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**TO:** Burlington Planning Commission  
**FROM:** Charles Dillard, AICP, Principal Planner  
**DATE:** February 23, 2023  
**RE:** Proposed CDO Amendment – ZA-23-03: Setbacks

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## **Overview & Background**

Setback standards are intended to provide access to light and air, provide fire separation and access, and maintain the existing neighborhood pattern of buildings and open spaces between them and to the street. However, certain setback rules are frequently cited as unduly limiting potential for infill projects within Residential areas. In fall 2022, the Planning Commission's Ordinance Committee, with input from Permitting and Inspections staff, met to discuss this limited group of setback standards and how they might be amended to facilitate redevelopment while maintaining their role in maintaining existing neighborhood character. The Committee identified the four residential district standards summarized below as topics to address in a zoning amendment.

### ***Front Yard Averaging***

Front yard setbacks intend to maintain a relatively consistent pattern of development along a given street. The *Comprehensive Development Ordinance* (CDO) today regulates front yard setback generally through an averaging approach that considers the two adjacent properties on either side of the subject property. The minimum front yard setback is simply the average of these four properties. In situations where one of the four adjacent properties is vacant, the next closest property on the same block face is to be considered. Beyond these Article 5 general standards, district-specific standards are applied in Article 4. In the Residential districts, the minimum and maximum setback must be within 5 feet of the aforementioned averaging-determined setback (either toward or away from the street). These two standards together provide adequate flexibility in most cases. However, there are situations where one of a property's adjacent lots contains a building with a very deep setback that skews the average. In such cases, the required setback is typically not feasible and can be a barrier to infill projects.

In considering front yard averaging, the Ordinance Committee determined that an appropriate response is to allow for the exclusion of one "outlier" property from the averaging equation. The Committee suggested defining "outlier." The amendment does propose allowing for the excluding of one property, but does not at this time propose defining "outlier." Given the existing +/- 5 feet allowance in the Residential districts, staff feels that an outlier definition that is too small would not impact the required min/max setback, and an outlier that is too large may retain the existing inflexibility. For example, where property's four adjacent setbacks are 12'/12'/10'/12', the resulting average is 11.5 feet and the Residential district +/- 5 feet allowance would create a minimum setback of 6.5 feet and a maximum of 16.5 feet. Only an outlier setback of 33 feet or more would materially impact the min/max setback. As such, for the purpose of clarity and ease of review, staff does not propose defining "outlier."

### ***Setback Exceptions – Abutting Building with Doors or Windows***

Today, the *Ordinance* establishes a minimum setback of 10 feet in cases where an adjacent property's building is within five feet of the common property line and contains doors and/or windows. A similar Downtown Form Code standard (Sec. 14.4.13 e.) v.) prohibits doors and windows along building elevations that are located on a side or rear property line where no setback is required. While these standards are intended to prevent unnecessary limitations on development of adjacent property and impacts to existing adjacent properties, the standards unfairly limit

development. As such, the Ordinance Committee recommended reconciling the Articles 5 and 14 standards, and amending them to allow for buildings (with or without doors/windows) up to the property line where no setback is required. The amendment would also state clearly that any such construction is subject to the effective building code.

***Setback Exceptions – Building or Site Features***

Today the *Ordinance* permits building and site features that project into required side setbacks but existing language is ambiguous and often leads to confusion among applicants and review staff. As such, the Ordinance Committee recommends amending this Sec. 5.2.5(b) 2 to state clearly that the list of permitted projections is not meant to restrict other projections that may not be listed. Thus, the amendment would also provide flexibility in development and redevelopment.

***Garage Setback***

Today, the *Ordinance* requires a minimum 25 foot setback for any street-facing garage on properties that have a front yard setback requirement. This is true even when the required front yard setback is far less than 25 feet. In considering this requirement, the Ordinance Committee recommends deleting the 25 foot standard, but retaining related language that states that the front wall of a garage must be behind the front wall of the associated residence. This standard had been in place to guarantee that a parked car would not infringe on the sidewalk or right of way. However, with the removal of parking minimums and a general desire to encourage redevelopment and reduced car-driven land use standards, the standard is no longer desirable or necessary.

**Proposed Amendment**

**Amendment Type**

<b>Text Amendment</b>	Map Amendment	Text & Map Amendment
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**Purpose Statement**

This amendment modifies a limited grouping of setback standards to facilitate development and redevelopment within residential districts and to reconcile language across Articles and 5 and 14 for clarity. The amendment removes ambiguous and unnecessary standards that often create barriers to infill development.

**Proposed Amendments**

The following amendments to the *Burlington Comprehensive Development Ordinance* are included in this proposal:

**1. Amends Article 5 – Citywide General Regulation to modify setback standards as described below.**

- Modifies Sec. 5.2.5(a) to allow for the removal of one property in the front yard setback averaging equation, which would create needed flexibility in determining the minimum front yard setback, particularly in residential portions of the city where there are typically greatly varying setbacks or where outlier setbacks may be common.
- Modifies Sec. 5.2.5(b) to allow for greater flexibility in meeting side setback standards where they exist and, in cases where they are not required, to refer applicants and review staff to the regulating effective building code.

**2. Amends Article 6 – Development Review Standards to modify garage setback standards in residential districts.**

- Modifies Sec. 6.2.2(h) to remove a requirement that garages be set back a minimum of 25 feet in cases where the subject property has a required front yard setback.

**3. Amends Article 14 planBTV Downtown Code –to modify language regulating building placement and design in cases where setbacks are not required.**

- Modifies Sec. 14.4.13(e) v. to remove a restriction on windows and doors on buildings placed on a side or rear property line where no setback is required and instead allow such openings but refer applicants and review staff to the regulating effective building code.

**Relationship to planBTV**

*This following discussion of conformance with the goals and policies of planBTV is prepared in accordance with the provisions of 24 V.S.A. §4441(c).*

<b>Theme:</b>	<b>Dynamic</b>	<b>Distinctive</b>	<b>Inclusive</b>	<b>Connected</b>
<b>Land Use:</b>	<b>Conserve</b>	<b>Sustain</b>		<b>Grow</b>

Compatibility with Proposed Future Land Use & Density

The proposed amendment is consistent with *planBTV*, which calls for small and incremental change that is consistent with the existing development pattern, building scale and neighborhood character. In facilitating infill development, the amendment allows for the small and subtle changes that the *Plan* calls for in Burlington’s residential districts, particularly at a time when a housing shortage is generally acknowledged.

Impact on Safe & Affordable Housing

The amendment, in facilitating infill development, will promote the development of safe and affordable housing by clearly legalizing patterns of development that are desirable but that today may be prohibited or obstructed due to unclear *Ordinance* language.

Planned Community Facilities

This amendment has no direct impact on planned community facilities.

**Process Overview**

The following chart summarizes the current stage in the zoning amendment process, and identifies any recommended actions:

<b>Planning Commission Process</b>				
Draft Amendment prepared by: Staff 2/16/23	<b>Presentation to &amp; discussion by Commission 2/28/23</b>	Approve for Public Hearing	Public Hearing	Approved & forwarded to Council
<b>City Council Process</b>				
First Read & Referral to Ordinance Cmte	Ordinance Cmte discussion	Ordinance Cmte recommend	Second Read & Public Hearing	Council Approval & Adoption