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ALSO ADMITTED IN NY, PA, OHIO & MA



December 30, 2021

Peter Britz, Interim Planning Director
City of Portsmouth
One Junkins Avenue
Portsmouth, New Hampshire 03801

Re: 389 Lincoln Avenue

Dear Mr. Britz:

I represent Evan and Jill Maloney, the owners of the above-referenced property at 389 Lincoln Avenue.

Mr. & Mrs. Maloney are requesting an equitable waiver or, in the alternative, a variance, in order to allow them to erect a tree house for their eight-year-old son in the left rear corner of their property. (The tree house is probably more accurately described as an elevated deck, as it does not have any walls, roof, or other enclosures, but there are two large trees in the back yard of the property which are, in fact, its main sources of support.) Actually, the tree house has already been erected; hence, the request for the equitable waiver.

I electronically filed an application for the variance this date, using the "ViewPoint" feature Planning Department's web page, and I filed the administrative appeal/request for an equitable waiver previously.

This tree house has already been the subject of a November 10, 2021 memorandum to the Maloneys, written by yourself. A copy of that memorandum is included among the rest of the materials enclosed herewith for your reference.

The Maloneys seek relief from sections 10.573.10 and -.20 of the Zoning Ordinance, which would otherwise require them to place the tree house at least 8 feet from the property lines on both the rear and left sides. The tree house/deck is approximately 8 feet high, and its surface area is about 168 square feet. Thus, if I am reading sections 10.573.10 and -.20 correctly, the setback from the property line is 8 feet--the same as the height of the structure --in each instance.

Peter Britz, Interim Planning Director
December 30, 2021
Page 2

The tree house butts up against the fence in the rear of the property, and so my clients are asking for, in effect, permission for a zero setback in the rear of the property.

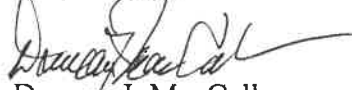
On the left side, the property line is not parallel to the left edge of the deck. Rather, they are at an angle to one another, and so the distances from the left-side property line to the corners of the deck are different. One corner of the deck is approximately 5' 4" from that property line, and the other corner is approximately 7' 5" from it.

I enclose eleven copies of a sketch of the site and the other materials that I electronically submitted in support of my clients' application today. I expect to be supplementing these materials with some additional documentation prior to the time of the hearing.

If you have any questions or problems in the meantime, please do not hesitate to contact me.

Thank you.

Very truly yours



Duncan J. MacCallum

DJM/eap
Enclosures
cc. Evan and Jill Maloney (w/o enclosures)

HAND DELIVERED

1925 NELLIE II
DEED BK. 800

STO'

ABOVE
1922 IN
DEED F

now o
JACOE
KELLY
MAP 1
RCRD
(THIS
DEED
LOTS

PIN (INSIDE PIPE)
W/CAP FLUSH

HUB SET
FLUSH
(TYP.)

OLD STOCKADE FENCE 6'± HIGH

30"±

30"±

30"±

30"±

30"±

30"±

30"±

30"±

30"±

30"±

30"±

1 STORY
WD. GAR.

PRIVACY FENCE
ON EDGE OF DECK
ENCROACHES OVER
LOT LINE 1.9'±

1 STORY
WD. GAR.

S81°49'44"E

103.73'

103.73'

103.73'

103.73'

103.73'

• Tree platform with privacy
wall erected at request of
neighbors
• Ramp

TAX MAP 134 LOT 17

54'38"W
14.48'
416/441)
6183/1791)

PAVED
DRIVEWAY

S06°40'15"E
73.00' (416/461)

21/2 ST.
WD. HSE.
#389

LOT LINE
(TYP.)

GAS METER
PIPE GUARDS

1/2" IRON PIN
FOUND FLUSH

S86°14'50"W
100.00'

CONCRETE SIDEWALK (TYP.)

DRILL HOLE SET IN
GRANITE CURRING

GRANITE

GRANITE (TYP.)

nerly
GHT REVOC. TR.
ORDER REVOC. TR.
JT 16
3475 PG. 1975
PLAN #C-28079

OLD LOT LINE PER
1867 FRANK W. MILLER
DEED BK. 416 PG. 461
REMOVED FROM SUBJECT LOT
DEED DESCRIPTION IN 1890
BY DEED BK. 521 PG. 229.
(LOT 10 & 11 PER HOYT PLAN)









Memorandum

To: Evan Maloney
From: Peter Britz, Interim Planning Director
CC: Suzanne Woodland, Acting Deputy City Manager
Peter Stith, Principal Planner
Date: November 10, 2021
Subject: 389 Lincoln Accessory Structure Review



It has come to my attention that a backyard structure has been constructed in your yard which the Planning Department must review for conformance with the City's Zoning Ordinance. I am aware that the City's Building Inspector reviewed this project and determined it was exempt from a building permit because the structure was classified as a one story detached accessory structure less than 200 square feet and/or could be classified as playground equipment.

However, the Building Code analysis differs from the Zoning Ordinance analysis. The City of Portsmouth Zoning Ordinance has separate requirements that must be reviewed to ensure compliance. When reviewing this project for zoning compliance, what was built clearly falls under the definition of a structure in Article 15 of the Zoning Ordinance:

*Any production or piece of work, artificially built up or composed of parts and joined together in some definite manner. Structures include, but are not limited to, buildings, fences over 4 feet in height, signs, and swimming pools.
(See also: temporary structure.)*

The Zoning Ordinance section 10.570 covers Accessory Buildings, Structures and Uses where it states in section 10.573: *In a Residential or Mixed Residential district, an accessory building or structure may be located in a required side yard or rear yard subject to the following:*

10.573.10 An accessory building or structure not more than 10 feet in height and not more than 100 square feet in area shall be set back at least 5 feet from any lot line.

10.573.20 An accessory building or structure more than 10 feet in height or more than 100 square feet in area shall be set back from any lot line at least the height of the building or the applicable yard requirement, whichever is less.

According to these sections the structure in question would need to be located the appropriate distance from the side and rear yards (or from the side and rear property lines) to comply with section 10.573.10 or 10.573.20, which it does not do today. As it stands today, the structure in your yard is in

violation of the Zoning Ordinance. There is not adequate information in your building permit application to determine which section applies but to be in compliance with Zoning the structure in your yard must be at least 5 feet and as much as 20 feet from the side and rear property lines. In order to remedy the situation you have several options:

1. Remove the structure entirely from your yard;
2. Reconstruct the structure to comply with the Zoning Ordinance sections 10.573.10 or 10.573.20;
3. Apply for a variance from the Board of Adjustment to allow the structure to remain in its current location. A variance request would be subject to review and approval by the Board of Adjustment in conjunction with a public hearing.

Please let me know how you would like to proceed within 10 days from the date of this letter. If you have questions or would like to discuss further please do not hesitate to contact me by email at plbritz@cityofportsmouth.com or by phone at (603)610-7215.

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Paul Garand

Sep 16, 2021 at 12:42 pm

The tree house platform will be considered an exempt structure as per Section R105 of the International Residential Code. This permit will be revoked/stopped as it is not required.
Thank you, Paul Garand
Building Inspector Review - Building Permit Application BLDG-21-738



Paul Garand

Sep 16, 2021 at 12:42 pm

The tree house platform will be considered an exempt structure as per Section R105 of the International Residential Code. This permit will be revoked/stopped as it is not required.
Thank you, Paul Garand
Building Inspector Review - Building Permit Application BLDG-21-738

Jill,

Can you provide the setbacks to the property lines on the site plan and upload some pictures? Thanks,



Peter Stith

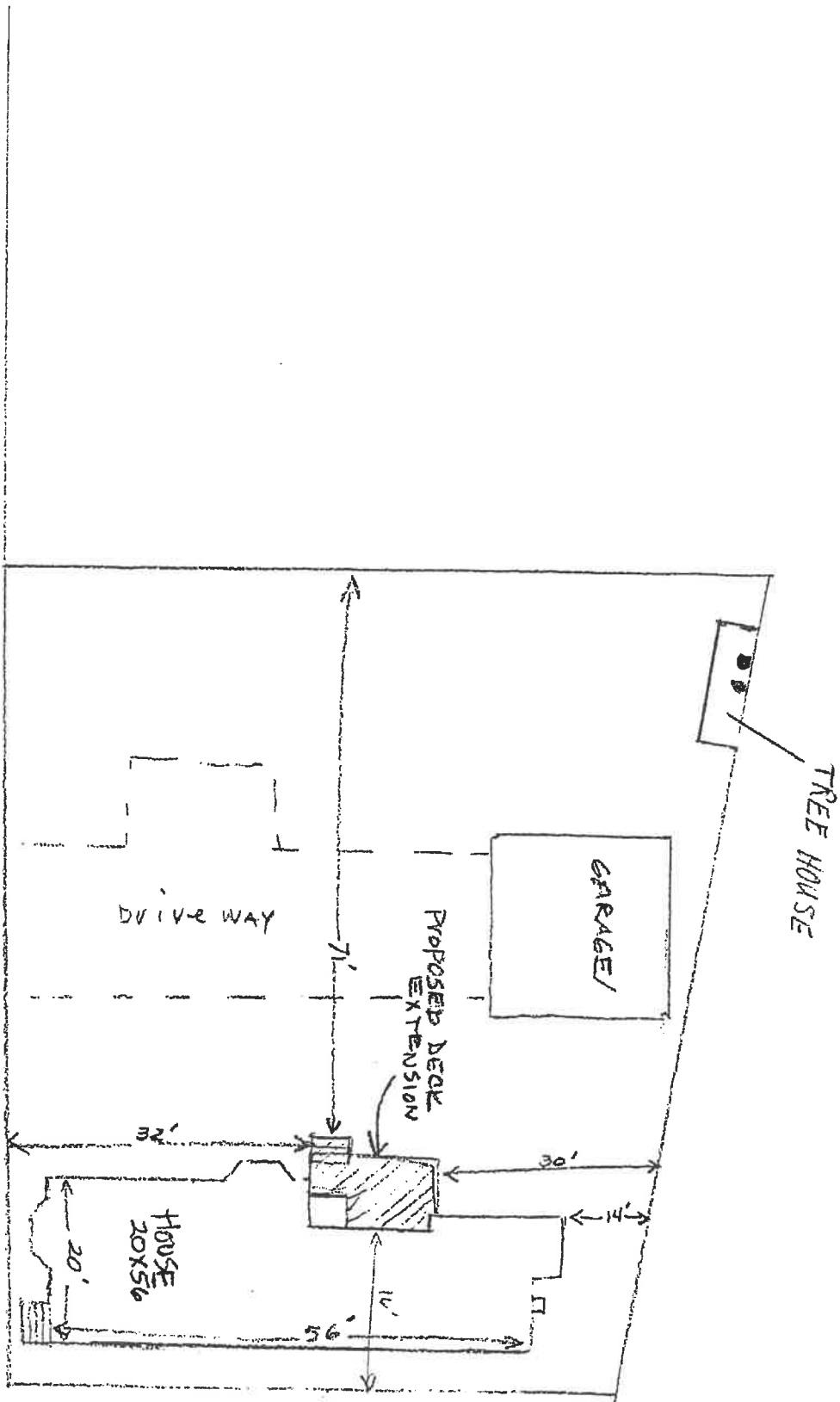
Sep 9, 2021 at 9:35 am

Peter
Land Use Code Review - Building Permit Application BLDG-21-738

View All

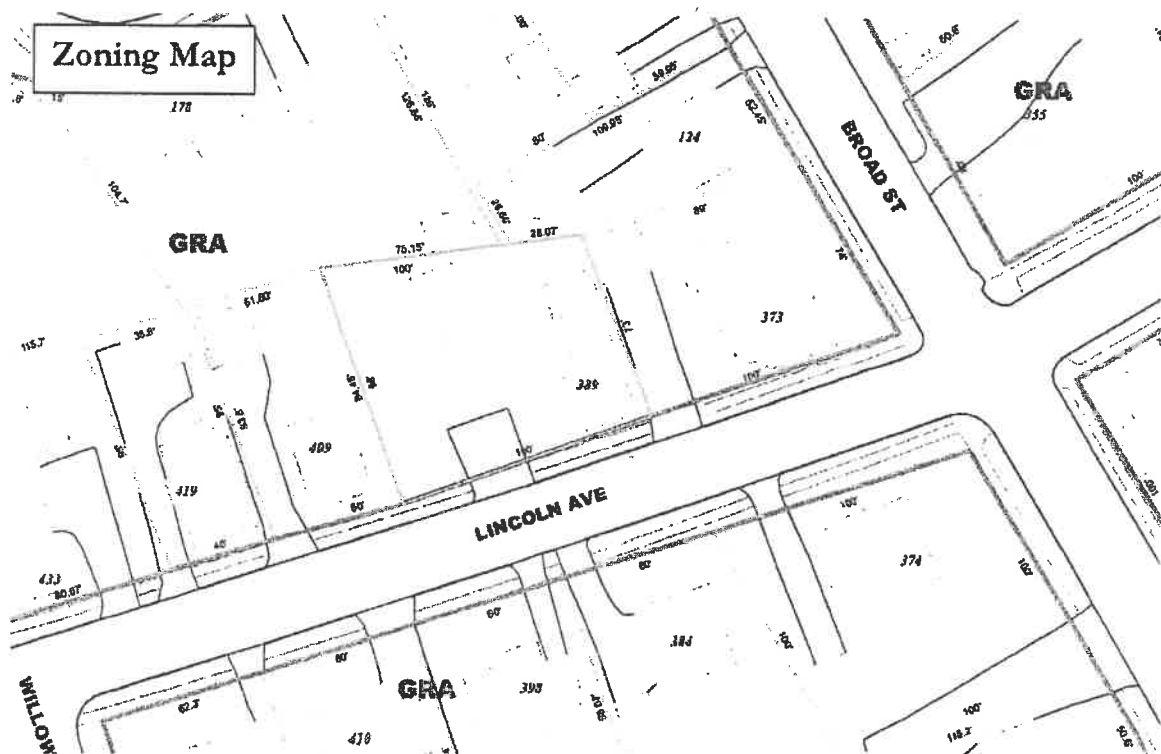
Permits & Documents

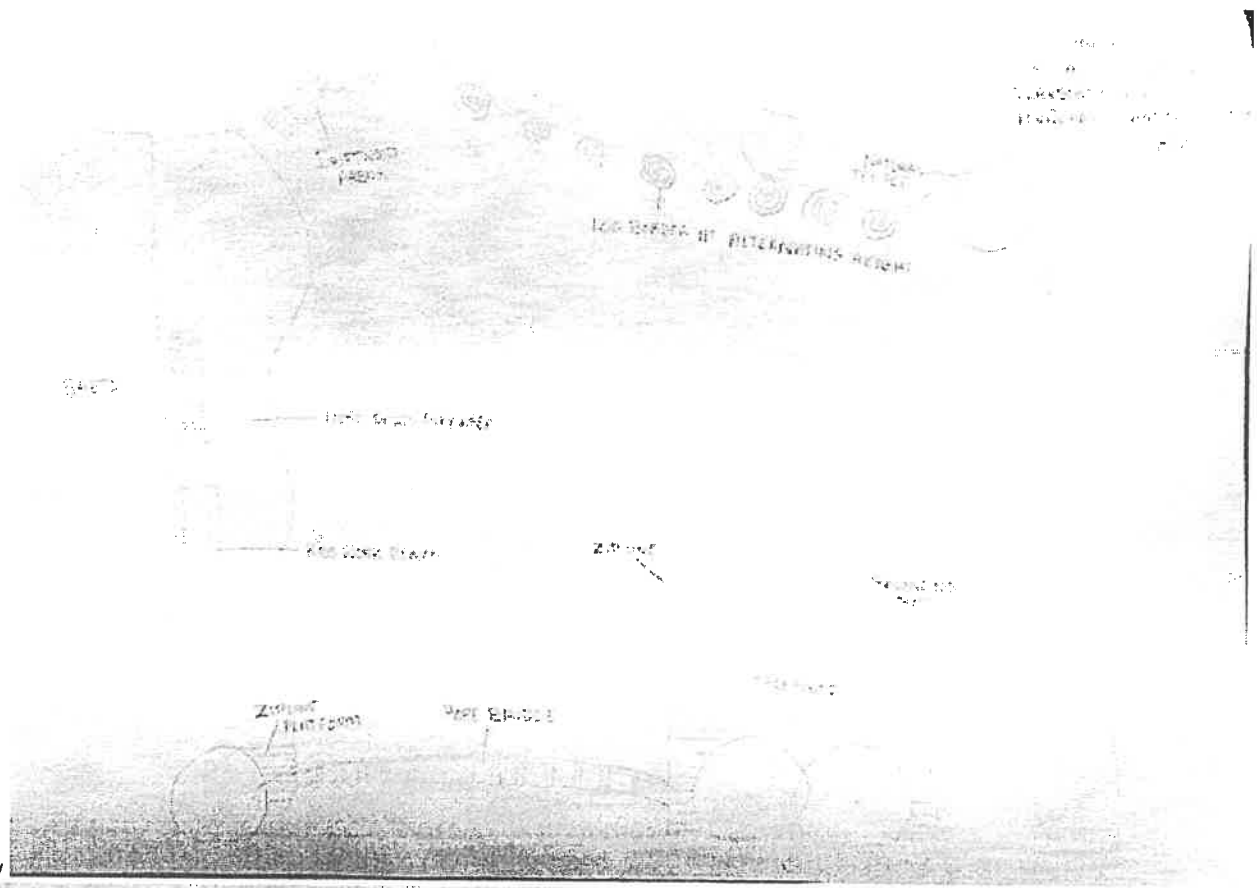
(Not to scale)



389 LINCOLN AVE

Neighborhood Context





Jill Maloney

