



DISCUSSION ITEM

Agenda Item # 6

AGENDA REPORT SUMMARY

Meeting Date: August 25, 2020

Subject: Appeal of the administrative determination that a structure at 714 Arroyo Road is an accessory structure and not a tree house or play structure.

Prepared by: Jon Biggs, Community Development Director

Approved by: Chris Jordan, City Manager

Attachment(s):

1. CDD Notice of Determination
2. Property Owner Appeal Letter
3. Letter from Harry Price
4. Reduced Floorplan Diagram
5. Design Review Commission Agenda Packet November 2018
6. November 2018 Design Review Commission Minutes
7. Public Correspondence, Erika Gasaway
8. Public Correspondence Request for Assistance Email
 8. a. Letter to Mountain View City Council 8-5-20
 8. b. Letter from Eric Schmidt Address to Design Review Commission
 8. c. Photos from Neighboring Property Owners

Initiated by:

Appellants, Katie and Rich Heley

Previous Council Consideration:

None.

Fiscal Impact:

None

Environmental Review:

This project is categorically exempt from environmental review pursuant to Section 15303 (new construction of small structures) of the State Guidelines implementing the California Environmental Quality Act of 1970, as amended.

Policy Question(s) for Council Consideration:

- Does the subject structure, given its size and height qualify it as an accessory structure; thus, making it subject to site development standards for accessory structures or does it fall into the

Reviewed By:

City Manager

CJ

City Attorney

JH

Finance Director

SE



Subject: 714 Arroyo Road, Appeal of the administrative determination that a structure is an accessory structure and not a tree house or play structure

category of a “tree house” or “play structures”, which would not make it subject to site development standards for an accessory structure.

Summary:

- The City Council in considering the appeal of a staff determination that a structure in the rear yard of the property at 714 Arroyo Road is an accessory structure and should be subject to accessory structure site development standards.

Staff Recommendation:

Concur with staff's determination

Purpose

Determine if the subject structure is an accessory structure or “tree house” or “play structure”, which will clarify the site development standards it will be required to comply with.

Background

The discussion presented in this agenda report is about a structure, which is partially supported by a two living redwood trees, that is in the rear yard of 714 Arroyo Road. The question before the City Council is whether the subject structure should be classified as an accessory structure and subject to accessory structure site development standards or does it more appropriately fall into the category of a “tree house” or “play structure” neither of which is defined or regulated by specific site development standards.

The subject structure, as it presently exists, consists of a 105 square-foot raised deck that is approximately nine feet above the ground, an enclosed area that is approximately 160 square-feet in size, and a second story loft that is approximately 50 square feet in size, approximately 210 square feet of enclosed space total and it has a height of approximately 24 feet. The structure is located approximately 4’ from the rear and side property lines. Given the size and height of this structure, staff has determined that it is an accessory structure and not a “tree house” or “play structure”.



Subject: 714 Arroyo Road, Appeal of the administrative determination that a structure is an accessory structure and not a tree house or play structure



SUBJECT STRUCTURE – REAR YARD OF 714 ARROYO ROAD



SITE DIAGRAM OF STRUCTURE PLACEMENT AT 714 ARROYO ROAD



Subject: 714 Arroyo Road, Appeal of the administrative determination that a structure is an accessory structure and not a tree house or play structure

Structure History

Construction of the subject structure, which is called a “tree house” by the property owner, was started in 2018. Toward the end of its construction, in early September, the City was made aware of its existence and issued a Stop-Work notice since there were no Planning approvals or building permits on file. Based on the overall size of the structure and the fact that it had permanent foundational footings in the ground, it was determined by the Building and Planning divisions that it is an accessory structure per the Zoning Ordinance and is subject to meeting accessory structure site development standards and requirements of the California Building Code. With this determination, the structure needed to either be rebuilt to comply with the accessory structure ordinance or the property owners could seek a variance to allow it to remain as constructed. The property owners elected to apply for a variance.

In November of 2018, the Design Review Commission (DRC) considered a variance application for an exception to the height limit, exceptions to the rear and side yard setbacks, and encroachments into the rear and side yard daylight plane (Agenda report for this DRC meeting is included with this report as attachment number 5 and includes more details about the subject structure). Following a review of the project, presentation by the property owner, and public comment, the Commission voted 4-0 to deny the variance request and directed the applicant to rebuild the accessory structure in compliance with City regulations.

Following the DRC’s November 2018 decision, there was communication between the property owner and staff regarding next steps for the subject structure. In September of 2019, the property owners, through their attorney Harry Price, submitted to the City plans to modify the structure. The proposed modification included:

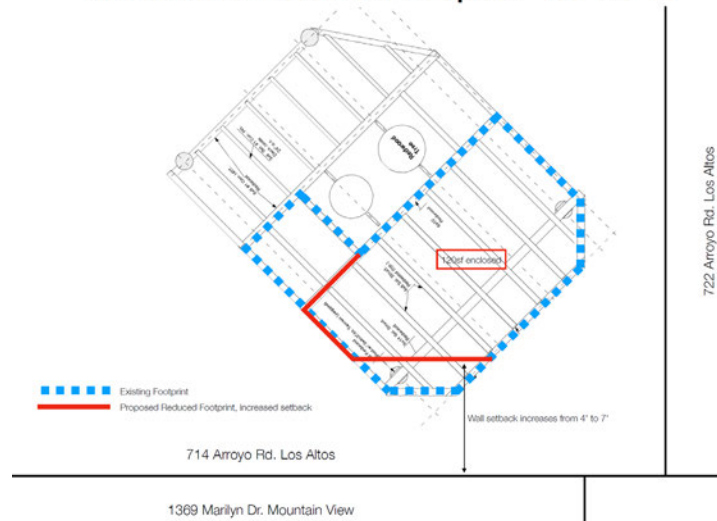
- Reducing the enclosed space to 120 square feet
- Increasing the setback to the rear property line from 4 feet to 7 feet
- Installing additional plantings to screen the structure from neighboring properties

Staff reviewed the plans for the proposed modifications and based on that review, determined the subject structure was still an accessory structure and subject to the site development standards for an accessory structure. Staff provided the property owners with a letter of this determination, which, was subsequently appealed and now before the City Council for consideration.



Subject: 714 Arroyo Road, Appeal of the administrative determination that a structure is an accessory structure and not a tree house or play structure

Treehouse Reduced Floorplan - 09-18-19



MODIFICATIONS PROPOSED BY PROPERTY OWNERS

Accessory Structure Regulations

The City's Zoning Ordinance has regulated the placement of accessory structures on single-family properties dating back to 1969. Over the years, the accessory structure regulations have grown and become more comprehensive to address the needs and concerns of the community. In February of 2018, the City Council adopted an amendment to the accessory structure regulations (Ordinance No. 2018-440) that established the current rules for the size and placement of accessory structures on single-family properties.

If the subject structure is determined to be an accessory structure, it would not comply with accessory structure site development standards (Zoning Code Chapter 14.15 Accessory Structure Ordinance) because, at a height of 24 feet, it is taller than the maximum height for accessory structures, which is 12 feet, and at this height, it cannot be located in a 25 foot rear yard or the 17.5 foot side yard setback. At approximately 4' to the rear (7' in the proposed modifications) and side property lines, the structure also encroaches into the rear and side yard daylight plane for accessory structures.

It is important to note, given public correspondence that has been received, that the City Council is not considering a variance or an appeal of the DRC's denial of a variance. The hearing to consider the variance was held in 2019 and the decision of the DRC to deny the variance application was not appealed. As noted above, the City Council is considering an appeal of staff's determination that the subject structure is an accessory structure and this determination followed a review of proposed changes to the subject structure submitted by the applicant.



Subject: 714 Arroyo Road, Appeal of the administrative determination that a structure is an accessory structure and not a tree house or play structure

Discussion/Analysis

In staff's opinion, the size and height of the subject structure qualify it as an accessory structure. As the property owners have pointed out, they did reach out to Planning staff before construction started and received feedback that play structures, which can include treehouses, are not required to meet Zoning requirements or obtain a building permit. Current staff was not present at the exchange and staff involved in that exchange is no longer with the City. As far as staff knows, there was never an exchange of plans or concept drawings that demonstrated the height and size of the subject structure and would have allowed for a closer review of what was being considered. In addition, the structure's method of construction is more in-line with that done for a structure that needs a building permit and inspections to verify minimum construction standards for life and safety requirements are satisfied. Therefore, staff is recommending the appeal be denied.

Options

1) Option #1 Grant appeal

Advantages: Allows the property owner to retain the subject structure in its present location and possibly form (applicant has proposed modifications to the structure but Council may determine these are not necessary if it qualifies as a "tree house" or "play structure").

Disadvantages: Based on public correspondences, the subject structure may impact the ability of neighboring property owners to enjoy their residences and yards.

2) Option #2 Deny appeal

Advantages: Establishes the subject structure as an accessory structure and would require that it be modified to comply with site development standards for accessory structures and, thus, minimizing impacts on neighboring property owners.

Disadvantages: Will require substantial modifications to the subject structure in order to bring it into compliance with site development standards for accessory structures.

Recommendation

The staff recommends Option 2.



City of Los Altos
Community Development Department
One North San Antonio Road
Los Altos, California 94022

March 5, 2020

Mr. Harry I. Price, Attorney at Law
40 Main Street
Los Altos, CA 94022

Project Address: 714 Arroyo Road, Detached Accessory Structure Determination

Dear Mr. Price:

The review of the revised plans for the existing detached accessory structure located at 714 Arroyo Road has been completed, and although the proposed plans reflect a reduction to 120 square feet of enclosed space, and an increase in the distance to the rear property line from 4' to 7', the height of the structure (24'5") requires compliance with the rear and side yard setback requirements, which are 25' and at 17.5' respectively. I note as well the plan provided, maintains an approximate 4' setback to the side property line and does not clarify whether there is a reduction in the area of the second story loft.

Given these facts, the subject structure must be removed, relocated, or modified to comply with the site development standards for detached accessory structures in the R1-10 zone district. Failure to bring the structure into compliance with zoning code requirements may result in the City taking enforcement action.

If you seek to appeal this administrative determination you may appeal it to the City Council within fifteen (15) days of the date of this determination (date of this letter) by filing a notice of appeal with the City Clerk that clearly identifies this decision and states the grounds for the appeal (Los Altos Municipal Code Section 1.12.010). The appeal must also be accompanied by the payment of a \$595.00 fee.

We anticipate your cooperation in this matter, and should you have any questions please feel free to contact me by phone at 650.947.2635.

Sincerely,

A black rectangular redaction box covering the signature of Jon Biggs.

Jon Biggs
Community Development Director

C:
Jolie Houston, City Attorney
Mr. & Mrs. Heley

March 19, 2020

via email and hand delivered
council@losaltosca.gov

Mayor Jan Pepper and Los Altos City Council Members
c/o Mr. Jon Biggs
Community Development Director
City of Los Altos
One North San Antonio Road
Los Altos, CA 94022

Re: Appeal concerning 714 Arroyo Road
Inaccurate depiction of treehouse as “detached accessory structure”

Dear Honorable Mayor Pepper and City Council Members:

On behalf of Katie Heley, and myself, we hereby appeal the determination of City staff set forth in the letter of March 5, 2020. We recently received the response to our letter dated September 18, 2019 whereby we proposed three modifications to the built Treehouse in our backyard to minimize any impact to neighbors. Despite the concessions that we offered, we additionally proposed to work with the City to address any further questions or concerns. We are disappointed that the City is continuing to require that our 90% complete treehouse conform to all “detached accessory structure” requirements for height and setback. We are appealing this administrative determination to the City Council.

Clearly, this treehouse was not designed nor built to conform to detached accessory structure requirements. It is a treehouse for our two children to play in, not a pool house, not a garage, not an ADU. It was never intended for dwelling purposes nor storage purposes – simply for play. It is, as a treehouse, designed to be a play structure.

You may wonder why it wasn't built to meet “detached accessory structure” requirements or why we did not get permits for it. The answer is that we attempted to find out exactly what was required by the City of Los Altos for a treehouse. We literally tried to get permits from the city and were turned away twice and assured by the Planning Manager that it is the City Council's policy to not regulate play structures, including treehouses. David Kornfield (Advance Planning Manager for Los Altos) stated in an email to me “there is no Planning or Building permit necessary and no zoning or building code to apply” when specific requirements for treehouses were requested. I was completely forthcoming with the city prior to designing and building the treehouse and I was assured that it was exempt from all permits and codes. Prior to construction I conferred with my two adjoining neighbors, who had no objections to my proposed treehouse. With my neighbor's approval and the city's explicit confirmation that my treehouse required no permits or code to follow, I constructed the treehouse to near completion. Construction came to an abrupt halt following aggressive complaints from a rear neighbor, a Mountain View resident.

The City thereafter required us to go through a Planning Commission hearing for what we were lead to believe would be an approval process to address one complaint (our rear neighbor). We did not realize that by “applying” for that hearing that we were opening up a process for complete denial. We were shocked that the City Planning Commission ignored the information that we received in the communication from David Kornfield, simply dismissively explaining that “he no longer works at the City.” Our nearly completed treehouse was thereafter red-tagged.

Since then, City staff has graciously agreed to review our revised treehouse plans as a direct application for approval of a treehouse. We, in turn, submitted new plans, revising the specifications by reducing the total square footage by 120 feet, and by increasing the distance from the rear yard from four to seven feet. The sole complaintant, our rear neighbor in Mountain View, benefits from dense foliage that prevents any visible intrusion from their rear yard, and now we would be affording an even greater distance from that property. You will be able to see for yourselves that there is no negative impact to views or privacy resulting from our nearly-complete treehouse.

Upon receipt of Mr. Biggs’ denial letter dated March 5, 2020, we see that City Staff continues to misclassify our treehouse as a “detached accessory structure.” We believe that it is wrong for the City Staff to refuse to acknowledge that the as-built built treehouse is in fact a treehouse, while staunchly refusing to define what a treehouse is despite saying they are allowed in the city – and then categorizing our treehouse as a detached accessory structure. My family’s case is a simple one: we want to have a play structure, we seek to utilize the available and suitable existing tree in our rear yard, and we wish to have it completed while our young children can enjoy it while they are still young. We have already lost two summers in the past 18 months.

We have an expectation that the City of Los Altos provides its citizens accurate information about building and planning in the city when inquiries are made and will stand behind their communications. Our reliance on Los Altos staff direction has cost us both substantial time and money, and loss of use of the treehouse for many months. As our case is not unique – we believe that we are one of hundreds of existing and future treehouses in this city – it is imperative that vagueness regarding treehouse construction be eliminated. Given that there are no specific guidelines on height, size and setback requirements published for treehouse construction in Los Altos, we respectfully request that our treehouse project be allowed to be completed and used as they have been for decades in the city.

Additionally, for the long term benefit of our community, we would hate to see anyone go through the saga the City has already put us through, despite our best intentions. Therefore, our recommendation is that the City either indicate that there are no regulations on treehouses (our preference) or, alternatively, publish criteria: specific guidelines on height, size and setback requirements for treehouses for all future treehouse enthusiasts.

In advance of the actual hearing on this appeal, we shall submit all of the current and prior modifications for the treehouse, together with any and all additional communication between ourselves, city staff and neighbors. We also invite you to physically view our nearly-complete treehouse. We hope that you will agree that we only operated in good faith, received explicit

direction from the City that there were no permits or code required, and that there are no reasons to reject our appeal.

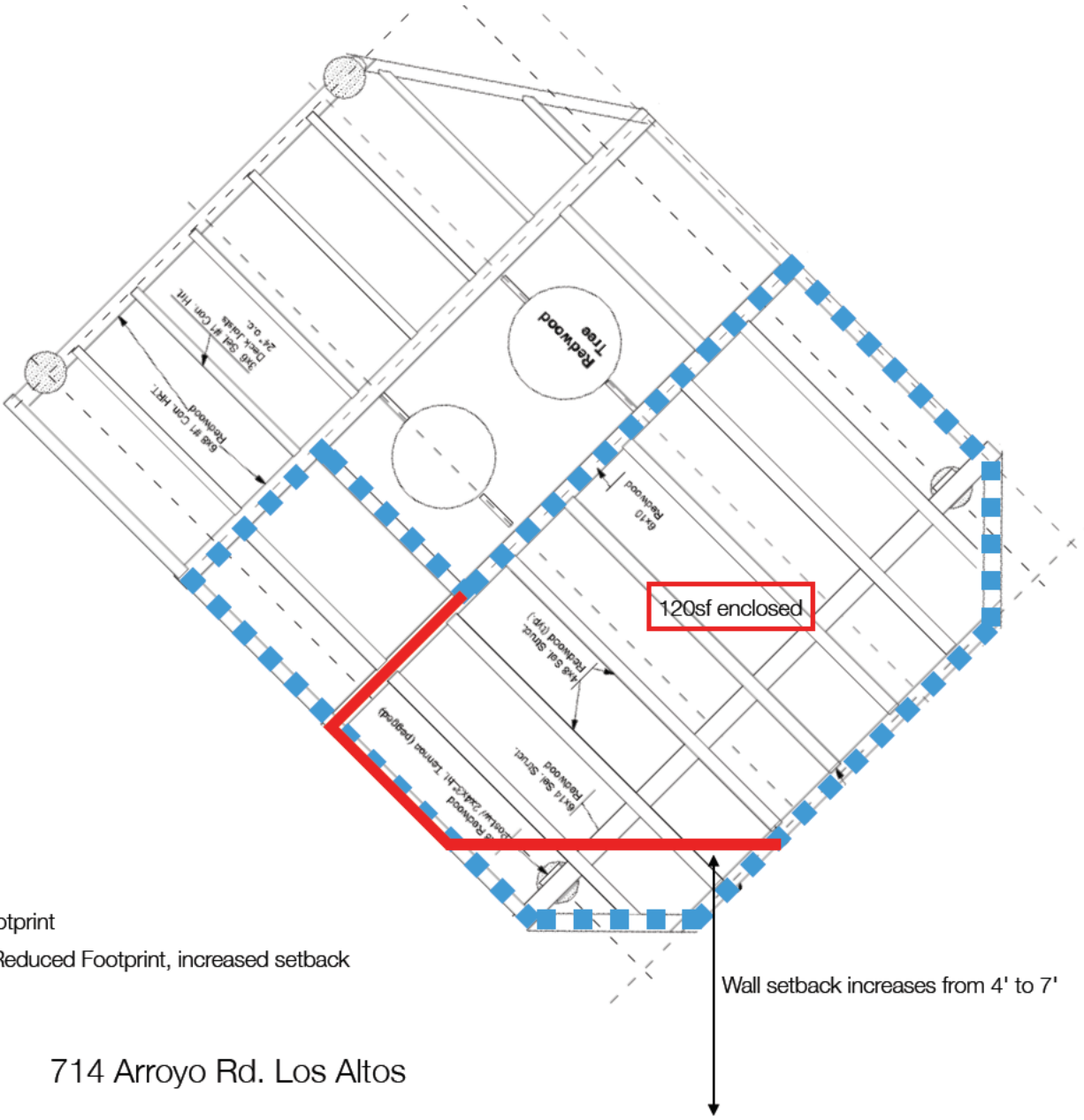
Thank you for your anticipated attention to our appeal.

Sincerely,

Katie and Rich Heley

cc: Jon Biggs, Community Development Director (via email only at: jbiggs@losaltosca.gov)
Chris Jordan, City Manager (via email only at: cjordan@losaltosca.gov)
Mayor Jan Pepper (via email only at: jpepper@losaltosca.gov)
Vice-Mayor Neysa Fligor (via email only at: nfligor@losaltosca.gov)
Council Member Jeannie Bruins (via email only at: jbruins@losaltosca.gov)
Council Member Anita Enander (via email only at: aenander@losaltosca.gov)
Council Member Lynette Lee Eng (via email only at: lleeeng@losaltosca.gov)
Ms. Jolie Houston, Esq., City Attorney (via email only at: jolie.houston@berliner.com)
Mr. Harry I. Price, Esq. (via email only at: harry@priceslaw.com)

Treehouse Reduced Floorplan - 09-18-19



- Existing Footprint
- Proposed Reduced Footprint, increased setback

714 Arroyo Rd. Los Altos

722 Arroyo Rd. Los Altos

1369 Marilyn Dr. Mountain View

Wall setback increases from 4' to 7'



HARRY I. PRICE
Attorney at Law

Tel 650.949.0840

Fax 650.949.0844

Harry@PricesLaw.com

September 18, 2019

via hand delivery and email

jbiggs@losaltosca.gov

Mr. Jon Biggs
City of Los Altos
Community Development Department
One North San Antonio Road
Los Altos, CA 94022-3087

Re: Play Structure - 714 Arroyo Road

Dear Mr. Biggs:

As you are aware, it has now been 12 months since my clients, Mr. and Mrs. Heley, were given a Stop Work notice from the City of Los Altos for the construction of a Treehouse. Before construction or design began, my clients had approached the city (both in person and in writing) to seek any permits and understand size and setback constraints, and they were told unambiguously that there were no building or planning permits required for a play structure and no code would apply. My clients were pleased to undertake the construction of their proposed treehouse for the benefit of their two young children.

The Heleys' next door neighbor at 722 Arroyo was consulted, as their property would have line of sight to the structure, and they were in full support of the plans and even wrote a letter of support. A rear neighbor at 1368 Marilyn Dr. in Mountain View (Michelle Mann) only began to vocally oppose the treehouse once construction was 90% complete, because due to the thick tree screening between the treehouse and their property they had been unaware of it up until that point. My clients have been trying to work with them over the past year to appease their concerns yet allow the treehouse to remain for their two children. They have been invited over to the Heleys' house to voice their concerns and allow them to offer suggestions on how to minimize the impact on them. My clients have never received specific requests as to how best to modify the

PRICE Law Firm
Attorneys at Law

September 18, 2019
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treehouse, but instead those neighbors have simply expressed that they felt it was “too big,” “too close,” and “too tall.”


Although this treehouse was initially built with complete transparency to the city after my clients inquired about requirements to obtain any necessary permits, because maintaining neighbor relations is important to Mr. and Mrs. Heley, they are hereby submitting a new and different proposal, with the following modifications to further reduce the impact of neighboring properties:

1. Reduce the enclosed size to 120sf. This will both shrink the volume of the structure as well as make it exempt from any building permit requirements;
2. Increase the average setback to the property line with 1368 Marilyn Ave., Mountain View. This will be achieved by removing enclosed space from the side of the treehouse facing this rear property line of 1368 Marilyn Dr.; and
3. Plant additional screening at the fence line to further conceal the treehouse from view.

I submit this request, and believe that as it continues to fall under the category of treehouse, no accessory structure permit application is required. Consequently, I ask that you review this application, and contact me with any further questions or concerns, so that the needs of both the homeowners and the City can be addressed. Once approved, I request that you remove the “Stop Work” notice so that my clients will be allowed to complete the treehouse with the above outlined modifications in order to reduce the impact on neighboring properties. If you cannot approve this proposal, I request a written response, outlining the grounds for denial. Thank you for your anticipated attention to the requests set forth herein.

Very truly yours,

PRICE LAW FIRM



Harry I. Price
HIP/mc

cc: clients



DATE: November 7, 2018

AGENDA ITEM # 3

TO: Design Review Commission

FROM: Zachary Dahl, Planning Services Manager

SUBJECT: 18-V-06 – 714 Arroyo Road

RECOMMENDATION:

Consider variance application 18-V-05 to allow an existing accessory structure to be maintained

PROJECT DESCRIPTION

This is a variance request to allow for increased height, reduced setbacks and a daylight plane encroachment for an existing accessory structure (described as a treehouse by the applicant) located in the rear yard of the property at 714 Arroyo Road. The project includes variances to the City's Accessory Structure Ordinance (Zoning Code Chapter 14.15) to allow a height of 24 feet where the maximum height is 12 feet, side and rear yard setbacks of approximately four feet where a minimum of five feet is required and encroachments into the side and rear yard daylight plane.

BACKGROUND

Accessory Structure Regulations

The City's Zoning Ordinance has regulated the placement of accessory structures on single-family properties dating back to 1969. Over the years, the accessory structure regulations have grown and become more comprehensive to address the needs and concerns of the community. Most recently, in February of 2018, the City Council adopted an amendment to the accessory structure regulations (Ordinance No. 2018-440) that established the current rules for the size and placement of accessory structures on single-family properties. The Accessory Structure Ordinance (Chapter 14.15) and the Community Development Department's handout on accessory structures is attached for reference.

Structure History

The subject accessory structure, which was built by the applicant as a treehouse, was constructed earlier this year. Toward the end of its construction, at the beginning of September, the City was made aware of its existence and issued a Stop-Work notice since there were no Planning approvals or building permits on file. Based on the overall size of the structure and the fact that it had permanent foundational footings in the ground, it was determined by Building and Planning that it is considered an accessory structure per the Zoning Ordinance and is subject to meeting the requirements of the California Building Code. With this determination, the structure needed to either be rebuilt to comply with the Accessory Structure Ordinance or seek a variance to be allowed to remain as constructed.

DISCUSSION

Variance

The applicant is seeking a variance to allow the existing accessory structure to be maintained as constructed. The structure consists of a 105 square-foot raised deck that is approximately nine feet

above the ground, an enclosed area that is approximately 160 square feet in size, and a second story loft that is approximately 50 square feet in size. A letter from the applicant that provides additional information about the variance request is included as Attachment A.

As noted in the applicant's justification letter, they did reach out to Planning staff before construction started and received feedback that play structures, which can include treehouses, are not required to meet Zoning requirements or obtain a building permit. However, as defined in the Accessory Structure Handout (Attachment C), in order to avoid the need for a Planning approval or building permit, the play structure needs to be unenclosed, and under 120 square feet in size. In this case, portions of the structure are enclosed, it is over 120 square feet in size and is constructed as a raised deck, with permanent footings in the ground, that is built around two large redwood trees. If the applicant had provided staff with a set of plans that outlined the scope of the proposed structure, it would have been determined that it exceeded the size and scope of an unenclosed play structure that is exempt from the Zoning Ordinance and Building Code.

In addition, staff has received correspondence from the neighbor to the rear of the site that raise objections to the variance request (Attachment D). Their concerns are related to the height of the structure, proximity to the rear property line, potential safety issues and potential negative privacy impacts.

In order to approve a variance, the Commission must make three positive findings pursuant to Section 14.76.060 of the Zoning Code:

1. The granting of the variance will be consistent with the objectives of the City's zoning plan;
2. That the granting of the variance will not be detrimental to the health, safety, or welfare of persons living or working in the vicinity or injurious to property or improvements in the vicinity; and
3. Variances from the provisions of this chapter shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of the provisions of this chapter deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classifications.

Due to the unique nature and circumstances of this variance request, staff is not making a recommendation to the Commission. The Commission should consider the applicant's request, the City's rule and regulations as they pertain to this accessory structure and the concerns raised by the neighbor to the rear of the site, to make a decision that can be supported by the required variance findings.

Options

- 1) Approve the variance request

Advantages: This will let the applicant proceed with obtaining a building permit from the City and allow the structure to remain as constructed.

Disadvantages: This could result in negative impacts to the adjacent properties

2) Deny the variance request

Advantages: This will avoid any potential negative impacts to the adjacent properties and determine that a structure of this size and scale is required to comply with the City's accessory structure regulations.

Disadvantages: This will require the applicant to remove and/or rebuild the structure to comply with the City's accessory structure regulations.

Environmental Review

This project is categorically exempt from environmental review under Section 15301 of the California Environmental Quality Act because it involves an accessory structure on a single-family property in a residential zone.

Public Notification

A public hearing notice was published in the *Town Crier*, posted on the property and mailed to all property owners within 500 feet of the project site. The mailed notice included 85 property owners in Los Altos and Mountain View. The public notification map is included in Attachment B.

Cc: Richard Heley, Applicant and Owner

Attachments:

- A. Application and Justification Letter
- B. Area, Vicinity and Public Notification Maps
- C. Accessory Structure Ordinance and Handout
- D. Public Correspondence



CITY OF LOS ALTOS
GENERAL APPLICATION

Type of Review Requested: *(Check all boxes that apply)*

Permit # 1108505

<input type="checkbox"/>	One-Story Design Review	<input type="checkbox"/>	Commercial/Multi-Family	<input type="checkbox"/>	Environmental Review
<input type="checkbox"/>	Two-Story Design Review	<input type="checkbox"/>	Sign Permit	<input type="checkbox"/>	Rezoning
<input checked="" type="checkbox"/>	Variance	<input type="checkbox"/>	Use Permit	<input type="checkbox"/>	R1-S Overlay
<input type="checkbox"/>	Lot Line Adjustment	<input type="checkbox"/>	Tenant Improvement	<input type="checkbox"/>	General Plan/Code Amendment
<input type="checkbox"/>	Tentative Map/Division of Land	<input type="checkbox"/>	Sidewalk Display Permit	<input type="checkbox"/>	Appeal
<input type="checkbox"/>	Historical Review	<input type="checkbox"/>	Preliminary Project Review	<input type="checkbox"/>	Other:

Project Address/Location: 714 Arroyo Rd

Project Proposal/Use: Treehouse Current Use of Property: Single Family

Assessor Parcel Number(s): 18929002 Site Area: 17,500sf

New Sq. Ft.: 260 Altered/Rebuilt Sq. Ft.: 0 Existing Sq. Ft. to Remain: 3683

Total Existing Sq. Ft.: 3683 Total Proposed Sq. Ft. (including basement): _____

Is the site fully accessible for City Staff inspection? yes upon request

Applicant's Name: Richard Heley

Telephone No.: _____ Email Address: _____

Mailing Address: 714 Arroyo Rd

City/State/Zip Code: Los Altos, CA 94024

Property Owner's Name: Richard Heley

Telephone No.: _____ Email Address: _____

Mailing Address: _____

City/State/Zip Code: _____

Architect/Designer's Name: _____

Telephone No.: _____ Email Address: _____

Mailing Address: _____

City/State/Zip Code: _____

** If your project includes complete or partial demolition of an existing residence or commercial building, a demolition permit must be issued and finalized prior to obtaining your building permit. Please contact the Building Division for a demolition package. **

(continued on back)

11/02/2018

DESIGN REVIEW COMMISSION

LOS ALTOS CITY HALL
1 N. SAN ANTONIO RD
LOS ALTOS, CA 94022

Attached please find our general application for a variance. We are requesting a variance for our tree house, which we've been building in a tree, in our backyard. We live at 714 Arroyo Road in Los Altos.

Per the instructions on the variance application, we understand that we are supposed to describe the special circumstances, applicable to our property, which justify a variance. In a nutshell, our special circumstance is that we were misled by the City of Los Altos Planning Department, regarding the permit requirements for tree houses and we have now nearly completed construction of our tree house. Specifically, David Kornfield (Advance Planning Manager for Los Altos) communicated, via email in August 2017, that "there is no Planning or Building permit necessary and no zoning or building code" applies to tree houses. Please see the attached email for your reference. Additionally, a very similar message was verbally communicated when we approached the Planning Department window and spoke with an employee regarding any procedures or permits necessary for tree houses in August 2017. With two separate confirmations that no permits were required, we began to design our tree house in September 2017. Prior to finalizing the design, we spent a significant amount of time discussing the project with our next door neighbors (Keith and Kirsten Mello, 722 Arroyo Road) as our tree house is easily viewed from their rear yard and we did not want to build something that would be obtrusive. The Mello Family were excited about this project and enthusiastically supported it. Feeling confident that we'd covered all the necessary bases, we finalized the design and started construction in March 2018.

We are now nearly finished with the construction of the tree house but we recently received a stop work notice on the project in August 2018. Our rear neighbor, who resides on Marilyn Avenue in Mountain View, apparently did not notice the treehouse during the past 6 months (possibly because it is obscured from her view by trees and shrubbery), but is now very upset that it is located in a tree, close to her rear property line. She is demanding that it be removed and is taking an aggressive approach to achieve her desired outcome, placing multiple calls to the City of Los Altos. In response to her calls, the City of Los Altos sent Greg Anderson (building inspector) to our house in August 2018. Greg immediately issued a stop work notice without inspecting the tree house, declined to speak with us about the circumstances surrounding the stop work notice and shouted "I need to get back to real construction. I don't have time for tree houses." when we attempted to discuss the situation with him. Moments after his departure, Police Captain Scott McCrossin visited our tree house, as a representative of Code Enforcement, and attempted to defuse the situation, as Greg's visit to our house was quite aggressive. Capt. McCrossin was very professional, took some photos of our tree house, reviewed David Kornfield's email and seemed sympathetic to our situation. Ultimately, we fully agreed with Greg's sentiment, but were left very confused as to our next steps for our tree house project. After Greg and Capt. McCrossin's visits, we met with Jon Biggs and Zach Dahl. During that meeting, both Jon and Zach fully acknowledged that we had received incorrect guidance from David and also from the planning window employee regarding tree houses and they informed us that we would need to apply for a variance and building permit for our tree house. As a point of information, and as illustrated by the accompanying photos, we did not reach out to our rear neighbors regarding the tree house project as the tree house does

not face their property and is barely visible from their yard. The rear wall of the tree house, which is intentionally windowless and designed to blend in with the tree, is the only part of the tree house that faces their lot. They did inform us that their primary concern was that our children would be playing in the tree house and would be making noise.

It has always been our intent to build a tree house that complies with the rules and requirements of the City of Los Altos. That is precisely why we reached out, both verbally and in writing, to city staff before starting this project. The tree house construction is now 90% complete and our sons, ages 4 & 6, are counting down the days until they are allowed to play in it. We respectfully ask that you approve our request for a variance so that we may complete our project. With regards to our rear neighbor, we are more than happy to install any additional screening that she may feel is necessary for noise or privacy concerns.

Thank you for considering our request.
Rich, Katie, Hudson & August Heley
714 Arroyo Road

From: **Katie Heley** [REDACTED] >
Date: Thu, Aug 24, 2017 at 5:21 PM
Subject: Re: Tree Houses
To: David Kornfield <DKornfield@losaltosca.gov>

Hello David,

Thank you very much for the clarification and very prompt response! Our boys will be very excited and we do plan to work with our neighbor (only one would be impacted) to come up with something that's not intrusive to their privacy.

Thanks again,
Katie

On Thu, Aug 24, 2017 at 5:13 PM, David Kornfield <DKornfield@losaltosca.gov> wrote:

Dear Mrs. Heley:

The City Council's policy is to not regulate play structures (e.g., tree houses, forts, basketball hoops, jungle gyms, swing sets, et cetera) so long as they are located on residential properties. Therefore, there is no Planning or Building permit necessary and no zoning or building code to apply.

We suggest, however, to be mindful of potential privacy impacts from such structures (i.e., noise, line of sight) and locate them accordingly. It's great that you've already reached out to your neighbors to understand if there are any concerns.

Thanks for checking in with us. We appreciate the opportunity to answer the questions.

David

David Kornfield

Planning Services Manager – Advance Planning

650-947-2632

City of Los Altos

1 North San Antonio Road

Los Altos, CA 94022

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From: Planning Division (FAX)
Sent: Thursday, August 24, 2017 3:43 PM
To: David Kornfield <DKornfield@losaltosca.gov>
Subject: FW: Tree Houses
Importance: High

Please respond. Thanks!

From: Katie Heley [REDACTED]
Sent: Thursday, August 24, 2017 1:39 PM
To: Planning Service <planning@losaltosca.gov>
Subject: Tree Houses

Hello,

My husband and sons are interested in building a tree house in our backyard. I stopped by the planning department earlier this week to inquire about any necessary permits for a treehouse. The lady that I spoke with said that a treehouse would not require a permit as long as it was truly a treehouse, intended for our kids use and play.

Before we move any further with the treehouse plan, I'd like to confirm that there aren't permits or other permission/forms that we would need from your office. Do I have the right? Additionally, is there a height limit on the treehouse and does the day-light plane calculation come into play?

We have already reached out to our neighbors and are hoping to build something that doesn't upset anyone (and that doesn't violate any Los Altos building rules). Thank you for providing clarification on this topic.

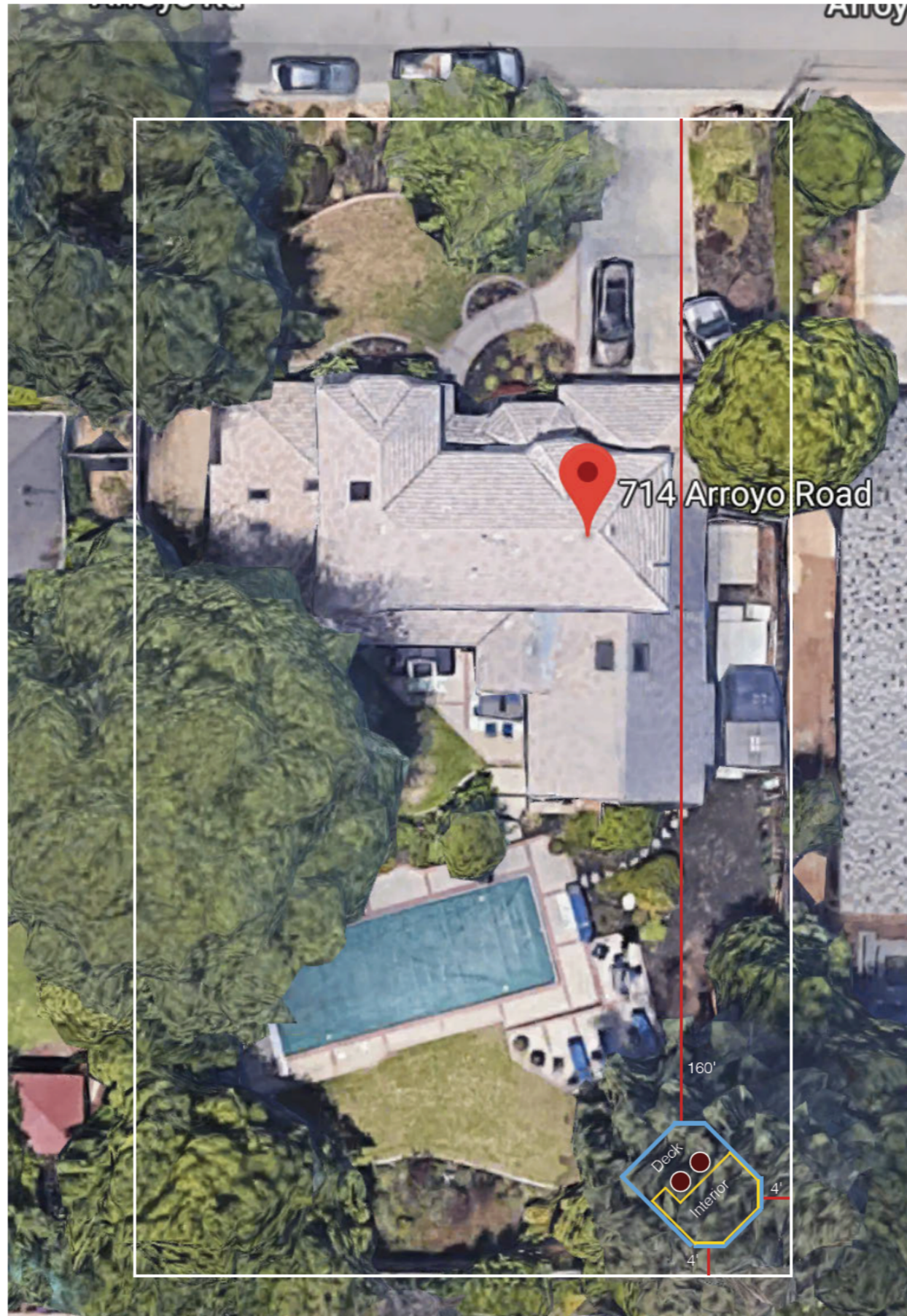
Thank you very much for your insights!

Katie Heley

Ph: [REDACTED]

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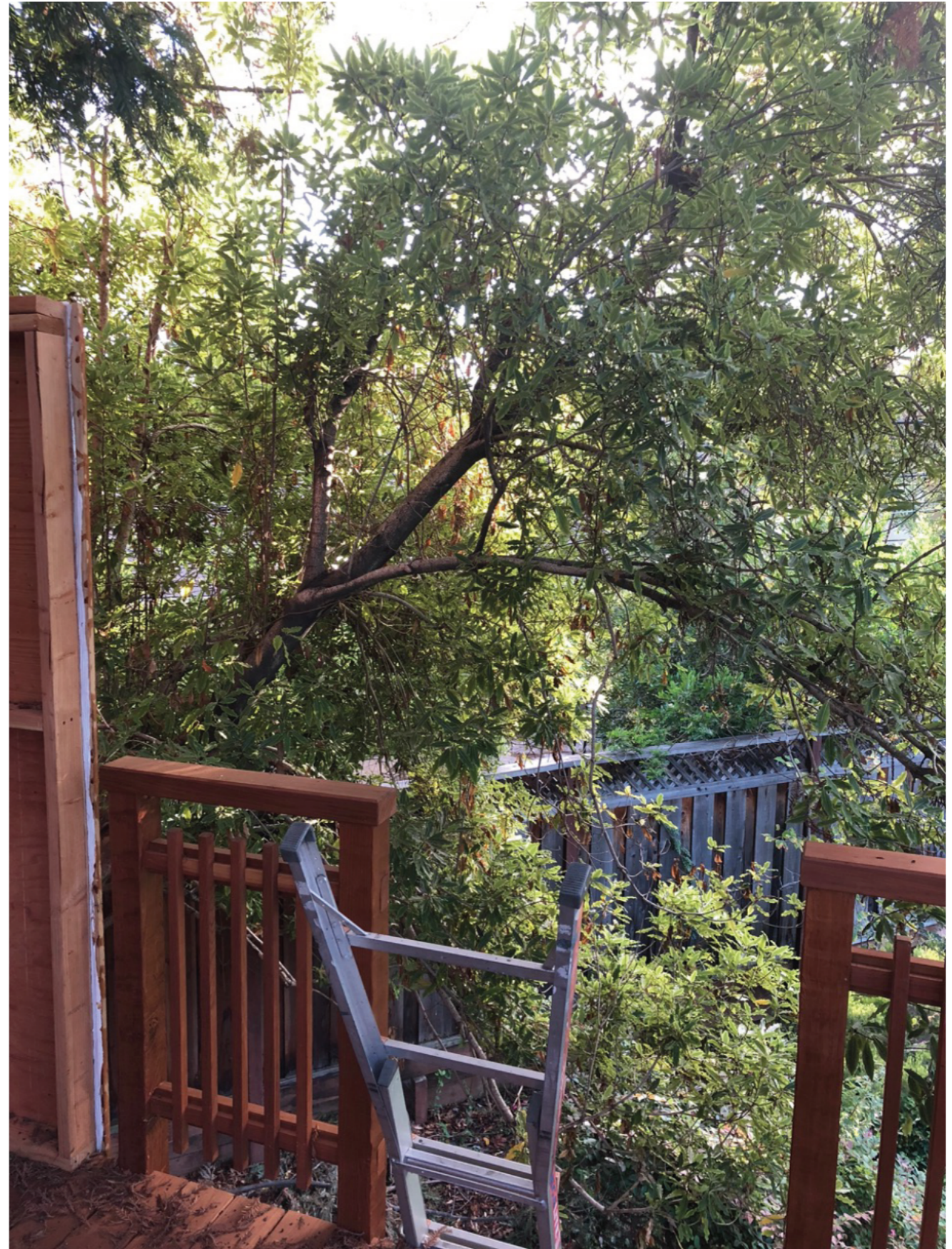
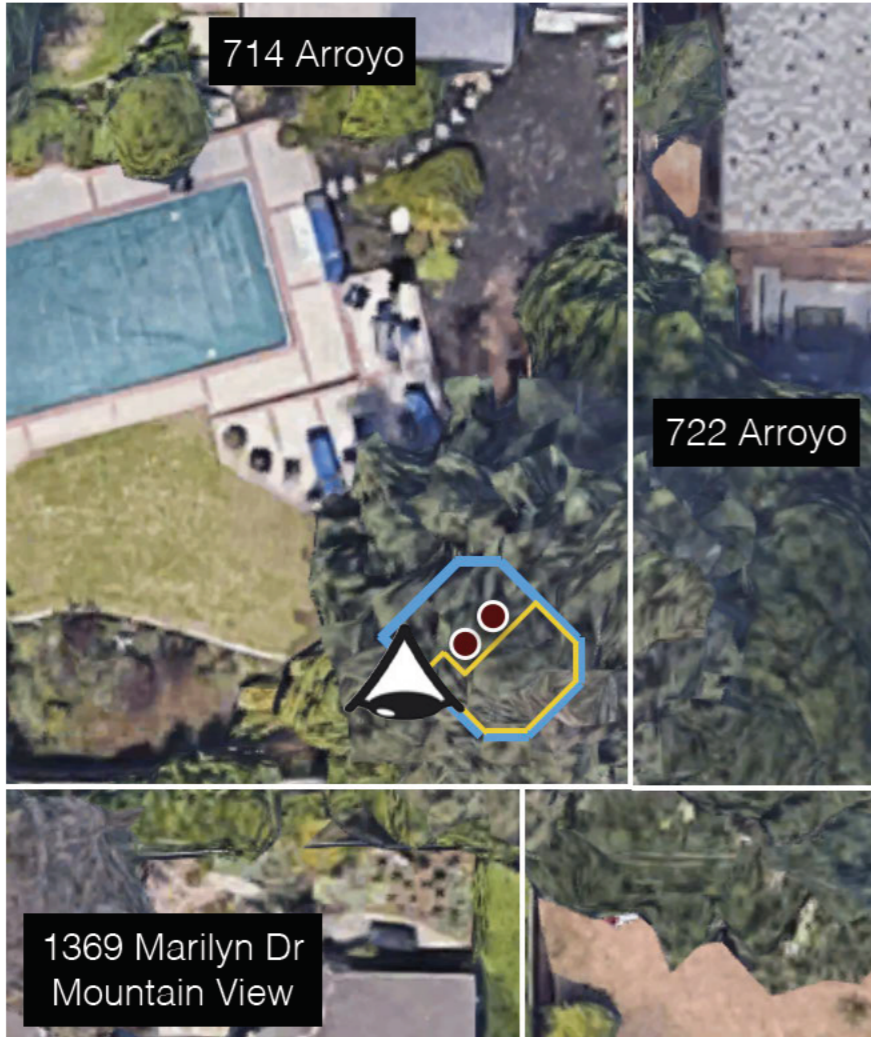
Site Plan with Treehouse Location and Setbacks



Surrounding Properties

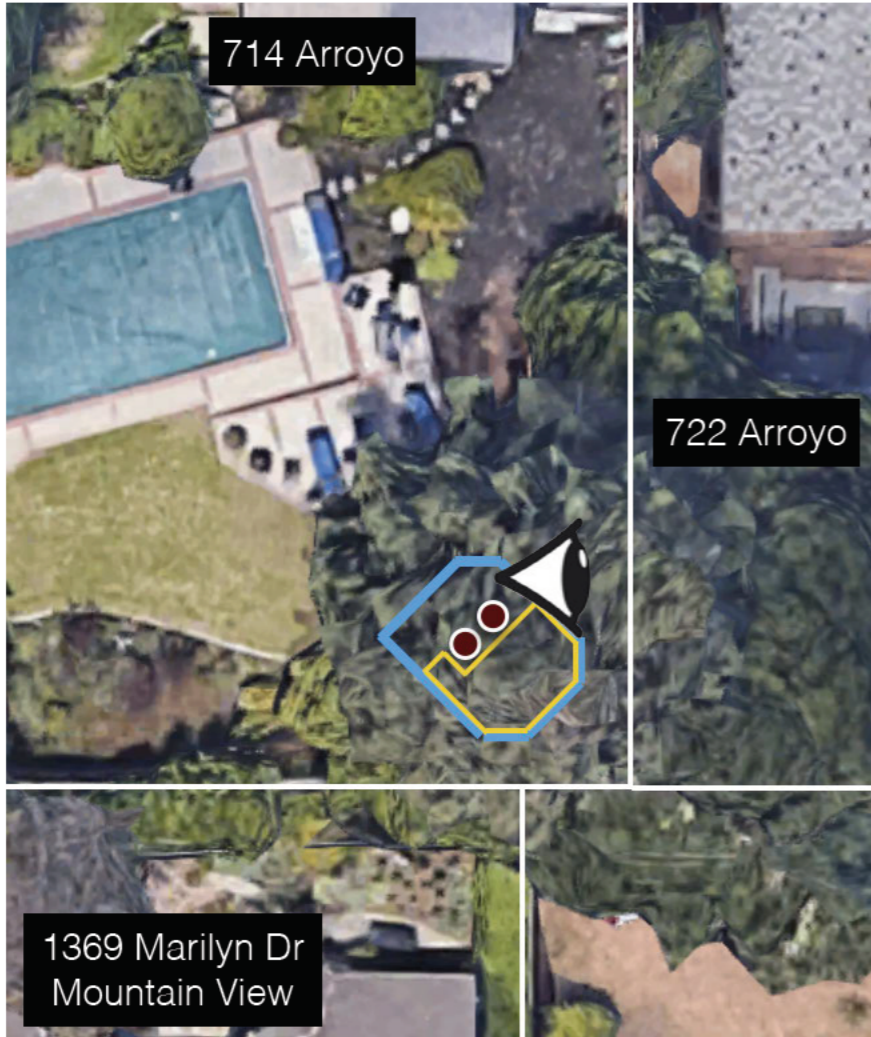


View from Treehouse towards 1369 Marilyn



Dense Foliage Screening to 1369 Marilyn

View from Treehouse towards 722 Arroyo

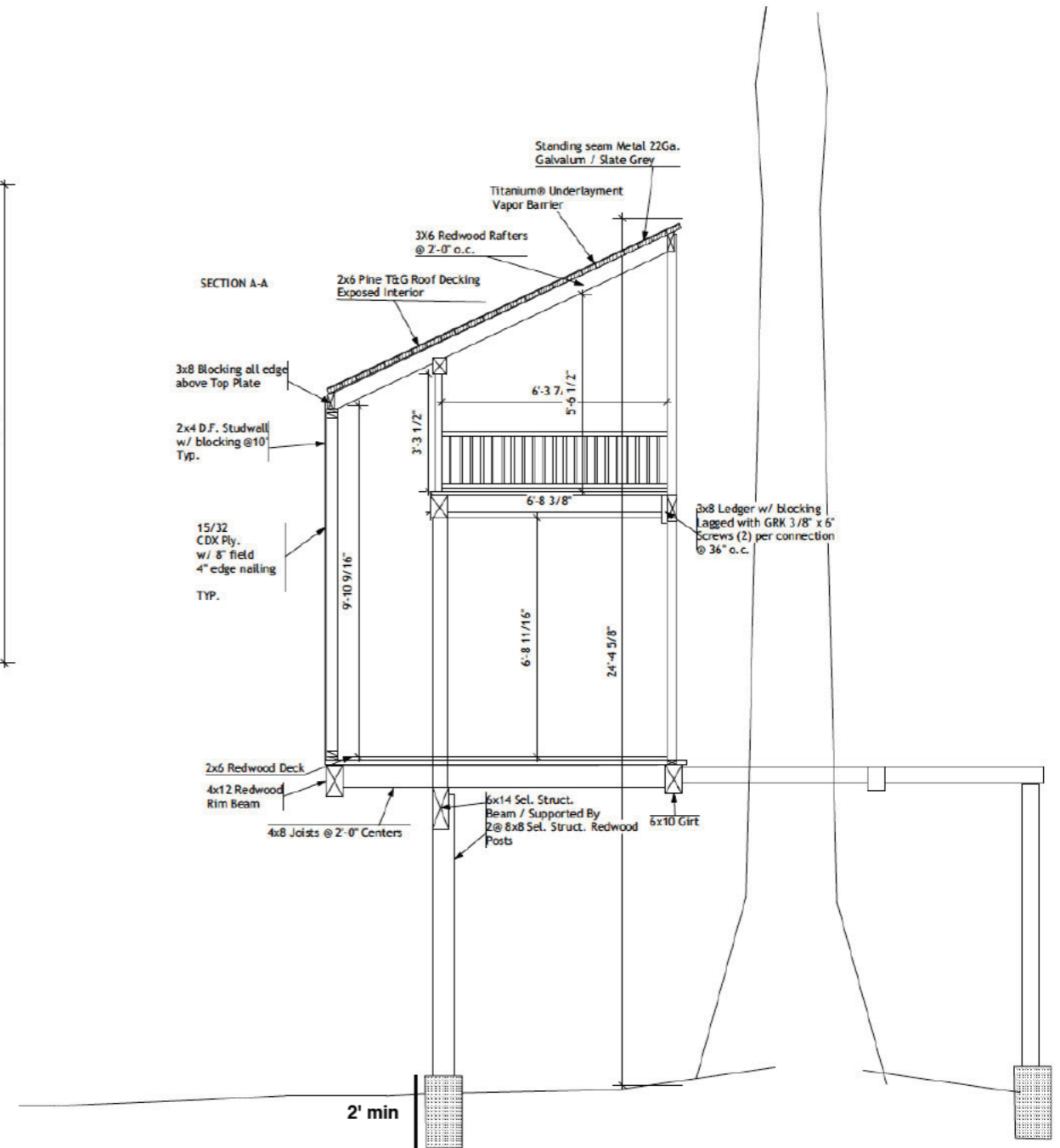
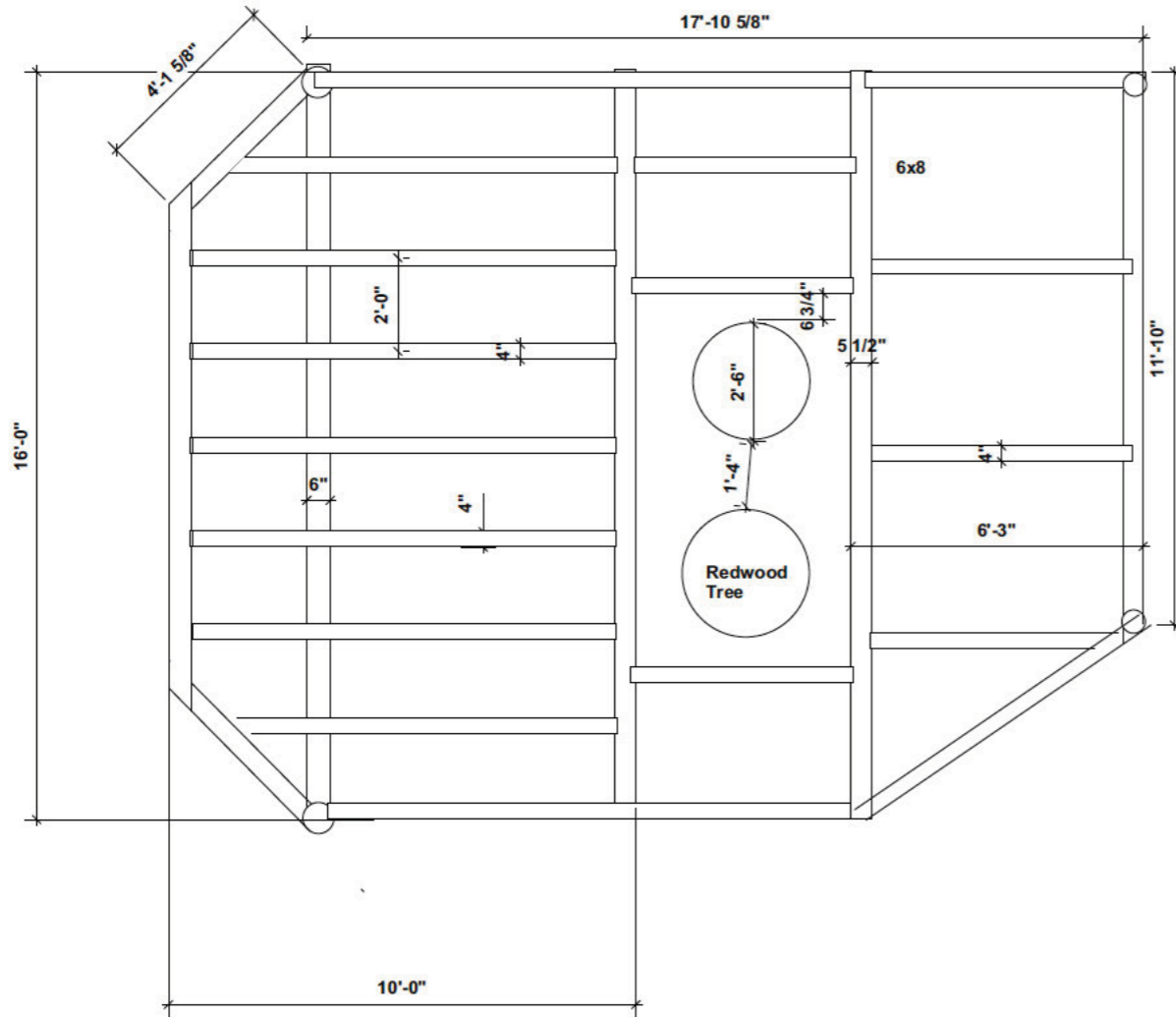


Visible from 722 Arroyo backyard
(see letter of support attached)

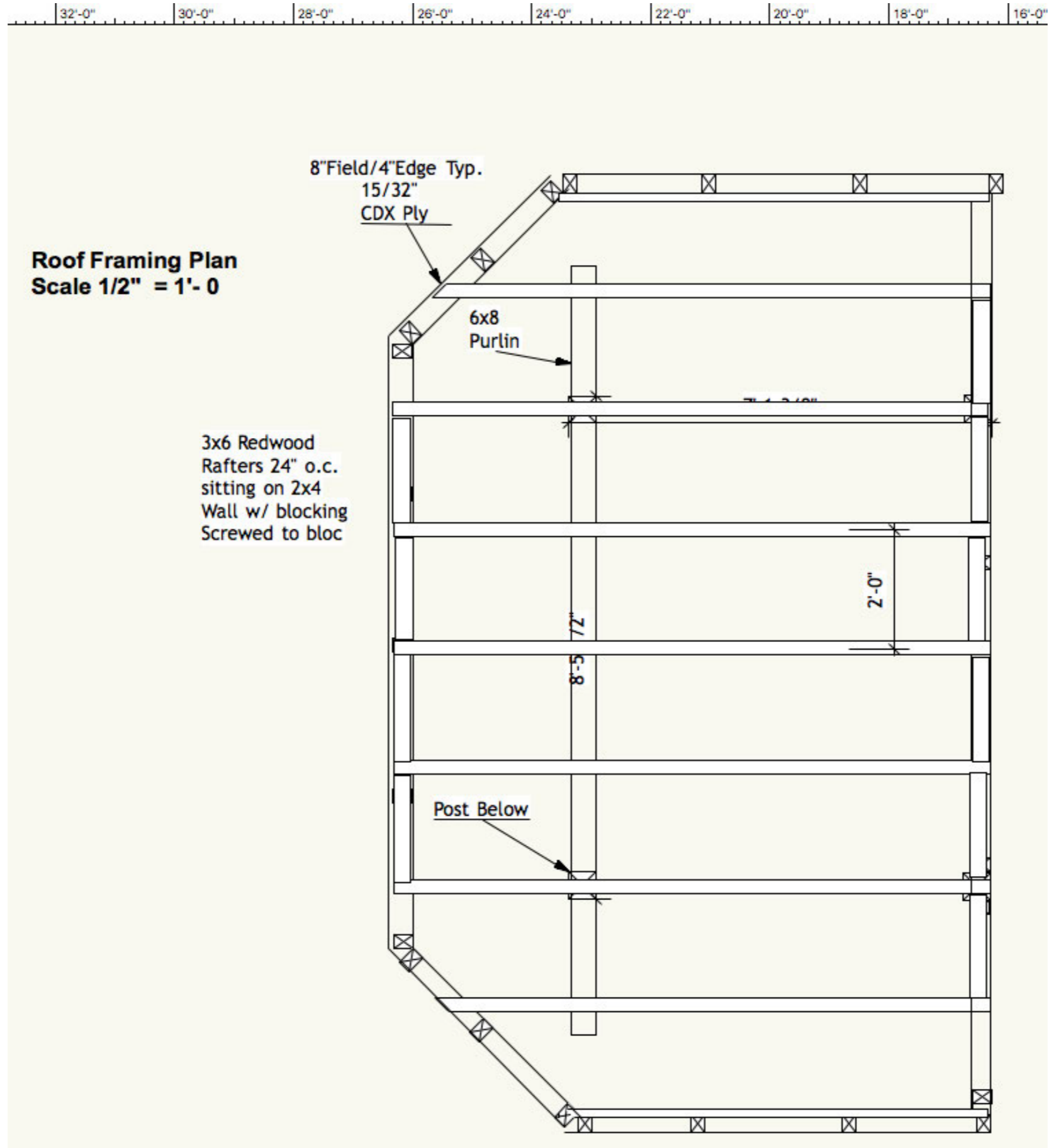
Treehouse Floor Framing and Section

Timber Framed Floor & Deck Framing Plan

SCALE 1/2" = 1'-0"



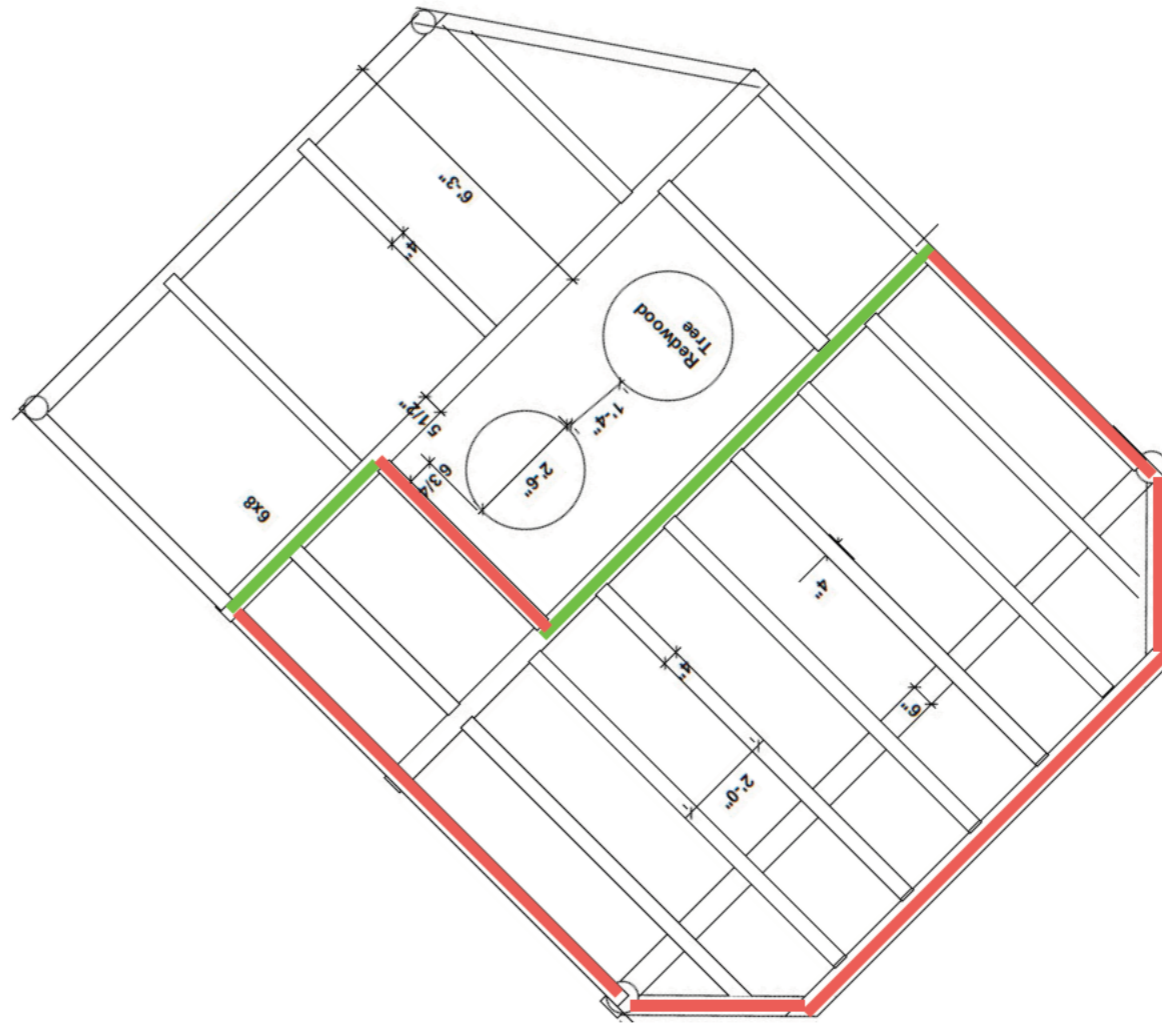
Treehouse Roof Framing



Window Plan

714 Arroyo

722 Arroyo



No windows or penetrations on Red exterior walls facing neighboring properties

1369 Marilyn

Treehouse Photo



Planning Department response to specific inquiry about Treehouse permitting, height, and setback requirements before design and construction began

From: David Kornfield <DKornfield@losaltosca.gov>
Date: Thu, Aug 24, 2017 at 5:13 PM
Subject: RE: Tree Houses
To: [REDACTED]
Cc: "Planning Division (FAX)" <planningfax@losaltosca.gov>

Dear Mrs. Heley:

The City Council's policy is to not regulate play structures (e.g., tree houses, forts, basketball hoops, jungle gyms, swing sets, et cetera) so long as they are located on residential properties. Therefore, there is no Planning or Building permit necessary and no zoning or building code to apply.

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Thanks for checking in with us. We appreciate the opportunity to answer the questions.

David

David Kornfield
Planning Services Manager – Advance Planning
[650-947-2632](tel:650-947-2632)

City of Los Altos
1 North San Antonio Road
Los Altos, CA 94022

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Before we move any further with the treehouse plan, I'd like to confirm that there aren't permits or other permission/forms that we would need from your office. Do I have the right? Additionally, is there a height limit on the treehouse and does the day-light plane calculation come into play?

We have already reached out to our neighbors and are hoping to build something that doesn't upset anyone (and that doesn't violate any Los Altos building rules). Thank you for providing clarification on this topic.

Thank you very much for your insights!
Katie Heley
Ph: [REDACTED]

Letter of support from 722 Arroyo (most impacted neighbor)

October 9, 2018

To Whom It May Concern at the City of Los Altos:

Mr. Rich Heley and Mrs. Katie Heley spoke to me and my wife Mrs. Kirsten Mello before embarking on the tree house construction in their backyard. They were excited to construct something for their young sons to enjoy but were concerned about the impact a structure placed in their redwood trees would have on our family. Rich and Katie explained the design of the tree house would only have windows facing into their yard and that the construction of the tree house would be from high quality materials that would be maintained over the years. In addition, they told us that the design of the tree house would be aesthetically pleasing yet blend in well to the redwood area.

All along the construction process Rich and Katie have asked for our input, as our yard is by far the most impacted from a view and privacy standpoint. As the construction of the structure and deck was complete, they have continually offered to construct any screening to minimize any impact of the structure. We appreciate their gesture, but do not believe any screening is necessary. They have told us that if we change our minds, they will construct something to our liking that is effective and aesthetically pleasing.

We know that Rich and Katie also went for approval from your offices before embarking on their project. We sincerely hope that you approve their request for a variance, as we believe they did what was necessary and neighborly. The tree house is a wonderful place for their boys and friends to explore the outside and expand their imaginations. As a teacher, I can attest to the fact that way too many kids are plugged in these days. The joy expressed by the young boys when they stood on that deck for the first time was something I will not soon forget.

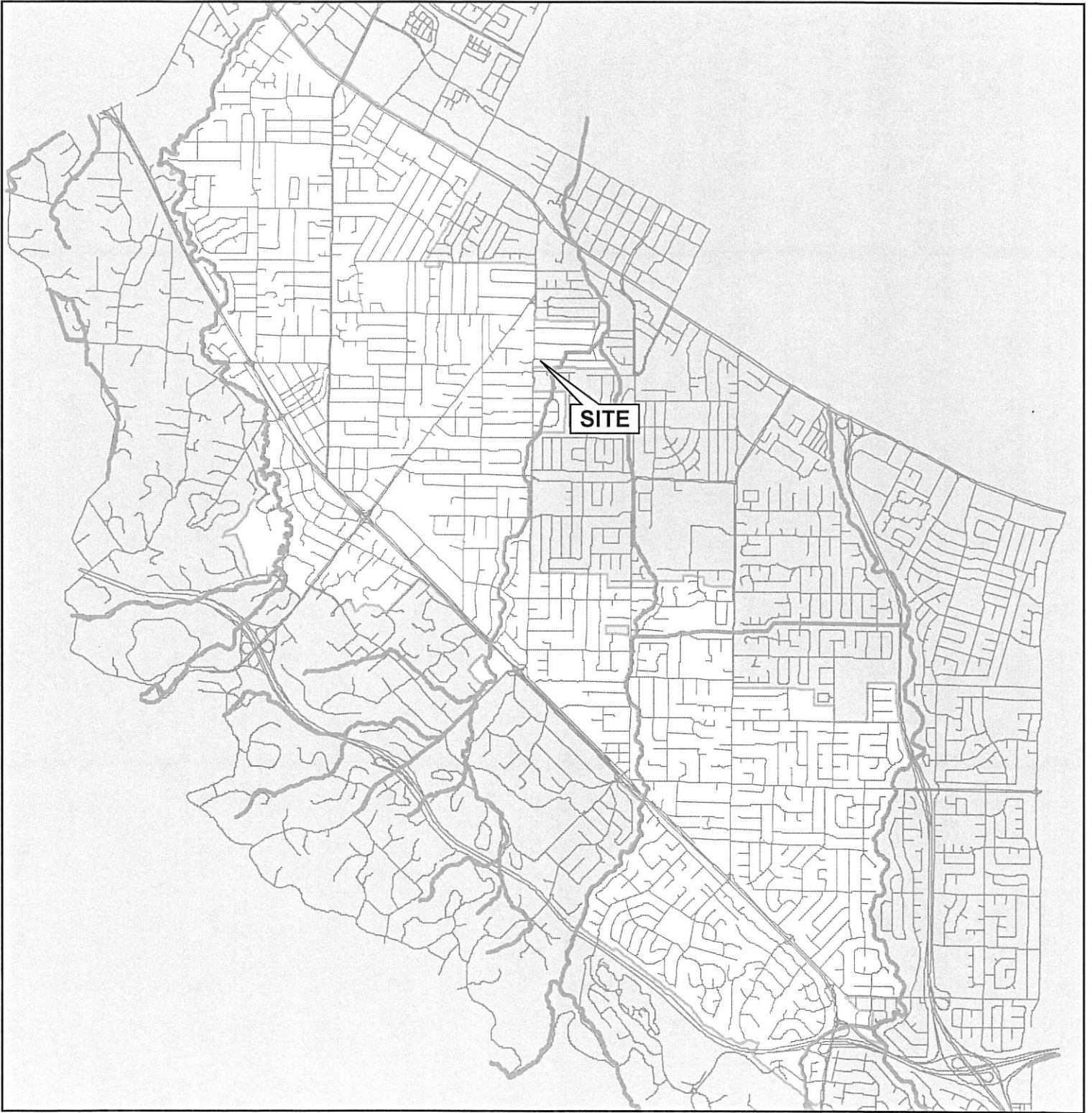
Best,





Keith and Kirsten Mello
722 Arroyo Road Los Altos, CA 94024

AREA MAP



CITY OF LOS ALTOS

APPLICATION: 18-V-06
APPLICANT: Richard Heley
SITE ADDRESS: 714 Arroyo Road

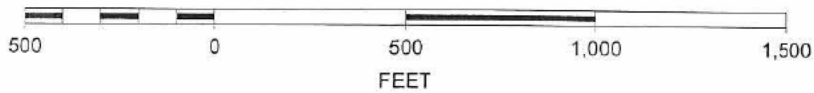


Not to Scale

VICINITY MAP



SCALE 1 : 6,000



CITY OF LOS ALTOS

APPLICATION: 18-V-06
APPLICANT: Richard Heley
SITE ADDRESS: 714 Arroyo Road

714 Arroyo Road 500-foot Notification Map



SCALE 1 : 3,000



Chapter 14.15

ACCESSORY STRUCTURES IN R DISTRICTS

Sections:

- 14.15.010 Purpose.**
- 14.15.020 Size, height and placement.**
- 14.15.030 Rear yard coverage.**
- 14.15.040 Daylight plane.**
- 14.15.050 Distance between structures.**
- 14.15.060 Coverage exception for open accessory structures.**

14.15.010 Purpose.

The purpose of this chapter is to provide site standards for the placement of detached accessory structures in all R (residential) districts. Both enclosed and unenclosed accessory structures, as defined in Chapter 14.02, are subject to the regulations contained herein.
(Ord. No. 2018-440, § 1, 3-13-2018)

14.15.020 Size, height and placement.

A. Accessory structures may not be located in a required front yard setback area, with the exception of a single arbor-style entry element as provided in Chapter 14.72.

B. Accessory structures may be located on other areas of a property as outlined in Table 1:

Table 1			
Location	Maximum Size	Max. Height	Minimum Setback
Required side yard setback area (interior and exterior)	120 square feet	6 feet	None
Required rear yard setback area	800 square feet	12 feet	0 feet when under 6 feet in height 5 feet when between 6-12 feet in height 2.5 feet for an eave overhang, or similar projection, when over 6 feet in height

Table 1			
Location	Maximum Size	Max. Height	Minimum Setback
Main structure's building envelope (meets all required setbacks)	No size limit	12 feet	Not applicable

1. When an accessory structure is located in a side yard setback area, it shall be screened from off-site view with solid fencing which is not lower in height than the accessory structure and which is constructed in conformance with the provisions of Chapter 14.72 of this title.

2. When an accessory structure is located in the main structure's building envelope, the height limit may be extended up to eighteen (18) feet if the additional height is necessary to establish architectural compatibility with the main structure.
(Ord. No. 2018-440, § 1, 3-13-2018)

14.15.030 Rear yard coverage.

In addition to compliance with the maximum allowable coverage and floor area ratio as provided by the subject zone district, the maximum coverage within the required rear yard setback area for all accessory structures, or portions thereof, that exceed six feet in height shall be thirty-five (35) percent of the total rear yard setback area.
(Ord. No. 2018-440, § 1, 3-13-2018)

14.15.040 Daylight plane.

No portion of an accessory structure shall extend above or beyond a daylight plane as follows:

A. The daylight plane starts at a height of six feet at the property line and proceeds inward at a 5:12 slope to a distance of ten (10) feet from the side and rear property lines;

B. All appurtenances, including chimneys, vents and antennas, shall be within the daylight plane;

C. The daylight plane is not applied to a side or rear property line when it abuts a public alley or public street.

(Ord. No. 2018-440, § 1, 3-13-2018)

14.15.050

14.15.050 Distance between structures.

A. When an accessory structure is located in a required side yard setback, a minimum clearance of five feet is required. The clearance may be provided between the accessory structure and the main structure, or between the accessory structure and the property line.

B. When an accessory structure exceeds six feet in height and is located in a required rear yard setback, a minimum clearance of ten (10) feet is required between the accessory structure and the main structure, and a minimum clearance of five feet is required between accessory structures.

C. For the purposes of this section, clearance is measured from outside edge of wall of each structure.

(Ord. No. 2018-440, § 1, 3-13-2018)

14.15.060 Coverage Exception for Open Accessory Structures.

A. Up to five percent of the lot area, but not more than five hundred (500) square feet, may be occupied by a detached accessory structure, such as an arbor (gazebo) or pergola (trellis) structure, that is open on all sides, with such area not being counted as lot coverage in residential zoning districts.

B. No more than two hundred (200) square feet of an open accessory structure which is exempt from lot coverage, as provided in subsection (A) above, may have a solid roof.

C. Accessory structures allowed by this section are subject to the rear yard coverage limitation as proscribed in Section 14.15.030.

(Ord. No. 2018-440, § 1, 3-13-2018)



ACCESSORY STRUCTURES AND SWIMMING POOLS IN SINGLE-FAMILY (R1) ZONE DISTRICTS

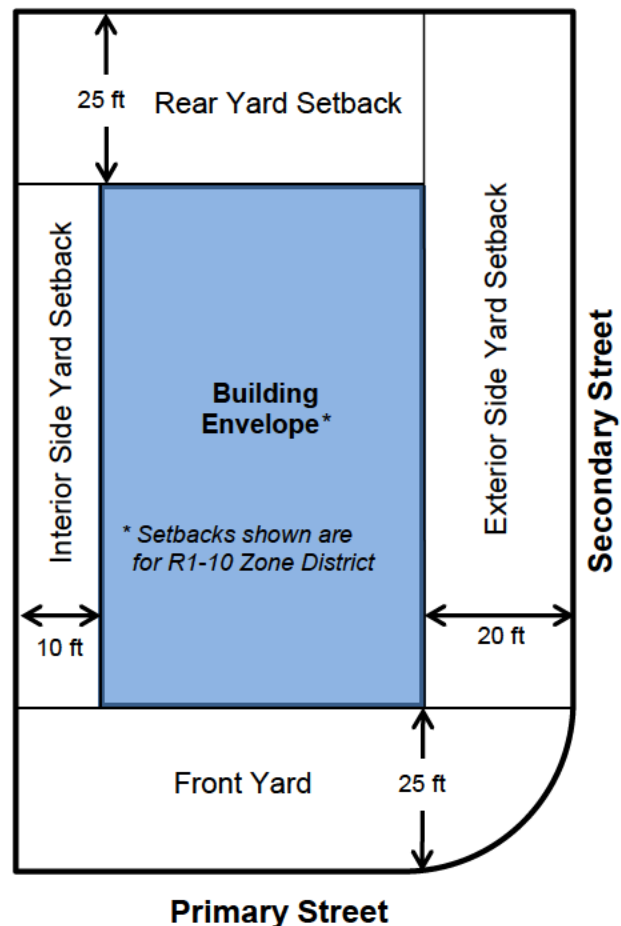
As outlined in the Zoning Code (Chapter 14.15), detached accessory structures and swimming pools are allowed on single-family zoned properties. Accessory structures that exceed six feet in height require a Site Permit to verify Zoning Code compliance. Accessory structures over 120 square feet in floor area require a Building Permit, which includes administrative design review from Planning.

General

- Freestanding, unenclosed play structures, such as jungle gyms, swing sets, slides or other similar unenclosed structures intended for children's play, do not require a Site Permit or Building Permit.
- Unenclosed accessory structures (open to light and air on at least two sides with a solid or semi-open roof) such as trellis', gazebos and pergolas, that exceed 6 feet in height, require a Building Permit.
- Enclosed accessory structures (structures with three or more walls and a solid roof) such as playhouses, storage sheds, and pool houses that are over 6 feet in height, require a Site Permit and/or a Building Permit.
- Accessory structures that exceed 6 feet in height must comply with a property's floor area and lot coverage requirements.

Structures in a Side Yard Setback Area (Interior or Exterior)

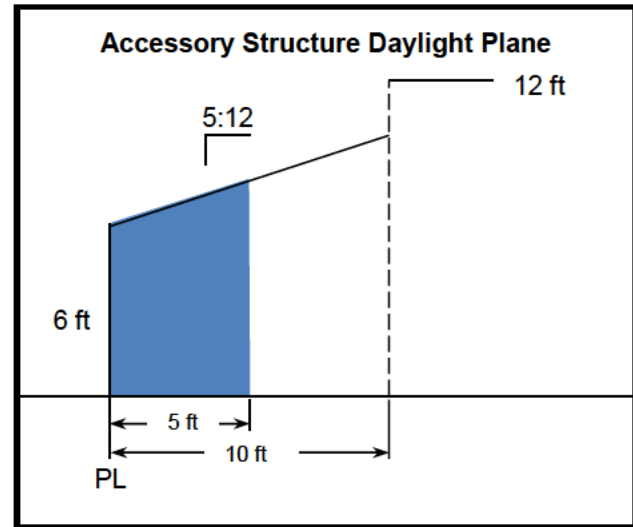
- Maximum Height: 6 feet
- Maximum Size: 120 square feet
- Minimum Setbacks: None
- Separation: Accessory structures must have minimum separation of 5 feet, either between the accessory structure and the main house or the accessory structure and the property line, as measured to the nearest wall(s) or supports.
- Screening: Accessory structures must be screened (as viewed from a public street or adjacent property) with a solid fence that is of equal or greater height.¹
- Accessory structures containing swimming pool equipment **cannot** be located in a required interior side yard setback, but can be located in a required exterior side yard setback.



¹ Per the City's Fence Ordinance (LAMC Chapter 14.72), a solid fence cannot exceed 6 feet in height.

Structures in the Rear Yard Setback Area

- Maximum Height: 12 feet
- Maximum Size: 800 square feet
- Minimum Setbacks:
 - 0 feet when under 6 feet in height
 - 5 feet when between 6-12 feet in height
 - 2.5 feet for an eave overhang, or similar projection, when over 6 feet in height
- Accessory Structure Daylight Plane: Begins at a height of six feet at the side and rear property lines and slopes into the property at a 5:12 pitch for a distance of 10 feet. All portions of an accessory structure, including roof eaves, chimneys and vents, must be within the daylight plane.
- Separation: An accessory structure must have a separation of at least 10 feet from the main house and at least 5 feet for another accessory structure, as measured to the nearest wall(s) or supports.
- Rear Yard Lot Coverage: In addition to compliance with the maximum allowable coverage and floor area ratio as provided by the subject zone district, the maximum coverage within the required rear yard setback area for all accessory structures, or portions thereof, that exceed six feet in height is 35 percent of the total rear yard setback area.



Structures Completely within the Main Building Envelope

- Maximum Height: 12 feet
 - The height limit may be extended up to 18 feet if the additional height is necessary to establish architectural compatibility with the main structure.
- Maximum Size: 800 square feet
- Minimum Setbacks: Must meet all setbacks for property's Zoning designation.
- Daylight Plane: Must meet the required daylight plane for property's Zoning designation.

Outdoor Barbeques and Fireplaces

- Outdoor barbeques, fireplaces, sinks and similar structures can be located within the building envelope or rear yard setback area, provided that they have a minimum setback of five feet from any property line. These structures are not allowed within a front yard or side yard setback area.

Hot Tubs and Swimming Pools

- Hot tubs and swimming pools can be located within the building envelope or rear yard setback area, provided that they have a minimum setback of five feet from any property line to the edge of the pool structure. These structures are not allowed within a front yard or side yard setback area.

'TREEHOUSE' DISCUSSION

MANN SCHMIDT FAMILY

SEPTEMBER 2018

ERIC SCHMIDT

[REDACTED]

[REDACTED]

BACKGROUND

- We have lived here since 1996 and raised 3 boys
- We have enjoyed good relations with all of our neighbors including the previous two owners:
 - Thad and Meg
 - Gina and David, added second story in remodel
- We had a treehouse
 - 3'x5' platform – 7' high
 - Included a ladder over the fence so the neighbor boys could enjoy it too
 - Took it down after 2 years
- We had a play structure: 5'x5' w/12' high canvas 'roof'
 - Took it down when kids outgrew it
- WE ARE GOOD NEIGHBORS, ACTIVE COMMUNITY MEMBERS AND APPRECIATE CHILDREN ' S PLAY

SURPRISED TO FIND THIS HUGE STRUCTURE

- We were not consulted
- Multi-story structure
 - We estimate ~30' high
- Only 4' from our fence
- 26' from our bedroom window
- Higher than the 240V wires



THANKFUL

- Natural wood siding
- Still a tree growing in the gap between the fence and the treehouse
- No windows looking into our yard and house

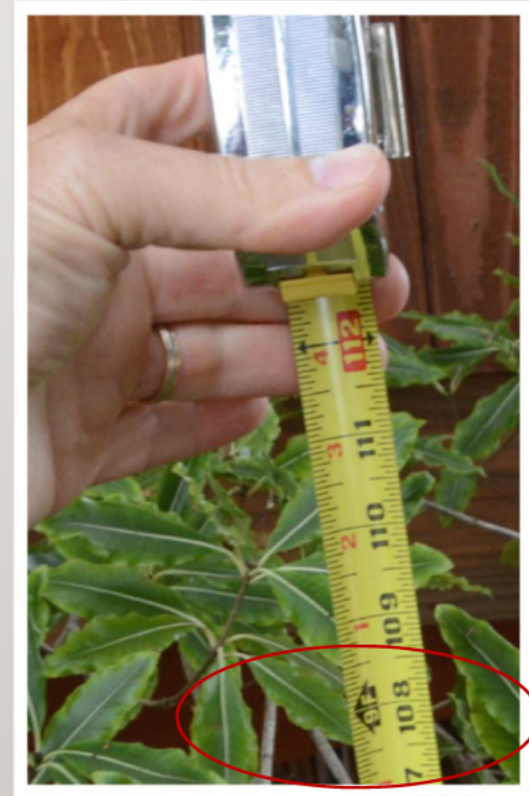


MEASUREMENTS

4' 2" from fence

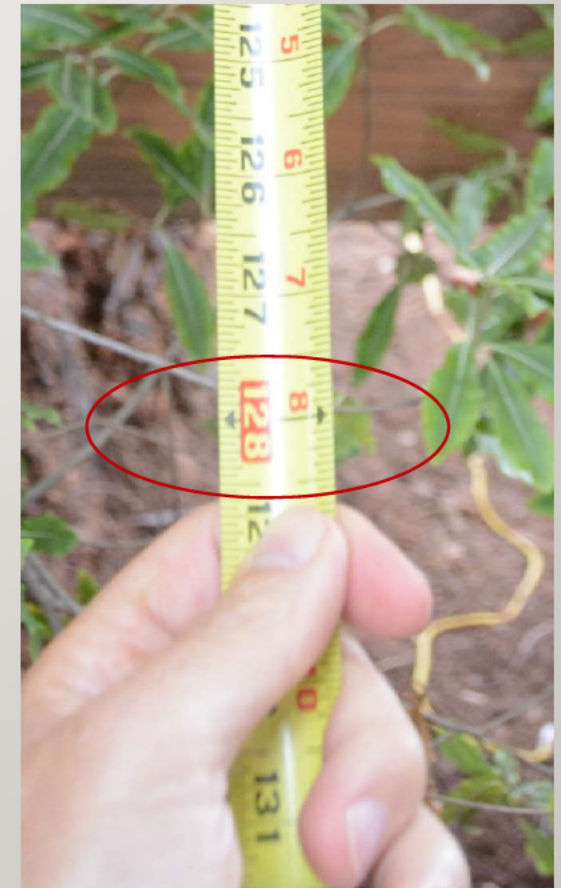


Base almost 9' off ground



MEASUREMENTS

19' or more (9'+>10') to top of siding



I ESTIMATE BETWEEN 28 AND 35' TO TOP LEVEL

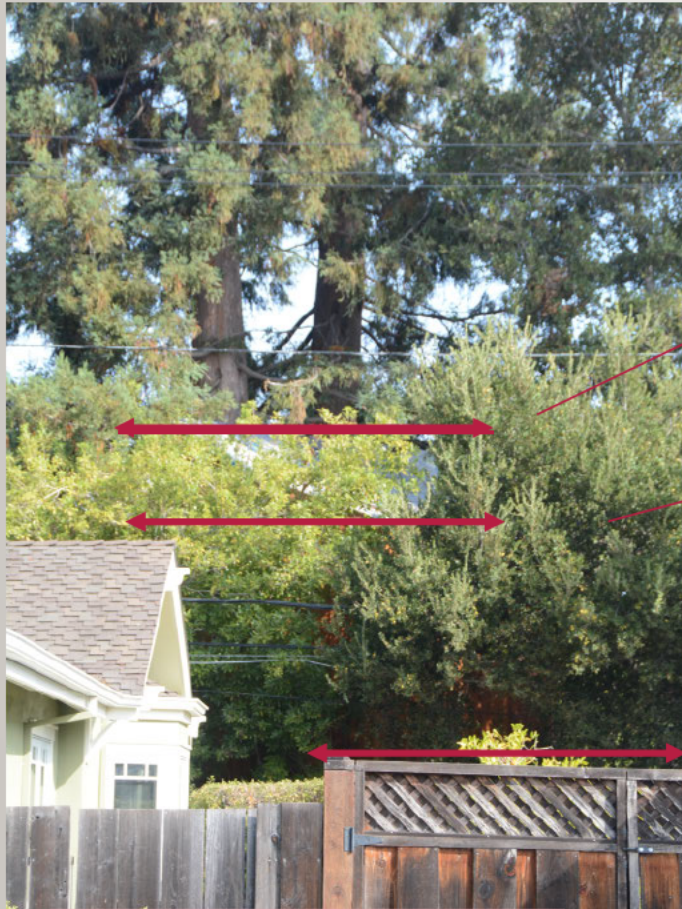


Photo from Marilyn 100' away

Roof at ~ 30'

Siding ~19'

Platform ~9'



Photo from my roof 30' up

CONCERNS

- Safety
 - The huge redwood trees blow and bend in winter storms
 - Does this work weaken the tree or root system? Has an arborist been consulted?
 - If tree dies (as ours did in that corner) then even bigger impact
 - The top of the structure is higher than the 240V wires
 - If this is a temporary playhouse, will it be safe during an earthquake?
- Other
 - Light plane is obstructed
 - Proximity to fence and our house impacts privacy
 - Immense size, proximity and visibility effect resale value of our home
 - Lack of compliance with stated code enforced for such structures

REQUESTS

1. Comply with the code
 1. Build 25' away or limit to 12' high
2. Please plant mature trees between fence and future structure
3. Please thin out redwood tree branches, to reduce wind load in winter storms

If there will be public hearing, please schedule such that we can attend

**MINUTES OF THE REGULAR MEETING OF THE DESIGN REVIEW
COMMISSION OF THE CITY OF LOS ALTOS, HELD ON WEDNESDAY,
NOVEMBER 7, 2018 BEGINNING AT 7:00 P.M. AT LOS ALTOS CITY HALL, ONE
NORTH SAN ANTONIO ROAD, LOS ALTOS, CALIFORNIA**

ESTABLISH QUORUM

PRESENT: Chair Harding, Vice-Chair Kirik, Commissioners Bishop and Glew
ABSENT: Commissioner Ma
STAFF: Planning Services Manager Dahl and Senior Planner Golden

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

None.

ITEMS FOR CONSIDERATION/ACTION**CONSENT CALENDAR****1. Design Review Commission Minutes**

Approve minutes of the regular meeting of October 3, 2018.

Action: Upon a motion by Commissioner Glew, seconded by Vice-Chair Kirik, the Commission approved the minutes from the October 3, 2018 regular meeting.

The motion was approved (4-0) by the following vote:

AYES: Chair Harding, Vice-Chair Kirik, Commissioners Bishop, and Glew

NOES: None

ABSENT: Ma

PUBLIC HEARING**2. 18-V-05 and 18-SC-14 – Simon Ilkhani – 901 Madonna Way**

Variance to allow for a daylight plane encroachment and reduced second story setback for a new two-story house. The project includes a variance to encroach into the right-side daylight plane and second story setback of 12 feet where a 17.5-foot setback is required and design review for a new two-story residence which includes 2,018 square feet at the first story and 2,235 square feet at the second story. *Project Planner: Golden*

Senior Planner Golden presented the staff report, recommending denial of variance and design review applications 18-V-05 and 18-SC-14 subject to the listed findings.

Project applicant Simon Ilkhani presented the project and made his case for approving the variance and design review. Property owner Stephanie Peng also spoke in support of the project.

Public Comment

None.

Action: Upon a motion by Vice-Chair Kirik, seconded by Commissioner Bishop, the Commission denied variance and design review application 18-V-05 and 18-SC-14 per the listed findings.

The motion was approved (3-1) by the following vote:

AYES: Chair Harding, Vice-Chair Kirik, and Commissioners Bishop

NOES: Glew

ABSENT: Ma

3. 18-V-06 – Richard Heley – 714 Arroyo road

Variance to allow for increased height, reduced setbacks and a daylight plane encroachment for an existing accessory structure (treehouse) located in the rear yard of the property at 714 Arroyo Road. The variance would allow the accessory structure (treehouse) to exceed the 12-foot height limit, encroach into the accessory structure daylight plane and encroach into the side and rear yard setbacks. *Project Planner: Dahl*

Planning Services Manager Dahl presented the staff report and noted that staff did not have a recommended action for the variance.

Property owner/applicant Richard Heley presented the project, stating that the structure was designed to be a tree house or play structure that was exempt from Zoning and Building Code requirements; there are no windows facing the neighbors; and there is a special circumstance because it is located within the tree, should be considered an exempt play structure and they received poor guidance from staff. Property owner Katie Heley also spoke, disclosing her role on the PARC (Parks and Recreation Commission) and noting that the City needs to take accountability for inaccurate guidance that was provided.

Public Comment

Neighbor Eric Schmidt expressed opposition to the variance, noting that it does not comply with the Zoning Code, is very close to their shared property line and will decrease the value of his property.

Neighbor Mike Camicia expressed opposition to the variance, noting that the structure is huge and clearly visible from his living room and bedroom windows.

Neighbor Nadine Camicia expressed opposition to the variance, noting that the structure is very large and negatively impacts her property

Neighbor Chris Demassa expressed opposition to the variance, noting that the structure is very intrusive, will likely exist on the property for decades, and will significantly impact adjacent property values.

Neighbor Ron Ligon s expressed opposition to the variance, noting that it is not a play structure, the City is not at fault in this situation and a project of this size should require a permit.

Action: Upon a motion by Commissioner Bishop, seconded by Vice-Chair Kirik, the Commission denied variance application 18-V-06 and directed the applicant to rebuild the accessory structure in compliance with the City's Municipal Code.

The motion was approved (4-0) by the following vote:

AYES: Chair Harding, Vice-Chair Kirik, Commissioners Bishop, and Glew

NOES: None

ABSENT: Ma

COMMISSIONERS' REPORTS AND COMMENTS

None.

POTENTIAL FUTURE AGENDA ITEMS

None.

ADJOURNMENT

Chair Harding adjourned the meeting at 8:40 PM.

Zachary Dahl, AICP
Planning Services Manager

June 30, 2020

Erika J. Gasaway
egasaway@hopkinscarley.com
T. 408.299.1370
F. 408.938.6270

Via email with original to follow

Jolie Houston Esq.
Berliner Cohen LLP
jolie.houston@berliner.com
10 Almaden Blvd., 11th Floor
San Jose, CA 95113

Re: City of Los Altos Denial of Variance Request (18-V-06) for 714 Arroyo Road, Los Altos, CA

Dear Counsel:

This office represents Michelle Mann and Eric Schmidt, the owners of 1368 Marilyn Drive, Mountain View, California. Their property is adjacent to 714 Arroyo Road, Los Altos, California, owned by Richard and Katie Heley.

On or about November 7, 2018, the Design Review Commission (“DRC”) of the City of Los Altos (the “City”) denied the Heleys’ request for a variance to allow for increased height, reduced setbacks, and a daylight plane encroachment for a structure that was in the process of being built in the Heleys’ backyard. The Heleys were formally notified of that decision by a letter from the DRC that was dated November 9, 2018.

According to City Ordinance 14.76.100, any denial of a DRC variance request may be appealed to the City council within fifteen days. The Heleys did not make any such appeal.

We understand that, in January 2019, the DRC gave the Heleys thirty days to remove the noncompliant structure. Instead of removing the structure as required, the Heleys attempted to negotiate a different outcome with the City’s Community Development Department by proposing changes to the structure. We are unaware of any authority that allows the development department to approve such changes in the face of the DRC’s decision and the failure of the Heleys to appeal the DRC’s decision to the City council.

On March 5, 2020, the City’s Community Development Director, Mr. Biggs, informed the Heleys’ via a letter dated March 5, 2020, that the Heleys’ proposed changes to the structure are still unacceptable. Now, it appears the Heleys’ contend they are “appealing” Mr. Biggs’ letter to the City council and they are communicating with individual City councilmembers to lobby for the council to somehow overrule Mr. Biggs’ decision.

All of the foregoing is improper. The City is without jurisdiction to hear an appeal from the DRC’s denial because the Heleys’ did not appeal that decision within fifteen days. That timeline expired in November 2018. The Heleys’ post-denial attempts to negotiate for an outcome other than what the DRC determined did not somehow extend their time to appeal the DRC’s decision. In addition, Mr. Biggs’ March 5, 2020 letter did not somehow re-open the appeal period that ended in November 2018.

Mr. Biggs' March 5, 2020 letter informed the Heleys' that they could appeal his "administrative determination" to the City council pursuant to Los Altos Municipal Code section 1.12.010. That code section reads, "Except where an appeals procedure is otherwise specifically set forth in this code, any interested person objecting to the whole or any portion of an administrative determination ... where such determination or decision involves the exercise of administrative discretion or personal judgment pursuant to any of the provisions of this code, may appeal to the city council..." The cited ordinance does not apply in this situation. The Los Altos Municipal Code sets forth an appeals procedure specifically for denials by the DRC, which is what the Heleys' are attempting to pursue. That procedure is set forth in Municipal Code section 14.76.100. Also, Mr. Biggs did not have the discretionary authority to overrule the DRC's denial via an administrative determination. The only way the DRC can be overruled is by the City council.

Furthermore, there is no legal basis for the Heleys' to appeal the DRC's decision. There are no allegations that the DRC acted inappropriately or that the DRC misapplied the ordinance. The Heleys' only complaint is that they asked a city staff person about permits for a tree house; received accurate information about permitting for treehouses; and then proceeded to build what is essentially an apartment that happens to be attached to a tree. Regardless of what label is applied to the structure in the Heleys' backyard and regardless of whether it is attached to a tree, the structure falls within those that are subject to DRC review. (City Ord. 14.76.040.) There is no dispute that the structure does not comport with city codes regarding height, setbacks, and daylight plane encroachment. Several neighbors attended the DRC meeting and provided written and oral evidence demonstrating that the Heleys' refusal to follow city code negatively affects their lives and their properties. None of that has changed.

As is evident from the foregoing, the City council does not have jurisdiction to hear the purported appeal from the Heleys'. And, even if it did, there are no legal grounds on which the council can base any reconsideration. As a result, we expect the City council will not consider overruling the DRC's denial of the Heleys' request for a variance.

We look forward to your response. Please feel free to call me directly to discuss this matter.

Sincerely,

HOPKINS & CARLEY
A Law Corporation

[REDACTED]
[REDACTED]
Erika J. Gasaway

EJG

From: [Eric Schmidt](#)
To: [REDACTED]
Cc: [REDACTED]
Date: Wednesday, August 5, 2020 3:28:20 PM
Attachments: [Eric Schmidt Address to Design Review Commission.pdf](#)
[Attachment -Photo.pdf](#)
[Letter to Mountain View City Council 8-5-20.pdf](#)

Dear Mountain View City Council and Staff,

We are residents of Mountain View. We are writing to express our concern about an accessory structure that is partially built in our neighbor's backyard at 714 Arroyo Road in Los Altos with whom we share a fence line. The structure is extremely large and does not comply with Los Altos code.

Although we realize you have no jurisdiction in Los Altos, this structure directly impacts us, the Mountain View homeowners/neighbors. We are reaching out to you as constituents in the hope that you may be able to help us get the offending structure removed. The relevant information is below.

Background

In 2017 our neighbors Richard and Katie Heley asked the Los Altos city staff whether a 'treehouse' is constrained by any height, distance, size or lightplane restrictions. They were told "the City Council's policy is not to regulate play structures (e.g., tree houses, forts, basketball hoops, jungle gyms, swing sets, et cetera). We suggest, however, to be mindful of potential privacy impacts and locate them accordingly". With this information the Heley's designed and began construction without consulting their Mountain View neighbors affected by the structure.

After returning from vacation in August 2018, we were shocked to see that an accessory structure being built next to our fence (details attached) and notified the City of Los Altos.

Over the past 2 years, we have corresponded with the Los Altos staff. The City of Los Altos stopped construction on the structure. The Heley's request for a permit variance from the City of Los Altos Design Review Committee was denied in November of 2018. Based on city code, we believe the appeal period ended fifteen days after the denial. But now we understand that the Los Altos City Council plans re-consider this matter at the August 25 meeting.

Our Position

We are not against play structures or having fun. As neighbors we would like to collaborate to build a child-scale play structure or a code compliant accessory structure. This building is neither. We spoke with the Heleys and tried to reach a compromise but that has not worked.

Our Request

We would appreciate your support for our request to the City of Los Altos that they do not re-consider the Heley's request for a variance and require the Heley's to remove the structure or bring it into compliance with city codes. We would appreciate you expressing that support to your elected official colleagues in Los Altos. Additionally, if you have any suggestions for us, we would be grateful. We have been more than patient and hope to achieve resolution soon. The details of the project are below.

Thank you for your consideration,

- *Eric Schmidt and Michelle Mann* 1368 Marilyn Drive, MV
- *Amir Chaghajardi and Shabnam Gholizadeh* 1356 Marilyn Drive MV
- *Mark Dzwonczyk and Meri-Beth Bird* 1344 Marilyn Drive MV

cc: Kimbra McCarthy – City Manager
Aarti Shrivastava--Community Development Director
Jon Biggs – Los Altos Community Development Director

Attachments

- 2018 Presentation to the Los Altos Design Review Commission
- Map and photo

Eric Schmidt & Michelle Mann
1368 Marilyn Dr, Mountain View, CA 94040

August 5, 2020

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Jon Biggs – Los Altos Community Development Director

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Deny the Variance and pursue collaboration on a new less invasive and fun structure

Eric Schmidt November 7, 2018

Dear Commissioners and neighbors, my name is Eric Schmidt of 1368 Marilyn Drive. My wife and I came to the Bay Area in 1978/79 and have lived in Palo Alto, Los Altos, Cupertino and now more than 20 years at Marilyn Drive. We are active in the local community – I am an assistant scout master with Los Altos Troop 37 and a mentor at Los Altos High School. My wife is involved with Los Altos Community Foundation and various charities that help address: education, homelessness and hunger in our community.

We raised three boys in this house and had a normal play structure and a small treehouse in our backyard. We are not against young children enjoying outdoor play. But we are asking you tonight to deny this variance, declare the structure an Accessory Building and allow us to collaborate with the Heley's and neighborhoods to build something less intrusive and still fun for their children.

'The City Council's policy is to not regulate Play Structures'

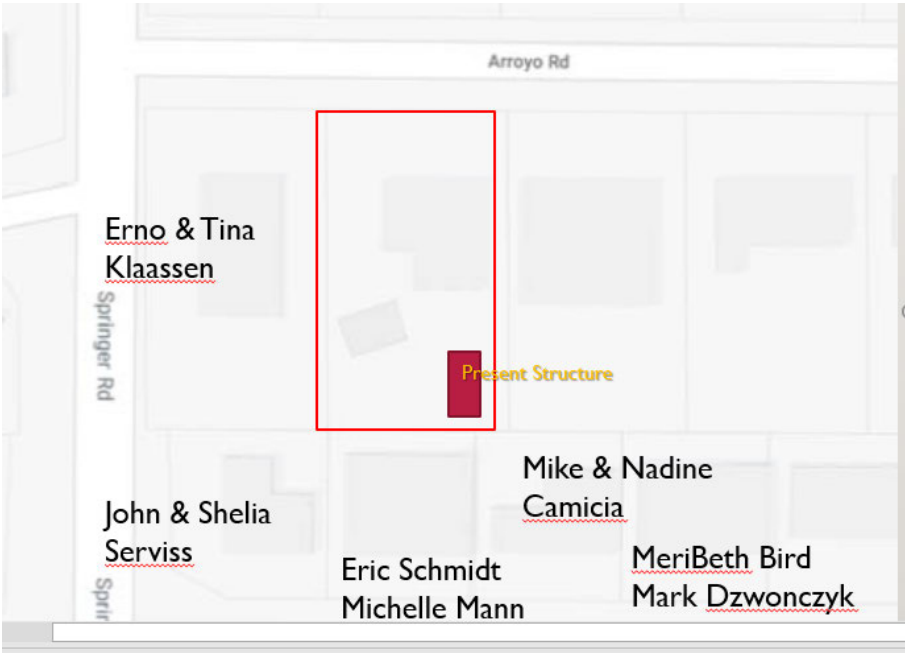
When you think of 'play structure', what do you think of? When I googled play structure, I got images like this.



Characteristics of a Play Structure include:

- "Child Scale" – not huge
- No concrete
- No power/water
- No chance for future modification into a shed, dwelling, workshop or balcony
- No adult usage beyond enjoying time with the kids

City Said 'Reach out to Neighbors'

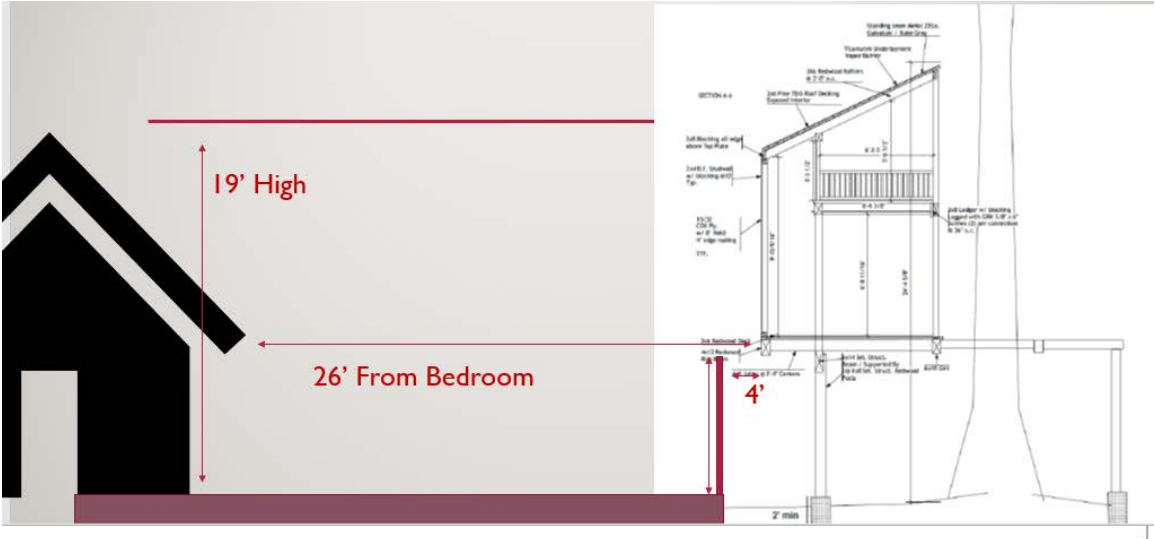


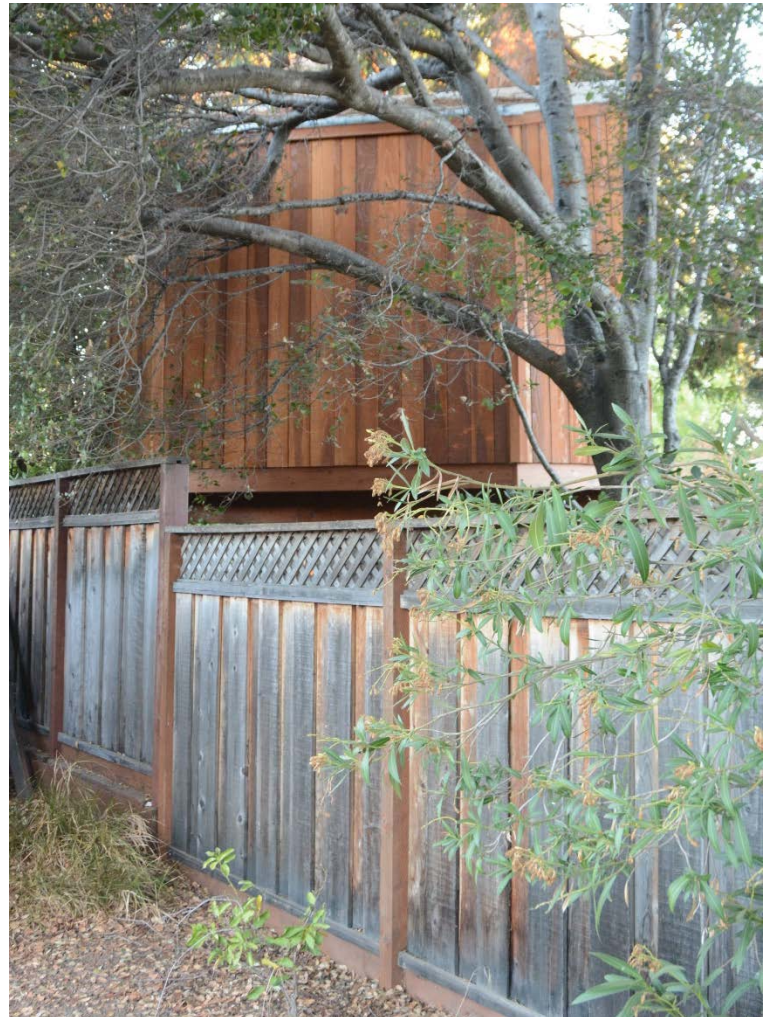
Yet 5 of 6 neighbors were not contacted.

The City said 'Be Mindful of Privacy'

The structure is

- Taller than our house!: 25 feet high
- 26 feet from our bedroom window.
- Encroaching on the setbacks: only 4 ft from our fence.



Light-Plane Impeded and Height Limit Exceed*View from Schmidts**View from Camicias****Long Term Concerns***

We have lived in this house for 22 years and plan to stay 22 more. We have concerns that if variance is granted, usage can change from a treehouse to something even more invasive. Once allowed, the structure could get windows, become enclosed and morph into an office, guest house or something else. The platform is higher than our fence line, so beyond daytime play, children and adults can dine or entertain overlooking the neighborhood. We too would see and hear the party guests, from inside our house. We have a second concern about the height of the platform; the space under the platform is more than 8-foot-high and could become a store-room, workshop, barn or some usage that has no bearing on the original 'Play Structure'.

Should Have Known – Should Have Double Checked

Before they started the Heleys enquired about Light Plan calculations, Height Restrictions and Los Altos Building Regulations. They should have known that they were outside the rules. The structure is professionally constructed, there most certainly were licensed contractors involved who would have known that the structure needed approval from the city. We're surprised that the family or the contractor didn't apply for a license or variance before starting the project.

The Variance

The variance calls this an 'existing structure, but it did not exist until it was erected this summer. The application cites the 'cost to remove' as a reason to allow a variance. No doubt this structure cost several thousand dollars. However, cost should not be an issue. In fact, I am happy to help carefully deconstruct the existing building and collaborate on a plan that we can jointly take to the city for proper permitting.

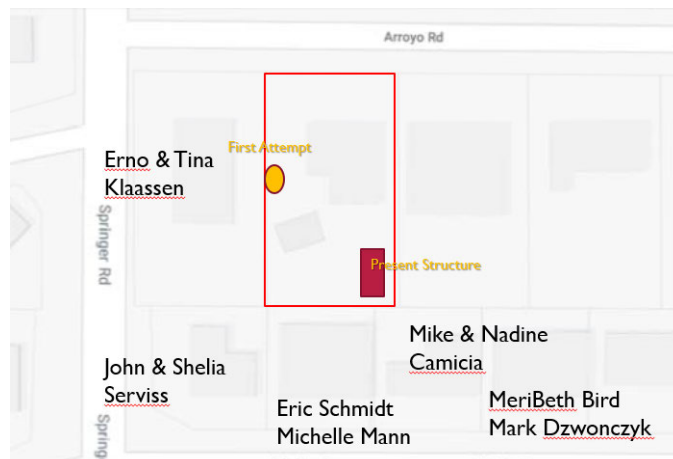
Only 2 Trees Provide a Tenuous Screen

The shrub between the structure and our fence has been cut back on both sides and the oak tree is on the Mello property out of control of the Heleys, Schmidts or Camicias. Over the years, we have seen many trees and bushes die in this corner. If the building stays and the trees go, it will be even worse impact than it currently has.

There is high voltage power overhead. The utility cuts the trees at 12' from their wires. We cannot grow high enough trees to block anything tall.

Not the First Treehouse

This is the second time the Heley's have tried to build an un-permitted tree house. We've been told that the Heleys initially started building a structure near the fence line with the Klaassens. The Klaassens asked the Heleys to remove it because it overlooked their bedroom and impacted their privacy. The Heley's removed it and built the building we are talking about tonight; once again without consulting the back-fence neighbors.



Summary

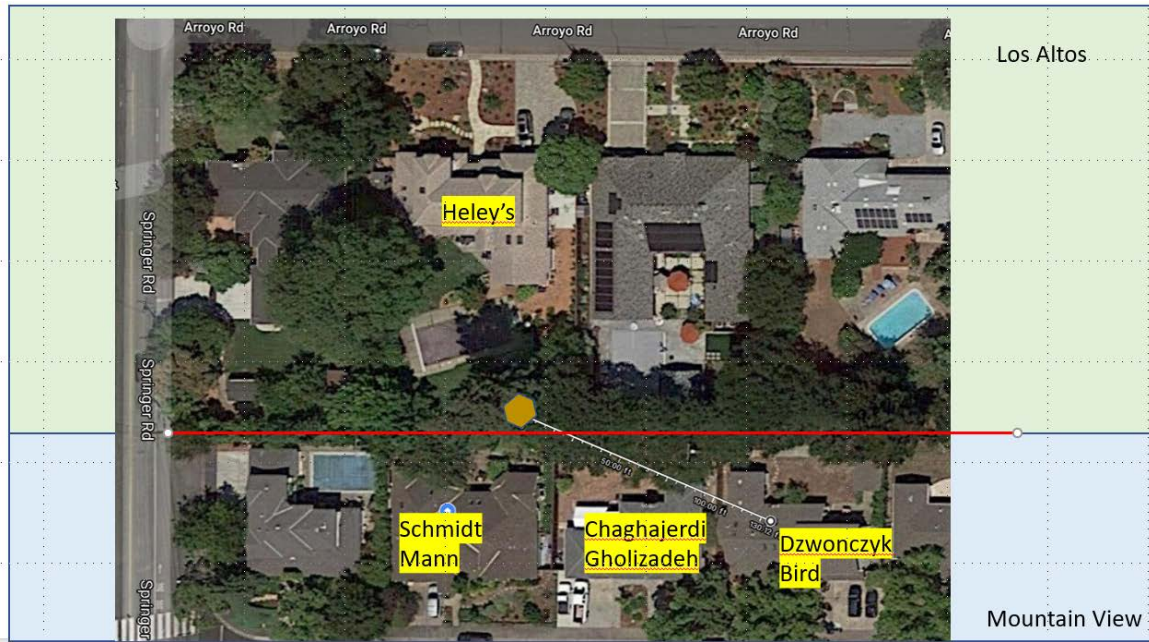
We urge you to deny the variance:

- This structure is not the Play Structure that the City was imagining. It is an unpermitted accessory structure. Light-plane, size and height are all beyond the limits
- Key neighbors were not consulted
- This is the second attempt by the Heleys at an un-permitted large structure at their fence-line
- The Heleys or their builders must have known that a permit or variance would be denied if requested prior to construction
- This building did not 'exist' until it showed up this summer
- Cost to take it down should not a consideration. I will help deconstruct it carefully

We want to collaborate with the Heleys on an accessory structure that they can enjoy, that is compliant with the code and respectful of the neighbors.

Thank you for your attention.

Attachment – Photos and map



Mountain View families signing this letter



source: <https://www.facebook.com/104966484527501/posts/105238067833676/?d=n>

Unpermitted accessory structure: Too big, too high, too close

- ~16'X16' platform at 9' height; with additional 16' higher enclosure on top.
- 2 stories, 25' high, ~400 sq. ft and only 4' from fence.