

III. NEW BUSINESS

- C. The request of **Ashley J Brown and Lisa F Brown Living Trust (Owners)**, for property located at **176 Orchard Street** whereas relief is needed to construct an addition and deck to the rear of the existing structure and rebuild the existing rear staircase which requires the following: 1) Variance from Section 10.521 to allow 27% building coverage where 25% is allowed. 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, or enlarged without conforming to the requirements of the ordinance. Said property is located on Assessor Map 149 Lot 41 and lies within the General Residence A (GRA) District. (LU-23-82)

Existing & Proposed Conditions

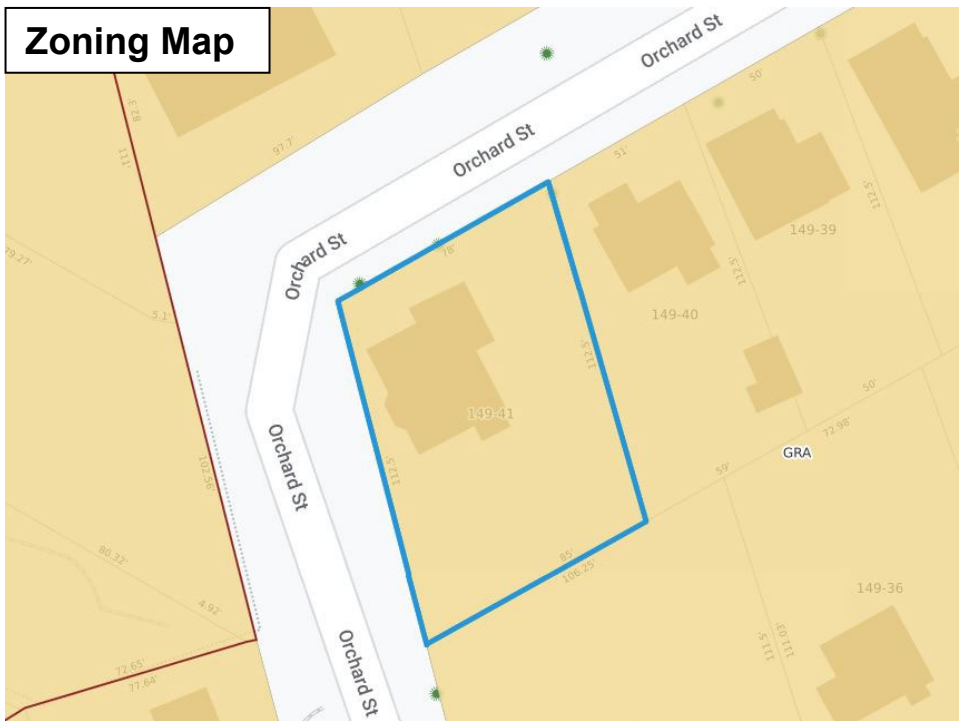
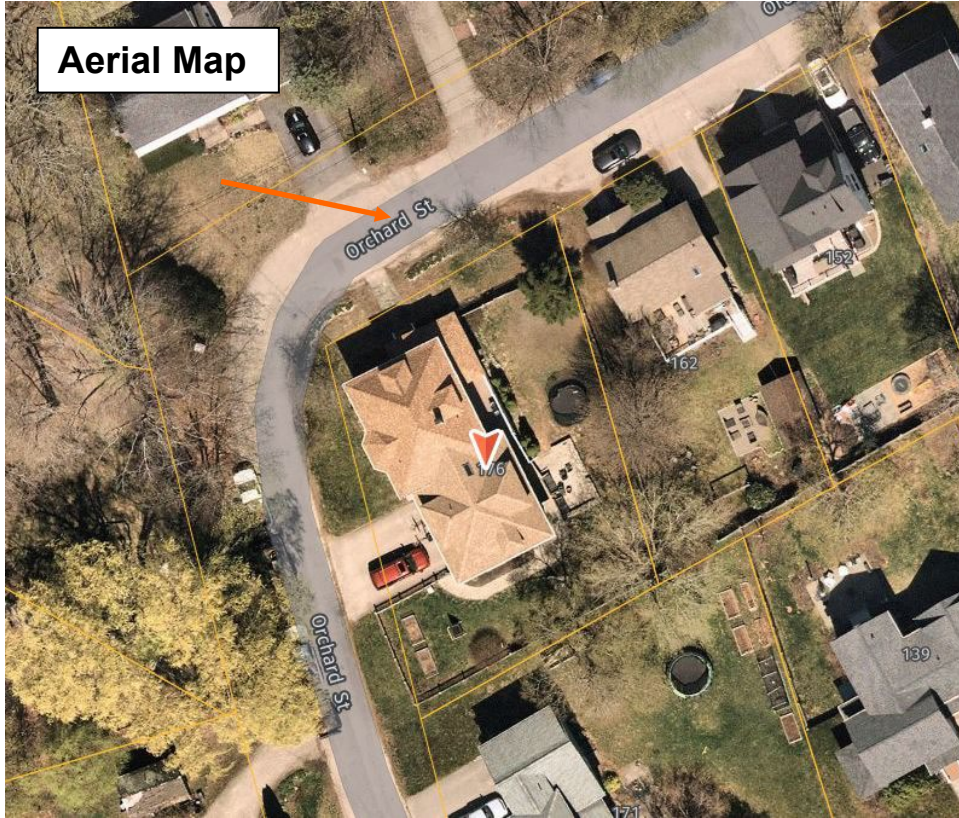
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family Dwelling	Addition and Deck*	Primarily residential
<u>Lot area (sq. ft.):</u>	8,974	8,974	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	8,974	8,974	7,500 min.
<u>Street Frontage (ft.):</u>	190	190	100 min.
<u>Lot depth (ft.)</u>	78	78	70 min.
<u>Front Yard (ft.):</u>	7	7	15 min.
<u>Secondary Front Yard (ft.):</u>	12.5	12.5	15 min.
<u>Right Yard (ft.):</u>	24	24	10 min.
<u>Rear Yard (ft.):</u>	24	24	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u> :	24	27	25 max.
<u>Open Space Coverage (%)</u> :	>30	>30	30 min.
<u>Parking</u>	4	4	2
<u>Estimated Age of Structure:</u>	1903	Variance request(s) shown in red.	

*to allow a nonconforming structure to be extended, reconstructed, or enlarged.

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

No previous BOA history found.

Planning Department Comments

The applicant is requesting relief to construct a 256 square foot addition and a 234 square foot deck to the eastern side of the existing dwelling, where a portion of the existing covered porch now exists. The addition and deck will increase building coverage from 24% existing to 27% proposed, thus requiring relief from the 25% maximum requirement. The existing house is non-conforming as to front yard setbacks and therefore the enlargement and extension of the non-conforming structure also requires relief from Section 10.321.

Variance Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*
AND
 - (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*
OR
Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

**APPLICATION OF LISA F. BROWN, TRUSTEE OF THE LISA F. BROWN
LIVING TRUST and ASHLEY J. BROWN, TRUSTEE OF THE ASHLEY J.
BROWN LIVING TRUST
176 Orchard Street, Portsmouth, NH
Map 149, Lot 41**

APPLICANT'S NARRATIVE

I. THE PROPERTY:

The applicants, Lisa F. and Ashley J. Brown, own and reside at the property located at 176 Orchard Street, which consists of a single family dwelling with attached garage. This has been the primary residence of the applicants and their family since 2007. The property is in the GRA zone and is non-conforming as to front yard setbacks. The property is notable in that it is located at the inside of the bend in Orchard Street such that it is bounded on both its northern and western sides by the right of way. As such, it technically has no side yards. Whether considered as rear or side yards, the eastern and southern yards would comply with the required setbacks.

The applicants propose to add a modest 256 square foot addition and a 234.1 foot deck to the eastern side of the existing dwelling, where a portion of the existing covered porch now sits. The existing non-compliant front yard setbacks will remain as is. The net increase in the building footprint will be 240 square feet.

The project requires relief from Section 10.521 lot coverage of 26.7% where 25% is the maximum required and from Section 10.321 to extend or enlarge a lawful non-conforming structure.

II. CRITERIA:

The applicant believes the within Application meets the criteria necessary for the Board to grant the requested variances.

Granting the requested variances will not be contrary to the spirit and intent of the ordinance nor will it be contrary to the public interest. The “public interest” and “spirit and intent” requirements are considered together pursuant to Malachy Glen Associates v. Chichester, 152 NH 102 (2007). The test for whether or not granting a variance would be contrary to the public interest or contrary to the spirit and intent of the ordinance is whether or not the variance being granted would substantially alter the characteristics of the neighborhood or threaten the health, safety and welfare of the public.

The essentially residential characteristics of the neighborhood would not be altered by this project. The existing structure and lot are already non-compliant with front setback requirements, and the modest increase in building footprint resulting from this project will in no way compromise the neighborhood.

Were the variances to be granted, there would be no change in the essential characteristics of the neighborhood, nor would public health, safety or welfare be threatened in any way.

Substantial justice would be done by granting the variance. Whether or not substantial justice will be done by granting a variance requires the Board to conduct a balancing test. If the hardship upon the owner/applicant outweighs any benefit to the general public in denying the variance, then substantial justice would be done by granting the variance. It is substantially just to allow a property owner the reasonable use of his or her property.

In this case, there is no benefit to the public in denying the variances that is not outweighed by the hardship upon the owner. The setbacks to abutting properties are fully compliant, and the existing non-conforming front yard setbacks are to remain as is. The increase in building coverage, approximately 240 square feet, is entirely reasonable given the lot is located at the inside of the bend in Orchard Street where the paved portion public way tapers significantly and turns south in what is almost a private alley.

The applicants have reviewed their plans with their neighbors and have received universal support. Accordingly, the loss to the applicant clearly outweighs any gain to the public if the applicant were required to conform to the ordinance.

The values of surrounding properties will not be diminished by granting the variance. The proposal will improve the functionality and livability of the applicants' property and will increase the value of the applicant's property and those around it. The values of surrounding properties will not be negatively affected in any way.

There are special conditions associated with the property which distinguish it from other properties in the area such that literal enforcement of the ordinance would result in an unnecessary hardship. The property is non-conforming as to front yard setbacks. It is a trapezoidal shaped lot that lies on the inside of the bend in Orchard Street such that it has no rear yards. The proposed additions are on the eastern side of the house, which is the only logical placement for such additions given the dwelling's existing configuration on the lot. The property is at the western end of Orchard Street, where the public way turns and heads south, and where it is one of only two properties with driveways on that portion.

The use is a reasonable use. The proposal is a residential use in a residential zone.

There is no fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property. The purpose of the building coverage requirement is to prevent overcrowding of lots and unsightly and inconsistent massing of structures. The amount of additional building coverage proposed, approximately 240 square feet, is minimal and not out of character for this neighborhood.

Accordingly, the relief requested here would not in any way frustrate the purpose of the ordinance and there is no fair and substantial relationship between the purpose of the setback requirements and their application to this property.

III. Conclusion.

For the foregoing reasons, the applicant respectfully requests the Board grant the variance as requested and advertised.

Respectfully submitted,

Dated: 5-25-23

By: *Chris Mulligan*
Christopher P. Mulligan, Esquire



Property Information
Property ID 0149-0041-0000
Location 176 ORCHARD ST
Owner BROWN ASHLEY J LIVING TRUST



**MAP FOR REFERENCE ONLY
 NOT A LEGAL DOCUMENT**

City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

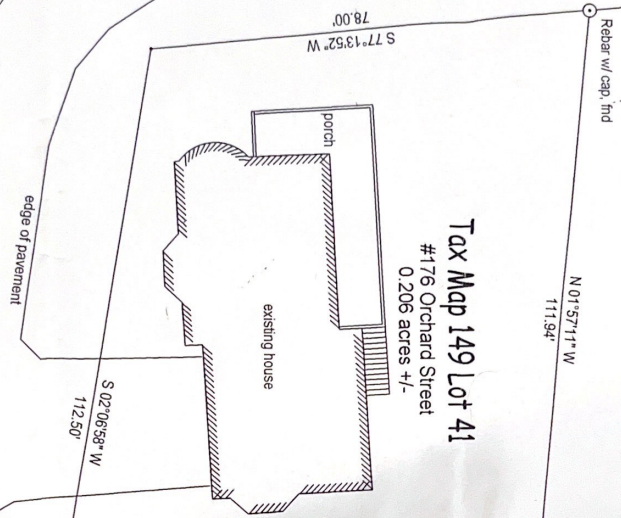
Geometry updated 09/21/2022
 Data updated 3/9/2022

Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.

1" = 88.26596571033642 ft



Tax Map 149 Lot 41
#176 Orchard Street
0.206 acres +/-



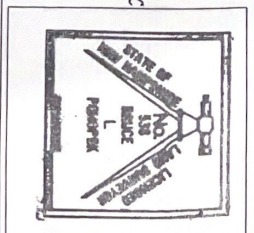
Orchard Street

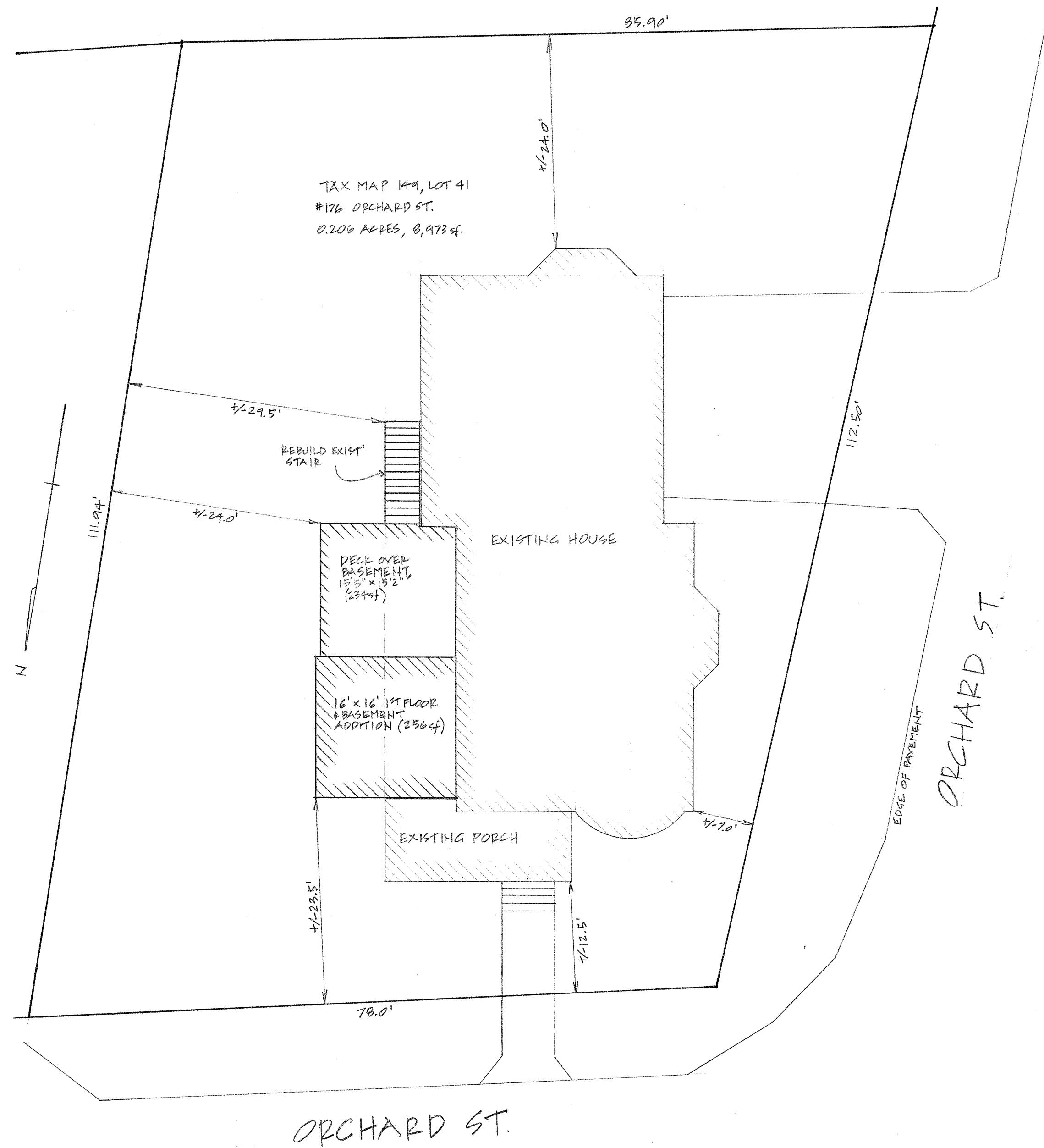


SCALE: 1" = 20' DATE: JUNE 10, 2008

FOR
Plan of Land
FOR
Lisa F. & Ashley J. Brown
FOR LAND LOCATED AT
#176 Orchard Street
City of Portsmouth Strafford County
New Hampshire

PREPARED BY:
POHOPEK LAND SURVEYORS
& SEPTIC SYSTEM DESIGN, LLC
42 FLAG ROAD
ROCHESTER, NH 03839
(603) 330-3282





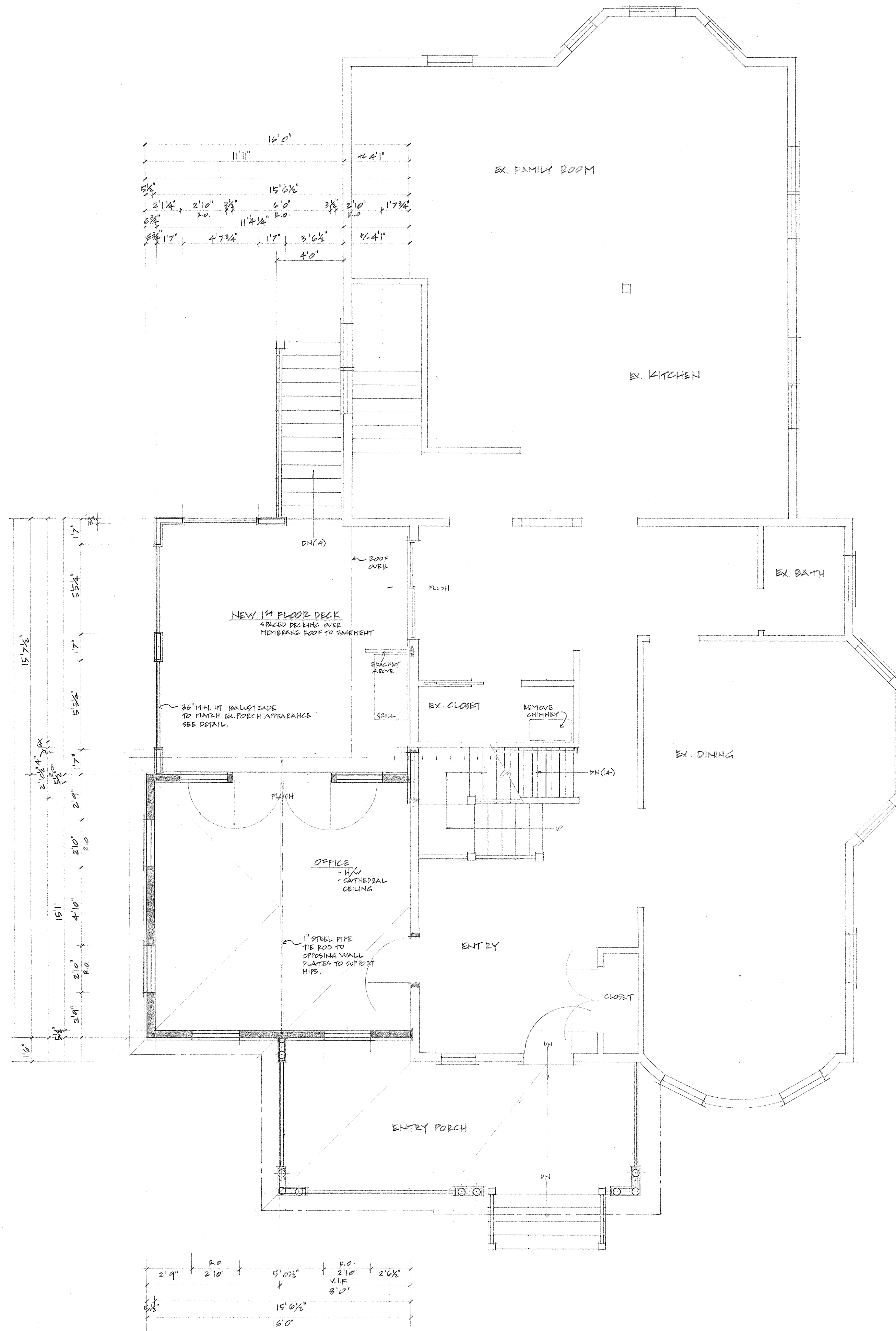
PROPOSED SITE PLAN 1"=10'

DIMENSIONAL TABLE (GRA)

ITEM	EXISTING	PROPOSED	CHANGE
Lot Area (Req. 7,500sf)	8,973sf	8,973f	0sf
Height (35' max.)	32'	32'	0'
Front Yard (Req. 15')	12.5'	12.5'	0'
Left Yard (Req. 10')	29.5'	24.0'	+5.5'
Right Front Yard (Req. 15')	7'	7'	0'
Rear Yard (Req. 20')	24'	24'	0'
House Area	2,153sf	2,393sf	+240sf
House Area % (25% max.)	23.99%	26.7%	+2.7%

OWNER OF RECORD;
 ASHLEY J BROWN LIVING TRUST
 176 ORCHARD ST.,
 PORTSMOUTH, NH, 03801
 MAP 149, LOT 41

PLAN TAKEN FROM "PLAN OF LAND", 6.10.2008, BY POHOPEK LAND SURVEYORS OF ROCHESTER, NH.



PROPOSED FIRST FLOOR PLAN 1/4"=1'0"

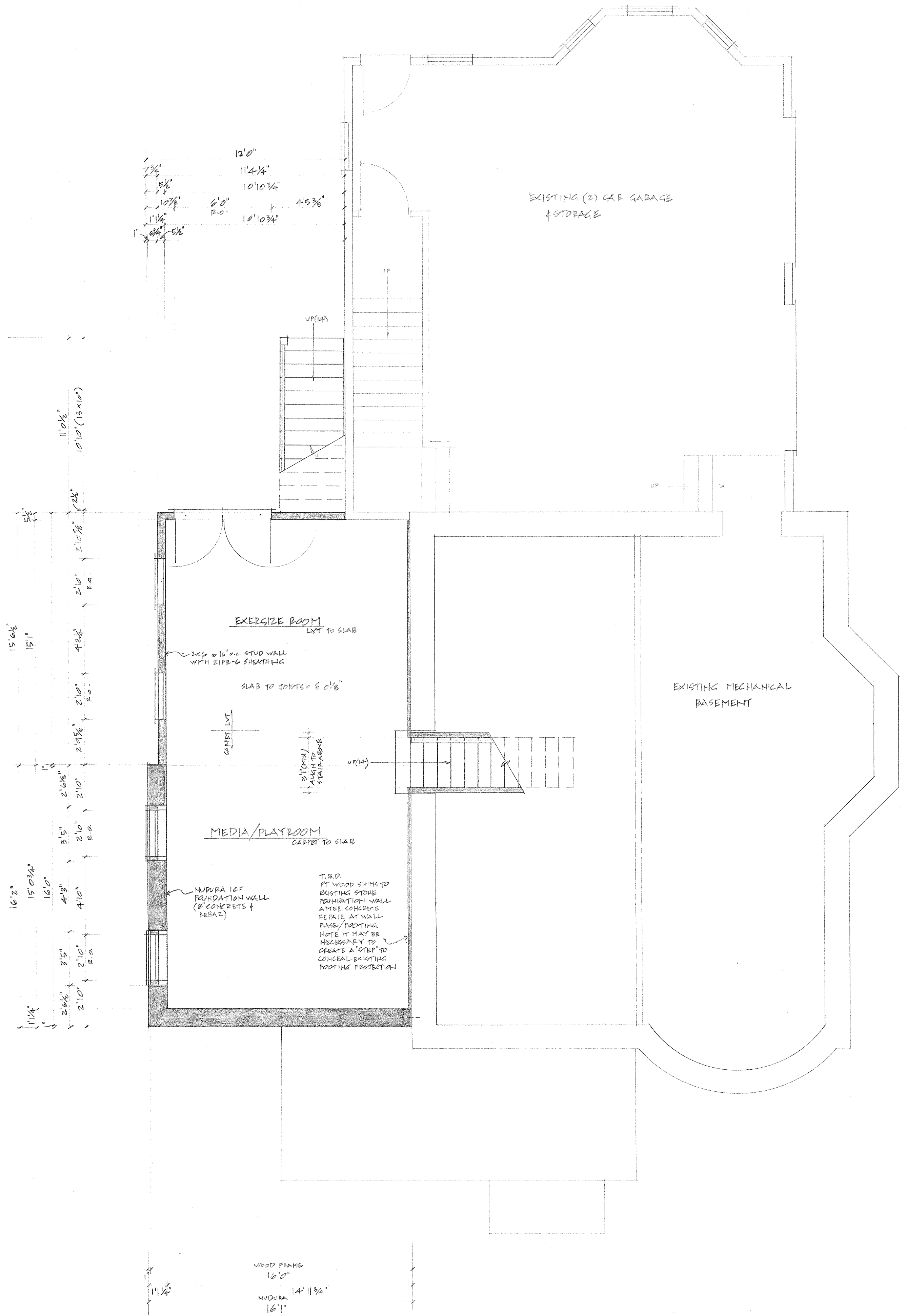
TITLE: PROPOSED SITE PLAN & FIRST FLOOR PLAN

SCALE: 1"=20' & 1/4"=1'0"

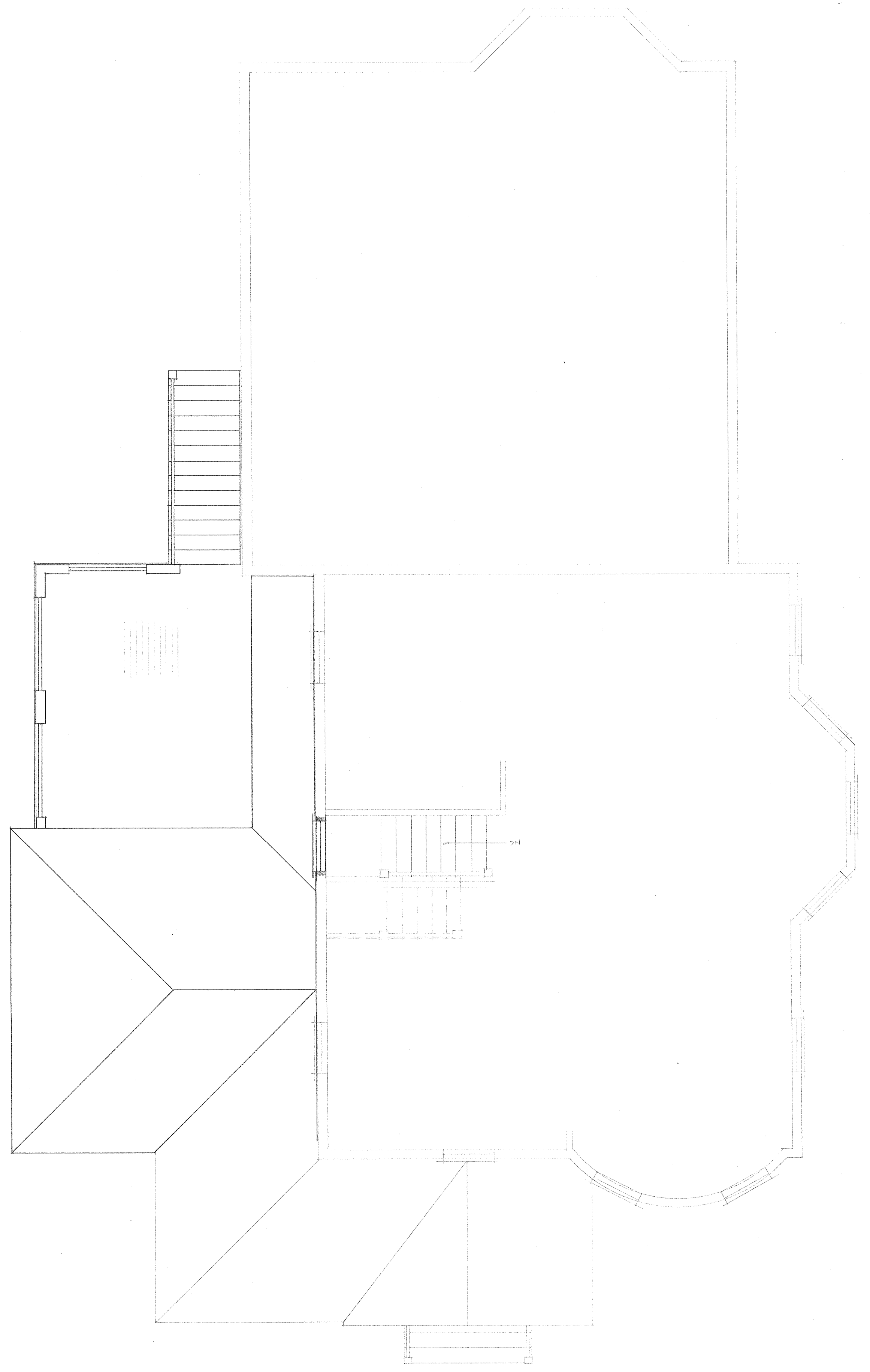
DATE: 4.28.2023

REVISIONS:

ADDITION AT
 176 ORCHARD ST.,
 PORTSMOUTH, NH.



PROPOSED BASEMENT FLOOR PLAN 1/4"=1'0"



PROPOSED SECOND FLOOR PLAN 1/4"=1'0"

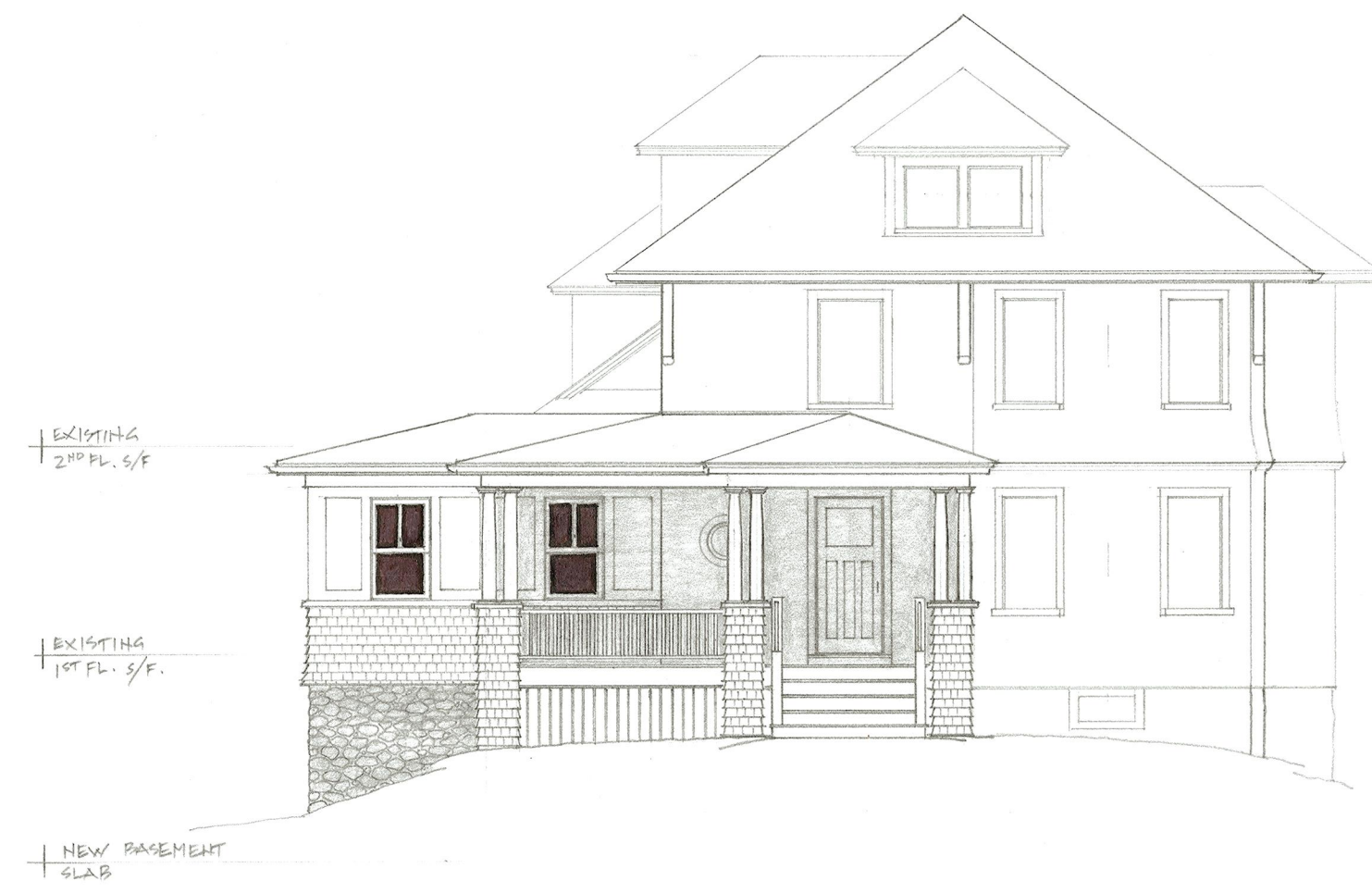
TITLE: PROPOSED BASEMENT + 2ND FLOOR PLAN

SCALE : 1/4"=1'0"

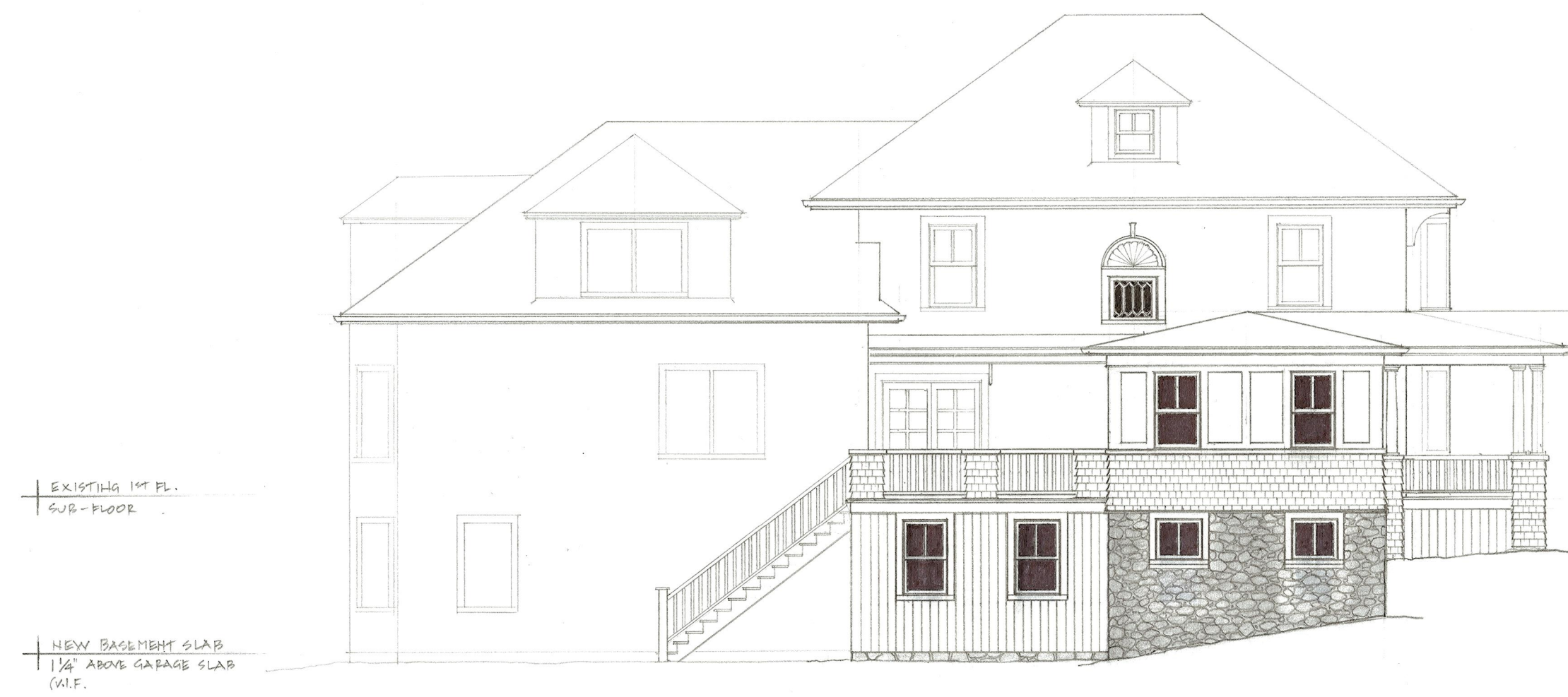
DATE : 4.28.2023

REVISIONS :

ADDITION AT
176 ORCHARD ST.,
PORTSMOUTH, NH.



PROPOSED NORTH ELEVATION



PROPOSED EAST ELEVATION 1/8"=1'0"



PROPOSED SOUTH ELEVATION 1/8"=1'0"

TITLE: EXISTING CONDITIONS PHOTOS & PROPOSED ELEVATIONS

SCALE : 1/8"=1'0"

DATE : 4.14.2023

REVISIONS:

ADDITION AT
176 ORCHARD ST.,
PORTSMOUTH, NH.

TO WHOM IT MAY CONCERN,
WE HAVE ABSOLUTELY
NO PROBLEM WITH THIS PROJECT.
ASSET TO NEIGHBORHOOD.

RICK & CHRIS MORGEN
155 ORCHARD ST.
603 812 3582

[Signature] 5/15/23

+ EXISTING
2ND FL. S/F

+ EXISTING
1ST FL. S/F

+ NEW BASEMENT
SLAB



PROPOSED NORTH ELEVATION