

144 Washington Street  
P.O. Box 1222  
Portsmouth, NH 03802  
[www.durbinlawoffices.com](http://www.durbinlawoffices.com)



Durbin Law Offices, P.L.L.C.

Derek R. Durbin, Esq.  
603.287.4764  
[derek@durbinlawoffices.com](mailto:derek@durbinlawoffices.com)  
*\*Also admitted in MA*

**VIA VIEWPOINT**

August 26, 2020

City of Portsmouth  
Zoning Board of Adjustment  
Attn: David Rheume, Chairman  
1 Junkins Avenue  
Portsmouth, NH 03801

**RE: Variance Application of Kevin Shitan Zeng, Trustee of the Kevin Shitan Zeng Revocable Trust of 2017  
377 Maplewood Avenue, Portsmouth (Tax Map 141, Lot 22)**

Dear Chairman Rheume,

Our Office represents Kevin Shitan Zeng, Trustee of the Kevin Shitan Zeng Revocable Trust of 2017, owner of property located at 377 Maplewood Avenue in Portsmouth. Attached herewith, please find the following materials for submission to the Zoning Board of Adjustment for consideration at its next regularly scheduled meeting:

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) Plan Set (Site Plan, Floor Plans and Elevations);
- 4) Photographs of the Property;
- 5) Tax Map Image of the Property; and
- 6) Zoning Overlay Image of the Property.

Twelve (12) copies of the application submission are being delivered to the City on this date. Should you have any questions or concerns regarding the enclosed application materials, do not hesitate to contact me at your convenience.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Derek Durbin', written over a large, loopy blue oval scribble.

Derek R. Durbin, Esq.

LETTER OF AUTHORIZATION

**Kevin Shitan Zeng, Trustee of The Kevin Shitan Zeng Revocable Trust of 2017**, owner of property located at 377 Maplewood Avenue, identified on Portsmouth Tax as Map 141, Lot 22 (the "Property"), hereby authorizes Durbin Law Offices PLLC, of 144 Washington Street, Portsmouth, New Hampshire 03801, to act as his agent and representative in connection with the filing of any building, zoning, planning or other municipal permit applications with the City of Portsmouth for said Property. This Letter of Authorization shall be valid until expressly revoked in writing.



---

**Kevin Shitan Zeng, Trustee**

August 24, 2020

**CITY OF PORTSMOUTH  
ZONING BOARD OF ADJUSTMENT  
APPLICATION NARRATIVE**

Kevin Shitan Zeng, Trustee  
The Kevin Shitan Zeng Revocable Trust of 2017  
377 Maplewood Avenue  
Portsmouth, NH 03801  
(Owner/Applicant)

**INTRODUCTORY STATEMENT**

**The Property**

Kevin Shitan Zeng is the owner of the property located at 377 Maplewood Avenue, identified on Portsmouth Tax Map 141 as Lot 22 (the "Property" or the "Applicant's Property"). The Property is zoned General Residence A ("GRA") and lies within the Historic District. It is a 0.12 acre (5,277 square feet) parcel that contains a small, two-story, single-family home that was built in 1941. The house is located far to the front of the Property, being approximately 5' from the Maplewood Avenue right-of-way. Just to the rear (north) of the existing home, there is a detached, wood-framed, single-story building that has fallen into significant disrepair and is structurally unsound. This building pre-dates the existing house and is believed to have been built in the early 1900s. It is comprised of multiple sections that have been cobbled together over time. Portions of the exterior walls and floors are missing. The building sits upon concrete and clay piers. Per Section 10.521 of the Ordinance, it is non-conforming as to the left, right and rear yard setbacks. In addition, the Property is non-conforming with respect to building coverage at 45.3%.

**Proposed Detached Dwelling Unit**

To make the rear building useable again, it must be demolished and re-constructed. This determination was made in consultation with the Historic District Commission ("HDC"), who viewed the building and determined that replacement is appropriate given the building's current condition. Mr. Zeng is proposing to construct a new one-story single-family residence in its place. The replacement building would have a smaller building footprint than the existing building and more compliant side and rear yard boundary setbacks.

The new building is architecturally designed as a carriage house, as viewed from the street, appearing accessory to the existing dwelling in the front of the Property. The stylistic features and scale of the new building reflect the character of the building that will be demolished. It will be designed similarly to other carriage houses in the City. The proposed design has already undergone a successful Historic District Commission work session.

## SUMMARY OF ZONING RELIEF

The Applicant seeks the following relief from the Zoning Ordinance:

1. A variance from Section 10.513 to allow more than one free standing dwelling on a lot;
2. A variance from Section 10.521 to allow lot area per dwelling unit of 2,638.50 square feet ((+/-) where 7,500 square feet is the minimum required and 5,277 square feet exists;
3. A variance from Section 10.521 to allow lot coverage of 43.3% (+/-) where 45.3% exists and 25% is the maximum allowed;
4. A variance from Section 10.521 to allow a right yard setback of 4'-7" (+/-) where 0" exists and 10' is the minimum required;
5. A variance from Section 10.521 to allow a left yard setback of 3'-3" (+/-) where 2'-11 ¾" exists and 10' is the minimum required; and
6. A variance from Section 10.521 to allow a rear yard setback of 5'-6" (+/-) where 2'-10 ¾" exists and 20' is the minimum required.

## VARIANCE CRITERIA

*Granting the variances will not be contrary to the public interest and will observe the spirit of the Ordinance.*

In the case of *Chester Rod & Gun Club, Inc. v. Town of Chester*, the Court observed that the requirements that a variance not be "contrary to the public interest" or "injure the public rights of others" are coextensive and are related to the requirement that the variance be consistent with the spirit of the ordinance. 152 N.H. 577 (2005). The Court noted that since the provisions of all ordinances represent a declaration of public interest, any variance will, in some measure, be contrary to the ordinance, but to be contrary to the public interest or injurious to 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.'" "[I]d. "There are two methods of ascertaining whether granting a variance would violate an ordinance's basic zoning objectives: (1) examining whether granting the variance would alter the essential character of the neighborhood or, in the alternative; and (2) examining whether granting the variance would threaten the public health, safety, or welfare." *Harborside Assoc v. Parade Residence Hotel*, 162 N.H. 508, 514 (2011).

The area of the GRA District where the Property is located is densely settled. Many of the surrounding properties are of similar size and/or contain more than one dwelling unit. For example, the directly abutting property to the right (east), 357 Maplewood Avenue (Lot 141-24) is a 0.14 acre parcel of land that contains four dwelling units. Of the three properties directly across Maplewood Avenue from the Applicant's Property two of them contain multiple condominium units. The other immediate surrounding properties contain a mixture of single-family, two-family and three-family uses. Two of the surrounding properties have more than one free standing dwelling unit on them. The property at 1 Jackson Hill Street (Lot 141-30) has two detached condominium units on it. The property 33 Northwest Street (Lot 141/27) has two detached single-family residential units on it. Most of the surrounding properties, if not all of them, have buildings on them that encroach into one or more boundary setbacks.

The goal of GRA Zoning is "to provide areas for **single-family, two family and multifamily dwellings**, with appropriate **accessory uses**, at *moderate to high densities...*["] (*italics added*). The purpose of the restrictions pertaining to lot area per dwelling unit and number of dwelling units per lot is to control density and prevent the overcrowding of land. The purpose of the setback requirements is to maintain adequate light, air and space between buildings on contiguous properties to address spacing, privacy and fire safety concerns.

With the proposed demolition and reconstruction of the rear building on the Property, the Applicant will be improving setback conditions, thus creating more light, air and space with buildings on adjacent properties. Moreover, there will be a reduction in building footprint and lot coverage associated with the new building from what presently exists, which will create more open space. In these respects, the replacement building will make the Property more conforming under the terms of the Ordinance than it is presently.

By creating a second free-standing dwelling unit on the Property, the Applicant will be creating a new non-conformity; however, what is proposed falls in line with the character of the surrounding area and would not alter it in any negative fashion. The proposed detached dwelling unit is architecturally designed as a small, one-story carriage house. It will have a secondary appearance to the main residence at the front of the Property.

The overall conditions and appearance of the Property will be greatly improved by the demolition of a building that is structurally unsound and its replacement with a new, tastefully designed structure that meets current building and life safety codes. For the foregoing reasons, public health, safety and welfare will be positively impacted by granting the variances and it will not negatively alter the essential character of the neighborhood.

***Substantial justice will be done by granting the variance relief.***

Any loss to the individual that is not outweighed by a gain to the general public is an injustice. *New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials* (1997); *Malachy Glen Assocs., Inc. v. Town of Chichester*, 155 N.H. 102 (2007).

The public would not realize any gain by denying the variance relief. The rear building on the Property has no functional value. If the variance relief is denied, the rear building would remain on the Property in its existing derelict condition, which represents a loss to the Applicant, abutters and the general public. The rear building is unsightly, falling apart and structurally unsound. It is an eyesore to the neighborhood. By granting the variance relief, the public benefits from a well-designed building that meets all current building and life safety codes and adds little additional demand upon municipal services. The design of the proposed building has received the initial consent of the HDC and will integrate well with and be compatible with the surrounding neighborhood. The new building will achieve greater compliance with the Ordinance's dimensional requirements than the existing building, thus improving the light, air and space with abutting properties and the buildings thereon. Overall, the new building on the Property will be a substantial improvement over what exists. As such, the substantial justice balancing test weights in favor of the Applicant.

***The values of surrounding properties will not be diminished by granting the variance relief.***

The demolition of the decrepit rear building on the Property and its replacement with a new, code-compliant, appropriately designed building that is in greater compliance with the Ordinance's setback and lot coverage requirements can only improve the value of surrounding properties. The proposed building will appear accessory to the existing residence at the front of the Property. It is small and has a simple but tasteful design that will integrate well with the existing residence on the Property and buildings on surrounding properties. The proposed building will improve the value of the Property, which will in turn help to improve the values of surrounding properties.

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

The Property has several special conditions that distinguish it from surrounding properties. It is one of the only properties in the neighborhood that contains more than one structure. Of the surrounding properties that do contain more than one structure, the others have two or more dwelling units. As pointed out above, the properties at 33 Northwest Street and 1 Jackson Hill Street each have two detached dwellings on them, much like what is proposed with the Applicant's property.

The Property is an odd-shaped lot that has only *one* abutting property to the left and rear (383 Maplewood Avenue). The properties may have once been part of one larger parcel at some point in time. The property at 383 Maplewood Avenue contains one residential building which is situated to the far left-front portion of the property. There are no buildings to the left or rear of the building that the Applicant intends to demolish and replace with the detached dwelling unit.

The Property is also essentially a corner lot with primary frontage on Maplewood Avenue and secondary frontage on a "passageway", which the City refers to as Jackson Hill Street on its tax maps. The ownership of the passageway remains unclear, although the City appears to maintain it.

The abutting property to the right (357 Maplewood Avenue) is located across the passageway. Therefore, the actual right yard setback with the property at 357 Maplewood Avenue is greater than what is represented in the Applicant's plans. The Applicant's Property sits at much lower grade than the property at 357 Maplewood Avenue which minimizes any impacts that the construction of a new dwelling unit would have on that property.

The one-story building that the Applicant intends to demolish and replace with the detached dwelling unit is only partially visible from the properties across Maplewood Avenue due to the fact that the primary residence on the Property is situated in front of it and is two-stories in height. Similarly, due to existing topography, the proposed building abuts an embankment on the passageway (Jackson Hill Street) side of the Property, further reducing its visibility.

The proposed detached dwelling unit will have a smaller footprint and greater setback from structures on surrounding properties than the building it will replace, thus it will have less of an impact upon abutters and the public than the existing building. Denying the variances would not result in any tangible benefit to abutters or the public, as the existing building could remain. Accordingly, there is no fair and substantial relationship between the general purposes of the Ordinance provisions and their application to the Property.

The goal of GRA Zoning is to provide areas for moderate to high density. The neighborhood surrounding the Applicant's Property is densely settled. The abutting property to the right contains four dwelling units and the properties across Maplewood Avenue, except for one vacant parcel of land, are condominiums. Adding one dwelling unit to this area will not have any impact upon it. Therefore, the proposed use of the Property is also reasonable.

### CONCLUSION

In conclusion, the Applicant has demonstrated that his application meets the five (5) criteria for granting the variance relief sought and he respectfully requests that the Board approve his application.

Respectfully Submitted,

Dated: August 25, 2020

Kevin Shitan Zeng, Trustee

By and Through His Attorneys,  
Durbin Law Offices PLLC



By: Derek R. Durbin, Esq.  
144 Washington Street  
Portsmouth, NH 03801  
(603)-287-4764  
derek@durbinlawoffices.com



A0.01

Scale: As indicated  
 Drawn By: AM  
 Checked by: DB  
 Project No.: 202013  
 Date: 15 SEPTEMBER 2020

TITLE:  
 PROPOSED SITE  
 PLAN

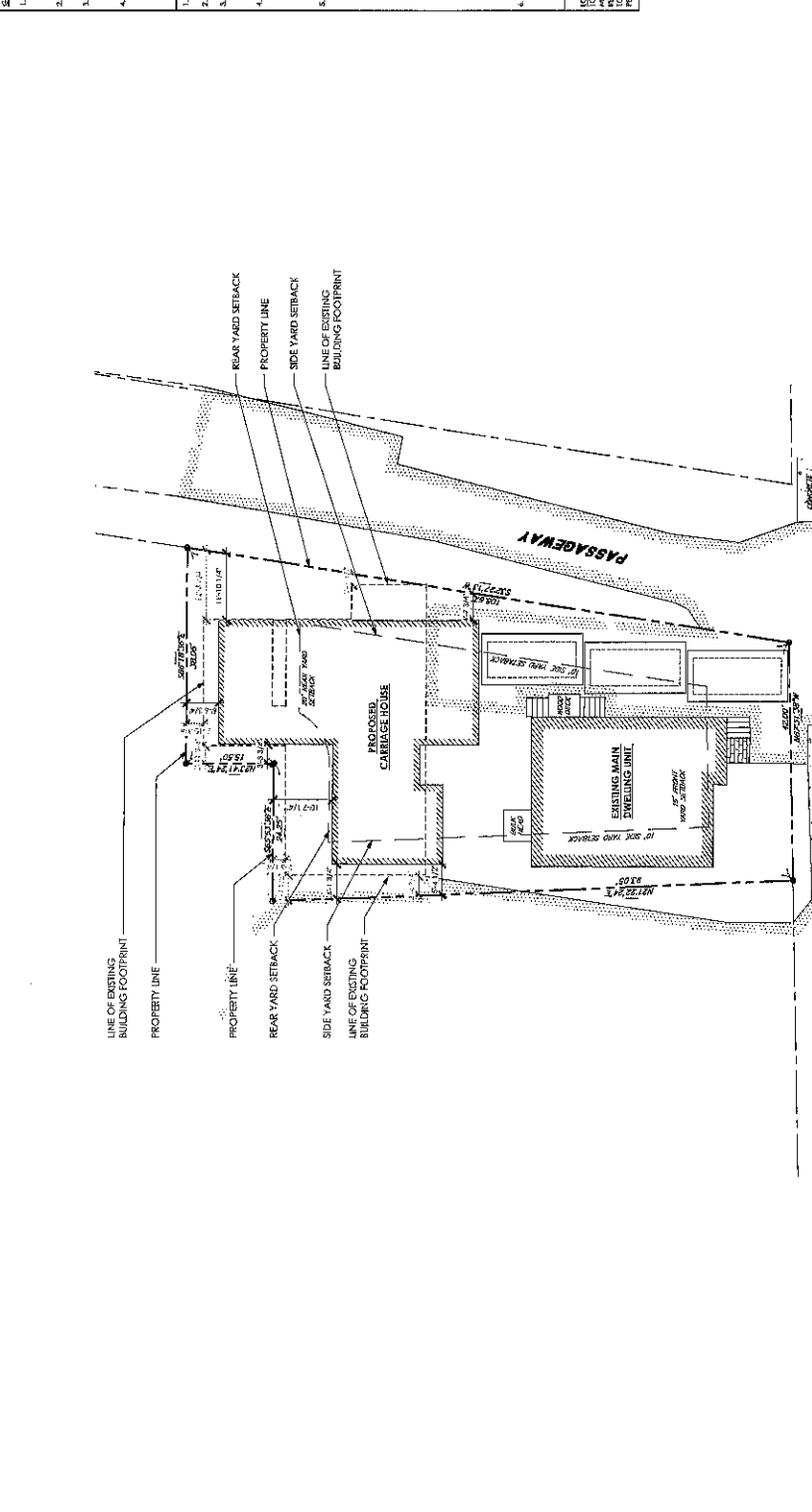
NEW CONSTRUCTION FOR  
 377 MAPLEWOOD AVE.  
 PORTSMOUTH, NH 03801

DIMA  
 DESTEFANO  
 MAUGEL  
 ARCHITECTS  
 22 Long Street  
 Portsmouth, NH 03801  
 PH: 603.431.8701  
 D:\deltone\mudge\proj

Revisions:  
 # Description Date

- GENERAL NOTES:**
1. DETAILS NOTED ARE ARCHITECTURAL WHERE BEST BLOCK AT CONSTRUCTION. ALL OTHERS SHALL BE CONSTRUCTION ACTUAL. DIMENSIONS SHALL BE TO THE CENTER OF FINISH SURFACE UNLESS NOTED OTHERWISE.
  2. ALL DIMENSIONS SHALL BE TO THE CENTER OF FINISH SURFACE UNLESS NOTED OTHERWISE.
  3. ALL DIMENSIONS SHALL BE TO THE CENTER OF FINISH SURFACE UNLESS NOTED OTHERWISE.
  4. ALL DIMENSIONS SHALL BE TO THE CENTER OF FINISH SURFACE UNLESS NOTED OTHERWISE.
  5. ALL DIMENSIONS SHALL BE TO THE CENTER OF FINISH SURFACE UNLESS NOTED OTHERWISE.

EXISTING	PROPOSED
2,500 S.F.	2,500 S.F.
7,800 S.F.	7,800 S.F.
70 FT	70 FT
14 FT	14 FT
14 FT	14 FT
28 FT	28 FT
38 FT	38 FT
38 FT	38 FT
32 S.F.	32 S.F.
32 S.F.	32 S.F.
32 S.F.	32 S.F.



PROPOSED SITE PLAN  
 1  
 1" = 10'-0"

GENERAL REMARKS:

1. REFER TO THE CONNECTION DETAILS FOR EACH ROOM AT EACH BUILDING ELEVATION AS NOTED FOR RELATIVE ELEVATIONS. THE CONNECTIONS SHALL BE AS SHOWN FOR ACTUAL ELEVATIONS.
2. REFER TO THE CONNECTION DETAILS FOR EACH ROOM AT EACH BUILDING ELEVATION AS NOTED FOR RELATIVE ELEVATIONS. THE CONNECTIONS SHALL BE AS SHOWN FOR ACTUAL ELEVATIONS.
3. REFER TO THE CONNECTION DETAILS FOR EACH ROOM AT EACH BUILDING ELEVATION AS NOTED FOR RELATIVE ELEVATIONS. THE CONNECTIONS SHALL BE AS SHOWN FOR ACTUAL ELEVATIONS.
4. REFER TO THE CONNECTION DETAILS FOR EACH ROOM AT EACH BUILDING ELEVATION AS NOTED FOR RELATIVE ELEVATIONS. THE CONNECTIONS SHALL BE AS SHOWN FOR ACTUAL ELEVATIONS.
5. REFER TO THE CONNECTION DETAILS FOR EACH ROOM AT EACH BUILDING ELEVATION AS NOTED FOR RELATIVE ELEVATIONS. THE CONNECTIONS SHALL BE AS SHOWN FOR ACTUAL ELEVATIONS.
6. REFER TO THE CONNECTION DETAILS FOR EACH ROOM AT EACH BUILDING ELEVATION AS NOTED FOR RELATIVE ELEVATIONS. THE CONNECTIONS SHALL BE AS SHOWN FOR ACTUAL ELEVATIONS.
7. REFER TO THE CONNECTION DETAILS FOR EACH ROOM AT EACH BUILDING ELEVATION AS NOTED FOR RELATIVE ELEVATIONS. THE CONNECTIONS SHALL BE AS SHOWN FOR ACTUAL ELEVATIONS.
8. REFER TO THE CONNECTION DETAILS FOR EACH ROOM AT EACH BUILDING ELEVATION AS NOTED FOR RELATIVE ELEVATIONS. THE CONNECTIONS SHALL BE AS SHOWN FOR ACTUAL ELEVATIONS.
9. REFER TO THE CONNECTION DETAILS FOR EACH ROOM AT EACH BUILDING ELEVATION AS NOTED FOR RELATIVE ELEVATIONS. THE CONNECTIONS SHALL BE AS SHOWN FOR ACTUAL ELEVATIONS.
10. REFER TO THE CONNECTION DETAILS FOR EACH ROOM AT EACH BUILDING ELEVATION AS NOTED FOR RELATIVE ELEVATIONS. THE CONNECTIONS SHALL BE AS SHOWN FOR ACTUAL ELEVATIONS.

Revisions:

#	Description	Date

DIMA  
DESTEFANO  
MAJCELL  
ARCHITECTS  
22 Lead Street  
Portsmouth, NH 03801  
Phone: 603.481.8701  
dima@dimainc.com

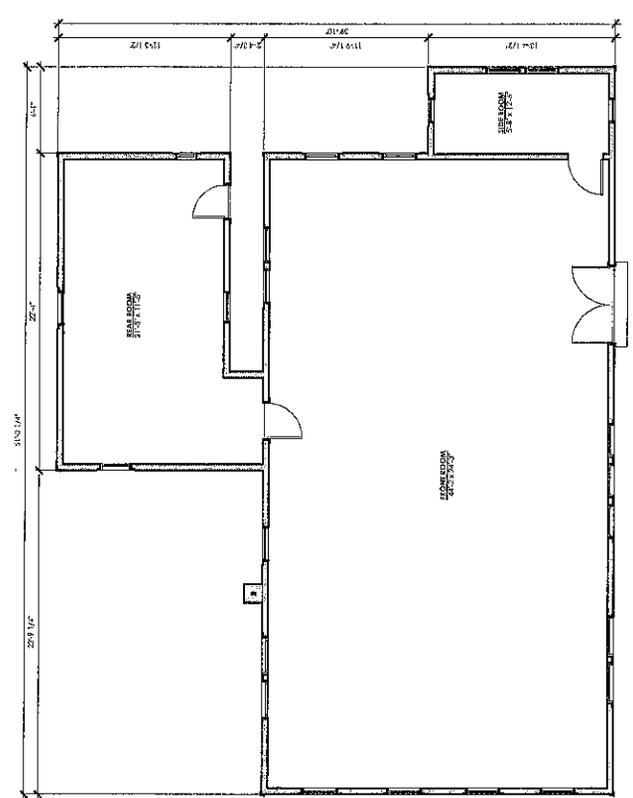
NEW CONSTRUCTION FOR  
377 MAPLEWOOD AVE  
PORTSMOUTH, NH 03801

TITLE:  
EXISTING AND  
PROPOSED  
FLOOR PLANS

Scale: As indicated  
Drawn By: AM  
Checked By: DB  
Project No.: 200013  
Date: 15 SEPTEMBER, 2020

A0.02

8/25/2020 3:31:18 PM



**GENERAL NOTE**

1. THE ARCHITECTURAL ARCHITECTURE SHALL BE SUBJECT TO ALL LOCAL, STATE AND FEDERAL REGULATIONS, INCLUDING BUT NOT LIMITED TO:
  - a. ALL APPLICABLE ZONING ORDINANCES AND REGULATIONS.
  - b. ALL APPLICABLE BUILDING CODES AND REGULATIONS.
  - c. ALL APPLICABLE ENVIRONMENTAL REGULATIONS AND PERMITS.
  - d. ALL APPLICABLE HISTORIC PRESERVATION REGULATIONS AND PERMITS.
  - e. ALL APPLICABLE ARCHITECTURAL REGULATIONS AND PERMITS.
2. THE ARCHITECT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM ALL APPLICABLE AGENCIES.
3. THE ARCHITECT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM ALL APPLICABLE AGENCIES.
4. THE ARCHITECT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM ALL APPLICABLE AGENCIES.

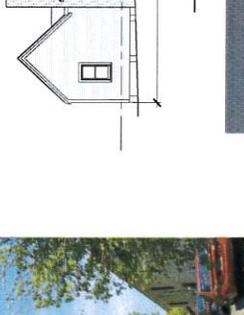
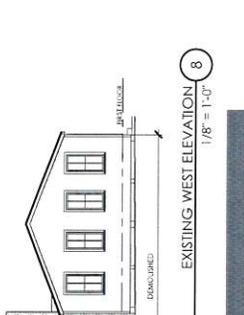
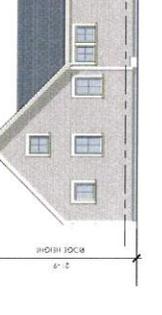
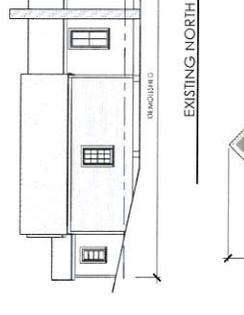
Revisions	Description	Date

**DMA DESTAFANO MAUCEL**  
 22 Lord Street  
 Portsmouth, NH 03801  
 Phone: 603.431.8701  
 DestinationImage.com

**NEW CONSTRUCTION FOR**  
**377 MAPLEWOOD AVE**  
 PORTSMOUTH, NH 03801

**TITLE:**  
 EXISTING / PROPOSED ELEVATIONS & CONTEXT IMAGE

**Scale:** As Indicated  
**Drawn By:** AM  
**Checked By:** DB  
**Project No.:** 202013  
**Date:** 15 SEPTEMBER 2020





REAR STRUCTURE FROM EAST ELEVATION



PARTIAL NORTH ELEVATION



EAST ELEVATION FROM JACKSON HILL STREET



NORTH ELEVATION FROM NEIGHBORING PROPERTY

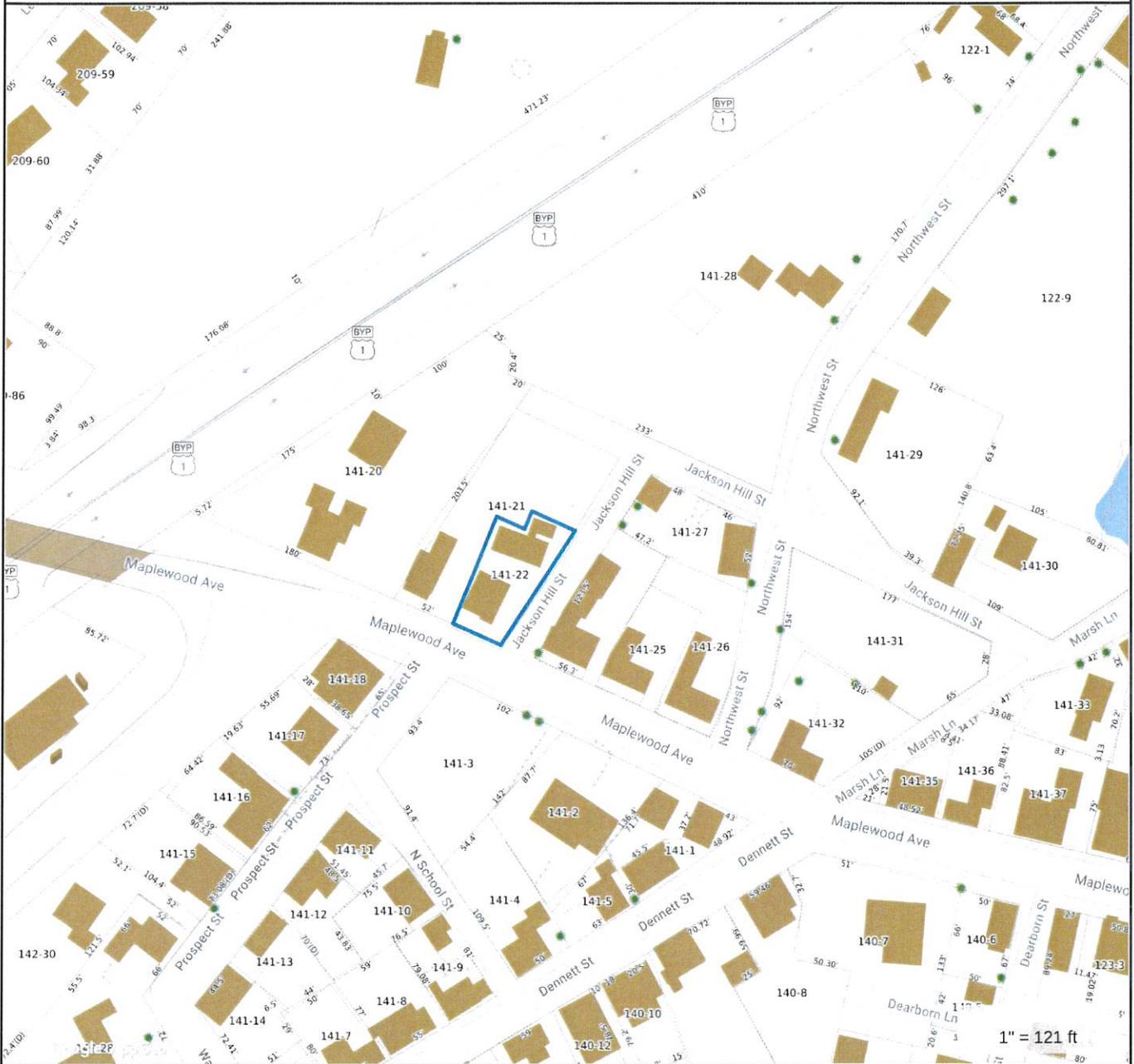


FRONT ELEVATION FROM JACKSON HILL STREET.



WEST ELEVATION AT NEIGHBORING DRIVEWAY

### Tax Map - Zeng - 8-24-2020



**Property Information**

Property ID: 0141-0022-0000  
 Location: 377 MAPLEWOOD AVE  
 Owner: ZENG KEVIN SHITAN REVOC TRUST OF 2017

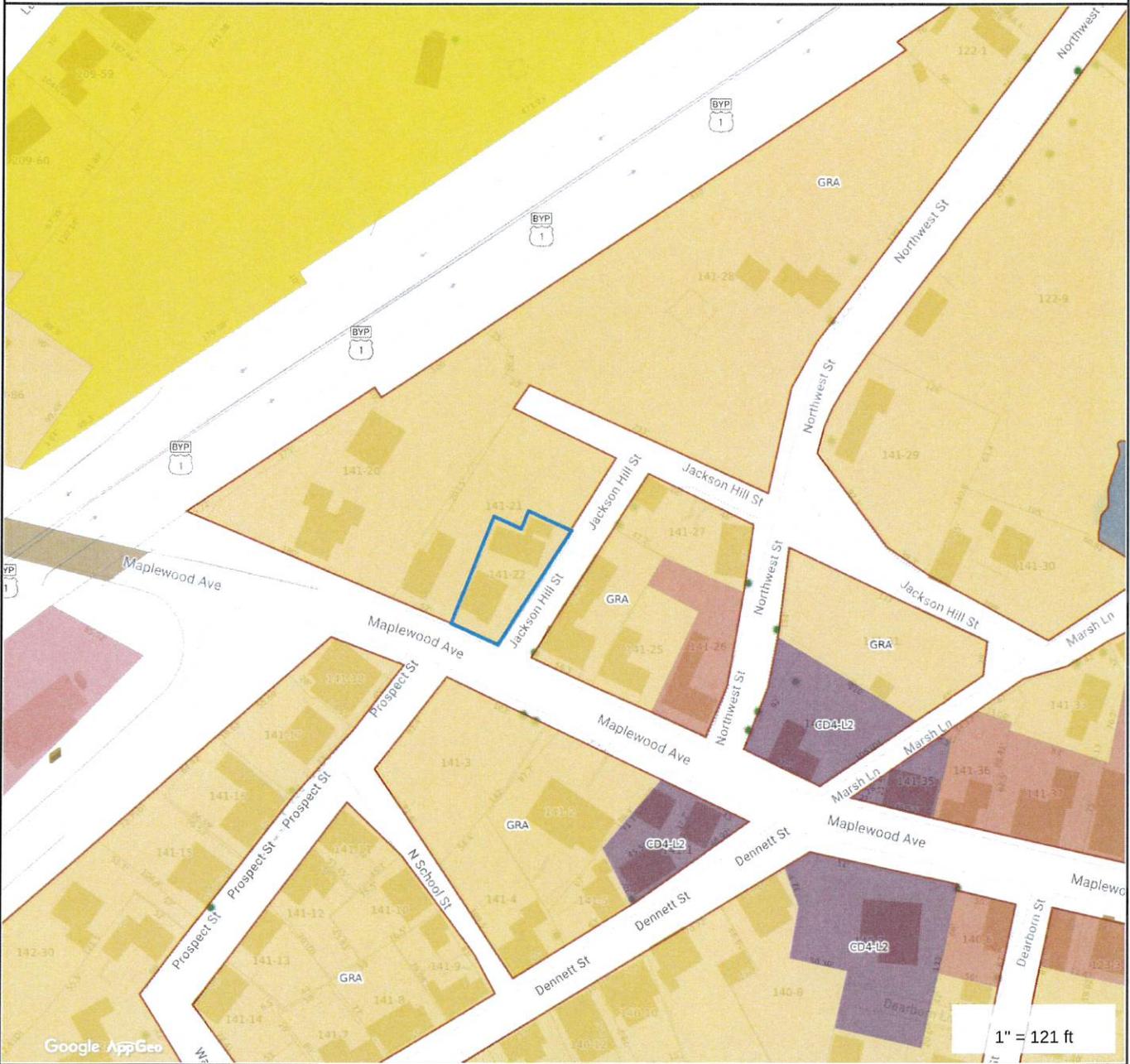


**MAP FOR REFERENCE ONLY  
 NOT A LEGAL DOCUMENT**

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.

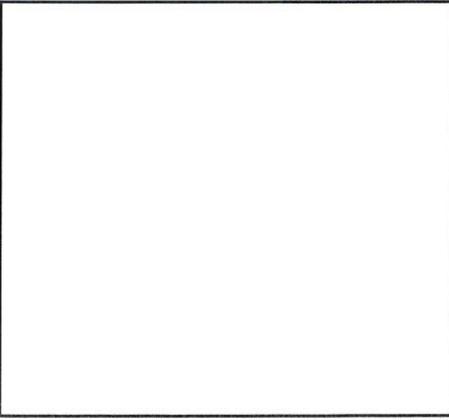
Geometry updated 4/1/2019  
 Data updated 7/17/2019

### Zoning Overlay Map - Zeng - 8-24-2020



Property Information	
Property ID	0141-0022-0000
Location	377 MAPLEWOOD AVE
Owner	ZENG KEVIN SHITAN REVOC TRUST OF 2017

  
**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 4/1/2019  
 Data updated 7/17/2019



# Map Theme Legends

## Zoning

### Residential Districts

-  R Rural
-  SRA Single Residence A
-  SRB Single Residence B
-  GRA General Residence A
-  GRB General Residence B
-  GRC General Residence C
-  GA/MH Garden Apartment/Mobile Home Park

### Mixed Residential Districts

-  MRO Mixed Residential Office
-  MRB Mixed Residential Business
-  G1 Gateway Corridor
-  G2 Gateway Center

### Business Districts

-  GB General Business
-  B Business
-  WB Waterfront Business

### Industrial Districts

-  OR Office Research
-  I Industrial
-  WI Waterfront Industrial

### Airport Districts

-  AIR Airport
-  AI Airport Industrial
-  PI Pease Industrial
-  ABC Airport Business Commercial

### Conservation Districts

-  M Municipal
-  NRP Natural Resource Protection

### Character Districts

-  CD5 Character District 5
-  CD4 Character District 4
-  CD4W Character District 4-B
-  CD4-L1 Character District 4-L1
-  CD4-L2 Character District 4-L2

### Civic District

-  Civic District

### Municipal District

-  Municipal District

### Overlay Districts

-  OLOD Osprey Landing Overlay District
-  Downtown Overlay District
-  Historic District

City of Portsmouth