

**IN RE: APPLICATION OF CHRISTOPHER AND TARA SCHOFF
134 Fairview Avenue, Portsmouth**

MEMORANDUM IN SUPPORT OF APPLICATION

I. THE PROPERTY:

Applicants Christopher and Tara Schoff are the owners of the property located at 134 Fairview Ave.¹ which is shown on Assessor Plan as Map 220, Lot 63. The lot is located within a Single Residence B District.

The lot in question is 170.04 feet wide and 188.27 feet deep on its longest side and 137 feet on its shortest side. The single family residence has 3208 square feet of gross area including the porch and back deck. The lot area is 14,226 square feet.

II. VARIANCES REQUESTED:

We want to demolish the existing home and foundation and rebuild a single family residence with attached two-car garage. The house will be 2 stories and the garage will have unfinished space above it for storage and/or future living space.

As proposed, the project will not be within the side or rear setbacks and will be 20 feet from the front setback where ordinarily 30 feet is required. Based on the front yard exception pursuant to Section 10.516.10 for existing alignments, Applicants could build as close at 11 feet to the front boundary, however, 20 feet was chosen to maximize the best use of the lot.

A variance from Section 10.521, Table of Dimensional Standards, for lot area is required to allow the rebuilding in this nonconforming lot due to only having 14,226 square feet of lot area where 15,000 square feet are required.

III. ARGUMENT:

It is the Applicants’ position that their application meets the five criteria necessary for the Board to grant the requested variance. These criteria are as follows:

- a. **Granting the one variance will not be contrary to the public interest.** The test for whether or not granting a variance would be contrary to the public interest is the test which the New Hampshire Supreme Court set forth in the case of *Chester Rod & Gun Club v. The Town of Chester*, 152 NH 577 (2005). In the *Chester Rod & Gun Club* case the Supreme Court stated “to be contrary to the public interest or injurious to the public rights of others, the variance must unduly and in a marked degree conflict with the Ordinance such that it violates the Ordinance’s basic Zoning Objectives.” The Supreme Court went on to say “one way to ascertain whether the

¹ Property is held by Christopher P. and Tara C. Schoff Revocable Trust u/t/a July 22, 2010, and Christopher P. Schoff and Tara C. Schoff are Trustees of the Trust.

granting of the variance would violate basic Zoning Objectives is to examine whether it would alter the essential character of the locality.” The Supreme Court then set forth a second test stating “another approach to determine whether granting the variance would violate basic Zoning Objectives is to examine whether granting variance would threaten the public health, safety or welfare.”

Here, granting the variance requested to allow a demo and rebuild on the lot certainly will not alter the essential character of the locality. Fairview Avenue is an older residential neighborhood consisting of both small and medium homes with some larger homes on the adjacent O’Leary Place cul de sac. Many homes are located on undersized and/or irregularly shaped lots. Granting the variance to allow us to rebuild a modest-sized, energy efficient home designed for aging in place and future solar power would certainly not alter the essential characteristics of the neighborhood. The house is designed to fit in as a modern New England style. Granting the requested variance will not threaten the public health, safety or welfare. Thus, granting the variance would not be contrary to the public interest.

b. Granting the single requested variance would not be contrary to the spirit of the Ordinance. The Supreme Court in *Chester Rod & Gun Club* stated that “the requirement that granting the variance not be contrary to the public interest is related to the requirement that the variance be consistent with the spirit of the Ordinance.” The Supreme Court in the case of *Malachy Glen Associates, Inc. v. the Town of Chichester*, 155 NH 102 (2007) cited the *Chester Rod & Gun Club* case and again stated that the two-part test set forth in *Chester Rod & Gun Club* was the same two-part test to be applied to whether or not granting a variance would be consistent with the spirit of the Ordinance. Thus, granting the requested variances would certainly not alter the essential character or the locality nor would it threaten the public health, safety or welfare.

c. Substantial justice will be done by granting the requested variance. The test as to whether or not substantial justice would be done is a balancing test to be performed by Board Members. The Board must balance the hardship upon the owner/applicant if the variance is denied against the benefit to the general public in denying the requested variances. There is no benefit to the general public in denying the requested variance. The proposed project will not change characteristics of the neighborhood, public health, safety and welfare would not be threatened, and there will be no increase in the need for municipal services. There would be no increase in traffic, storm water run-off, or any other factor such as smoke, noise, odor, dust, etc. Thus, when the Board balances the hardship upon the Applicants if they cannot build an updated energy efficient home against some perceived benefit to the general public, it is clear that the hardship upon the owner outweighs any benefit to the public in denying the variance.

d. Granting the requested variance will not diminish values of surrounding properties. Allowing the Applicants to construct the proposed home would certainly not diminish values of surrounding properties. The impact on property values will only be positive since an outdated home requiring substantial cosmetic and major system updates with an older inground pool will be replaced by new construction, well-designed energy efficient home with tasteful exterior that improves the character of the neighborhood. All abutters and other

neighbors who could be contacted have indicated their support for the proposal. Applicants assert that the improvement to their property will add value to the neighborhood.

e. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

Due to the special conditions of the property, an unnecessary hardship exists. The special conditions of the property are its small lot size below the 15,000 required size in this Single Residence B. This special condition creates an unnecessary hardship.

- 1. No fair and substantial relationship exists between the general purpose of the Ordinance provision and the specific application of that provision to this property.** The general public purpose of minimum lot size is to provide adequate light and air between properties, to prevent the over-crowding of land, and to allow for access for emergency vehicles and personnel. Light and air to surrounding properties will not be affected. Building as proposed would not result in over-crowding of land.
- 2. The proposed use is a reasonable one.** Today, replacing an outdated home that is nonconforming with one that is well designed, energy efficient, and designed for the owners to age in place is a reasonable use. The lot area cannot change and that is the only variance requested.

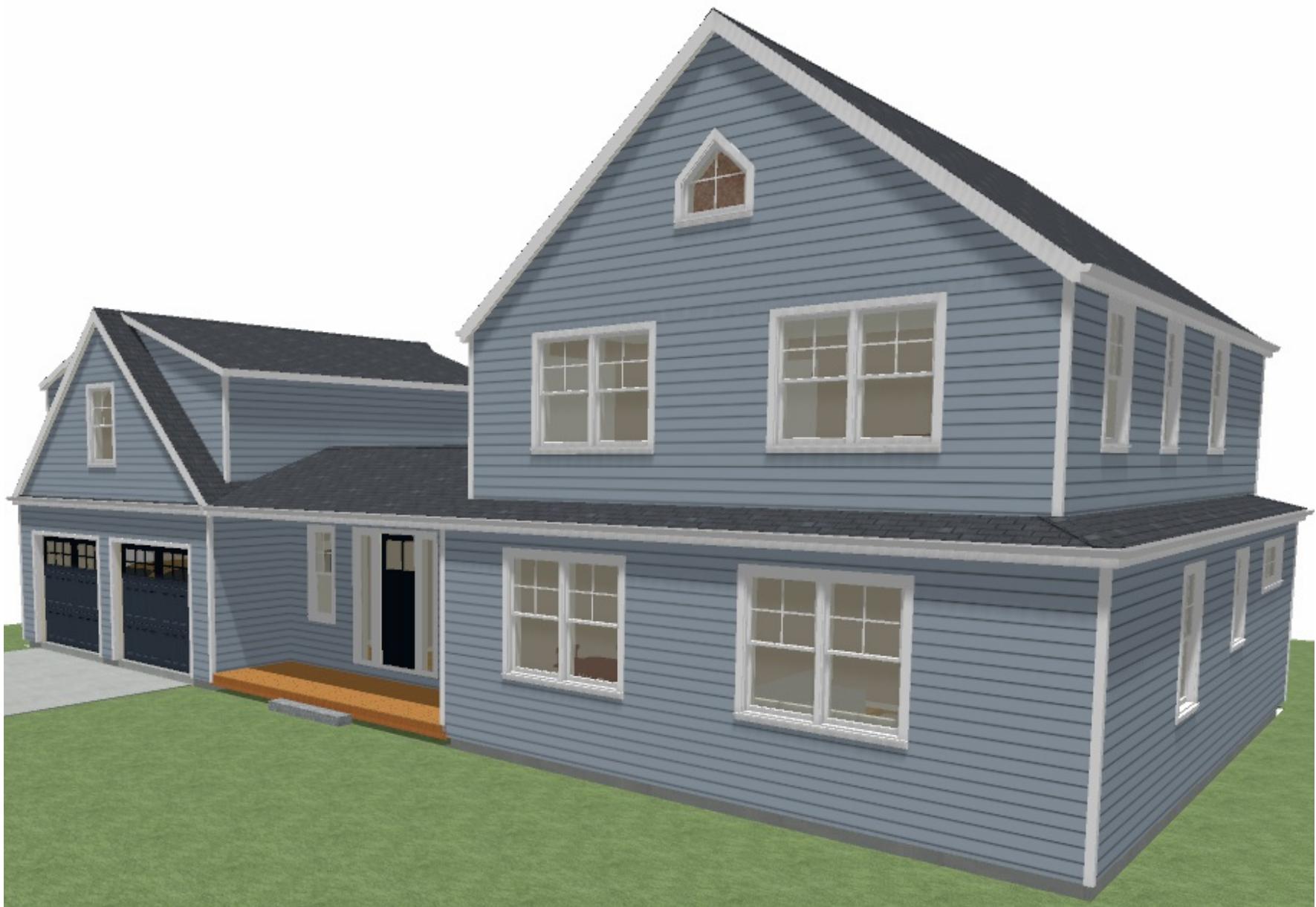
III. CONCLUSION:

In conclusion, it is the Applicant's position that the five criteria necessary for the Board to grant the requested variance for lot size are met by their Application. Thus, it is respectfully requested that the Board grant the variance as presented and advertised.

Respectfully submitted,

Dated: September 26, 2021

Christopher and Tara Schoff, Applicants

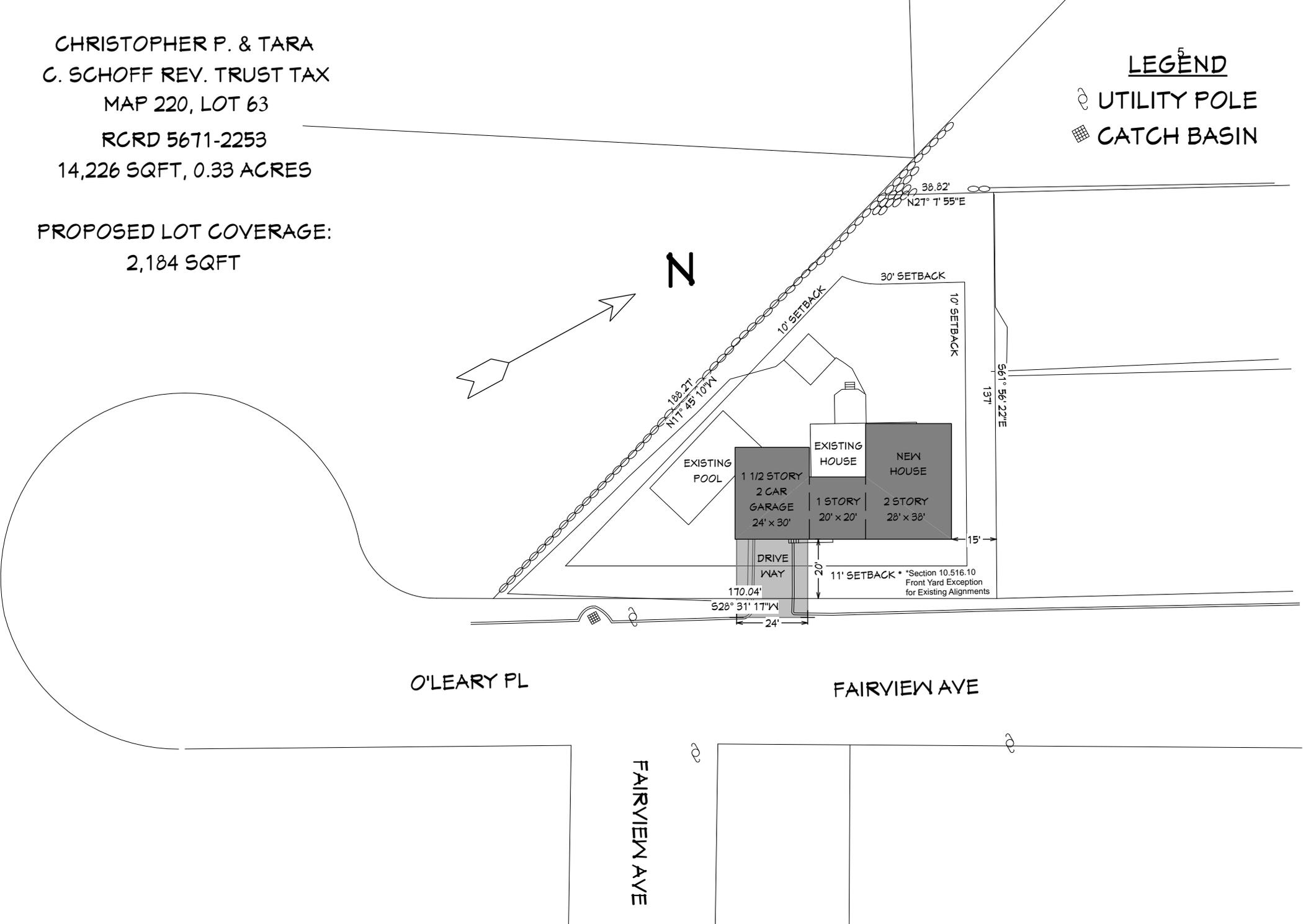


CHRISTOPHER P. & TARA
 C. SCHOFF REV. TRUST TAX
 MAP 220, LOT 63
 RCRD 5671-2253
 14,226 SQFT, 0.33 ACRES

PROPOSED LOT COVERAGE:
 2,184 SQFT

LEGEND

-  UTILITY POLE
-  CATCH BASIN

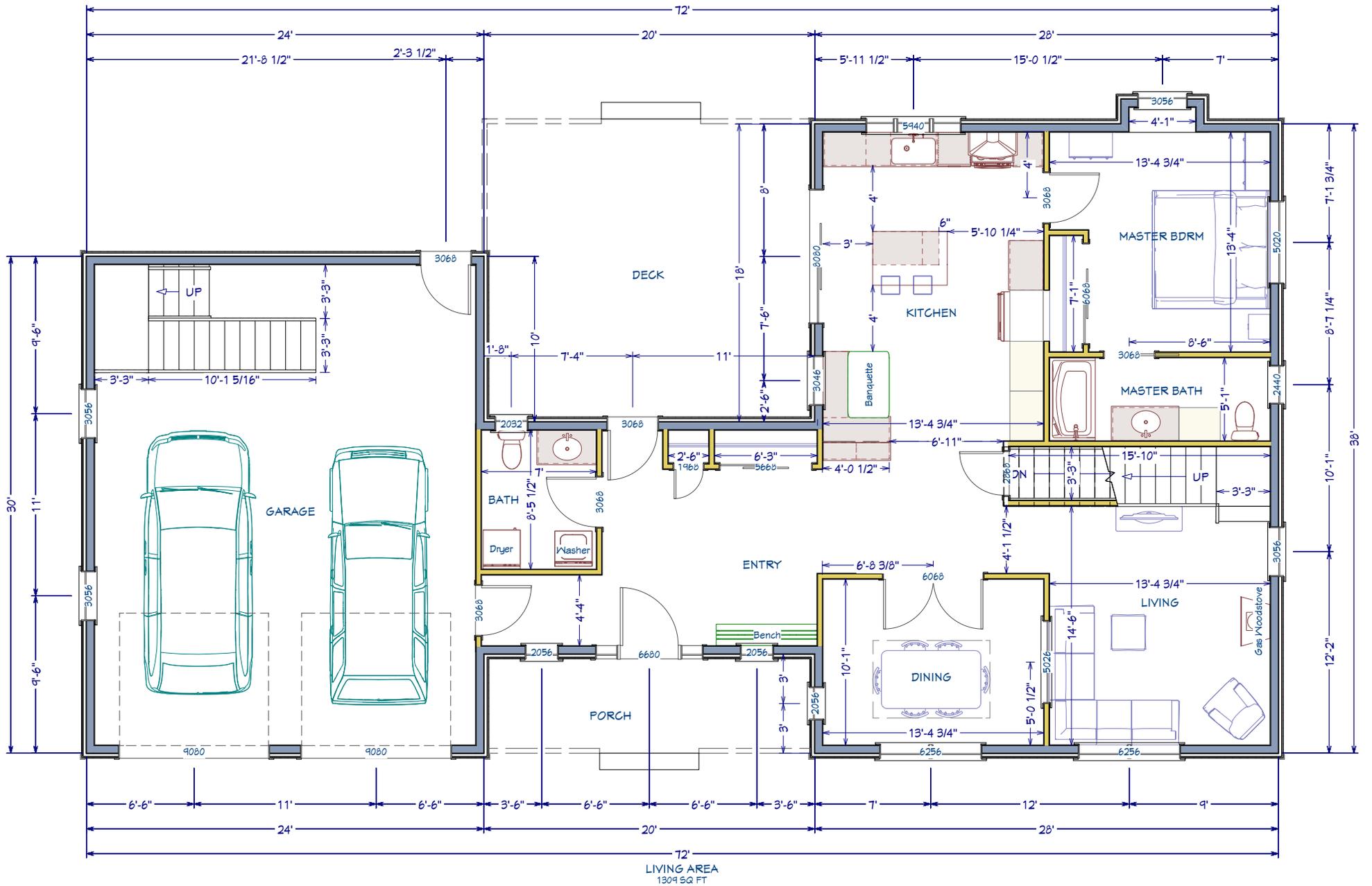


O'LEARY PL

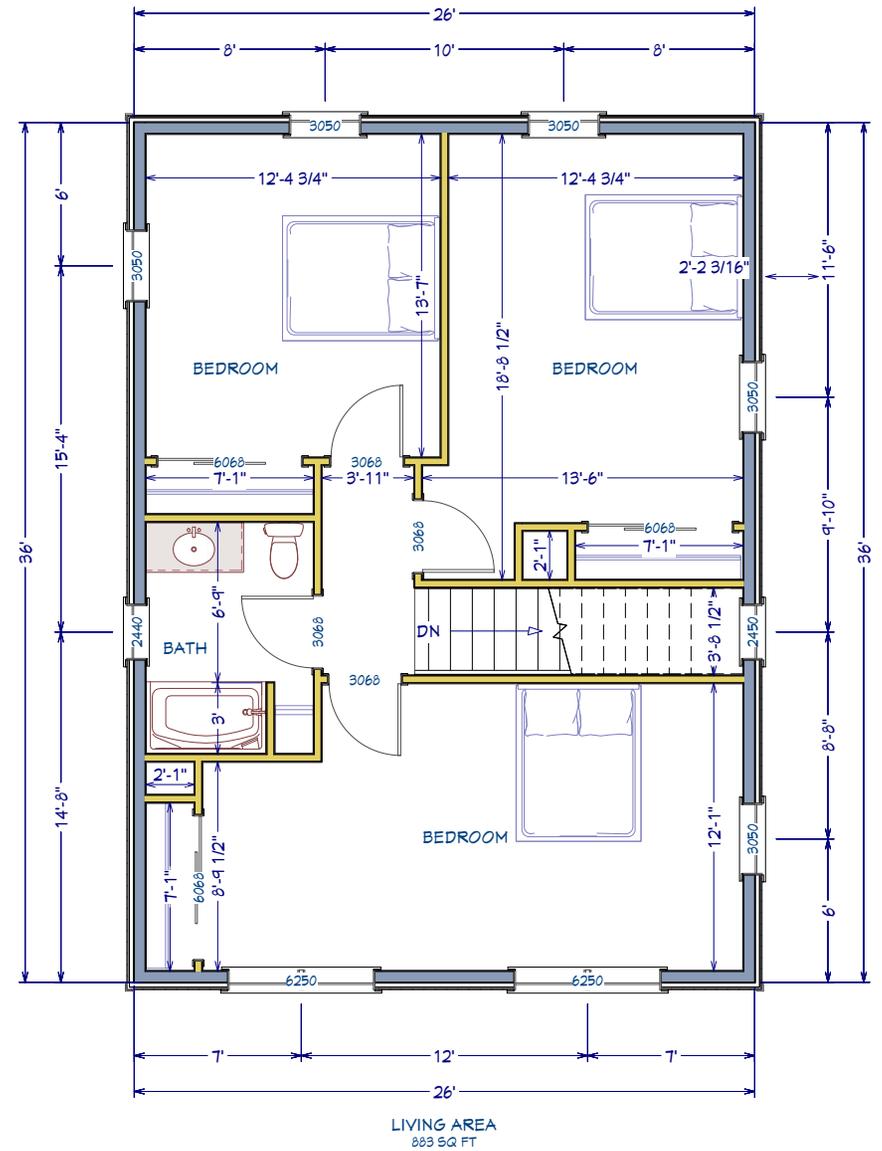
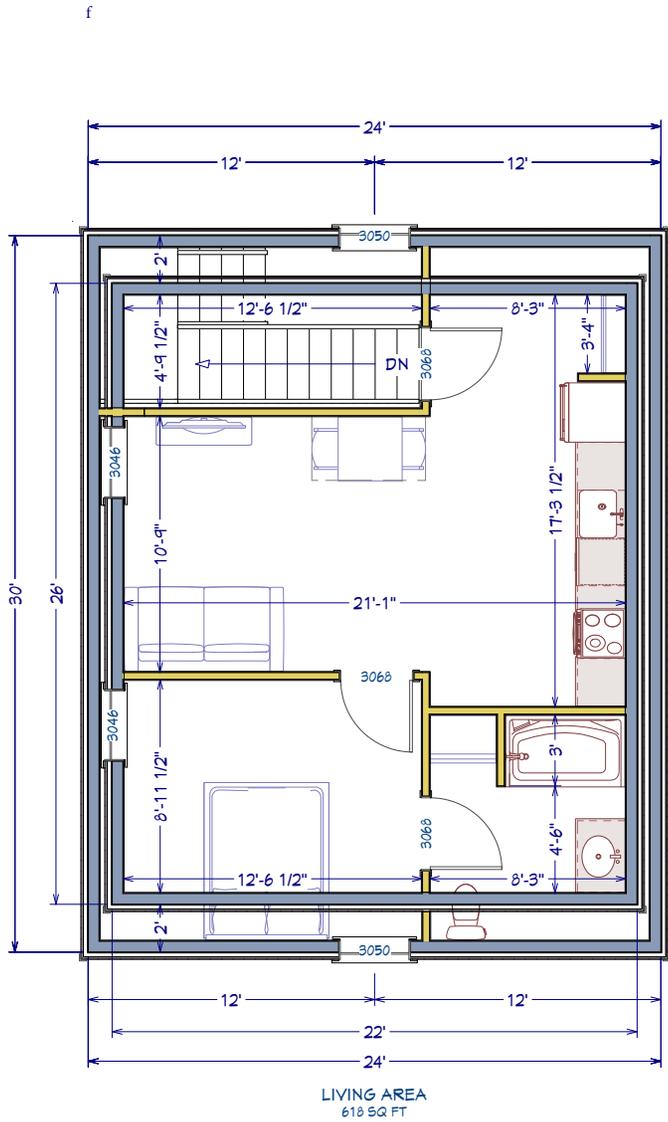
FAIRVIEW AVE

FAIRVIEW AVE

1 in = 40 ft



1st Floor
1/8 in = 1 ft



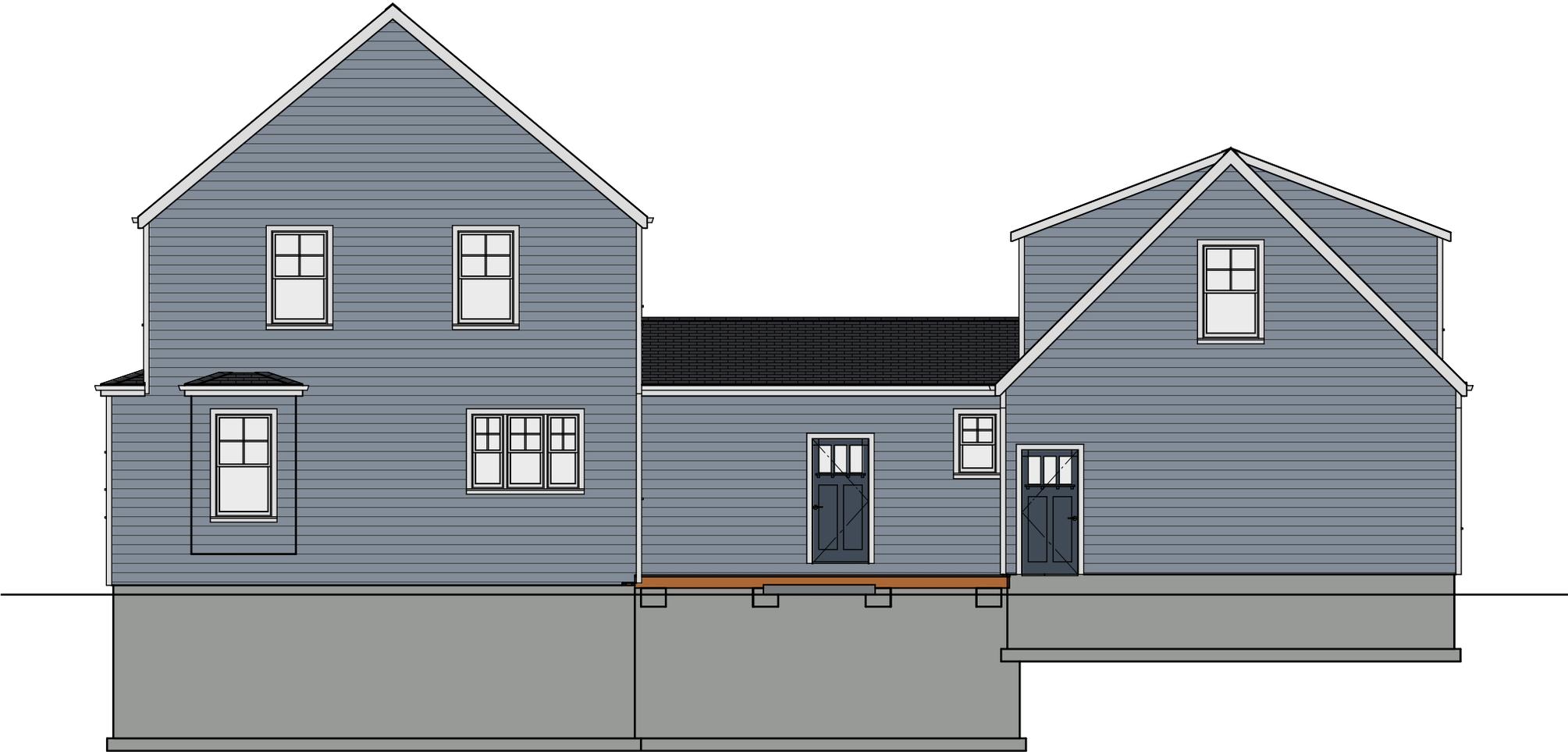
2nd Floor
 1/8 in = 1 ft
 draft ADU plan over garage
 not part of current project



East Elevation
1/8 in = 1 ft



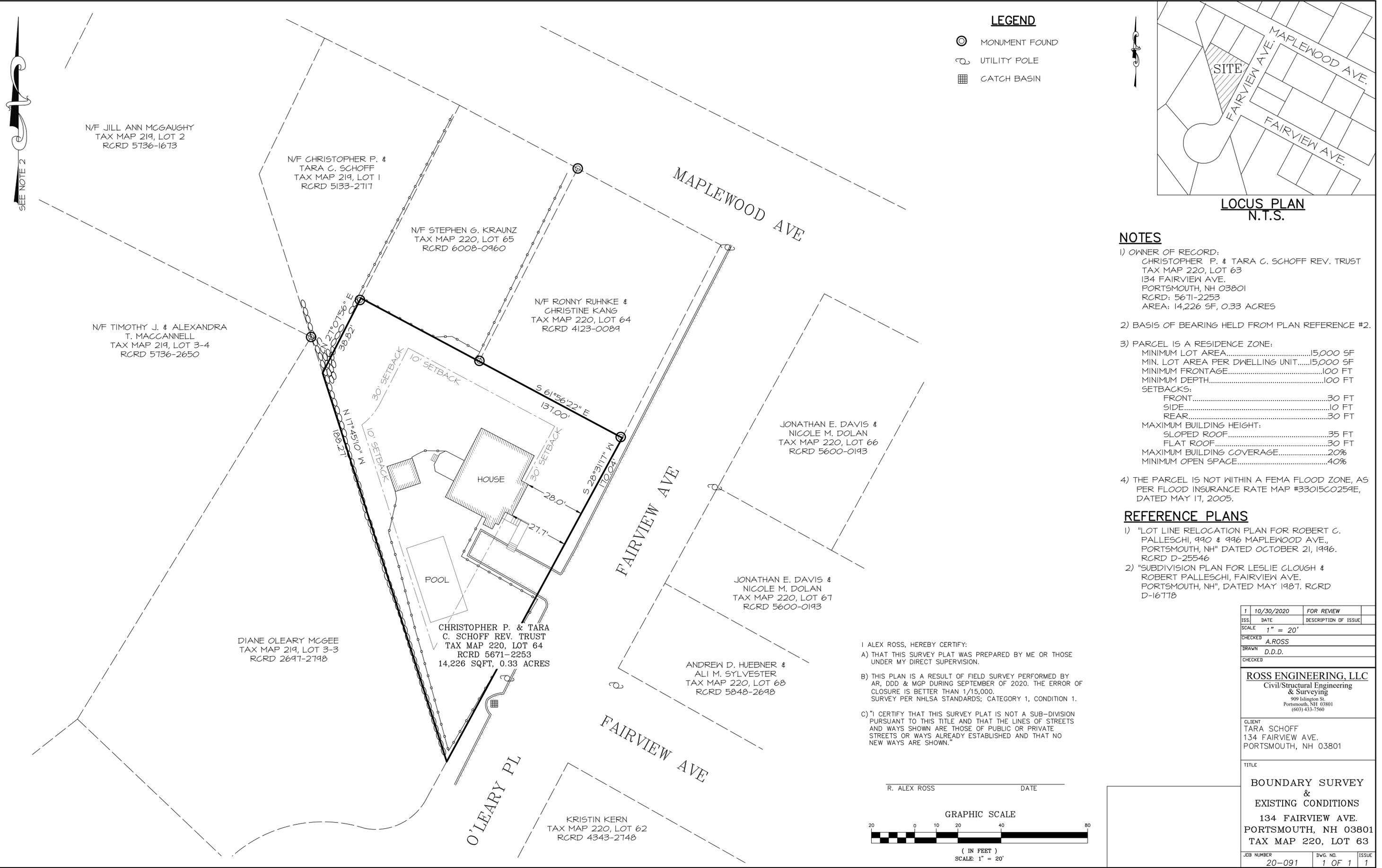
North Elevation
1/8 in = 1 ft



West Elevation
1/8 in = 1 ft



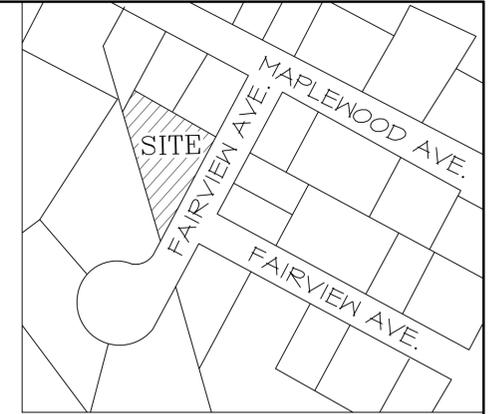
South Elevation
1/8 in = 1 ft



SEE NOTE 2

LEGEND

- ⊙ MONUMENT FOUND
- ⊕ UTILITY POLE
- ▣ CATCH BASIN



**LOCUS PLAN
N.T.S.**

NOTES

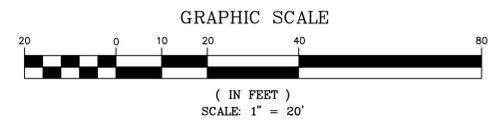
- 1) OWNER OF RECORD:
CHRISTOPHER P. & TARA C. SCHOFF REV. TRUST
TAX MAP 220, LOT 63
134 FAIRVIEW AVE.
PORTSMOUTH, NH 03801
RCRD: 5671-2253
AREA: 14,226 SF, 0.33 ACRES
- 2) BASIS OF BEARING HELD FROM PLAN REFERENCE #2.
- 3) PARCEL IS A RESIDENCE ZONE:
MINIMUM LOT AREA.....15,000 SF
MIN. LOT AREA PER DWELLING UNIT.....15,000 SF
MINIMUM FRONTAGE.....100 FT
MINIMUM DEPTH.....100 FT
SETBACKS:
FRONT.....30 FT
SIDE.....10 FT
REAR.....30 FT
MAXIMUM BUILDING HEIGHT:
SLOPED ROOF.....35 FT
FLAT ROOF.....30 FT
MAXIMUM BUILDING COVERAGE.....20%
MINIMUM OPEN SPACE.....40%
- 4) THE PARCEL IS NOT WITHIN A FEMA FLOOD ZONE, AS PER FLOOD INSURANCE RATE MAP #33015C0254E, DATED MAY 17, 2005.

REFERENCE PLANS

- 1) "LOT LINE RELOCATION PLAN FOR ROBERT C. PALLESCHI, 990 & 996 MAPLEWOOD AVE., PORTSMOUTH, NH" DATED OCTOBER 21, 1996. RCRD D-25546
- 2) "SUBDIVISION PLAN FOR LESLIE CLOUGH & ROBERT PALLESCHI, FAIRVIEW AVE. PORTSMOUTH, NH", DATED MAY 1987. RCRD D-16778

I ALEX ROSS, HEREBY CERTIFY:
A) THAT THIS SURVEY PLAT WAS PREPARED BY ME OR THOSE UNDER MY DIRECT SUPERVISION.
B) THIS PLAN IS A RESULT OF FIELD SURVEY PERFORMED BY AR, DDD & MGP DURING SEPTEMBER OF 2020. THE ERROR OF CLOSURE IS BETTER THAN 1/15,000. SURVEY PER NHLSA STANDARDS; CATEGORY 1, CONDITION 1.
C) "I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUB-DIVISION PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN."

R. ALEX ROSS _____ DATE _____



ISS.	10/30/2020	FOR REVIEW
DATE		DESCRIPTION OF ISSUE
SCALE	1" = 20'	
CHECKED	A.ROSS	
DRAWN	D.D.D.	
CHECKED		
ROSS ENGINEERING, LLC Civil/Structural Engineering & Surveying 909 Islington St. Portsmouth, NH 03801 (603) 433-7560		
CLIENT TARA SCHOFF 134 FAIRVIEW AVE. PORTSMOUTH, NH 03801		
TITLE BOUNDARY SURVEY & EXISTING CONDITIONS 134 FAIRVIEW AVE. PORTSMOUTH, NH 03801 TAX MAP 220, LOT 63		
JOB NUMBER	DWG. NO.	ISSUE
20-091	1 OF 1	1







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