

**DEVELOPMENT NARRATIVE AND STATEMENT IN SUPPORT OR REQUEST TO
REMOVE CONDITON 10
OF SPECIAL PERMIT No. ZBA 2013-39**

Summary:

Mona Kotecha and Nikhil Shanbhag, new owners of the property in question described below, submit this development narrative and statement in support of their application to modify the Special Permit decision of the Somerville Zoning Board of Appeals, dated August 21, 2013, in Case No. ZBA 2013-39 (the “Decision”), to remove condition number 10 of the Decision. The condition was imposed to limit the finished space in the basement of their building to avoid a violation of the floor area ratio requirements (“FAR”) of the Somerville Zoning Ordinance (“SZO”) in effect in 2013. The recent amendment to the SZO has eliminated FAR entirely. Therefore, condition 10, imposed to ensure compliance with then-applicable FAR criteria, is now obsolete and should be removed as a condition of the Decision. Removal of Condition 10 would be consistent with the applicable current NR zoning designation for the property.

Background:

This application concerns the real property located at 34 St. James Ave, Somerville, MA.; one of two residential units of the 32-34 Saint James Summer Condominium. (the “Property”). The Property was in the RA zoning district at the time (and is now in the NR zoning district under the new Somerville Zoning Ordinance), and was developed at the site of the previous 336 Summer Street. In 2013 the Property was the subject of appeal No. ZBA 2013-39, that involved an application for a Special Permit to alter a non-conforming two-family structure to create one new two-family dwelling. The then-existing structure was non-conforming as to minimum lot size (existing 5,110 s.f versus the then-required 10,000 s.f.).

On August 21, 2013, the Somerville Zoning Board of Appeals granted the requested Special Permit. *See Exhibit 1.* As noted in the Decision, the net useable floor area for the new proposed building was 3,786 s.f., resulting in a FAR of 0.74. In order to not exceed the maximum FAR of 0.75, the Decision imposed Condition 10, which barred the use of the basement portion of the Property for bedrooms or sleeping quarters and limited it to only 46 net square feet of additional finished space.

The new two-family dwelling was completed at the end of 2014 and a Certificate of Occupancy was issues on December 9, 2014. At the time of the Certificate of Occupancy issuing, the basement area of the property had drywall walls and ceilings, concrete flooring, and limited electrical outlets and lighting. The predecessors in title, Peter and Kristin Nordblom, acquired the property on December 12, 2014. The predecessors in title performed updates to the basement - they added flooring, shelves, and installed wall outlets pursuant to an issued electrical permit

(Permit # E17-000370, Issued 03/07/2017) from the City. There have been no walls or ceilings moved, removed, or added since the Certificate of Occupancy was issued in 2014

In June 2020, the predecessors in title, Peter and Kristin Nordblom, filed a Development Review Application seeking to legalize the use of the basement. That application was denied on August 10, 2020 by Hans Jensen of the Inspectional Services Department based on the existence of Condition 10 of the Decision. *See Exhibit 2.*

Current Application to Remove Condition:

Mona Kotecha and Nikhil Shanbhag are now the sole occupants of the property and wish to use the basement as personal family space in which to exercise and do laundry. As such, the applicants now seek to authorize the space in the basement area of their unit as a Finished space for the purpose of an exercise & fitness area, laundry room, and storage area as shown on the attached Basement Existing Conditions Floor Plan. *See Exhibit 3.* The remaining portions of the basement of their unit will remain as areas for mechanical equipment and utilities. Approval is **not sought** for the addition of any bedroom or bathroom use in the basement, and the space will not be used for sleeping.

The SZO was amended, effective December 12, 2019. This most recent amendment removed the FAR requirements provisions of the SZO. As a result, Condition 10 of the Decision, limiting the finished space in the basement is now obsolete. As Mr. Jensen noted in Exhibit 2, FAR no longer exists as a criteria under the SZO, and he recommended an application to modify Condition 10 to allow finished space.

Removal of Condition 10 is appropriate due to the elimination of FAR under the SZO. Removal of Condition 10 will legitimize the finished basement area and will allow the Property to obtain the same build-out and use rights as other similarly situated properties under the amended SZO. Removal of Condition 10 would be consistent with the applicable current NR zoning designation for the property.

Exhibit 1



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
JOSEPH A. CURTATONE
MAYOR

MICHAEL F. GLAVIN
EXECUTIVE DIRECTOR

PLANNING DIVISION

ZONING BOARD OF APPEALS MEMBERS

HERBERT F. FOSTER, JR., *CHAIRMAN*
ORSOLA SUSAN FONTANO, *CLERK*
RICHARD ROSSETTI
DANIELLE EVANS
ELAINE SEVERINO
JOSH SAFDIE (ALT.)
BRANDY BROOKS (ALT.)

Case #: ZBA # 2013-39
Site: 336 Summer Street
Date of Decision: August 21, 2013
Decision: Petition Approved with Conditions
Date Filed with City Clerk: August 23 2013

ZBA DECISION

Applicant Name:	Siyuan He
Applicant Address:	12 Thorndike Street, Somerville, MA 02144
Property Owner Name:	Siyuan He
Property Owner Address:	12 Thorndike Street, Somerville, MA 02144
Agent Name:	Richard G. DiGirolamo, Esq.
Agent Address:	424 Broadway, Somerville, MA 02145

Legal Notice: Applicant, Siyuan He, and Owners, Siyuan He and Robert Yi Bao, seek a Special Permit under SZO §4.4.1 to alter a nonconforming structure to create one new two-family dwelling. RA zone. Ward 6.

<u>Zoning District/Ward:</u>	RA zone/Ward 6
<u>Zoning Approval Sought:</u>	§4.4.1
<u>Date of Application:</u>	May 21, 2013
<u>Date(s) of Public Hearing:</u>	6/19, 7/10, 8/7, 8/21
<u>Date of Decision:</u>	August 21, 2013
<u>Vote:</u>	5-0

Appeal #ZBA 2013-39 was opened before the Zoning Board of Appeals at Somerville City Hall on June 19, 2013. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by M.G.L. c. 40A, sec. 11 and the Somerville Zoning Ordinance. After two (2) hearings of deliberation, the Zoning Board of Appeals took a vote.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
(617) 625-6600 EXT. 2500 • TTY: (617) 666-0001 • FAX: (617) 625-0722
www.somervillema.gov

DESCRIPTION:

Applicant, Siyuan He, and Owners, Siyuan He and Robert Yi Bao, propose to alter a two-family, nonconforming structure to create one new two-family dwelling.

The proposed new two-family dwelling would be a 2½ story, gable-end structure with a tower component on the corner of Summer Street and St. James Avenue. The units would be located on either half of the building and share only the side porch along St. James Avenue. The gross floor area, which includes the basement level, would be 6,654 square feet. The basement and first floor are each approximately 1,750 gross square feet while the second floor and attic space are each approximately 1550 gross square feet. The front unit would be 1,909 net square feet while the rear unit would be 1,877 net square feet with a 0.74 floor area ratio. The net floor area and floor area ratio have been altered as the previous plan excluded hallways from the net floor area calculation. Each unit would have a living room with gas fireplace, dining room, kitchen, bathroom, and mudroom on the first floor while the second floor would have a master bedroom with a bathroom and walk-in closet, a study, a second bathroom, and access to a second story porch along St. James Avenue. A balcony would be located on the front and rear façades, one for each unit. The half-story would be composed of a third bathroom and two additional bedrooms, to create family sized units, and an unfinished area for mechanicals. The rear unit along St. James Avenue would also have a small two foot deep balcony above the two-story polygonal bay. The basement level would provide access to the rear yard, have two separate storage areas and a laundry room; only the laundry room will be finished.

The exterior of the new dwelling would be primarily composed of Hardi Board, a fiber cement board, while the trim would be composed of Azek. The deck areas would be a composite deck material that appears like wood, and the windows would be low-E vinyl windows, except for the windows in the corner tower, which would be further insulated to deter street noise.

The new structure, as proposed, conforms to all setback and dimensional requirements. Using Summer Street as the front elevation, there is a 15 foot front yard setback, a 20.5 foot rear yard setback and the sum width of both side yards is approximately 18 feet. Ground coverage will conform to SZO requirements at 36%. Nearly half of the parcel will remain landscaped (41%) while more than half of the parcel will be composed of a pervious material (56.3%). Each unit will have two parking stalls to be located near the private front and rear entries which will be composed of permeable pavers. A new 12 foot curb cut will be created along Summer Street to accommodate parking for the front unit, as one curb cut per street is allowed in residential districts. A four foot fence would enclose a majority of the Summer Street and St. James Avenue front and side yards while a six foot fence would run along the right side parcel boundary and at the rear of the St. James parking area.

FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1):

In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in §5.1.4 of the SZO. This section of the report goes through §5.1.4 in detail.

1. Information Supplied: The Board that the information provided by the Applicant conforms to the requirements of §5.1.2 of the SZO and allows for a comprehensive analysis of the project with respect to the required Special Permits.
2. Compliance with Standards: The Applicant must comply "with such criteria or standards as may be set forth in this Ordinance which refer to the granting of the requested special permit."

In considering a special permit under §4.4 of the SZO, the Board finds that the alterations proposed would not be substantially more detrimental to the neighborhood than the existing structure. The proposed design for the new structure utilizes a gable-end roof form, which is consistent with the neighborhood and continues the roofline rhythm of the streetscape. In addition, the corner tower provides a focal point at the corner of St. James and Summer Street. The proposal will increase the pervious area for the site and become conforming with regard to the right side yard setback.



3. Consistency with Purposes: The Applicant has to ensure that the project "is consistent with (1) the general purposes of this Ordinance as set forth in Article 1, and (2) the purposes, provisions, and specific objectives applicable to the requested special permit which may be set forth elsewhere in this Ordinance, such as, but not limited to, those purposes at the beginning of the various Articles."

The proposal is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to promoting "the health, safety, and welfare of the inhabitants of the City of Somerville; to protect health; to secure safety from fire, panic and other dangers; to provide adequate light and air; to conserve the value of land and buildings; to encourage the most appropriate use of land throughout the City; and to preserve and increase the amenities of the municipality."

The proposal is consistent with the purpose of the Residence A district, §6.1.1, which is, "To establish and preserve quiet neighborhoods of one- and two-family homes, free from other uses except those which are both compatible with and convenient to the residents of such districts."

4. Site and Area Compatibility: The Applicant has to ensure that the project "(i)s designed in a manner that is compatible with the characteristics of the built and unbuilt surrounding area, including land uses."

The proposed design for the new structure utilizes a gable-end roof form and similar 2½ story massing, which is consistent with the neighborhood and continues the roofline rhythm of the streetscape. In addition, the corner tower provides a focal point at the corner of St. James and Summer Street. The proposal will increase the pervious area for the site and become conforming with regard to the right side yard setback. There will likely be no impact on the surrounding neighborhood as the design is compatible with the area and surrounding residential uses of the neighborhood. In addition, the number of units is not proposed to change as a result of this proposal.

5. Adverse environmental impacts: The proposed use, structure or activity will not constitute an adverse impact on the surrounding area resulting from: 1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area; 2) emission of noxious or hazardous materials or substances; 3) pollution of water ways or ground water; or 4) transmission of signals that interfere with radio or television reception.

6. Vehicular and pedestrian circulation: The circulation patterns for motor vehicles and pedestrians which would result from the use or structure will not result in conditions that create traffic congestion or the potential for traffic accidents on the site or in the surrounding area.

While a second curb cut for the property will be created along Summer Street to accommodate two vehicles for the front unit, the circulation patterns should not be altered for motor vehicles or pedestrians. Additionally, the new curb cut would be located approximately 17 feet from the Summer Street/St. James Avenue intersection.



DECISION:

Present and sitting were Members Herbert Foster, Richard Rossetti, Danielle Evans, Elaine Severino, and Josh Safdie. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit. Elaine Severino seconded the motion. Wherefore the Zoning Board of Appeals voted **(5-0)** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes										
1	Approval is for a Special Permit to alter a nonconforming structure to create one new two-family dwelling. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/PIng.											
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>(May 21, 2013)</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>August 10, 2012 Revised August 14, 2013 (August 15, 2013)</td> <td>Plans submitted to OSPCD (A1, A2, A3, A4, A5, A6, A7, A8.1, A8.2, A8.3, & A9)</td> </tr> <tr> <td>March 24, 2013 Revised June 25, 2013 (July 29, 2013)</td> <td>Utility/Plot plans submitted to OSPCD (Sheets 1, 2, 3, 4, 5)</td> </tr> <tr> <td>(July 29, 2013)</td> <td>Rendering submitted to OSPCD (Sheet 1)</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	(May 21, 2013)	Initial application submitted to the City Clerk's Office	August 10, 2012 Revised August 14, 2013 (August 15, 2013)	Plans submitted to OSPCD (A1, A2, A3, A4, A5, A6, A7, A8.1, A8.2, A8.3, & A9)	March 24, 2013 Revised June 25, 2013 (July 29, 2013)	Utility/Plot plans submitted to OSPCD (Sheets 1, 2, 3, 4, 5)	(July 29, 2013)	Rendering submitted to OSPCD (Sheet 1)
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Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive SPGA approval.														
Pre-Construction														
2	The Applicant will be required to demonstrate that the updated project plans meet the current City of Somerville stormwater policy. Utility, grading, and drainage plans must be submitted to the Engineering Department for review and approval.	BP	Eng.											
3	The Applicant shall submit a proposed grading and drainage plan, stamped by a registered PE in Massachusetts that demonstrates compliance with the City's stormwater policy.	BP	Eng.											
4	The Applicant shall submit a proposed drainage report, stamped by a registered PE in Massachusetts that demonstrates compliance with the City's stormwater policy.	BP	Eng.											
5	The Applicant shall develop a demolition plan in consultation with the City of Somerville Inspectional Services Division. Full compliance with proper demolition procedures shall be required, including timely advance notification to abutters of demolition date and timing, good rodent control measures (i.e. rodent baiting), minimization of dust, noise, odor, and debris outfall, and sensitivity to existing landscaping on adjacent sites.	Demolition Permitting	ISD											



Construction Impacts				
6	The applicant shall post the name and phone number of the general contractor at the site entrance where it is visible to people passing by.	During Construction	Plng.	
7	The Applicant shall at his expense replace any existing equipment (including, but not limited to street sign poles, signs, traffic signal poles, traffic signal equipment, wheel chair ramps, granite curbing, etc) and the entire sidewalk immediately abutting the subject property if damaged as a result of construction activity. All new sidewalks and driveways must be constructed to DPW standard.	CO	DPW	
8	All construction materials and equipment must be stored onsite. If occupancy of the street layout is required, such occupancy must be in conformance with the requirements of the Manual on Uniform Traffic Control Devices and the prior approval of the Traffic and Parking Department must be obtained.	During Construction	T&P	
Design				
9	An exterior light and electrical receptacle is required for the first (or all) level of the porch and an electrical receptacle is required for the second level (if there is no access to the ground).	Final sign off	Wiring Inspector	
10	The basement shall not be used for bedrooms or sleeping quarters and only 46 net square feet may be allowed as additional finished space.	Final sign off	Plng.	
Site				
11	The electric, telephone, cable TV and other such lines and equipment shall be placed underground from the source or connection. The utilities plan shall be supplied to the Wiring Inspector before installation.	Installation of Utilities	Wiring Inspector	
Public Safety				
12	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
13	Any transformers should be located as not to impact the building or landscaped area, and shall be fully screened.	Electrical permits & CO		
Final Sign-Off				
14	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final inspection by Inspectional Services to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final sign off	Plng.	

Attest, by the Zoning Board of Appeals:

Herbert Foster, *Chairman*
Richard Rossetti
Danielle Evans
Elaine Severino
Josh Safdie (Alt.)

Attest, by the Senior Planner:

Lori Massa

Copies of this decision are filed in the Somerville City Clerk's office.
Copies of all plans referred to in this decision and a detailed record of the
SPGA proceedings are filed in the Somerville Planning Dept.

CLERK'S CERTIFICATE

Any appeal of this decision must be filed within twenty days after the date this notice is filed in the Office of the City Clerk, and must be filed in accordance with M.G.L. c. 40A, sec. 17 and SZO sec. 3.2.10.

In accordance with M.G.L. c. 40 A, sec. 11, no variance shall take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

Also in accordance with M.G.L. c. 40 A, sec. 11, a special permit shall not take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and either that no appeal has been filed or the appeal has been filed within such time, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed Special Permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.

The owner or applicant shall pay the fee for recording or registering. Furthermore, a permit from the Division of Inspectional Services shall be required in order to proceed with any project favorably decided upon by this decision, and upon request, the Applicant shall present evidence to the Building Official that this decision is properly recorded.

This is a true and correct copy of the decision filed on _____ in the Office of the City Clerk, and twenty days have elapsed, and

FOR VARIANCE(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ any appeals that were filed have been finally dismissed or denied.

FOR SPECIAL PERMIT(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ there has been an appeal filed.

Signed _____ City Clerk Date _____



Exhibit 2

From: hjensen@somervillema.gov,
To: digirolamolegal@verizon.net,
Subject: Re: 34 St James Ave
Date: Mon, Aug 10, 2020 11:15 am

Good morning,

The permit to legalize the basement has been denied. ZBA 2013-39 condition #10 states:

The basement shall not be used for bedrooms or sleeping quarters and only 46 net square feet may be allowed as additional finished space.

As the utilization of the basement has been tied to a condition the condition stands. The applicant may apply to revise or strike the condition as floor area ratios no longer exist.

-Hans

From: Richard Di Girolamo <digirolamolegal@verizon.net>
Sent: Tuesday, August 4, 2020 2:18 PM
To: Hans Jensen <hjensen@somervillema.gov>
Subject: 34 St James Ave

Hans

Hans you completed your review of the DRA for 34 St James Ave?

Thankyou for your attention to this matter.

Anne

Law Office of Richard Di Girolamo
424 Broadway
Somerville, MA 02145
Tel: (617) 666-8200
Fax: (617) 776-5435
digirolamolegal@verizon.net

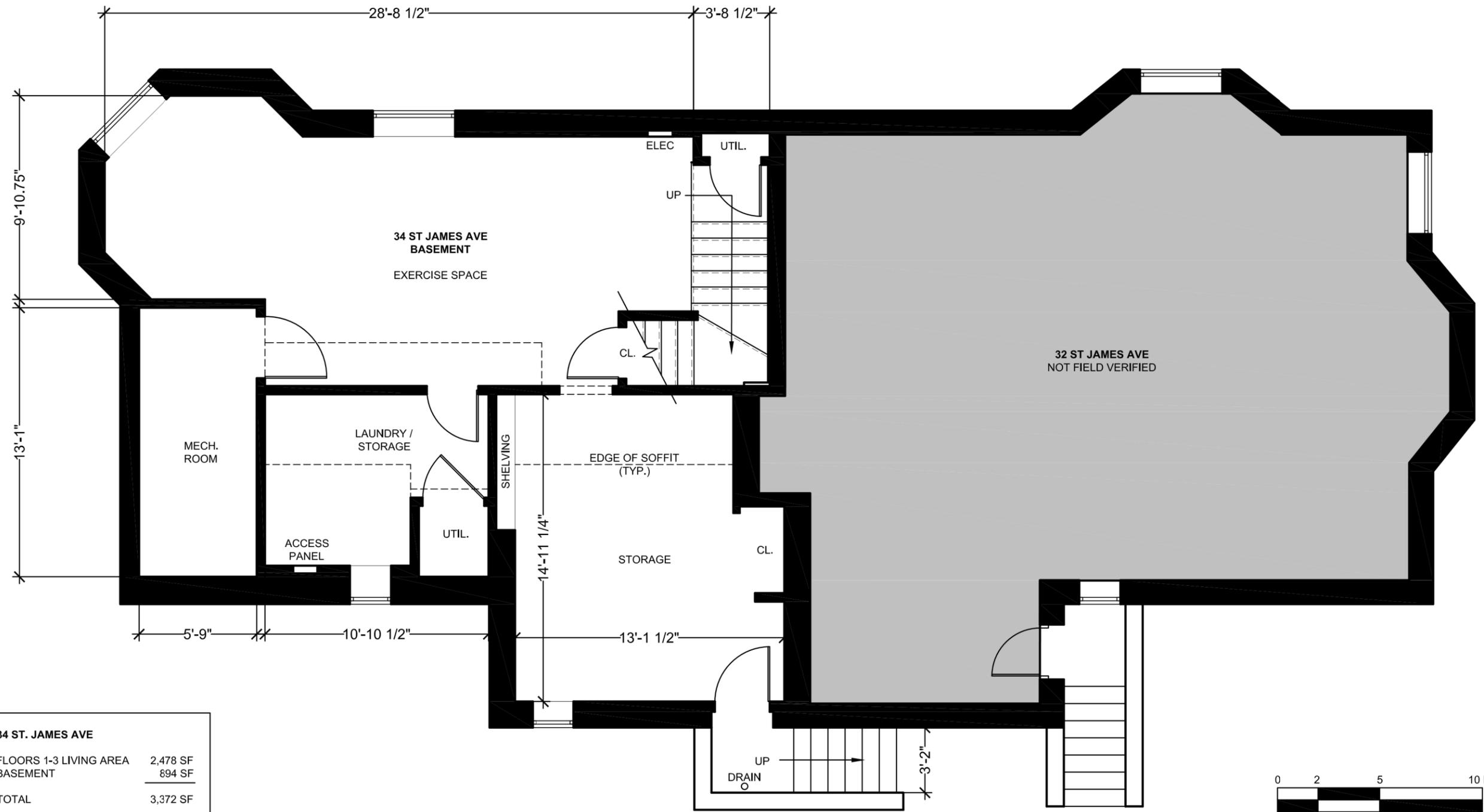
**DUE TO THE INCREASE IN WIRE FRAUD ALL WIRING INSTRUCTIONS MUST BE VERIFIED WITH THIS OFFICE
PRIOR TO SENDING ANY FUNDS**

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Exhibit 3



34 ST. JAMES AVE	
FLOORS 1-3 LIVING AREA	2,478 SF
BASEMENT	894 SF
TOTAL	3,372 SF



BASEMENT EXISTING CONDITIONS FLOOR PLAN 1
SCALE: 3/16"=1'-0" When Printed at 11x17



<p>MAUGEL ARCHITECTS 200 AYER ROAD SUITE 200 HARVARD, MA 01451 978 456 2800 MAUGEL.COM</p>	<p>THESE DOCUMENTS AND ALL IDEAS, ARRANGEMENTS, DESIGNS AND PLANS INDICATED THEREON OR REPRESENTED THEREBY ARE OWNED BY AND REMAIN THE PROPERTY OF MAUGEL ARCHITECTS, INC. AND NO PART THEREOF SHALL BE UTILIZED BY ANY PERSON, FIRM OR CORPORATION FOR ANY PURPOSE WHATSOEVER EXCEPT WITH SPECIFIC WRITTEN PERMISSION © 2019 MAUGEL ARCHITECTS, INC.</p>	<p>Kotecha-Shanbhag Townhouse 34 St. James Ave Somerville MA 02144</p>	
		<p>Regarding: Existing Conditions Floor Plan</p>	<p>Reference Drawing: AEX.100</p>
<p>Date: 9/8/2020</p>		<p>Scale: 3/16" = 1'-0"</p>	

File: 11x17.dwg
 Date Plotted: June 11, 2020
 Plotted By: Daniel Barton