

From: [Kimberli Kienia](#)
To: [Kimberli Kienia](#)
Subject: FW: 232 Wibird St - zoning board of adjustment meeting 1/18/22
Date: Friday, January 14, 2022 10:05:36 AM

From: David Gray [<mailto:graydavidm@gmail.com>]
Sent: Friday, January 14, 2022 9:40 AM
To: Peter M. Stith <pmstith@cityofportsmouth.com>; Melody Chase <chasemelody@yahoo.com>
Subject: 232 Wibird St - zoning board of adjustment meeting 1/18/22

Dear Mr. Stith and zoning board members:

We are writing in response to a request for zoning relief for the property located at 232 Wibird St. First, we would like to acknowledge Charles Seefried for kindly and openly sharing his building plans with us. The proposed structure will represent an improvement to our neighborhood and brings the overall property into greater compliance with zoning regulations as we understand them. For this, we would like to express our gratitude to Mr. Seefried.

The proposed building plan includes a two-story garage. The second story of the garage includes a bathroom with shower, as well as, what appears to be a kitchenette and refrigerator. It is our understanding that this represents an accessory dwelling unit (ADU). The South wall of the ADU is flush with the setback line immediately adjacent to our property (244 Wibird St). The South wall contains a row of windows. These windows will be directly above our backyard fence and give visual access into our backyard, thereby, significantly reducing our privacy. It is our understanding that per zoning rules an ADU "will not significantly reduce the privacy of adjacent properties" (10.814.63).

For this reason, we are respectfully requesting a revision in the design to reduce the size of these windows such that they occupy no greater than the upper one quarter of the vertical dimension of the South wall. The applicant previously indicated to us a willingness to make such a change, however, the plan submitted contains no such change.

Our support for zoning relief at 232 Wibird St is contingent upon adjustment of the South wall ADU windows to preserve our backyard privacy. Thank you for your consideration of this matter.

Respectfully,

David M. Gray, MD
Melody M. Gray
244 Wibird St.
Portsmouth, NH 03801

0 Woodbury Avenue

January 17, 2022

Sherbeth Young and Joseph Dibella are requesting the construction of a single-family home on 0 Woodbury Avenue, a non-conforming, non-buildable lot that is 7,436 sq. ft of the 15,000 SF ft requirements. This lot is less than half the size of the required buildable lot size for the city of Portsmouth. Of the required 100 feet of road frontage, it only possesses 60ft.

This lot was divided by the Planning board on November 16, 2017, by the request of Sheila Raeburn from its existing lot 737. She stated that her purpose for separating the lot was to keep it "out of the hands of developers," and that she was keeping the lot for gardening purposes. The subdivision approval for this lot was based on her statements that it would not be developed. Unmerging of the lots made the current lot "0" a "non-conforming" lot per the planning board minutes.

On June 6, 2021, prior to the sale of this property, I sent an email to Lylah Starkey the listing agent of this property, at New World reality (See email correspondence below). In this email, I informed Mrs. Starkey that she had a fiduciary obligation to inform the buyers of this property that the lot was a "non-buildable lot," and that it had been separated by the planning board in 2017, for the purpose of keeping it "out of the hands of builders." Her reply back to me was that "The city of Portsmouth states the property needs 3 variances which as buyer has to get approved by the city." Sherbeth Young and Joseph Dibella purchased this lot with full knowledge that it was a non-conforming, non-buildable lot. It is not a hardship when you knowingly purchase a non-conforming lot. If purchasing a lot on which to build a home, isn't it responsible to make the purchase contingent on getting all three variances approved by the planning board PRIOR to the purchase?

Not one (1a), Variances from Section 10.521 to allow a) a lot are/area of 7,436 where 15,000 is required; not two (1b) a lot area per dwelling unit of 7,436 where 15,000 square feet is required; but three (c) 60' of continuous street frontage where 100 feet is required, are all necessary for this non-conforming lot. These variance requests are not even close to the Ordinance requirements. One of them is less than half the required sq. footage, and the other two are closer to half the requirements of the Ordinance. These are significant requests. What is the purpose of having city requirements/zoning regulations/Ordinances if they are not abided by?

A similar hearing was heard before the planning committee on November 19, 2019, where the owners of a lot on Meadow were looking to build a second home by subdividing their current property into a 10,000 SF lot. At that hearing, neighbors spoke in opposition of changing the surrounding property values and neighborhood appearance (where the average lot sizes were closer to 15,000- 20,000 SF), already existing drainage problems were present in the neighborhood- (as seen by new construction on Rockingham that required re-drainage after three houses were erected).

Members of the board (11/19/19) stated the surrounding lots were "substantially larger than 10,000 SF."

Per the (11/19/19) minutes; Chairman Rheaume said he would support the motion to deny because he thought that “taking a fully compliant existing lot and breaking it into two non-compliant lots created a high burden in terms of the balancing test.” He said the spirit of the ordinance was affected because it tried to minimize the creation of non-conforming lots.

The Two beautiful full-grown Japanese maple trees, shown on the sale posting for this property (We were informed there was an agreement from the seller to the purchaser that those trees were to remain), have now been removed. Portsmouth’s current status of endless development is affecting the city’s natural environment. There are only 5 houses between this property and I-95, every tree that is cut down adds to noise pollution and reduced air quality. There is only one house between this lot and the major Eversource power lines. Eversource has already clear-cut from Maplewood through to Meadow. Further diminishing air quality. These trees also provided improvement to water quality and flood reduction as it is downhill from the pond at Corpus Christi Parish and assumes natural runoff from the abutting 737 property. Portsmouth is already in danger of losing its small-city charm and lacking sufficient green space as we begin to look more and more like Boston every day. Progress Portsmouth ran of the guise of smart & sustainable growth. It is irresponsible growth to build on every square inch of green space and take neighborhoods with an average lot size 15,000-20,000 SF and turn them into house on house. Those of us who purchased property in our current neighborhood did so for the green space and lot sizes they provided.

National Wildlife Federation

<https://www.nwf.org/Trees-for-Wildlife/About/Trees-Make-a-Difference>

In Summary, this property must meet:

Application Review Criteria: The 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.

The request for variance approval does not meet any of the criteria:

1. Granting the variance is contrary to public interest as it changes the neighborhood that is otherwise surrounded by properties that all meet the 15000 sq. ft. requirements (or are very close to those requirements) and meet road frontage requirements. This home would alter the appearance and character of the Frank Jones neighborhood, making it resemble the smaller lot sizes, and crowding found closer to downtown Portsmouth.
2. The variances do not observe the spirit of the Ordinance as it does not meet the ordinance requirements by close to half of the required (insufficient road frontage and less than half the size of a “buildable lot.”
3. Granting the variance in a neighborhood that already lost natural barriers (due to Eversource clear-cutting), The removal of the full-grown Japanese maple trees that aided in air quality, flood reduction (to lower level neighbors), and erosion. Two existing developments surrounding the neighborhood that were developed had substantial drainage issues during build and after houses were erected. This property lies in the natural drainage of both higher ground lots, the pond at Corpus Christi Parish, and the natural slope from Farm lane to Rockingham Ave.

As to Esq. Durbin’s statement that “the request for relief is minimal due to it existing in its current configuration since the early 1900s,” the direct abutters, at 700 Woodbury Avenue, property/lot have also existed since the 1900s.

This property was restored to its pre-merger state, as the Planning Board (or Zoning Board) relied on the representation that the lot would not be developed when it approved the subdivision. Additionally, this property was purchased by Sherbeth Young and Joseph Dibella with the full knowledge of its non-conforming state.

4. Granting the variance diminishes the values of surrounding properties as its current landowners purchased away from downtown to have green space. A home here would diminish the existing neighborhood.
5. This property does not have special conditions that distinguish it from other properties in the area

The proposed use is not reasonable as the variances are substantially less than required by the ordinance. The City Council did restore it to its pre-merger status, on the grounds that it would be a nonconforming/non-buildable lot and that the intent of the owner at the time to keep it from being built upon. There are other lots that are nonconforming in the surrounding neighborhoods, however that is not the case with this lot's direct abutters. For those lots that are nonconforming, they are close to the 15,000 square foot requirement. This lot however at 7,436 is only 49% of the 100% requirement, is, therefore, is a significantly undersized lot.

A variance does not enable a reasonable use. This property was knowingly purchased by said owners as a non-conforming, non-buildable lot as supported by the emails from myself to the selling agent prior to purchase. (please see attached).

Thank you for your time, sincerely,

Direct Abutter: Stacey & Szmyt 690 Woodbury Ave.

Direct Abutter: Walter Lewis 700 Woodbury Ave.

Direct Abutter: Ed & Jean Baldassarre

Indirect Abutter: Dave & Anne Perkins 759 Woodbury Ave.

Indirect Abutter: Pam & Alan Gordon 620 Woodbury Ave.

Good Evening,

I want to thank you for your letter. This was not disclosed to me. The City of Portsmouth states the property needs 3 variances which a buyer has to get approved through the City. I will be talking to the owner of the property regarding this matter. I want to thank you again Hope you have a wonderful day!!

Lylah Starkey, Broker, SRS, MRP, SFR
NEW WORLD REALTY LLC
With offices in Portsmouth NH and Rochester NH
603-973-0465



June 6, 2021

Dear Lylah Starkey,

I am writing you on behalf of the abutters to the lot between 717 Woodbury Avenue, Portsmouth NH, and 737 Woodbury Avenue, Portsmouth NH. This lot is currently listed through your reality for \$279,000, as a lot size of 7405 sq. Ft. There is a fiduciary obligation by you as the realtor representing Sheila Raeburn to properly describe this lot as a "non-buildable lot." It does not meet the required 15,000 Sq. Ft. requirements for the town of Portsmouth for building, nor does it meet the 100 feet of road frontage requirement. It is a non-conforming lot per the Planning Board meeting on November 16, 2017, when Sheila Raeburn request the land split from her existing 737 lot. Ms. Raeburn noted the purpose of the split was to keep the lot "out of the hands of developers." This letter is being forwarded to you under the understanding that several developers have (been) expressing interest in this property.

January 18, 2022

Zoning Board of Adjustment
1 Junkins Ave
Portsmouth, NH 03801

Dear Board members,

I am writing with regard to the current request for a number of variances sought by current property owners at **0 Woodbury Avenue**, scheduled for discussion this evening, January 18, 2022.

My husband and I own the home located at 75 Ruby Road, directly abutting the property on Woodbury Avenue. This is our sole residence and we purchased our home in October 2012. We have seen many changes to the neighborhood around us in these last 9+ years and have welcomed the responsible and considerate growth as neighbors invest in their current homes.

One of the things we most appreciate about our neighborhood is the considerate community of people who adhere to a neighborly practice of checking in with one another when planning to do something on their property which may have an impact on the use and enjoyment of their neighbors. This kind of consideration makes good neighbors.

We were sorely dismayed this past summer when, without consideration of abutting properties, mature and healthy trees were cleared from the 0 Woodbury Avenue property, affecting immediate and significant change. The clearing of the land caused an immediate loss of privacy in our backyard and that of our neighbors. This was very disappointing to us as we've invested years of time, effort, and savings into creating a space to enjoy with reasonable privacy.

With the exception of one abutter (the one from which the piece of land in question was divided), all of us purchased our homes with the expectation that the lots around us were stable in their designated use. When the request for the plot to be divided was proposed to the city in 2018, we did not contest the request at that time because we were of the understanding that the newly divided piece of land was too small to build upon. We now feel, nearly 4 years later, that this was a deceitful tactic by that owner so that they could eventually sell this as a buildable piece of land.

The prospect of a building with a 3600+ sq ft footprint, including significant building up of the landscape to allow for a lower level garage and 2 floors above that, being built on a lot that is less than half the size required by the ordinance, simply feels unreasonable. The spirit of the zoning regulations should serve as a safeguard from the impingement that a house being built on this tiny lot would certainly create for our home and for the homes of our fellow abutters.

I sincerely ask that you take our request, and any requests from our current neighbors, into consideration and deny the variance requests being made for this property.

Respectfully,
Kathryn Auger-Campbell
75 Ruby Road
Portsmouth, NH 03801

From: [Jean&Ed Baldassarre](#)
To: [Planning Info](#)
Subject: Property located 0 Woodbury Avenue (Variances to approve lot) Jan. 18th meeting 7:00 pm Board of Adjustment
Date: Monday, January 17, 2022 1:12:49 PM

Reasons for not approving lot for single family home on 0 lot Woodbury Ave. Portsmouth, NH (Assessor map 220 Lot 16-1)

Lot is less than half the square feet required for building lot.

Only 60 feet of street frontage where 100 feet is required.

Only 40 feet left for road cuts,gas,sewer and water lines and utility pole in the way.

Drainage and water run off effecting abutters .

Lot is not level as described in original real estate listing.

Another lot in the same district was denied approval with more square feet and more street frontage.

What size house and footage would be allowed for this property?

Edward & Jean Baldassarre
717 Woodbury Ave. Portsmouth, NH

Sent from my iPad

Ellen S. Cohn

124 Broad Street
Portsmouth, NH 03801
January 17, 2022

Board of Adjustment
City of Portsmouth
Portsmouth City Hall
Portsmouth, NH 03801

Dear Board of Adjustment,

I am writing to you to request that you deny the petition of Evan C. Maloney and Jill Maloney and Duncan McCallum for a waiver for approval of a tree house. I am an abutter of the Maloney's house and can see the structure from my deck on the back of my house and from my garden behind my garage. I have lived in my home for over 37 years. Our neighborhood on Lincoln, Broad (where my house is), and Highland is a close, congenial neighborhood. Any time someone wants to do something, they make sure the neighbors have no problems. I wanted to put up a temporary bamboo fence on two sides of my garden. Before doing so, I checked with the neighbors on both sides to make sure they had no objections.

I would like to address the "tree house" that the Maloneys refer to in their petition. I have several objections. First, I question whether it is a "tree house", because I think of a tree house as a temporary structure that can be easily removed. When my daughter was younger, we had a sandbox, a pool and a slide but they were temporary structures that could be easily removed and were when my daughter grew up. This structure is a permanent structure that cannot easily be removed. It is larger than the typical treehouse with a ramp that is in concrete feet so it cannot be removed. The Maloneys are misrepresenting the structure as a "tree house" because of the size, concrete supports, and look of the "tree house".

My second objection is that the "tree house" is right on the boundary with the neighbors in the back of their property. That means that the neighbors have to look directly at the tree house every time they are in their yard. Other neighbors have gotten variances when there is less than 10 feet from their property and the neighbor's fence, but none have gotten variances when their construction is right at the other neighbor's property line. These neighbors have all gotten building permits first before applying for variances.

Finally I object to the term "previously constructed". The Maloneys constructed the structure referred to as a "tree house" immediately last fall without checking to see if the city required a building permit. Because they were in violation of the building permit, they should be asked to remove the structure.

In conclusion, I would like to see the Maloneys be denied their variance on a permanent structure that was built on an abutting neighbor's property line against their objections. The structure with concrete footings is not a tree house – it is a much more substantive structure. It is not feet away from the property line; it is on the property line. The Maloneys failed to get a permit before they started the work.

Ellen S. Cohn

Sincerely yours,

A handwritten signature in blue ink that reads "Ellen S. Cohn". The signature is written in a cursive style with a large, looping 'E' and a trailing flourish.

Ellen S. Cohn
124 Broad Street, Portsmouth

SUSAN V. DENENBERG
44 Wibird St.
Portsmouth, NH 03801

January 14, 2022

planning@cityofportsmouth.com

Re: 389 Lincoln Accessory Structure review

Dear Sir or Ms,

I am writing in support of the City's decision to require the property owner to adhere to the zoning ordinance and specifically the set back requirements from the property line. As I understand it, the tree house, as currently constructed, sits on the property line. Any such structure needs to be at least 8 feet from the back and 5 feet from the side yard property line. It does not meet either requirement. Allowing the structure to stand diminishes the abutter's property and privacy rights. Furthermore, an equitable waiver or variance is not applicable under these circumstances. There are no special conditions of the property that would justify allowing a tree house to violate the set back standards. The variance is contrary to the public interest, in that there are rational reasons to prohibit building on a property line, particularly diminishing a neighbors view, light and air as well as encroaching on their privacy. The spirit of the ordinance would be violated by allowing the tree house to remain on the edge of the property line. There is no hardship involved in removing the tree house. The major use of the property as a single family residence would remain intact without the tree house.

Should the Board allow the tree house to remain on the property line in violation of the ordinance, this would set a precedent for other home owners to erect a variety of different structures on their property lines. For these reasons, I respectfully suggest that no variance is warranted and therefore the tree house should be removed.

Sincerely,

Susan V. Denenberg

Katinka de Ruiter
420 Lincoln Avenue
Portsmouth, NH 03801

January 18, 2022

Re: 389 Lincoln Avenue

To Whom it May Concern,

I received a letter as an abutter regarding a structure built at 389 Lincoln Avenue. While I believe that play structures, including treehouses, should be allowed, I have a problem with the 0 foot setback. We live in a dense neighborhood—having a structure butt up against a property line affects the privacy and sightlines of neighbors. I am concerned that bypassing necessary permits upfront and then requesting (and possibly receiving) a 0 foot setback after the fact would set an unwelcome precedent that others may take advantage of in the future.

Sincerely,

A handwritten signature in black ink, appearing to read 'Katinka de Ruiter', with a large, stylized initial 'K' and a long horizontal flourish extending to the right.

Katinka de Ruiter

January 15, 2022

To Members of the Board of Adjustment:

As residents of Portsmouth for nearly 50 years, we have come to treasure the special properties of Portsmouth that make it so unique. We count on the enforcement of zoning laws and regulations to ensure that these characteristics remain intact, and to maintain the value of our properties.

Our understanding is that the erection of the play structure at 389 Lincoln Ave., immediately adjacent to the Moses property, without regard to set back rules violates both the letter and the intent of Portsmouth's zoning rules. We support removal of this structure.

Sincerely,

John and Margaret Evans

1 Lookout Lane

January 18, 2022

Board of Adjustment
City of Portsmouth
1 Junkins Ave
Portsmouth NH 03801

Dear Members,

I am writing in opposition to the variance request/adjustment by Evan C. and Jill Maloney of 389 Lincoln Avenue.

I have seen the structure from the abutters' yard and home and to say it's intrusive is an understatement. In Portsmouth we live in close quarters, and in general I feel that most residents are mindful of respecting each others' space. This deck goes past the boundaries of what should be allowable as it allows no privacy for the abutters to enjoy their backyard or sit in their kitchen without being observed from the deck or subjected to amplified noise.

The other concern would be that with the increased turnover and renovation of homes in Portsmouth, more structures could be built as "play structures" that exceed building codes and disregard lot lines. As a city, it's important to enforce the codes and encourage neighbors to work together to respect each others' property. If a resident decides to forgo cooperating with neighbors and building in a self-serving manner, they should not be surprised when codes are enforced.

Thank you.

Meganne Fabrega
539 Lincoln Ave
Portsmouth NH
603.661.3079

180 Lincoln Avenue
Portsmouth, NH 03801
January 12, 2022

To the members of the Zoning Board of Adjustment:

This is a statement in support of neighbors and abutters to 389 Lincoln Avenue where a substantial accessory play-structure was constructed without a variance.

While I'm not an abutter, I support friends and neighbors who weren't offered the opportunity for public comment, as is required, before the structure was built.

I'm asking you to please consider and apply the zoning laws that protect all of us -- the laws on setbacks; on building: land ratio; on permits and abutter notices. Residents or contractors who ignore these zoning laws should do so at their own risk, not assume they are above them.

Neighbors or developers or businesses that act independently, outside of the established rules and procedures that guide the growth of this city, should be held accountable. If the process can be ignored, why would anyone ask for permission?

Thank you for your dedication to Portsmouth and its residents.

Sincerely,
Maxene Feintuch

From: [Ted Gilchrist](#)
To: [Planning Info](#)
Subject: Play structure of Evan and Jill Maloney, 389 Lincoln Avenue
Date: Monday, January 17, 2022 6:49:54 PM

To the Board of Adjustment: Regarding 389 Lincoln Avenue

As a neighbor and abutter to this property I would like to voice my objection to the application for a variance by Evan and Jill Maloney for the play structure located at 389 Lincoln Avenue. I feel that the structure violates the Portsmouth zoning ordinances in a material way, and allowing it to stand will set a negative precedent, with repercussions for privacy, and property values, that could spread up and down Lincoln Avenue and out to surrounding streets and neighborhoods.

Having read the statement by the Maloney attorney, I see some assertions of fact that I find troublesome.

1.

He asserts that the structure is 8 feet high. In actual fact, when you consider the railings, it appears to me that the structure has a net height of close to 14 feet.

a.

And indeed we should consider the railings, since the railings contribute to the overhaul impression of a behemoth looming over the neighbors' property lines.

b.

So taking 14 feet as the true height, my reading of the ordinance suggests that the property setback on the Wright's side - about 5 feet - is not even close to what it should be. The violation is even more egregious along the back property line (Moses household), since there is zero setback there.

2.

The attorney also asserts that the structure is 168 square feet in area. I doubt that this figure takes into account the ramp, which is itself very long and wide. If the ramp were just a narrow footpath, perhaps that would justifiably be left out of the calculations, but, as is, it is wide enough to support a parade of children, 3 or 4 abreast. Therefore, I feel that the ramp is better described as an inclined platform that spans much of the backyard and should be entered into all calculations.

In view of these objections, my hope is that the structure be removed, and that the owners go back to square one, this time taking into serious consideration our local ordinances, and reflecting more on why those ordinances have been, and continue to be, in place.

Thank you for your consideration.

Julia Buck

Edgar Gilchrist
398 Lincoln Avenue
Portsmouth, NH 03801

January 13, 2022

Planning Department City Hall
1 Junkins Ave
Portsmouth, NH 0301
planning@cityofportsmouth.com

Re: Board of Adjustment Hearing (1/18/22) Request of Evan C. Mahoney & Jill Mahoney
389 Lincoln Ave, Portsmouth

We Joanne Holman and Lance Hellman (228 Highland St) are writing to support our neighbors Mark Moses & Tess Feltes (178 Highland St) in their opposition of the requested 'equitable waiver or variance...' by Evan C Mahoney & Jill Mahoney (389 Lincoln Ave).

Mark and Tess's home is located directly behind the Mahoney's. As you can see from photos of the elevated platform with obtrusive fence (attached), this structure violates the setback laws of our neighborhood, it imposes on Mark & Tess's privacy, and it is prominent and unsightly!

We feel the "tree house" description is highly inaccurate...or interpreted very generously...a euphemism. Tree house implies a child's whimsical construction, or a DIY construction dependent upon its elevation by the tree. This industrial sized platform is built around a tree, but is not in any way dependent upon the tree it surrounds for its structural elevation. This highly non-conforming platform looks to be constructed professionally with an (approximately) 15 foot long solidly constructed "ramp" leading up to the platform floor...very un-tree house looking. Also, clearly seen is a substantial structure (wall?) built above and behind the platform. This structure towers above the platform and its top is approximately (12) feet above ground level. Please note the height of this wall compared to the standard 6 foot tall fence in front of this "tree house". This looming wall was apparently built as a "privacy" screen for the platform occupants.

We hope that you will acknowledge the reasonableness of this request.

Joanne Holman
Lance Hellman
228 Highland St
Portsmouth, NH 03801
603-812-3451





From: [Nancy Hotchkiss](#)
To: [Planning Info](#)
Cc: [Tess and Mark \(Moses\) Feltes](#)
Subject: Board of Adjustment 1/18/22 hearing
Date: Sunday, January 16, 2022 12:09:03 PM

Planning Department City Hall
1 Junkins Ave
Portsmouth, NH 03801
planning@cityofportsmouth.com

RE: Board of Adjustment Hearing (1/18/22) Request of Evan and Jill Mahoney 389 Lincoln Ave, Portsmouth

I, Nancy Hotchkiss, 37 Sherburne Ave, am writing in support of fellow neighbors Mark Moses and Tess Feltes (178 Highland St) in their opposition to the requested “waiver or variance” by Evan and Jill Mahoney (389 Lincoln Ave).

Our neighborhood consists of many closely situated residential homes just outside of downtown Portsmouth. As homeowners, we are dependent on the planning board to maintain the integrity of the neighborhood in regards to property setbacks and accessory structures. The zoning laws protect us all. They maintain a level of privacy for the homeowner and prevent the intrusion of unsightly and over proportioned structures near or next to one’s property.

My friend's (Mark Moses and Tess Feltes) and neighbor’s home sits directly behind the Mahoney’s home. The “tree house” the Mahoney’s have constructed sits directly on the property line they share with Tess and Mark and towers over the existing fence that marks the property line. It is, in actuality, hardly a tree house, but instead, an unsightly massive building abutting the fence, with a total height of approximately 12 feet and a platform that appears to exceed the 100 square foot limit of the zoning regulations . It also clearly does not meet the setback requirements of AT LEAST 5 feet and exceeds the 10 foot limit on height per zoning requirements.

Dense and congested neighborhoods depend on the goodwill of each neighbor AND the enforcement of existing zoning requirements so that each property owner can enjoy the harmony, privacy, and freedom from intrusive, unsightly eyesores when using their property. This is the minimal expectation homeowners have when looking to the enforcement of the zoning rules and regulations by the planning board.

I hope you will consider these factors and reject the Mahoney’s request for an “equitable waiver or variance” from the City of Portsmouth Zoning Ordinance.

Sincerely,
Nancy E Hotchkiss
37 Sherburne Ave
Portsmouth, NH 03801
603-436-3240
dewset@comcast.net

From: janet.polasky@gmail.com
To: [Planning Info](#)
Subject: 389 Lincoln Avenue appeal
Date: Monday, January 17, 2022 1:21:47 PM

To: the Portsmouth Planning Committee
From: Janet Polasky and William Lyons
Re: 389 Lincoln Treehouse

We are writing in opposition to the appeal of Evan Mahoney to let stand an accessory unit on his property line. Clearly the unit was built in violation of the Zoning Ordinances. It is not a question of only a few inches over, a minor violation, but the structure is right on the property line. The unsightly wall extends at considerable height along that property line. There can be no question of “an appropriate distance” as specified in the code.

This substantial structure bears little resemblance to what we used to build and call “treehouses” when we were children. But then, we built those ourselves as children and they were intended to be temporary, lasting, if we were lucky, one summer.

It is unfortunate when residents violate the spirit of neighborliness and mutual accommodation that prevails through most of Portsmouth. As residents of the Lincoln Avenue neighborhood, at 62 Mendum, we hope that you will enforce the existing code.

Thanks,
Janet Polasky and William Lyons

62 Mendum Avenue
Portsmouth
603 431-6816

Janet Polasky
Janet.Polasky@gmail.com

Planning Department
City Hall
1 Junkins Ave
Portsmouth, NH 03801

Reference: Request of Evan C. Maloney and Jill Maloney (Owners), and Duncan McCallum (Applicant), for the property located at 389 Lincoln Avenue requesting an equitable waiver or variance for approval.

Dear Sir or Madam:

I am writing as an identified abutter to the referenced property to express my view regarding the request for a variance from Section 10.52 noted in the letter we received from the Board of Adjustment. My neighborhood in Portsmouth is known for its well-kept older homes, small lots, and peacefulness. My block where 389 Lincoln is located is serene and neighbors respect the little privacy we have between properties. Allowing this structure to remain would diminish these intrinsic neighborhood characteristics.

I believe paragraph 10.573.20 states that 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. The "Tree House", as presented by the Maloneys, seems to fit in as an accessory building to 389 Lincoln and therefore, in violation of this zoning rule.

Additionally, as the owner of 208 Highland Street I object to the application for waiver the said owners have requested. My reason for objecting is that allowing the structure to remain would be a bad precedent to set for the surrounding properties. If property owners are allowed to build a structure on the property without getting a permit, plead ignorance, and then asks for forgiveness, they basically have violated the City of Portsmouth's building protocols. Furthermore, I believe zoning regulation paragraph 10.233.20 states that to authorize a variance, the Board of Adjustment must find that the variance meets all of the following criteria:

- 10.233.21 The variance will not be contrary to the public interest;
- 10.233.22 The spirit of the Ordinance will be observed;
- 10.233.23 Substantial justice will be done;
- 10.233.24 The values of surrounding properties will not be diminished; and
- 10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

In my judgement subparagraph 10.233.21 is not met and the probability that surrounding property values are diminished is greater than zero, therefore, subparagraph 10.233.24 is not satisfied.

Sincerely,

Jane Nilles

208 Highland Street

Portsmouth, NH 03801

From: [Ellen Patton](#)
To: [Planning Info](#)
Subject: Play Structure at 389 Lincoln Avenue
Date: Tuesday, January 18, 2022 7:36:18 AM

To whom it may concern:

In response to the abutter's notice we received, this letter is in support of the Feltes/Moses request that the equitable waiver or variance submitted by Evan and Jill Maloney for the play structure on 389 Lincoln Avenue be denied. As the city previously determined it is in violation of the City of Portsmouth Zoning Ordinance regarding its setback from property lines. In addition, it imposes on the privacy of their neighbor on Highland Avenue. In a neighborhood where yards are closely tied together, it is important that every effort be made to ensure that boundaries are respected as per the city's own regulations.

Thank you in advance for your consideration in this matter.

Ellen & Walt Patton
407 Union Street

From: [Jacob Weinstein](#)
To: [Planning Info](#)
Subject: Comment for public hearing January 18, 2022
Date: Tuesday, January 18, 2022 10:27:48 AM

Please see my note below with reference to the Board of Adjustment Meeting on January 18, 2022 with respect to the property located at 389 Lincoln Ave.

I am writing to reflect my disapproval of the request for an equitable waiver or variance for the approval of a previously constructed tree house structure on 389 Lincoln Ave. I am a direct abutter to the said property. While I do not see the structure from my home, I believe the approval of a waiver or variance to allow a 0' rear yard where 8 feet is required and a 5' left side yard where 8 feet is required will set a standard at which the city will be required to follow. That erosion of standards is costly to the entire community of Portsmouth.

Thank you,
Jacob Weinstein
373 Lincoln Ave, Portsmouth, NH 03801

January 13, 2022

To Whom it May Concern:

My name is Kelly Weinstein and I live at 373 Lincoln Ave and am a direct abutter of the Maloneys at 389 Lincoln Ave. I served on the Citywide Neighborhood Council for several years and greatly appreciate all of your civil service, especially with cases like these. Thank you for your time.

I do not see the treehouse structure from my property, nor am I directly impacted by this structure. However, Mark Moses and Tess Feltes have lived in our neighborhood for almost 40 years. From the day my family moved in, Mark and Tess have been welcoming and kind. They've invited us to Holiday parties, and Tess has graciously offered her art studio for my children to play in. We often talk when we see each other walking our dogs and we love to catch up when visiting Tess's art studio when its open during our city's annual Art Walk. I formerly worked at UNH where Mark has been a Professor for years, and we have what I would describe as a positive and healthy neighborly relationship. They are two of the kindest people I've met in our community and I couldn't be more grateful for neighbors like them. To hear about the obstruction to their property and the stress it has caused them in this appeal is unnerving, and for the aforementioned reasons including the fact that a 0' setback where 8' is required by code and where a 5' setback where 8' is required by code are the reasons why I fully support Mr. Fischer's arguments regarding this case.

Kelly and Misa Wright have lived in our neighborhood for many years as well. We have the same type of positive neighborly relationship. We chat when we see each other, and Kelly has organized several fun bike tours in our community that my husband has attended. Again, I'd describe them as the type of neighbors anyone would want to have. I'm here to support their perspective and as stated before, while this structure does not impact my property directly it does impact the neighbors in our community greatly; the neighbors that have been welcoming and kind, and I support Mr. Fischer's arguments about the 0' setback appeal where 8' is required and where a 5' setback where 8' is required by code is being appealed.

To say my relationship as a direct abutter to the Maloneys has been strained since they moved here in an understatement. Due to a history of both boundary and privacy issues I've experienced myself, I had no choice but to issue a no-trespass order. Unfortunately, because of this history of boundary and privacy issues I have a contentious relationship with the Maloneys; this is something I've never experienced with a neighbor in my life, and it saddens me because it counteracts everything that defines the city I live in and love. Despite any of the personal issues I have with them, I

am here to support all of the neighbors in our community who are directly impacted by this structure that clearly violates our city's code.

Thank you for your consideration and for your time. Should you have further questions please feel free to contact me- 603-809-0102.

Kindly,
Kelly Weinstein