Memorandum to the City of Markham Committee of Adjustment

February 28, 2019

File:

A/13/19

Address:

1 Florelle Dr. Markham

Applicant:

Trung Tran

Agent:

Tran Dieu & Associates Inc (Elwin Wong)

Hearing Date:

Wednesday March 13, 2019

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

The applicant is requesting relief from the following requirements of By-law 177-96, as amended:

a) Section 6.5:

a secondary dwelling unit, whereas the By-law permits no more than one dwelling unit on a lot:

b) Parking By-law 28-97, Section 3.0:

two parking spaces, whereas the By-law requires three parking space.;

These variances relate to a secondary dwelling unit within the existing single detached dwelling

BACKGROUND

Property Description

The 355 m² (3,821.2 ft²) subject property is located on the south side of Florelle Drive and east side of Roy Rainey Avenue. More generally, the subject property is east of McCowan Road and south of Major Mackenzie Drive in the Wismer Commons community. The property is developed with a 242.4 m² (2,609 ft²) two-storey single detached dwelling, which according to assessment records was constructed in 2007. The property currently provides a total of two parking spaces, one in the garage and one on the driveway. The front yard comprises hard landscaping in the form of interlock pavers, which also encroaches within the City owned right-of-way abutting the sidewalk on both streets.

Proposal

The applicant is requesting permission for a proposed secondary suite in the basement of the existing dwelling. The proposal includes a new window at the front of the building and construction of a direct and separate access to the secondary unit via a proposed walkout in the flankage (corner) yard along Roy Rainey Avenue. No other changes are proposed to the exterior of the dwelling or 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".

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 a range of 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, 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 suites 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. Consequently each secondary unit requires zoning approval, either through a variance or by-law amendment, to be permitted.

Zoning By-law 177-96

The subject property is zoned 'Residential Two-Special*99 (R2-S*99)' under By-law 177-96, as amended, which permits a range of low rise housing, including single detached dwellings. The By-law does not permit a secondary suite on the subject property, and the applicant has therefore submitted this variance request. Exception 99 provides for specific development standards relating to minimum side yards, driveway setbacks, and wide and shallow lot depth requirements.

Parking Standards By-law 28-97

The secondary suite also does not comply with the standard of the Parking By-law 28-97 with respect to the number of parking space required. Further details of the parking requirement is provided in the comment section below.

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, "1) Provide 2nd kitchen for secondary unit 2) only able to provide 2 parking spaces whereas 3 parking is required".

Zoning Preliminary Review (ZPR) Not Undertaken

The owner has confirmed that a Zoning Preliminary Review (ZPR) has <u>not</u> 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.

Reduced Parking Spaces

Parking Standards By-law 28-97 requires two parking spaces for the principal dwelling unit, plus one additional space for an accessory dwelling unit or secondary suite. The existing single-car garage and driveway provides two required parking spaces for the principle dwelling unit. As noted, staff support the variance to permit the secondary suite, as it provides an opportunities for shared and affordable housing, which is consistent with Provincial Policy and the City's 2014 Official Plan. When considering secondary unit variances, staff typically support related variances to remove required parking requirements for these units to minimize potential changes to a property by requiring an additional parking space. For example adding parking by providing extra wide driveways, and thus reducing the amount of soft landscaping which plays a role for the infiltration of rain water, which is an important part of good storm water management practices.

In this instance however, staff note that the front yard has been hardscaped with interlocked pavers which is the same pavement materials as the private driveway. Technically this expanded area of hardscaping within the front yard could provide an additional parking space. However if this expanded area was to be used as parking on a "driveway" as defined by Parking Standards By-law 28-97 it may not comply with the By-law with respect to maximum driveway widths, soft landscaping, minimum driveway setbacks and parallel parking adjacent to a street provisions. Staff note that the City's By-law Licensing and Enforcement department has been made aware of the situation and will be monitoring it. The Property Owner is advised that parking within this area of the front yard may not conform to Parking Standards By-law 28-97, as amended and that hardscape paving within the City's right of way is not permitted.

Staff support the requested variance to reduce required parking for the secondary suite. Staff are of the opinion that not requiring additional parking for secondary suites may be considered "self-regulating", as the unit would only be of interest to a tenant not requiring a parking space. It should also be noted that overnight parking is not permitted on this street, and violators could be ticketed.

PUBLIC INPUT SUMMARY

No written submissions were received as of February 28, 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 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.

PREPARED BY:

Aqsa Malik, Planner, Zoning and Special Projects

REVIEWED BY:

Stephen Gorr, Senior Planner, East District

File Path: Amanda\File\ 19 111650 \Documents\District Team Comments Memo

APPENDIX "A" CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/13/19

- 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 February 5, 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;
- 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, Zoning and Special Projects

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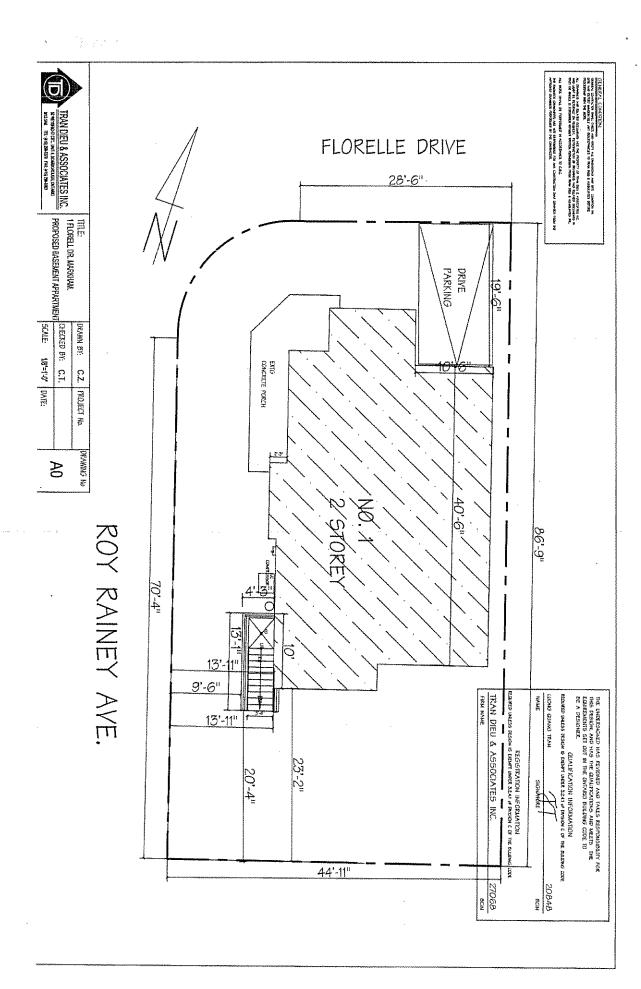
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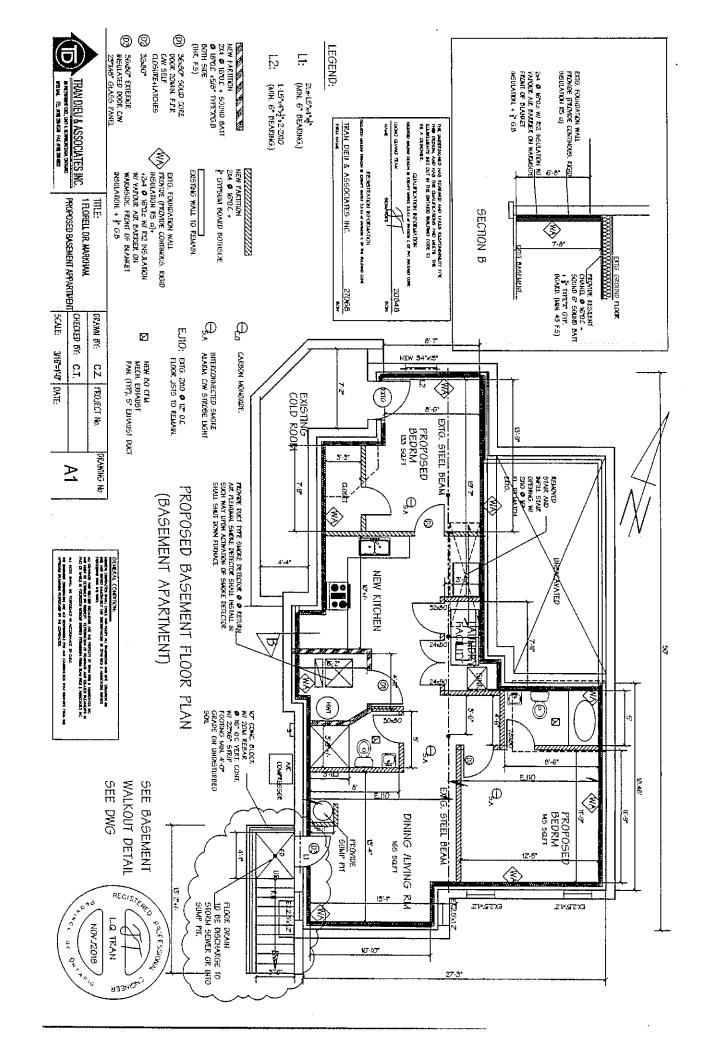
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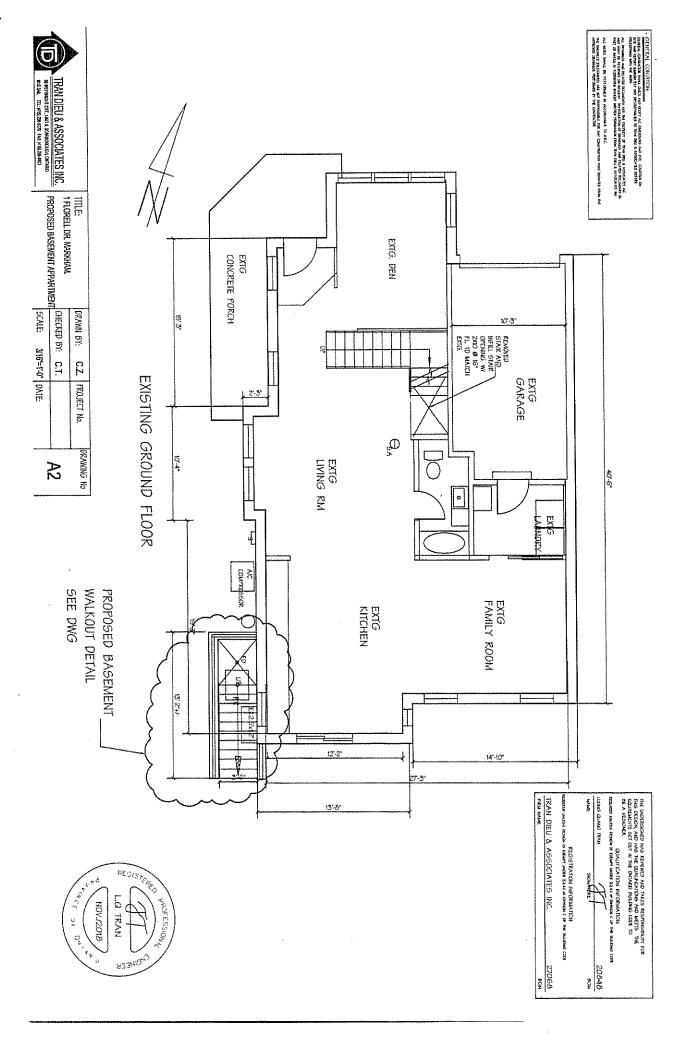
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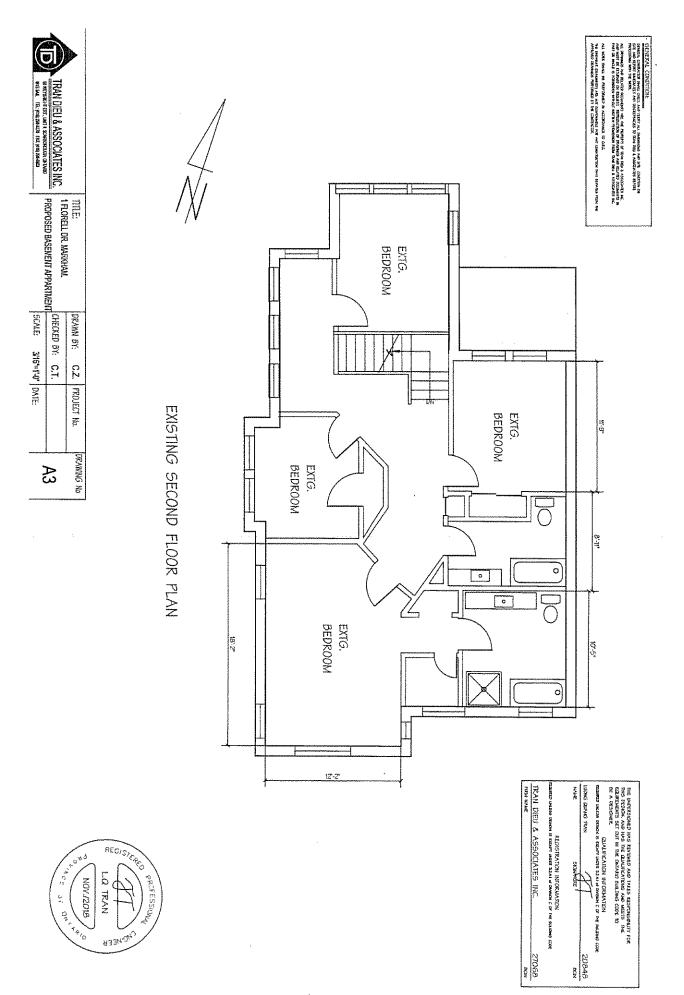
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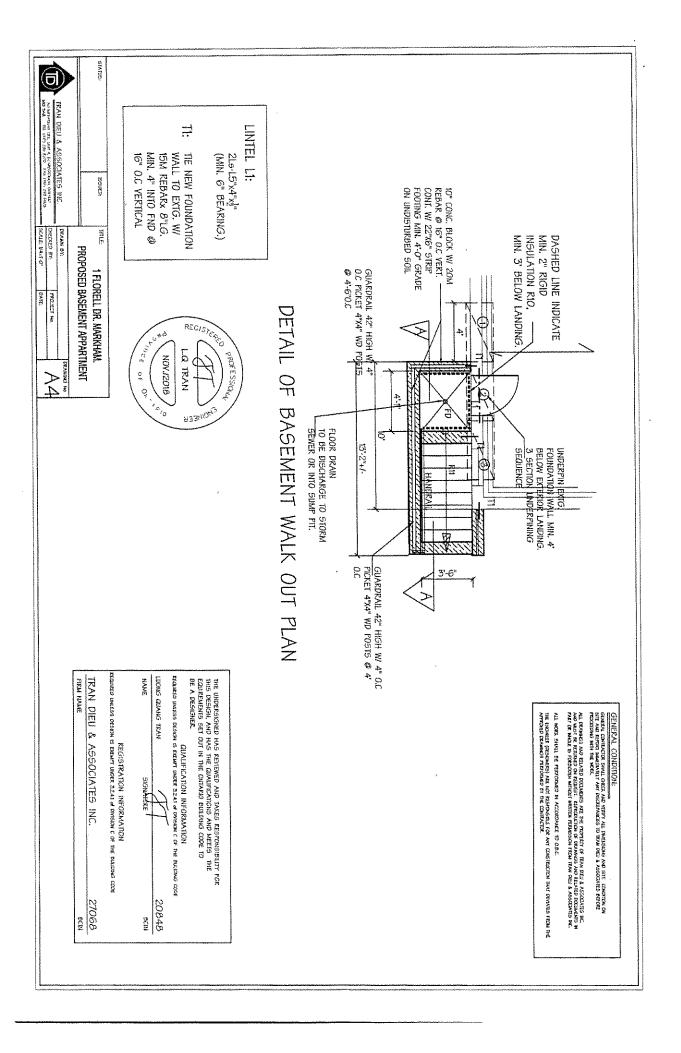
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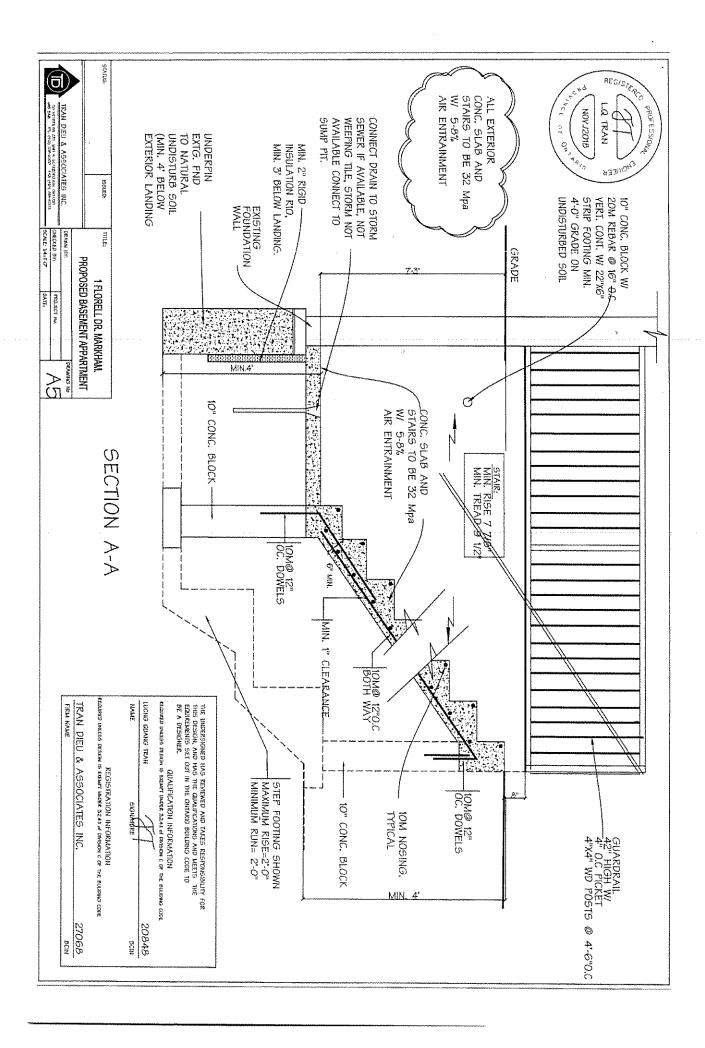
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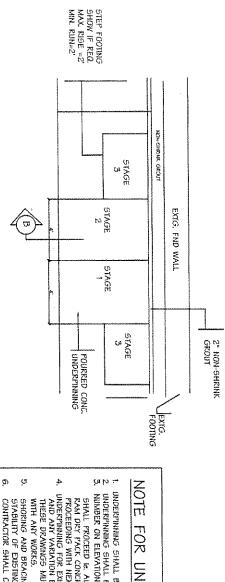




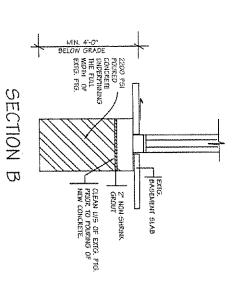








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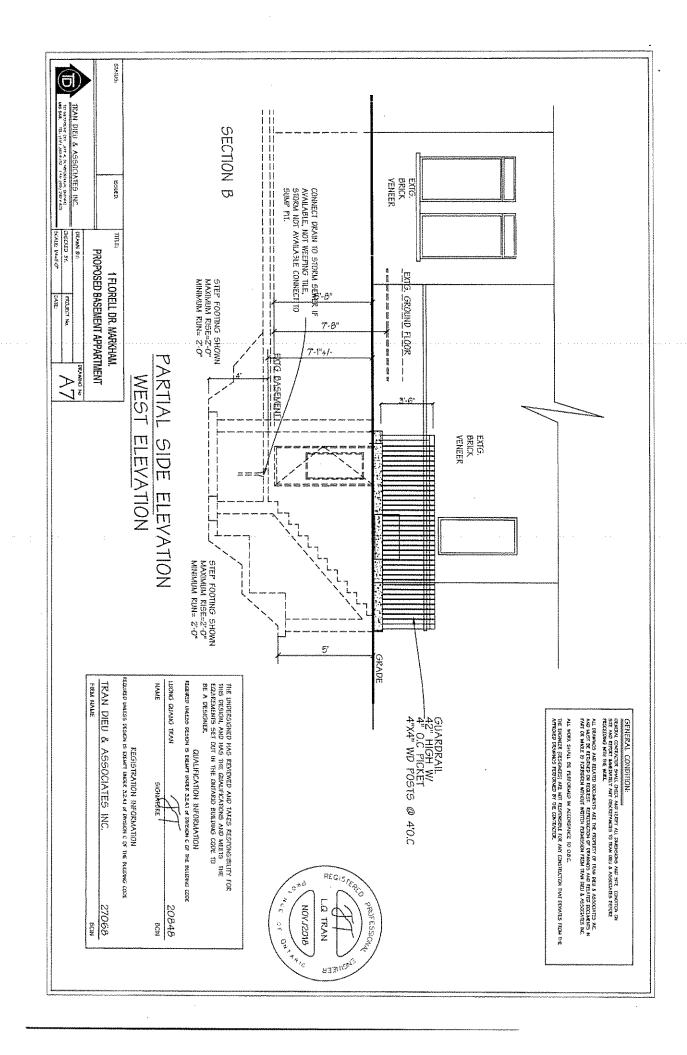
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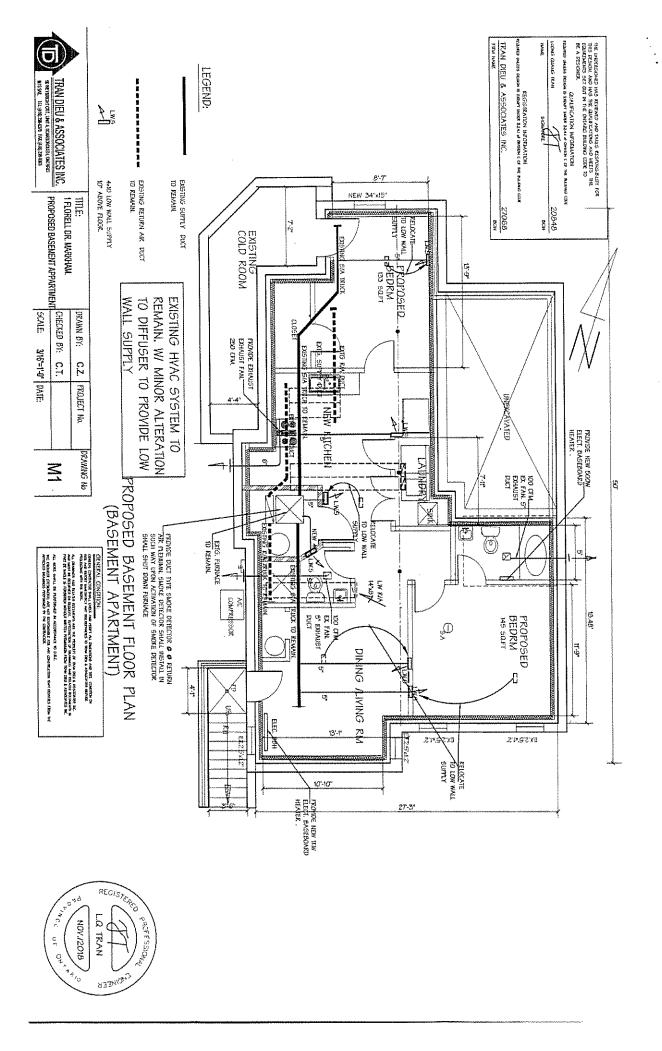
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