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To: [City Council FORWARD](#)
Cc: [Whitehill, Brittany](#); [City Attorney](#); [City Manager](#)
Subject: City council meeting of April 12th, item 4.3, SB 9 response
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Mayor, Council Members;

I believe the city attorney and staff may have misinterpreted SB9. You may also be interested in what I found other cities are doing with SB9 and objective standards.

- Instead of a objective standard being waived, it leaves modification of the standard up to the director, sometimes with some guidance.
- Normal setbacks are still required, except they can be modified/loosened to the down to a 4 foot setback. For example, a 10 foot rear yard setback would still be required if an 800 square foot 2nd unit can be built on the property with a 10 foot setback. It is only when the 10 foot setback would prevent an 800 square foot unit from being built, would a lesser setback (down to 4 feet) would be allowed.

You do NOT have to set the side and rear setbacks at 4 ft. You can keep the existing setbacks and only need to waive them if they preclude building an 800 square foot unit. For example, "20% of the lot depth or 15 ft., whichever is greater, but not more than 40 ft. maximum" for rear setback in R1 zone development standards.

Regards,
Dave

Setbacks

The state law is worded as such (bolding mine):

(2) (A) The local agency shall not impose objective zoning standards, objective subdivision standards, and objective design standards that would have the effect of physically precluding the construction of up to two units or that would physically preclude either of the two units from being at least 800 square feet in floor area.

(B) (i) Notwithstanding subparagraph (A), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.

(ii) Notwithstanding subparagraph (A), in all other circumstances not described in clause (i), a local agency may require a setback of up to four feet from the side and rear lot lines.

https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=202120220SB9&showamends=false

So, sub-paragraph (2)(A) is subordinated to sub-paragraph (2)(B)(ii). In other words, the four foot setback requirement is only required if a greater setback would not allow

at least an 800 square feet unit.

Belvedere (bolding is mine)

<https://www.cityofbelvedere.org/DocumentCenter/View/7781/Item-9>

G. The proposed Two-Unit Development complies with all objective zoning standards, objective subdivision standards, and objective design review standards applicable to the parcel as provided in the zoning district in which the parcel is located; provided, however, that:

1. The application of such standards shall be modified by the Director of Planning and Building if the standards would have the effect of physically precluding the construction of two units on a parcel subject to this chapter or would result in a unit size of less than 800 square feet. Any modifications of development standards shall be the minimum modification necessary to avoid physically precluding two units of 800 square feet each on a parcel.

2. Notwithstanding subsection (F)(1) above, required rear and side yard setbacks shall equal four feet, except that no setback shall be required for an existing legally created structure, or a structure constructed in the same location and to the same dimensions as an existing legally created structure.

Note: "modified", not "waived".

Note: "all objective zoning standards", which includes side and rear setbacks of more than 4 feet.

Woodland

<https://civicclerk.blob.core.windows.net/stream/WOODLANDCA/5af97f71-2096-4e63-b45e-20d9c86faef1.pdf?sv=2015-12-11&sr=b&sig=Ga3sBoFB7dPjx%2B8TqkBpba7bQGJpKDPbVi5jE8ZCTV4%3D&st=2022-03-05T02%3A34%3A00Z&se=2023-03-05T02%3A39%3A00Z&sp=r&rscc=no-cache&rsct=application%2Fpdf>

17.34.050 Requirements

F. Unit Standards.

*e. Lot Coverage. Structures shall not cover more than 50% of the total lot area. **This lot coverage standard is only enforced to the extent** that it does not prevent two primary dwelling units on the lot at 800 square feet each.*

f. Open Space.

*A minimum of 30% of the required rear yard shall be open space. **This open space standard is only enforced to the extent** that it does not prevent two primary dwelling units on the lot at 800 square feet each.*

Note, "only enforced to the extent", not "waived."

Garden Grove

<https://ggcity.org/sites/default/files/sb9ord2929.pdf>

CHAPTER 9.56 SB 9 TWO-UNIT RESIDENTIAL DEVELOPMENTS AND URBAN LOT SPLITS

9.56.100 Development Standards and Design Criteria

D. Setbacks.

1. *New Primary Dwelling Units.* The following minimum setbacks from the property lines shall be observed for each new primary dwelling unit and any garages and accessory structures that are attached to a new primary dwelling unit. Detached garages and accessory structures shall comply with the setbacks contained in subsection 2. The required setbacks shall be maintained open and unobstructed from the ground to the sky, except for the permitted intrusions.

- a. *Front Setback: 20 feet*
- b. **Interior Side Setback: 5 feet**
- c. *Street Side Setback: 10 feet*
- d. **Rear Setback: 15 feet.**

4. *Exceptions.* The above minimum setback requirements do not apply or shall be modified in the following circumstances

- a. *No increased setback is required for an existing legally established structure or for a new primary dwelling unit that is constructed in the same dimensions as an existing legally established structure, provided that the new primary dwelling unit shall not be greater than 800 square feet.*
- b. **A required minimum setback may be reduced** pursuant to subsection W of this section to the degree it would (i) physically preclude the development or maintenance of two dwelling units on a lot or (ii) physically preclude any new primary dwelling unit from being 800 square feet in floor area; but in no event may any structure be less than four feet from a side or rear property line.

Note, setbacks are greater than 4 feet can can be "reduced" to 4 feet, not "waived".

Saratoga

<https://www.saratoga.ca.us/DocumentCenter/View/2800/Ordinance-385-Urgency-Ordinance--Interim-SB-9-Ordinance>

Lot Coverage. If application of development standards pursuant to this ordinance would preclude construction of dwellings with a combined floor area equal to the floor area allowed for a dwelling by the underlying zoning district by City Code section 15-12.85, then the Two-Unit Residential Development may exceed the maximum site coverage allowed for the underlying zoning district in City Code section 15-12.080. Such exceedance shall be limited to the minimum site coverage required to construct dwellings with the allowed floor area.

Note, the floor area is "limited to the minimum" required to construct the dwelling, not "waived".