

To: Mayor and Ross Town Council  
From: Elise Semonian, Senior Planner  
Re: Santa, 43 Winship Avenue, Variances, File 1788  
Date: June 30, 2010

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**I. Project Summary**

Owner: Joanne Santa  
Location: 43 Winship Avenue  
A.P. Numbers: 72-154-01  
Zoning: R-1:B-10 (Single Family Residence, 10,000 Sq. Ft. Min. Lot Size)  
General Plan: Medium Low Density (3-6 Units/Acre)  
Flood Zone: Zone X (area outside the 1-percent annual chance floodplain)

**II. Request is for approval of:**

Design review and variance application to allow the after-the-fact conversion of the 325 square foot garage into living space within the side yard (15 feet required, 6 feet proposed) and rear yard (40 feet required, 5 feet proposed) setback areas. One uncovered parking space would be available for the residents between the inoperable garage door and the sidewalk (2 uncovered and one covered parking space required). Request to also allow an air conditioner to remain in the side yard setback (15 feet required, 10 feet proposed) to the east of the residence.

Lot area	6,910 square feet	
Existing Floor Area Ratio	29.3%	
Proposed Floor Area Ratio	29.3%	(15% permitted)
Existing Lot Coverage	34.2%	
Proposed Lot Coverage	34.2%	(15% permitted)

*The existing residence is nonconforming in setbacks.*

**III. Discussion**

***Setback variance for air conditioner***

The applicant requests approval of a setback variance to allow the retention of an air conditioning unit within the east side yard setback, installed by a prior owner. The adjacent neighbor is in support of the project and the air conditioner would have to be located on the roof of the structure in order to site it outside of a setback area.

Since the unit is setback as far as possible from the neighbor's residence, air conditioning is used infrequently in this climate, and the adjacent neighbor has consented to its installation, staff has no objection to the setback variance for the air conditioner.

***Garage Conversion to Living Space***

The applicant also requests after-the-fact design review and variance approval to allow the conversion of a garage to habitable space for a family room/play room. The work was discovered during a resale inspection on June 17, 2010. Planning department staff gave the property owner 6 months from the date of the resale inspection to legalize the

improvements or restore the garage for vehicle parking. Potential buyers are interested in maintaining the family room space.

The parking regulations for this zoning district require “space for the parking of not less than three automobiles on each lot, one of which spaces shall be enclosed in a permanent, roofed structure. (Ross Municipal Code Section 18.32.040). The site had two off street parking spaces, one covered and one uncovered, and now has only a single space between the faux garage door and the street. The existing home and garage exceed the maximum permitted floor area and lot coverage for the site and the structure is located within required setbacks.

The covered parking requirement was established in 1975 in response to resident requests to convert garage floor area to living space. The Council has discouraged conversion of garage space to living space since that time. The Town *General Plan* policies and design review criteria encourage provide:

Driveways and parking areas should be designed to minimize visibility from the street. (Town of Ross General Plan 2007-2025 Policy 3.8)

Address on-site and street parking needs through adequate parking standards and enforcement. Limit on street and overnight parking. (Town of Ross General Plan 2007-2025 Policy 7.6)

Drives, Parking and Circulation. (1) Good access, circulation and off-street parking should be provided consistent with the natural features of the site. Walkways, driveways, curb cuts and off-street parking should allow smooth traffic flow and provide for safe ingress and egress to a site. (2) Access ways and parking areas should be in scale with the design of buildings and structures on the site. They should be sited to minimize physical impacts on adjacent properties related to noise, light and emissions and be visually compatible with development on the site and on neighboring properties. Off-street parking should be screened from view. The area devoted to driveways, parking pads and parking facilities should be minimized through careful site planning. (Ross Municipal Code Design Review Criteria 18.41.100 (e), emphasis added)

Variances from the terms of the zoning ordinances 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 zoning ordinance deprives the property of privileges enjoyed by other property in the vicinity and under identical zoning classification. Conditions are required to assure that the adjustment authorized does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district.

To approve a variance the Town Council must find:

1. That there are special circumstances or conditions applicable to the land, building or use referred to in the application.
2. That the granting of the application is necessary for the preservation and enjoyment of substantial property rights.

3. That the granting of the application will not materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood. (RMC §18.48.030)

To approve the design review application the Town Council must make the following findings:

1. The project is consistent with the purpose of the design review chapter.
2. The project is in substantial compliance with the design review criteria.
3. The project is consistent with the Ross general plan and zoning ordinance.

While the total floor area, lot coverage and setbacks will not change with this project, the amount of floor area dedicated to living space will increase and the number of on site parking spaces will decrease. There is little yard area available to provide replacement parking on site that is adequately screened from view.

Staff does not know when the garage was converted to living space. Planning staff has received no complaints regarding the living space use or parking issues in the area. The adjacent neighbor at 23 Winship indicates parking is not a problem in the area and neighbors work cooperatively to park many vehicles in the cul-de-sac. The side yard area and small basement would provide adequate storage for items typically stored in a garage, such as strollers, bicycles and gardening equipment.

The proposed garage conversion conflicts with the Town policies and regulations regarding screened and covered parking. Staff does not believe the Town Council can make the findings to approve the design review application or to approve the variances associated with the request. This site cannot be distinguished from other small sites within the Town that seek additional living space. The project would also result in additional parking that is not screened from view. Staff is concerned that approval of this request will lead to other applications to convert garage space to living space, reducing off street parking in Town and diminishing the character of the Town streets by having more vehicles in public view.

No neighbor acknowledgements have been submitted. Staff has spoken with the immediate neighbor at 23 Garden Road, who supports this request.

#### **IV. Recommendation, Findings, & Conditions**

Staff recommends denial of the garage conversion application and approval of the variance to allow the air conditioner to remain within the side yard setback subject to the findings and conditions below.

- A. **Findings for denial of garage conversion to living space**
  1. The Council cannot make the finding that there are any special circumstances applying to the site that would justify the variances requested.
  2. The Council cannot make the finding that the project complies with the design review criteria recommending screened parking, as it eliminates all screened

- parking from the site. The site already exceeds the maximum permitted lot coverage and floor area, so the property owner cannot construct a replacement garage at the site.
3. The Council cannot make the finding that the site has adequate on site parking when only one parking place is provided on site. The site has limited yard areas, so additional parking would be difficult to provide on site without the garage space.
- B. Findings for approval of setback variance for air conditioner**
1. The applicants' property is located on a narrow corner lot. The house was constructed prior to current zoning regulations.
  2. The proposed variance will allow the applicants to maintain a temperature suitable for comfortable human habitation within their residence, a substantial property right.
  3. This project is not a grant of special privilege. The Council has previously approved variances to the installation of air conditioning units within required setbacks.
  4. The adjacent neighbor has no objection to the request and the existing air conditioner has not been an annoyance for neighbors.
  5. As conditioned, this project is consistent with the Town of Ross Zoning Code and General Plan.
  6. This project is a California Environmental Quality Act Class 3 categorical exemption, New Construction or Conversion of Small Structures.
- C. Conditions**
1. The property owner has until December 17, 2010, to remove the improvements to the garage and restore the area for vehicle parking. The garage door shall be operable and automatic. The floor shall be concrete.
  2. A permit is required from the building department for the air conditioner.
  3. Operation of the air conditioner shall comply with the Town noise ordinance (Ross Municipal Code Chapter 19.20).
  4. Any person engaging in business within the Town of Ross must first obtain a business license from the Town and pay the business license fee.
  5. No changes from the approved plans shall be permitted without prior Town approval. Red-lined plans showing any proposed changes shall be submitted to the Town Planner for review and approval prior to any changes.
  6. Failure to secure required building permits by July 15, 2011, will cause the approval to lapse without further notice.
  7. The applicants and/or owners shall defend, indemnify, and hold the Town harmless along with its boards, commissions, agents, officers, employees, and consultants from any claim, action, or proceeding against the Town, its boards, commissions, agents, officers, employees, and consultants attacking or seeking to set aside, declare void, or annul the approval(s) of the project or because of any claimed liability based upon or caused by the approval of the project. The Town shall promptly notify the applicants and/or owners of any such claim, action, or proceeding, tendering the defense to the applicants and/or owners. The Town shall assist in the defense; however, nothing contained in this condition shall prohibit the Town from participating in the defense of any such claim, action, or

proceeding so long as the Town agrees to bear its own attorney's fees and costs and participates in the defense in good faith.