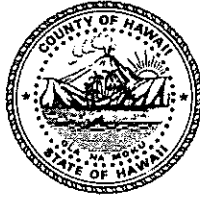


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Russell Kokubun
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

CERTIFIED MAIL

P 364 305 234

May 29, 1998

Mr. and Mrs. Scott A. Saxon
70 Lahi Street
Hilo, HI 96720

Dear Mr. and Mrs. Saxon:

Variance Permit No. 929 (VAR 98-17)

Applicant: SCOTT SAXON

Owners: SCOTT A. SAXON, ET AL.

Request: Variance From Minimum Yards, and Permitted Projections Into Yards and Open Spaces, Pursuant to Chapter 25, of the Hawaii County Zoning Code

Tax Map Key: 2-5-013:001, Lot 102

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to allow a portion of a proposed single story garage addition to the existing dwelling with a minimum rear yard of 13 feet yard in lieu of the minimum twenty (20) feet rear yard required by Article 5, Division 1, Section 25-5-7, Minimum yards,(2), (A) and (B) and with a clearspace of nine (9) feet in lieu of the minimum fourteen (14) feet open space requirements, pursuant to Section 25-4-44 (a), (1), Permitted Projections Into Yards and Open Spaces.

FINDINGS AND RECOMMENDATION

The Planning Director has concluded that the variance request to allow a portion of the proposed garage to be built within the required minimum rear yard and associated open space should be approved based on the following findings:

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SPECIAL AND UNUSUAL CIRCUMSTANCES

1. Lot 102 is a Portion of Piihonua 2nd, South Hilo, Hawaii. The property consisting of 19,010 square feet, is Single-Family Residential (RS-15) by the County and designated Urban "U" by the State Land Use Commission (LUC).
2. The subject property's address is 70 Lahi Street. The original dwelling and related site improvements were constructed in the 1940s. It appears the applicants acquired the property and further improved the original dwelling in 1989.
3. The site plan drawing, drawn to scale, identifies the location of the existing dwelling and proposed 560 square feet garage addition within the subject parcel. It appears approximately 7% or 36 square feet of garage floor area and associated roof eave is within the minimum building yards and open space required under the Zoning Code.
4. The driveway entry location, physical appearance of the dwelling's entry area, roof lines, and living spaces have not been significantly changed or severely altered since the original dwelling was constructed under Building Permit No. 312 issued in 1946. The driveway access from Lahi Street, original dwelling situs, and original floor layout for the dwelling limits design options to construct the desired garage addition.
5. Pursuant to a March 30, 1998, site inspection, it appears the majority of surrounding homes adjacent to the subject property and within the surrounding neighborhood were built and improved during the 1940s and 1950s. The character of this neighborhood has changed little since the 1950s. There is a row of mature "paper bark" trees planted along the driveway and low shrubs planted along and between the affected property line and the proposed garage addition. Very little of the existing landscape planting near the proposed garage addition and along the affected property lines is proposed to be removed or displaced.
6. The Department of Public Works memorandum dated May 13, 1998, states in part:

We have reviewed the subject application and our comments are as follows:

- "1. All driveway connections to a County road shall conform to Chapter 22, Streets and Sidewalks, of the Hawaii County Code."

Mr. and Mrs. Scott A. Saxon

Page 3

May 29, 1998

7. The Department of Health memorandum dated April 2, 1998, states:

"A new cesspool in this area requires the lot to be one acre or more. For TMK 2-5-13:001 with a lot area of 19,010 square feet, a septic system will be required if the existing cesspool is abandoned. A septic system can consist of a septic tank and seepage pit as a minimum."

8. The Department of Finance-Real Property Tax memorandum dated March 31, 1998, states in part:

"The subject property is being assessed at fair market value."

"Real Property taxes are paid through June 30, 1998."

9. The Planning Department received several telephone calls and several objection letters from the surrounding property owners. The Planning Department received a copy of the applicant's April 2 and April 3, 1998, letters responding to the March 9 and March 30, 1998, objection letters. Concerns and objections cited in the letters received from the surrounding property owners allege "the applicants intend to expand their garage area and conduct an automobile repair business", "that submitters of the request appear to be making inappropriate use of the property, producing loud mechanical noises through much of the day and into the early evening, on weekends as well as on other days. The sounds include the roar of what appears to be a large compressor; spraying; and metallic grinding and sanding. In addition, there are customarily an unusual number of cars in their driveway--a matter that might not bear on the request for a variance itself, but that is certainly a matter of concern in this residential neighborhood.", and "an excessive number of cars parked at the Saxon residence, and his construction of a large temporary carport including excessive lights. Neighborhood residents have observed that Mr. Saxon is using this carport for the repair of the numerous vehicles which are parked on the existing driveway on his property. As a result, there is suspicion that Mr. Saxon is conducting a business at his home. This suggests that if the County were to grant a variance to Mr. Saxon it would further facilitate the development of auto body repair, general auto repair, and car sales".

The above concerns and allegations specifically cited and received from the surrounding property owners were carefully weighed and considered pursuant to the Zoning Code. To date Mr. Saxon has received and reviewed all objection letters received and the foregoing Planning Department letters. Since

Mr. and Mrs. Scott A. Saxon

Page 4

May 29, 1998

Mr. Saxon and family were off island during the latter part of April 1998, additional time was afforded to Mr. Saxon until May 22, 1998, to review the Planning Department's letter dated April 29, 1998, with enclosures.

The concerns about the number of vehicles parked on the property and automobile repair business were discussed with Mr. Saxon. Mr. Saxon explained that all vehicles parked on the subject property belong to him or members of his household and no "commercial" auto repair business is being conducted on the property. Pursuant to a Planning Department site inspection, the discussion with Mr. Saxon during the site inspection revealed that the repair and restoration of his vehicles are for hobby purposes only and allegations that vehicles are being sold or repaired in terms of a commercial auto business are unfounded and untrue. All vehicles parked on the property belong to the Saxon family. The applicant understands the property is currently zoned single-family residential (RS) and is aware that the Zoning Code does not allow commercial car repairs, commercial body/fender repairs, and commercial used car sales to occur within the proposed garaged addition or elsewhere on the property. The applicant together with his wife are requesting permission to build approximately 7% of a proposed 560 square foot carport and related roof eave building improvements to protect their tool collection and family vehicles. Approximately 93% of the proposed garage consisting of 560 square feet garage would comply with the minimum building yards and open space requirements and could be constructed with a county building permit.

The existing tarp covering the tools was erected to protect the applicant's collection of power and hand tools. The request for permission to construct a permanent enclosed garage addition would protect household and personal articles, tools, and buffer or contain any sounds emitted by tool use. Additionally, the proposed garage will provide protection for family owned vehicles during inclement weather. The original driveway and existing house design was established on the property in the late 1940s. Driveway access to the garage location, building size and roof design options to attach a permanent garage addition to the original dwelling are limited.

The present owner submitted a copy of a recent site or plot plan, drawn to scale, which identifies the location of the existing dwelling built on the subject property. The site plan identifies and denotes the distances between the wall and eave of the proposed garage from the affected rear yard and the distances between the dwelling and the remaining property lines.

Mr. and Mrs. Scott A. Saxon

Page 5

May 29, 1998

Therefore, considering the foregoing facts, circumstances, and field inspection of the existing site and building improvements, it is felt there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the owner of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the subject property.

ALTERNATIVES

There are no reasonable alternatives in resolving the difficulty of the owner. Approximately 93% of the proposed garage addition will be constructed within the prescribed building envelope and open space requirements. The detailed building plans for the proposed garage addition will not disrupt the present room functions and architecture of the existing dwelling. The proportion and shape of the proposed garage addition would be architecturally compatible and similar to the surrounding and similar dwelling/carport combinations along Lahi Street and within the immediate neighborhood. The proposed building addition will meet the minimum front yard and the southwestern side yard setbacks.

The Planning Department acknowledges there may be other design or building alternatives available to the owner than those recited above. However, these design and building alternatives are deemed to be unreasonable at this time and would place excessive demands on the present owner when a more reasonable alternative is available by the granting of the subject variance request.

INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision are to assure that adequate air and light circulation is available between permitted structure(s) and property lines. It appears the original dwelling was designed for the needs of the original owners and complied with all building codes and setback requirements in 1940s. In view of similar dwelling/carport combinations within the immediate neighborhood, the proposed building addition will not depreciate or detract from the character of the surrounding neighborhood. It appears the existing dwelling's location has not visually, physically or adversely affected the rights of the property owners of the adjacent or surrounding properties. Therefore, it is felt the affected area within the proposed garage addition will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was received on February 27, 1997, and was acknowledged by Certified Letter dated March 25, 1998. However, due to the number of telephone inquiries and objection letters received by the Planning Department, additional time was required by the Planning Department and other agencies to understand and respond to the variance application.

Mr. and Mrs. Scott A. Saxon
Page 6
May 29, 1998

Furthermore, it appears the applicant was out of town on April 29, 1998, and was not able to review the statements and examine the issues or objection stated in the objection letter dated April 12, 1998, which included an attached list of 21 signatures. Therefore, an extension of time was granted to the applicant until May 29, 1998, to afford the applicant time to further review the objection letters received and consider the Planning Department's April 29, 1998, letter.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the County General Plan. Furthermore, the variance request will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and to adjoining properties.

This variance request is approved subject to the following conditions:

1. The owner, assigns or successors shall be responsible for complying with all stated conditions of approval. The effective date of this permit is May 29, 1998. The building construction plans together with the building permit application may be submitted to the Planning Department on or after June 30, 1998.
2. The approval of this variance is only from the Zoning Code. The owner, successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance pertaining to the construction of the proposed building addition.
3. The location of the proposed building addition to the existing dwelling will not meet the provision of the Zoning Code regarding minimum yards and corresponding permitted projections into yards and open spaces. The approval of this variance is from the Zoning Code and only allows the proposed building addition to be constructed on and within the subject property pursuant to the site plan submitted with the variance application and meeting current DPW building code requirements.
4. Future building improvements and permitted uses on the subject property shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

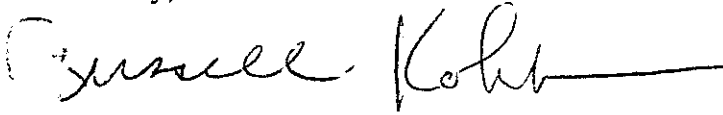
Mr. and Mrs. Scott A. Saxon

Page 7

May 29, 1998

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



VIRGINIA GOLDSTEIN
Planning Director

WRY/RK:cjf

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xc: Real Property Tax Office