whereas the By-law permits a maximum floor area ratio of 50.0%. The variance will facilitate the construction of a two-storey detached dwelling with a floor area of 305.96 m² (3,293.33 ft²), whereas the By-law permits a dwelling with a maximum floor area of 296.13 m² (3,187.50 ft²). This is an increase of 9.83 m² (105.81 ft²).

Floor area ratio is a measurement of the interior square footage of the dwelling as a percentage of the net lot area; however, it is not a definitive measure of the mass of the dwelling. With exception to the proposed front yard setback and building height, the building layout meets all other zoning provisions that establish the prescribed building envelope. Staff are of the opinion that the requested variance maintains the general intent and purpose of the By-law, and is representative of the intended scale of residential infill development for the neighbourhood. Staff have no concerns with the requested variance.

Reduction in Front Yard Setback

The applicant initially requested two variances (limited to an increase in building height and floor area ratio), as the dwelling initially complied with the minimum front yard setback requirement. However, TRCA provided comments requiring that the proposed dwelling be appropriately setback from the floodplain in accordance with TRCA's Living City Policies (LCP). On April 25, 2022, the applicant submitted revised drawings, and now requests a minimum front yard setback of 6.70 m (21.98 ft), whereas the By-law requires a minimum front yard setback of 8.23 m (27.0 ft). This is a reduction of 1.53 m (5.02 ft) to the main building wall.

Construction of the existing one-storey dwelling predates the Ontario Municipal Board's approval of By-law 2237, on July 12, 1967. The existing one-storey dwelling is currently setback 3.63 m (11.91 ft) from the front lot line to the enclosed projection, and approximately 5.36 m (17.59 ft) to the front building wall on either side of the enclosed projection.

The alternative siting of the dwelling appropriately addresses TRCA's comments (see summary of TRCA comments below) ensuring that it is located outside of the regulatory floodplain of the Don River contained on site. Given the varied front yard setback pattern along the street, floodplain matters, and in having regard for other provisions of the By-law, staff consider the alternative siting of the dwelling and requested variance to be appropriate for this lot and to meet the four tests for a minor variance application under the *Planning Act*.

TRCA Comments

On April 13, 2022 TRCA provided revised comments based on the most recent drawings submitted, which confirm that the proposed dwelling is located outside of the floodplain. TRCA recommends a 0.3 m (0.98 ft) freeboard above the Regional water surface elevation for floodproofing.

NOTE: Freeboard as defined on the TRCA website means, “a safeguard of separation in either length (linear – a specified distance) or height (vertical – a specified elevation) from the Regulatory Flood Plain or other specified flood level.”

It is noted that the applicant shall continue to work with TRCA through the permit process to ensure all window, door, and vent openings (including those in the basement) are above the Regulatory Floodplain elevation, plus a 0.3 m (0.98 ft) freeboard. These measures will mitigate any potential flooding during a regional storm event, and that the proposed deck is structurally engineered to withstand a regional storm event. In the event of approval, staff recommend that the Committee adopt the associated TRCA condition (see Appendix "A").

CN Rail Comments

As the subject property is within close proximity to the rail corridor, CN Rail has provided comments on this application, requesting a list of mitigation measures be implemented to attenuate the impacts generated by the railway located north of the property. CN Rail also recommends that a warning clause relating to noise and vibration be included in any development agreements, offers to purchase, and agreements of Purchase and Sale or Lease. Accordingly, staff recommend that the associated conditions be adopted by the Committee to ensure that these measures are implemented to the satisfaction of CN Rail prior to the issuance of a building permit.

Tree Protection and Compensation

Staff also recommend that the tree related conditions be adopted by the Committee to ensure that the applicant installs the appropriate tree protection barriers and provides compensation to the City, if necessary. Property owners are required to apply for and obtain a tree permit from the City for any proposed injury to, or removal of any trees that have a diameter at breast height (DBH) of 20.0 cm (7.87 in), or more on the subject property or neighbouring properties. Further mitigation through these processes may also be required to ensure the protection of certain trees is achieved.

PUBLIC INPUT SUMMARY

No written submissions were received as of April 29, 2022. Additional information may be received after the writing of this 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*, and are of the opinion that the requested variances meet the four tests. Staff recommend that the Committee consider public input, and the subsequent conditions of approval in reaching a decision. The onus is ultimately on the applicant to demonstrate how they satisfy the tests of the *Planning Act* required for the granting of minor variances.

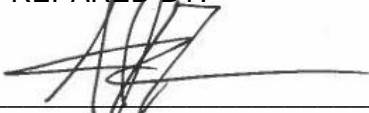
APPENDICES

Appendix "A" – Conditions of Approval

Appendix "B" – Plans

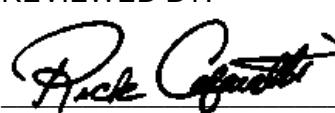
Appendix "C" – Notice of Hearing

PREPARED BY:



Aleks Todorovski, Planner, Zoning and Special Projects

REVIEWED BY:



Rick Cefaratti, MCIP, RPP, Senior Planner II, West District

APPENDIX “A”

CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/001/22

1. The variances apply only to the proposed development for as long as it remains.
2. That the variances apply only to the proposed development, in substantial conformity with the 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.
3. Submission of a Tree Assessment and Preservation Plan, prepared by a qualified arborist in accordance with the City’s Streetscape Manual (2009), as amended, to be reviewed and approved by the Director of Planning and Urban Design, or their designate, and that the Secretary-Treasurer receive written confirmation that this condition has been fulfilled to the satisfaction of the Director of Planning and Urban Design, or their designate.
4. That tree replacements be provided and/or tree replacement fees be paid to the Director of Planning and Urban Design, or their designate, if required, in accordance with the Tree Assessment and Preservation Plan, and that the Secretary-Treasurer receive written confirmation that this condition has been fulfilled to the satisfaction of the Director of Planning and Urban Design, or their designate.
5. That prior to the commencement of construction or demolition, tree protection be erected and maintained around all trees on site, including street trees, in accordance with the City’s Streetscape Manual (2009), as amended, and inspected by the Tree Preservation Technician, or their designate, and that the Secretary-Treasurer receive written confirmation that this condition has been fulfilled to the satisfaction of the Director of Planning and Urban Design, or their designate.
6. That the applicant satisfies the requirements of the TRCA, financial or otherwise, as indicated in their e-mail dated April 13, 2022 to the Secretary-Treasurer, and that the Secretary-Treasurer receive written confirmation that this condition has been fulfilled to the satisfaction of the TRCA.
7. That the applicant satisfies the requirements of CN Rail, as indicated in their comments provided, and that the Secretary-Treasurer, receives written confirmation that this condition has been fulfilled to the satisfaction of CN Rail.
8. That the owner submits a third party noise and vibration study prepared by a professional engineer licensed in the Province of Ontario, verifying that the proposed design submitted in the building permit application package is in compliance with the acoustical and structural mitigation measures recommended by CN Rail to the satisfaction of the Chief Building Official (CB), or their designate as follows: forced air ventilation systems with central air conditioning; the exterior wall siding of buildings closest to the railway line to be brick or masonry equivalent for the exposed facades; acoustically upgraded windows meeting the minimum requirements of the Ontario Building Code, and providing a maximum 35 dBA indoor limit for bedrooms and 40 dBA for living rooms, and that the Secretary-

Treasurer receive written confirmation that this condition has been fulfilled to the satisfaction of the CBO, or their designate.

CONDITIONS PREPARED BY:

A handwritten signature in black ink, appearing to be '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/001/22

Appendix B

File: 22.108878.000.00.MNV

Date: 04/29/22
MM/DD/YY

NOTES:

These drawings, dimensions and specifications must be checked and verified by the building contractor for discrepancies and report to MANDEEP KAUR before commencing any further work.

MANDEEP KAUR assumes no responsibility or liability for errors or omissions not reported by the building contractor or his subcontractor.

MANDEEP KAUR assumes no responsibility for the building contractor or his subcontractor for their to carry out the work according to these plans, specifications and related documents.

Construction must comply with the latest standards of the OBC, CBC and the local municipal regulations.

PROJECT:

Proposed Dwelling Unit

PROJECT ADDRESS:

82 MORGAN AVENUE,
MARKHAM, ON

OWNER/CLIENT:

MR. NEIL ALFRED

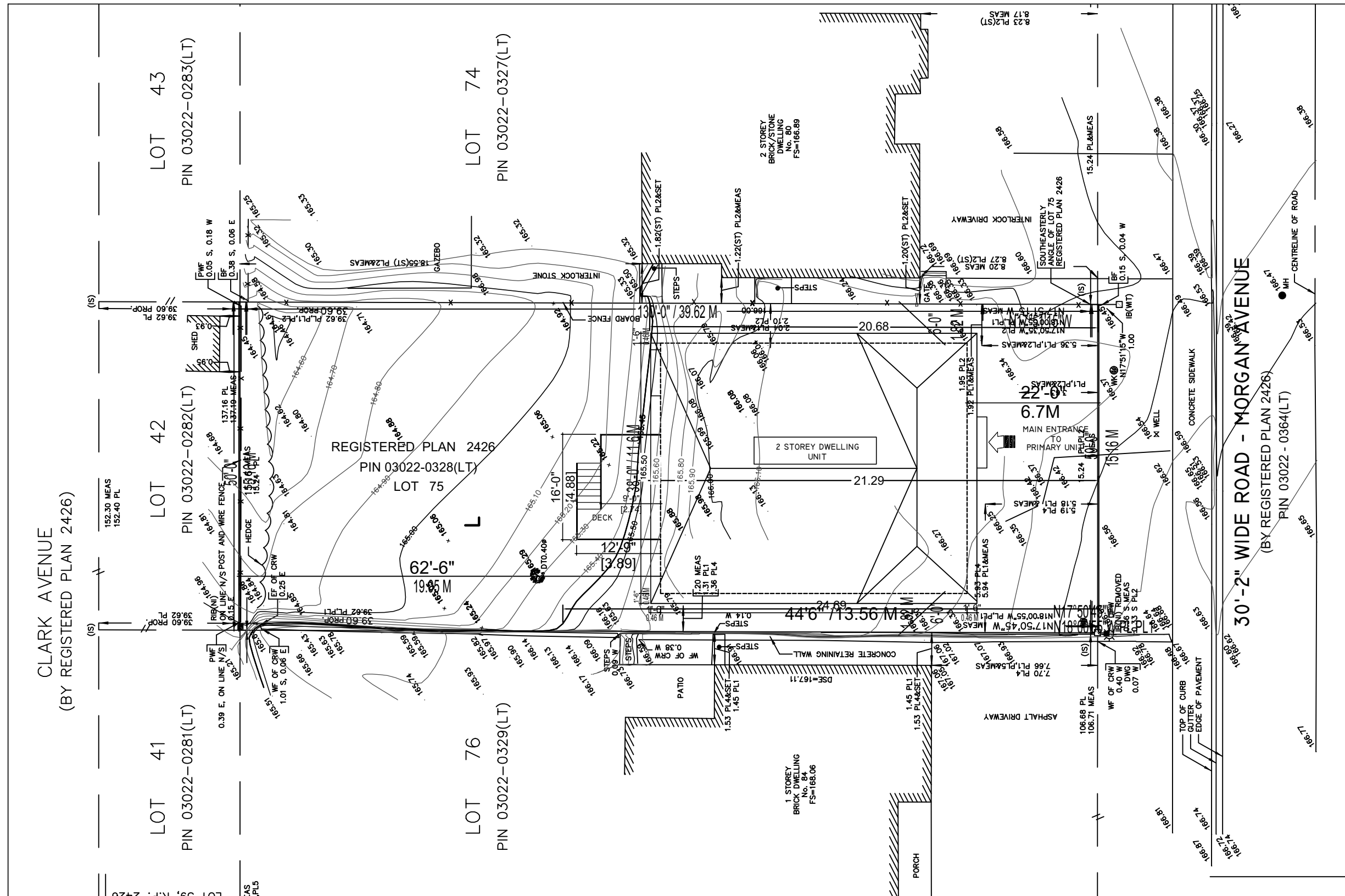
NORTH:



1.	29th Dec. 2021	Submitted
NO.	DATE	ISSUES/REVISIONS
DRAWN BY:		CHECKED BY:
M.K.		M.K.
DESIGNED BY:		APPROVED BY:
M.K.		M.K.
SCALE:		PROJECT NO:
1'-0" = 1/16"		MK-98-2021
DRAWING NOS:		A01

SEAL:
The undersigned has reviewed and takes responsibility for this design and has the qualifications and meets the requirements set out in Ontario Building Code.

QUALIFICATION INFORMATION



SITE DATA		AREA	PROPOSED	PERCENTAGE
ZONING	R4	LOT COVERAGE	2125 S.F.	33 1/3 %
LOT #	75	FLOOR AREA RATIO	330.92 S.M.	51.66%
LOT AREA	6500 S.F. / 603.87 S.M.	NOS. OF STORIES HEIGHT	2 STORIES AS SHOWN	
NET LOT AREA	6375 S. F.	PARKING	AS SHOWN	

PROPOSED SITE PLAN

LOT 37, R.P. 2426
LOT 38, R.P. 2426
LOT 39, R.P. 2426

CLARK AVENUE
(BY REGISTERED PLAN 2426)

30'-2" WIDE ROAD - MORGAN AVENUE
(BY REGISTERED PLAN 2426)

LOT 43
PIN 03022-0283(LT)

LOT 42
PIN 03022-0282(LT)

LOT 41
PIN 03022-0281(LT)

LOT 74
PIN 03022-0327(LT)

LOT 75
PIN 03022-0328(LT)

LOT 76
PIN 03022-0329(LT)

REGISTERED PLAN 2426

2 STOREY BRICK/STONE DWELLING No. 84 FS=168.88

1 STOREY BRICK DWELLING No. 84 FS=168.06

SOUTHEASTERLY ANGLE OF LOT 75 REGISTERED PLAN 2426

2 STOREY DWELLING UNIT

6.7M

MAIN ENTRANCE TO PRIMARY UNIT

44'-6" / 13.56 M

62'-6" / 19.65 M

LOT COVERAGE

FLOOR AREA RATIO

NOS. OF STORIES HEIGHT

PARKING

2125 S.F.

330.92 S.M.

2 STORIES AS SHOWN

AS SHOWN

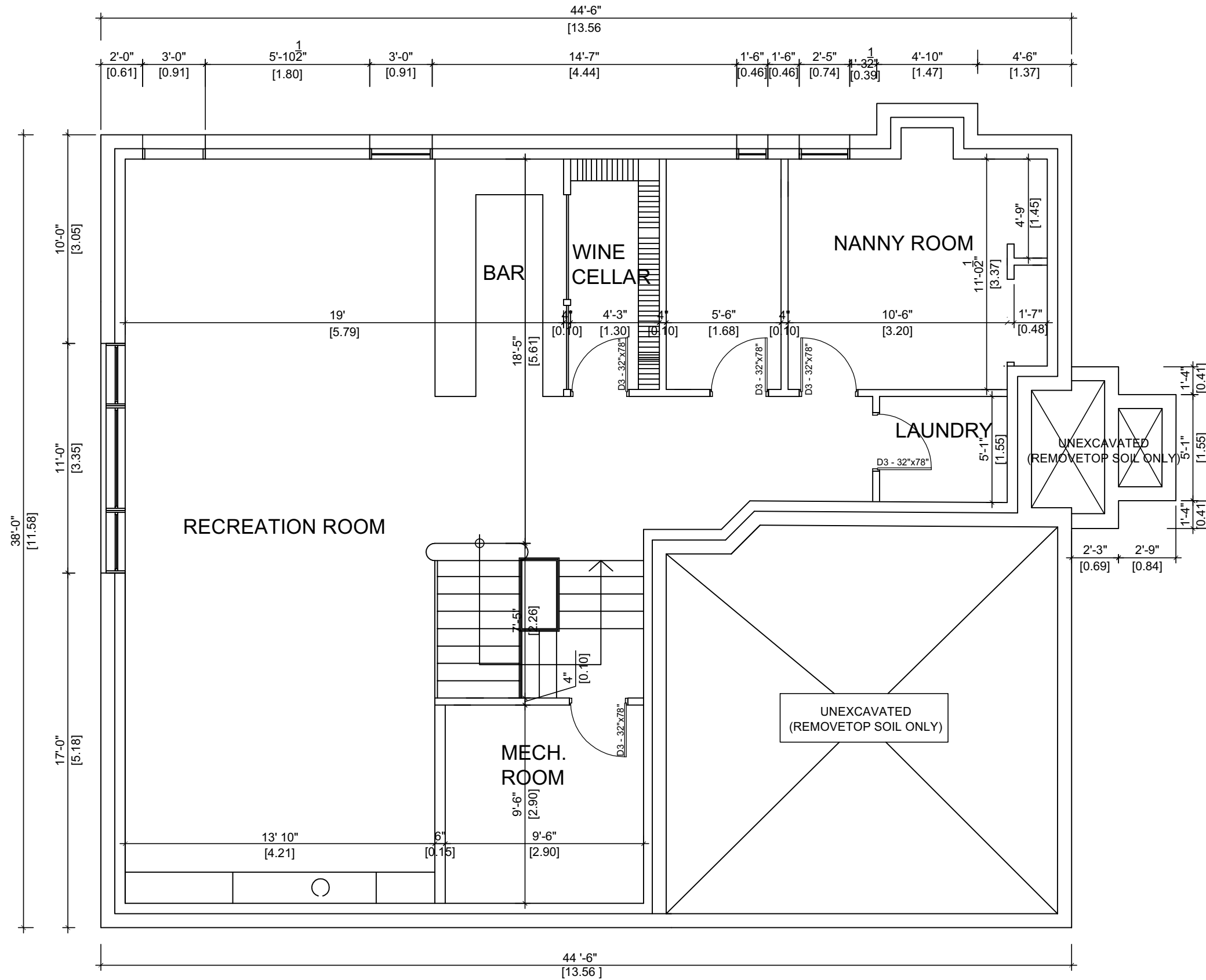
33 1/3 %

51.66%

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PROPOSED BASEMENT FLOOR PLAN

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MARKHAM, ON

OWNER/CLIENT:

MR. NEIL ALFRED

NORTH:



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DRAWN BY:		CHECKED BY:
M.K.		M.K.
DESIGNED BY:		APPROVED BY:
M.K.		M.K.
SCALE:		PROJECT NO:
1'-0" = 3/16"		MK-98-2021

DRAWING NOS:

A02

SEAL:

The undersigned has review and takes responsibility for this design and has the qualifications and meets the requirements set out in Ontario Building Code.

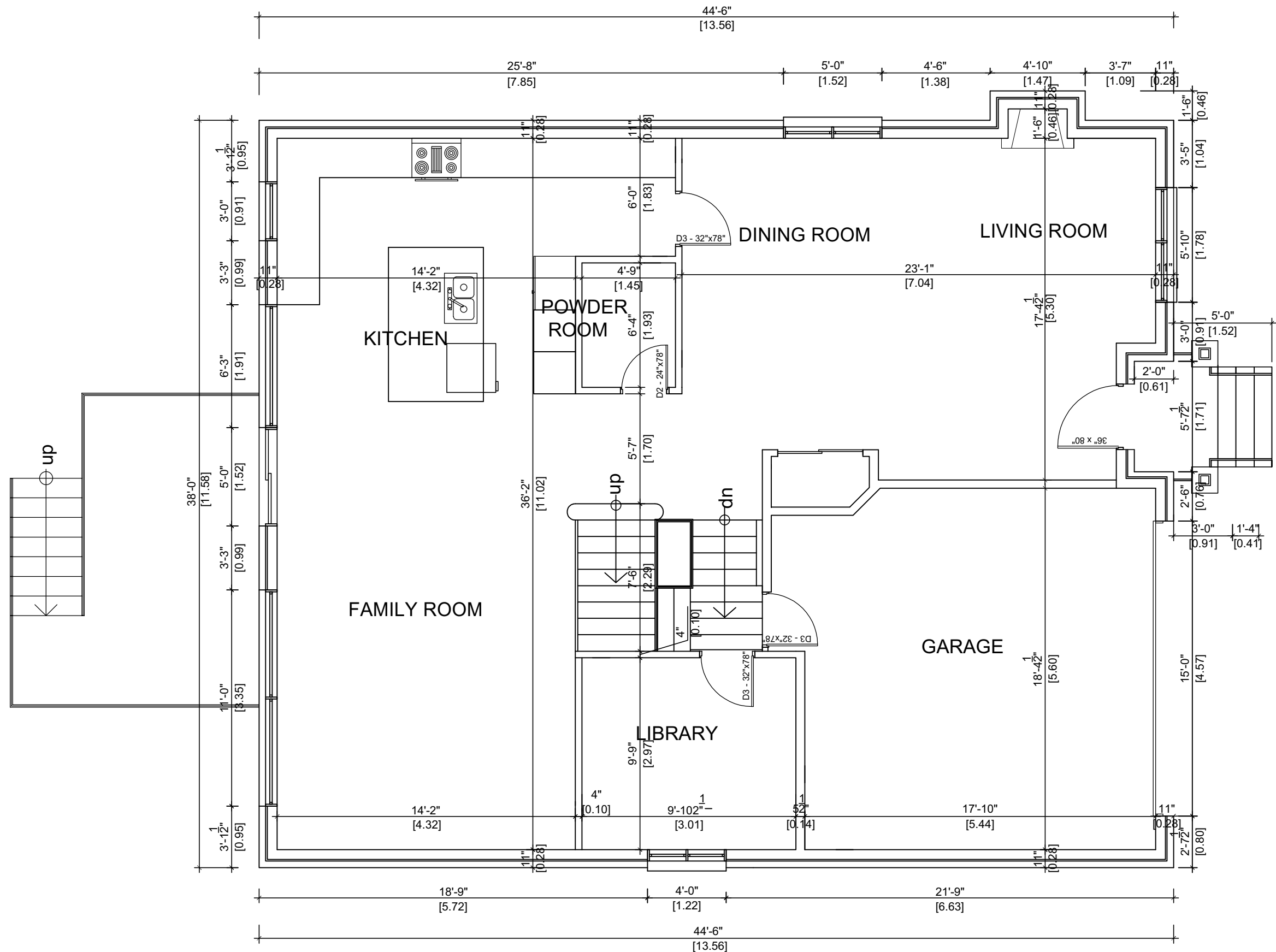
QUALIFICATION INFORMATION



Appendix B

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PROPOSED FIRST FLOOR PLAN

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DESIGNED BY:		APPROVED BY:
M.K.		M.K.
SCALE:		PROJECT NO:
1'-0" = 3/16"		MK-98-2021
DRAWING NOS:		A03

SEAL:

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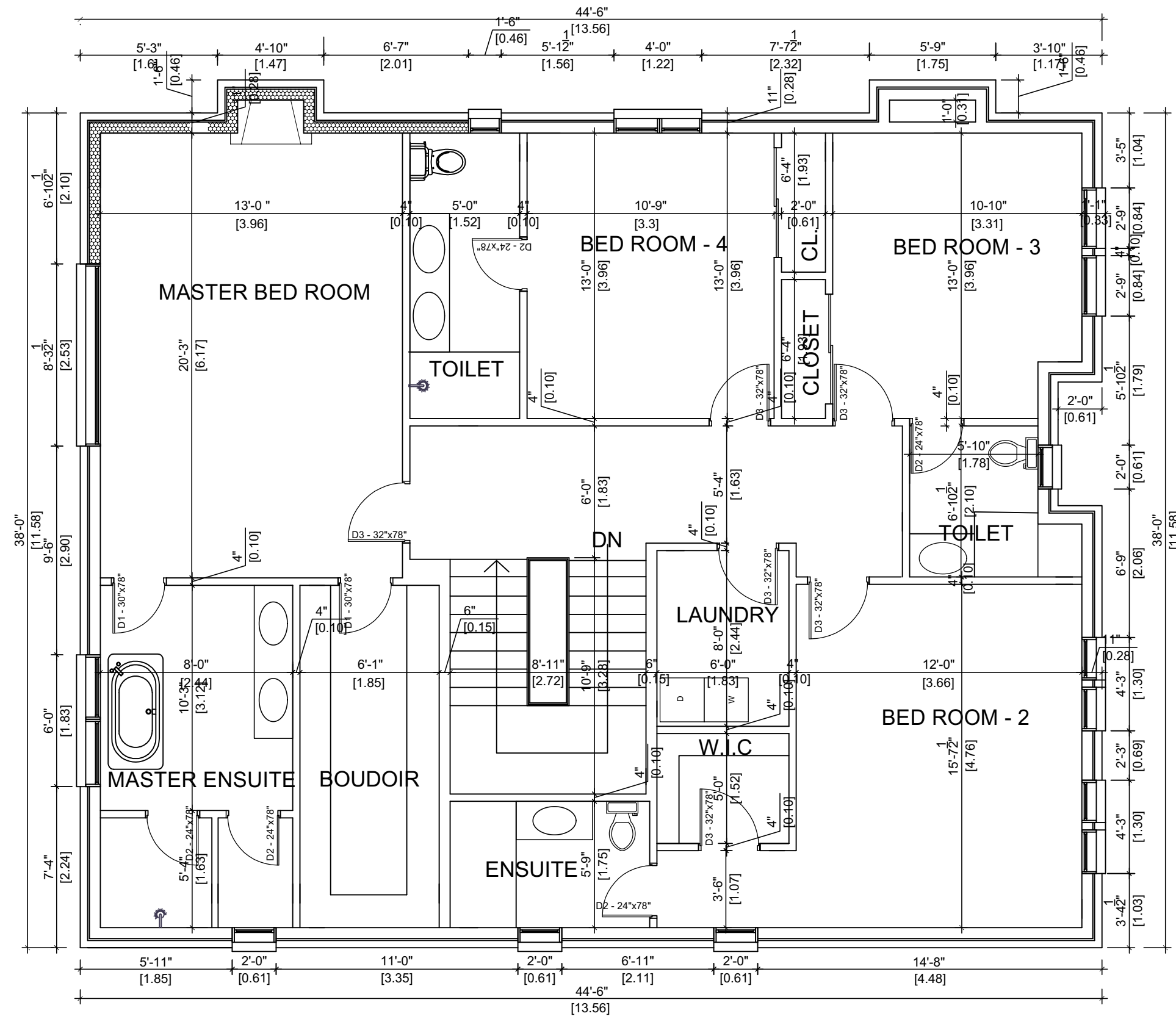
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PROPOSED SECOND FLOOR PLAN

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82 MORGAN AVENUE,
MARKHAM, ON

OWNER/CLIENT:

MR. NEIL ALFRED

NORTH:



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DRAWN BY:		CHECKED BY:
M.K.		M.K.
DESIGNED BY:		APPROVED BY:
M.K.		M.K.
SCALE:		PROJECT NO:
1'-0" = 3/16"		MK-98-2021
DRAWING NOS:		A04

SEAL:

The undersigned has review and takes responsibility for this design and has the qualifications and meets the requirements set out in Ontario Building Code.

QUALIFICATION INFORMATION



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M.K.	M.K.
SCALE:	PROJECT NO:
1'-0" = 3/16"	MK-98-2021
DRAWING NOS:	A05

SEAL:

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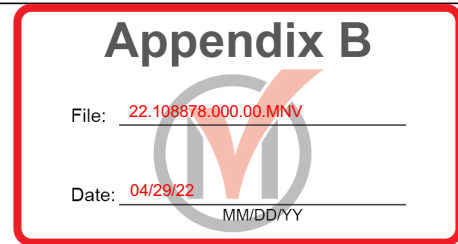


FRONT ELEVATION

Appendix B

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REAR SIDE ELEVATION

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DESIGNED BY:		APPROVED BY:
M.K.		M.K.
SCALE:		PROJECT NO:
1'-0" = 3/16"		MK-98-2021
DRAWING NOS:		A06

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QUALIFICATION INFORMATION

JM DESIGN & BUILD INC.
 BCIN NO. 117414

Appendix B

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LEFT SIDE ELEVATION

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1'-0" = 3/16"		MK-98-2021
DRAWING NOS:		A07

SEAL:

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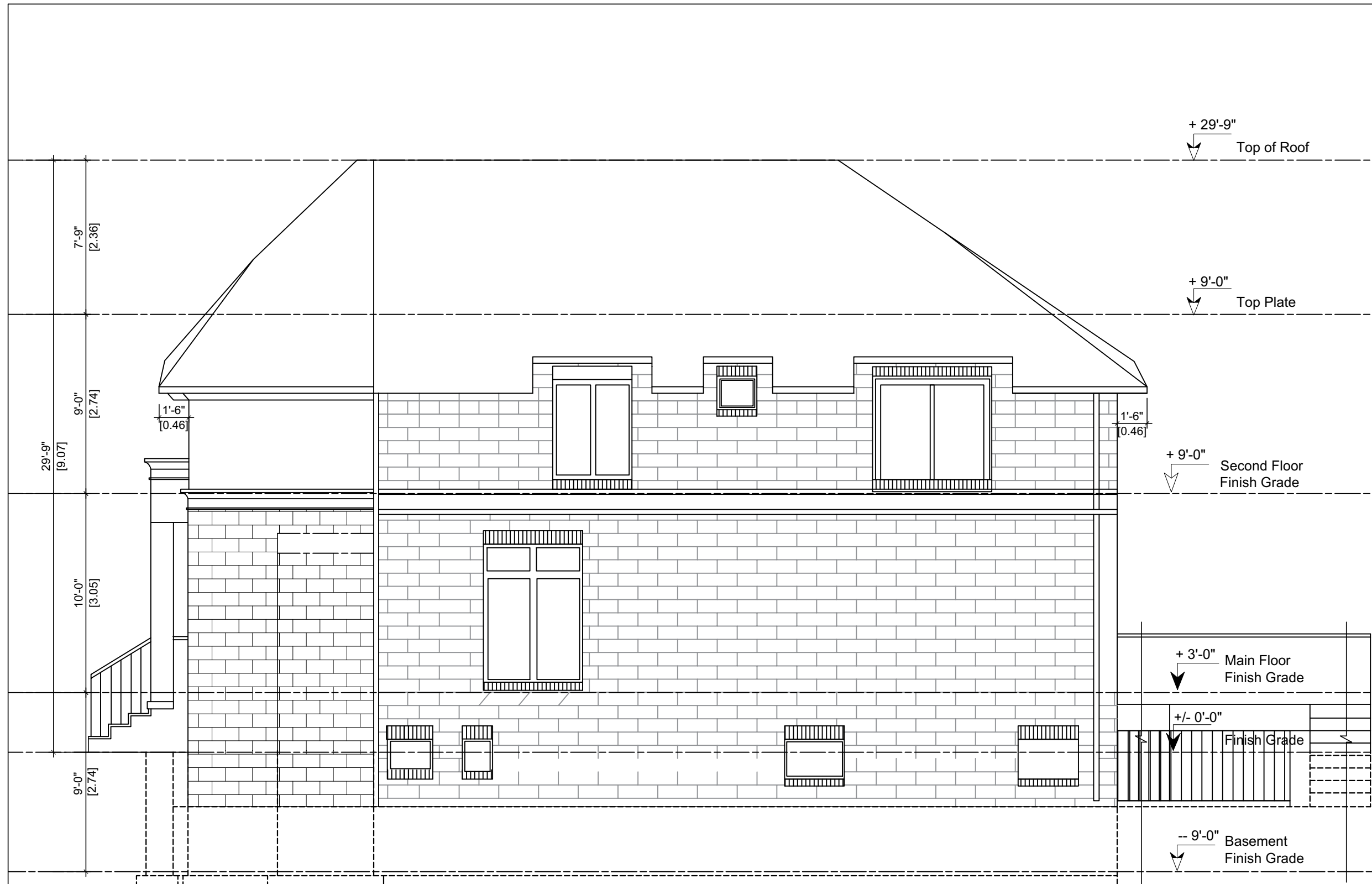
QUALIFICATION INFORMATION



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RIGHT SIDE ELEVATION

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M.K.		M.K.
SCALE:		PROJECT NO:
1'-0" = 3/16"		MK-98-2021
DRAWING NOS:		A08

SEAL:
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QUALIFICATION INFORMATION

JM DESIGN & BUILD INC.
 BCIN NO. 117414

APPENDIX "C"
NOTICE OF HEARING



COMMITTEE OF ADJUSTMENT

MEETING DATE AND TIME: Wednesday, May 04, 2022 at 7:00 p.m.

LOCATION: The Civic Centre is closed to the public. The Public Meeting will be held digitally. Participants or attendees are required to email the COA@markham.ca for more information on how to participate.

File Number:	A/001/22
Owner(s):	Neil Alfred
Agent:	Neil Alfred
Property Address:	82 Morgan Avenue, Thornhill
Legal Description:	PLAN 2426 LOT 75
Zoning:	By-law 2237 as amended; R4 - Fourth Density Single Family Residential
Ward:	1

PURPOSE OF THE APPLICATION:

The applicant is requesting relief from the requirements of By-law 2237, as amended to permit:

- a) **Infill By-law 101-90, Section 1.2 (i):**
a maximum height of 9.14 metres, whereas the By-law permits a maximum height of 8.60 metres;
- b) **Infill By-law 101-90, Section 1.2 (vii):**
a maximum floor area ratio of 53.9 percent, whereas the By-law permits a maximum floor area ratio of 50.0 percent;
- c) **Section 6.1:**
a minimum front yard setback of 6.096 metres, whereas the By-law requires a minimum front yard setback of 8.23 metres;

as it relates to a proposed two storey detached dwelling.

NOTICE REQUIREMENTS FOR LANDLORDS & CONDOMINIUM CORPORATIONS

A copy of this notice **must be posted** by the owner of any land that contains seven or more residential units in a location that is visible to all of the residents.

THE COMMITTEE OF ADJUSTMENT AND MINOR VARIANCES

The role of the Committee of Adjustment is to offer flexibility in dealing with minor adjustments to Zoning By-law permissions. The Committee of Adjustment forms its opinions through its detailed review of all material filed with an application, letters received, deputations made at the public hearing and results of site inspections.

The Committee of Adjustment, after hearing the applicant and every other person who desires to be heard in respect to this application may approve, refuse, modify or otherwise alter the application at the hearing without further notice provided.

HOW TO ATTEND AND PARTICIPATE AT THE MEETING

As required by the Planning Act, you are provided with written notice, to ensure that you may make your views known by either:

There are two options to attend the Digital Public Hearing:

1. Watch via live stream at <https://www.markham.ca/wps/portal/home/about/city-hall>.
2. Request to attend the ZOOM meeting by written request, along with a completed [Interested Party Comment and Deputation Form](https://www.markham.ca/wps/myportal/home/business/planning/committee-of-adjustment/11-committee-of-adjustment) at <https://www.markham.ca/wps/myportal/home/business/planning/committee-of-adjustment/11-committee-of-adjustment> to COA@markham.ca.

OR

Deliver a Letter in Person to the DROP BOX at the Thornhill Entrance, or by Mail or Email to the Undersigned

Written comments must be received no later than 4:00 p.m. two (2) days prior to the hearing date, to ensure Committee Members can review all written comments prior to the hearing.

**Under The Municipal Freedom of Information Act: personal information collected in response to this planning notice will be used to assist City staff and Council to process this application and will be a part of the public record.*

TO VIEW THE MATERIALS IN THE APPLICATION FILE:

Materials will be posted on the link below prior to the scheduled meeting date:
<https://www.markham.ca/wps/portal/home/business/planning/committee-of-adjustment/agendas-minutes-staff-reports>

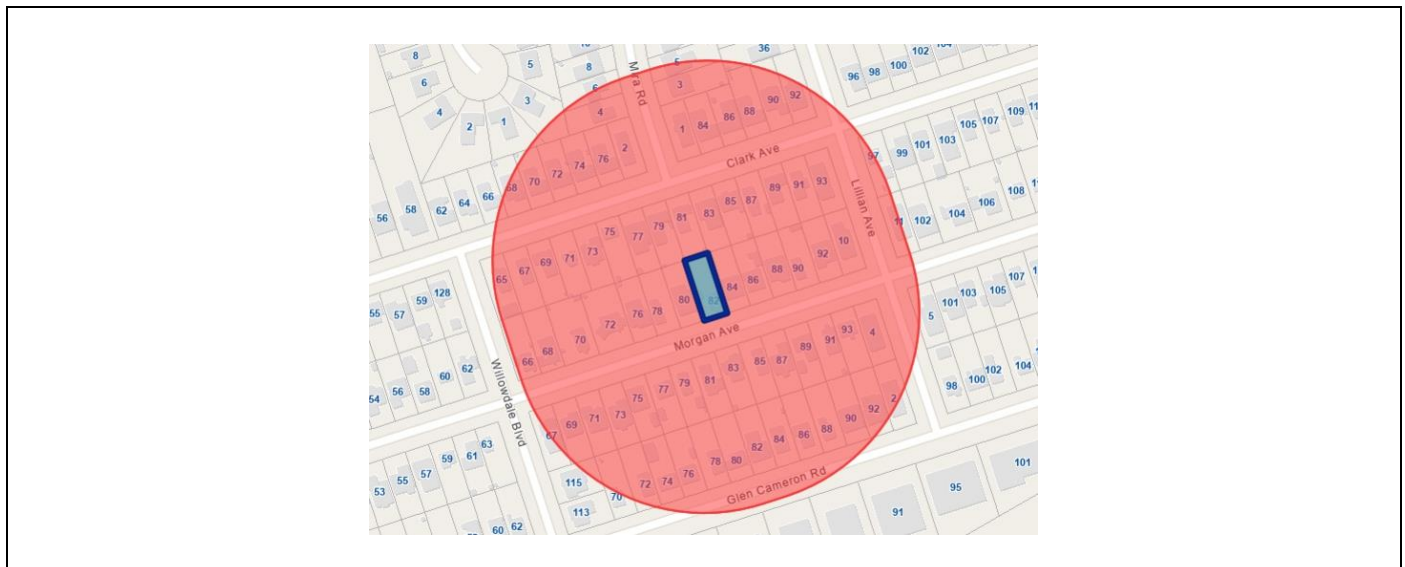
NOTICE OF DECISION and ONTARIO LAND TRIBUNAL PROCEEDINGS

Any person wishing to comment on this application but who is unable to attend the hearing may send a signed, written submission to the Secretary Treasurer prior to the hearing. A submission received prior to the hearing is not considered a notice of appeal.

A copy of the decision will be sent to the applicant and agent. Any other person or agency wishing to receive a copy of the decision or any notice of relevant Local Planning Appeal Tribunal hearings must submit a written request for a copy of the decision, or you will be not entitled to receive notice of any further proceedings.

IMPORTANT NOTICE TO OWNERS AND/OR AGENTS:

The applicant or representative for the applicant **MUST** appear at the hearing in support of the application, failing which this application may be dismissed.



Justin Mott, BA (Hons) MES (PL)
Acting-Secretary-Treasurer
Committee of Adjustment

City of Markham
101 Town Centre Boulevard
Markham, Ontario.
L3R 9W3

For more information about this matter, contact:

(tel) 905.475.4721 (fax) 905.479.7768 COA@markham.ca