

**SANTA CRUZ COUNTY PLANNING DEPARTMENT POLICY/ORDINANCE
INTERPRETATION**

Interpretation No.: SETBACKS-02 (Setbacks- Choosing)
Effective Date: 09/03/09
Revised:

Question

Can an applicant choose their setbacks when the required setbacks are of unequal size?

Is it a one-time only choice?

What about when one or both sides of the structure are nonconforming to current setbacks?

Applicable Ordinance Section(s)

13.10.323(b)

13.10.265(c)

13.10.700-L

INTERPRETATION:

An applicant cannot choose a setback that renders the structure nonconforming or more nonconforming than it currently is without first obtaining a Variance.

An applicant may choose one time only at the point when the chosen yards meet the setbacks only in that configuration, provided that the setbacks chosen are consistent with the parcel or final map, if there is one, and any applicable conditions of approval regarding setbacks, if any exist.

If both setbacks are currently nonconforming, the setbacks will be designated that result in the structure being less nonconforming overall.

Reasons:

The residential site standards contain three situations where required setbacks are of unequal size and, therefore, a choice must be made:

1. Parcels where 8' and 5' side yards are required;
2. 0' and 5' side yards for parcels zoned RB; and
3. Front and side yards for corner lots and reversed corner lots.

The definitions of Lot Line, Front and Lot, Reversed Corner specifically state that the property owner may choose once only which yard is front and which yard is street side. While the County Code is silent on who makes the choice for Situations 1 and 2 above, it is appropriate for the applicant to decide, in all three of the above situations, as long as doing so does not render an existing structure nonconforming (in which case a Variance would be required.) If the location of the existing or proposed structure or addition meets both of the site standard choices (such as a house that has 8-foot side setbacks on both sides where the requirement is 8' and 5'), the Department will not consider that the "choice" has been made yet. Only when the structure location is such that the required setbacks can only be met by the specific designation of yards (for example, if the above house is proposed to have an 8-foot and a 7-foot side yard) will the

one time “choice” be considered “made.” Once the “choice” is made, the owner cannot choose different setbacks in the future, unless a Variance is obtained.

When an existing structure is nonconforming to only one of the unequal sized setbacks and meets the other more restrictive setback (see Example #1), the nonconforming setback shall be designated as the less restrictive setback. As illustrated in Example #1, the existing left 3’ side yard does not conform to the 5’ or 8’ required setback while the right setback meets both. Designating the left 3’ side yard as the required 5’ side yard will require that new development on the right side maintain an 8’ foot side yard which is more in conformance with the 5’ and 8’ required setbacks. If the required yards were allowed to be the opposite, this would result in potential 3’ and 5’ side yards, clearly more nonconforming.

When an existing structure is nonconforming to both of the unequal sized setbacks (as illustrated in Example #2), the setbacks shall be designated so as to minimize nonconformity. In Example #2, the left side yard is 3’ (2’ less than the required 5’ setback and 5’ less than the required 8’ setback) and the right side yard is 7’(more than the required 5’ setback but 1’ less than the required 8’ setback). If the left side yard is chosen as the required 5’ setback and the right side yard is chosen as the required 8’, the amount of nonconformity is 3’ ($5-3=2$ feet and $8-7=1$ foot). While it could be argued that the right setback is currently conforming to the required 5’ setback and, therefore, it should be chosen as the 5’ setback, the amount of nonconformity would be 5’ (0 feet on the right side and $8-3=5$ feet on the left side). Since the goal of the Nonconforming regulations is reduce the amount of nonconformity, the former meets the goal to a greater extent than the latter.

When the existing structure is nonconforming to both the unequal sized setbacks and the amount of resulting nonconforming floor area is approximately the same, the applicant may then make the one-time only choice of setbacks.

Tom Burns, Planning Director

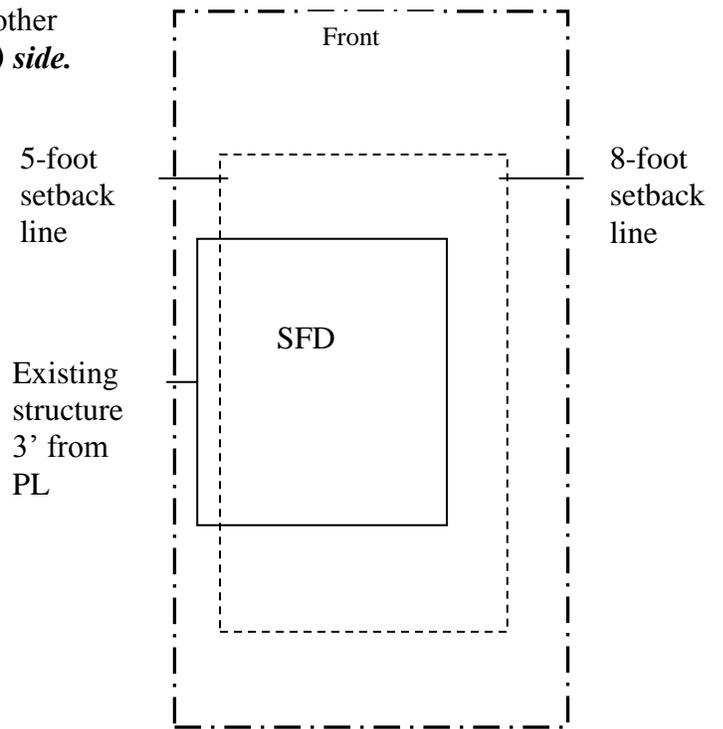
Date

Nonconforming Structures: Determining Setbacks

#1: Side yard setbacks are 5' on one side, 8' on other
Existing SFD nonconforming (3') on one (left) side.

To minimize nonconformity, left side is automatically the 5-foot setback side.

- Setbacks
- Existing structure



#2 Side yard setbacks are 5' on one side, 8' on other
Existing SFD nonconforming on both sides.

To minimize nonconformity, left side is designated the 5-foot side and right side is the 8-foot side.

