

Midway City Council
18 January 2022
Regular Meeting

Ordinance 2022-02 /
Setbacks in Residential Zones



Midway

CITY COUNCIL MEETING STAFF REPORT

DATE OF MEETING: January 18, 2022
NAME OF APPLICANT: Midway City
AGENDA ITEM: Code Text Amendment of Title 16

Midway City is proposing an amendment to Sections 16.7, 16.8, 16.9, 16.10, 16.11, and 16.12 of the Midway City Municipal Code. The proposed amendment would change setbacks for the residential zones.

BACKGROUND:

The purpose of this item is to review and amend the City’s land use ordinance regarding setbacks in residential zones with the goal of preserving view corridors and the rural atmosphere in Midway. The purpose of reviewing the ordinance is to see whether adjusting setbacks would promote the feel of added open space in developments and help preserve the rural character of Midway, which were both identified as priorities in the revisions to the general plan that was adopted in 2017. These two goals developed from the City’s General Plan survey that was conducted in 2016. In that survey, information was gathered regarding the residents’ preferences of the vision they have for Midway. 66% of the 483 responses to that survey stated the rural atmosphere was very important to them. 70% felt that the quietness of Midway was very important. 69% felt that open space protection was very important.

The idea that developed in the Community Vision Committee that reviewed that chapter of the General Plan was to preserve the rural atmosphere, preserve open space, and protect view corridors by extending the required setbacks along City streets. By doing this the City can help retain its rural atmosphere. Below are some examples from the General plan that promote this extending the setbacks from City streets:

Elements of the Community Vision

- *Midway will retain a rural atmosphere through open space preservation*

- *Through effective zoning, Midway will plan for density closer to its core reinforcing more open space and less density as the City grows to its limits.*
 - *All developments will incorporate various kinds of open space into their projects.*
 - *Open spaces will be accessible, visible, appropriately landscaped (depending on the open space purpose and use) and will be aesthetically pleasing.*
 - *Development and City entryways will be landscaped, aesthetically pleasing and, where appropriate, will reinforce a Swiss/ European theme.*
 - *Effective planning through clustering, **setbacks**, Transfer Development Rights and animal/agriculture ordinances will help Midway to preserve its view corridors, maintain open spaces and reinforce a country/rural feeling.*
 - *Animal rights will be protected and promoted to help preserve the rural atmosphere and preserve open space.*
- *High-quality, well-planned residential areas with open spaces that support and complement the unique rural quality and character of the City;*
 - *Goal 2: Encourage open space to preserve a high quality of life and to preserve Midway's rural atmosphere.*
 - *Objective 1: Protect all of the environmental and natural resources of the City by requiring development to occur in a manner and location which respects sensitive environmental lands: wetlands, flood plains and natural drainage patterns, steep slopes, productive agricultural lands, geologically unstable areas, critical wildlife areas, vegetation and important scenic features such as ridge lines hillsides and **view corridors**.*

There is clearly support for protecting the rural atmosphere and protecting view sheds. One approach to accomplish this is by increasing structure setbacks on residential building lots.

Adjusting setbacks is not a new concept to the City. Title 16.16, the Planned Unit Developments and Standard Subdivision code and Title 16.17, the Small Subdivision code, were both amended in 2018 requiring greater setbacks from certain city streets, creating a greater sense of open space. If setbacks from property boundaries are increased, it will require property owners to consolidate structures towards the center of the lot and not near property boundaries. Doing so could create a greater sense of open space along roads, it could also create better view corridors between structures on adjacent lots along with a greater sense of openness through the city.

If setbacks are increased on residential building lots, many structures throughout the city may become legally non-conforming, possibly limiting the future modification of the structure. Recently the non-conforming section of the land use code was amended to provide some additional flexibility for properties and structures who may become non-conforming due to a change in setbacks. Even with the increased flexibility, any allowed adjustments within the setback area are limited.

In the 2021 Utah legislative session, the legislature approved H.B. 409 which made changes to Utah code 10-9a-509, which are the land use regulations within the Municipal Land Use, Development, and Management Act. One notable adjustment to that section is a limitation on imposing new land use regulations on a building permit for 10 years following the recoding of a plat. The language reads:

10-9a-509 - Applicant's entitlement to land use application approval -- Municipality's requirements and limitations -- Vesting upon submission of development plan and schedule.

(4)

- (a) *Except as provided in Subsection (4)(b), for a period of 10 years after the day on which a subdivision plat is recorded, a municipality may not impose on a building permit applicant for a single-family dwelling located within the subdivision any land use regulation that is enacted within 10 years after the day on which the subdivision plat is recorded.*
- (b) *Subsection (4)(a) does not apply to any changes in the requirements of the applicable building code, health code, or fire code, or other similar regulations.*

This newly adopted code mandates a ten-year grace period from the date a plat is recorded for new land use regulations that would otherwise impact a building permit application. If setbacks are adjusted, there is a possibility that some properties would be vested in the previous setbacks for a period of up to ten-years. Once that vested period has lapsed, they would need to comply with whatever the current setbacks are at the time a building permit is issued. This could create a situation where a development is built out with some lots meeting one set of setbacks and the balance of the lots meeting another set of setbacks.

A similar impact may occur in developments that are not covered by the newly adopted state code and are partially built out when new setbacks are adopted. If setbacks do change, it may mean that two different setback standards are imposed within the same development. Section 16.13.17 may help provide relief for some lots if setbacks are increased in an existing subdivision. It says:

16.13.17 Exception to Front and Side Setback Requirements

The setback from the street for any dwelling located between two existing dwellings in any residential zone may be the same as the average for the said two dwellings, provided the existing dwellings are on the same side of the street and are located within 150 feet of each other. However, no dwelling shall be located closer than 20 feet from the street.

This would allow some relief to properties who meet the criteria outlines above.

Increasing the setbacks in some of the smaller zones may limit the size of building footprints on lots that meet the minimum acreage and frontage requirements. It may also limit the ability to

construct detached accessory structures on smaller lots, especially if the structure is intended to be a garage.

Planning staff has taken the approach of reviewing and proposing updates to the dwelling and accessory structure setbacks as listed in each specific residential zoning ordinance. We have one matrix for the main dwelling setbacks and a second matrix for the accessory structure setbacks.

Proposed Residential Dwelling Setback Matrix:

Main Dwelling Setbacks (If different, existing it is noted in parenthesis)				
Zone	Front	Secondary Frontage (Corner Lot)	Side	Rear
R-1-7 Zone (min. 70' frontage)	30'	30'	10'	30'
R-1-9 Zone (min. 90' frontage)	30'	30'	10'	30'
R-1-11 Zone (min. 100' frontage)	30'	30'	12' (10')	30'
R-1-15 Zone (min. 100' frontage)	30'	30'	12' (10')	30'
R-1-22 Zone (min. 115' frontage)	40' (30')	40' (30')	15' (12')	40'* (30')
RA-1-43 Zone (min. 150' frontage)	50' (30')	50' (30')	20' (14')	50'* (30')

* On parcels in the R-1-22 and RA-1-43 zones, if the front and rear setbacks limit the main dwelling structure depth to being less than 45', the rear setback may be reduced to allow for up to a 45' structure depth. In no case shall the rear setback be less than 30' and a reduction assumes that a proposed structure will be built to the front setback line.

Existing Accessory Structure Setback Matrix:

Existing Accessory Structure Setbacks			
Zone	Front	Side	Rear
R-1-7 Zone (min. 70' frontage)	30'	10' or 3'	10' or 2'
R-1-9 Zone (min. 90' frontage)	30'	10' or 3'	10' or 2'
R-1-11 Zone (min. 100' frontage)	30'	10' or 3'	10' or 2'
R-1-15 Zone (min. 100' frontage)	30'	10' or 3'	10' or 2'
R-1-22 Zone (min. 115' frontage)	30'	12' or 3'	10' or 2'
RA-1-43 Zone (min. 115' frontage)	30'	14' or 3'	10' or 2'

Proposed Accessory Structure Setback Matrix:

Accessory Structure Setbacks								
ZONE	FRONT	SECONDARY FRONTAGE (CORNER LOT)	SIDE			REAR		
			Minimum Setback	Maximum Height at Minimum Setback	Allowable Height Increase for Additional Setback Beyond Minimum	Minimum Setback	Maximum Height at Minimum Setback	Allowable Height Increase for Additional Setback Beyond Minimum
R-1-7 Zone (min. 70' frontage)	40'	40'	10'	20'	(Setback) 1:1 (Height) May Not Exceed Maximum Allowed Height For Zone	10'	20'	(Setback) 1:1 (Height) May Not Exceed Maximum Allowed Height For Zone
R-1-9 Zone (min. 90' frontage)	40'	40'	10'	20'	(Setback) 1:1 (Height) May Not Exceed Maximum Allowed Height For Zone	10'	20'	(Setback) 1:1 (Height) May Not Exceed Maximum Allowed Height For Zone
R-1-11 Zone (min. 100' frontage)	40'	40'	12'	20'	(Setback) 1:1 (Height) May Not Exceed Maximum Allowed Height For Zone	12'	20'	(Setback) 1:1 (Height) May Not Exceed Maximum Allowed Height For Zone
R-1-15 Zone (min. 100' frontage)	40'	40'	12'	20'	(Setback) 1:1 (Height) May Not Exceed Maximum Allowed Height For Zone	12'	20'	(Setback) 1:1 (Height) May Not Exceed Maximum Allowed Height For Zone
R-1-22 Zone (min. 115' frontage)	50'	50'	15'	20'	(Setback) 1:1 (Height) May Not Exceed Maximum Allowed Height For Zone	15'	20'	(Setback) 1:1 (Height) May Not Exceed Maximum Allowed Height For Zone
RA-1-43 Zone (min. 115' frontage)	60'	60'	20'	20'	(Setback) 1:1 (Height) May Not Exceed Maximum Allowed Height For Zone	20'	20'	(Setback) 1:1 (Height) May Not Exceed Maximum Allowed Height For Zone

Note 1: Accessory structures that are 200 square feet or less in size, are 12' or less in height and have temporary foundations, may be located up to 5' from a side or rear property line in any residential zone. There are no exceptions to the front or secondary front setback. At the owner's risk, they may be located on a platted public utility easement. All drainage must be maintained on site.

The proposed tables match the recommendation from the planning commission with two exceptions. The two items not included in the above tables relate to accessory structure setbacks and staff felt added an unneeded layer of complication to amending the setbacks. We have listed the two items that have been left out below in the event the City Council feels that there is value in including in a proposed amendment to setbacks:

- **Omitted Item #1 - Require the accessory building to be setback 10' behind the main dwelling, regardless of where the main dwelling is built.** *In instances where the accessory structure is built before the main dwelling, this requirement would limit the area where a property can propose a future main dwelling. In lieu of a fluid setback, we have proposed a minimum front setback for accessory structures that is 10' behind the minimum dwelling setback. Where most property owners build at the minimum dwelling setback line, we felt like this will facilitate a similar outcome as intended by the planning commission's proposal, while maintaining flexibility for those that want to build a dwelling further back in their lot.*
- **Omitted Item #2 - On lots with existing homes that have side setbacks that are less than current side setbacks, the minimum accessory structure setback may match the existing home side setback but may not be less than the current setbacks for the zone.** *We felt like if the intent is to increase setbacks for accessory structures, this would further limit that outcome. As mentioned previously in this report, subdivisions that were platted in the last 10 years would have a grace period where they would be exempt from any adjustments to setbacks. We do not feel like it is needful to create an additional exception.*

PLANNING COMMISSION RECOMMENDATION:

Motion: Commissioner Bouwhuis: I make a motion that we recommend approval of an amendment to Sections 16.7, 16.8, 16.9, 16.10, 16.11, and 16.12 of the Midway City Municipal Code. The proposed amendment would change setbacks for the residential zones. That we accept staff findings and that we modify the main dwelling setbacks as proposed, with the 50' for the RA-1-43 for the secondary frontage as in the staff packet. The exception for R-22 and RA-1-43 for the rear setback be stated that if it would leave less than 45' building depth for the buildable area from front to back that they would be able to reduce the rear setback in order to obtain a 45' building depth, but in no case can the rear setback be less than 30'. Accessory structure front setbacks are modified to be 10' behind the main dwelling, the secondary frontage would remain as proposed. That the side and rear setbacks are the same, allowing for a 20' structure height at the minimum setback and increasing at a 1 to 1 ratio as the setback increases over the minimum required side and rear setbacks. On properties with an existing dwelling, the accessory structure side setback could match the side setback of the existing dwelling but could not be less than what is currently allowed in the code. Add a 5' setback for the tuff shed type structure exception.

Seconded: Commissioner Garland

Chairman Nicholas: Any discussion on the motion? It was clarified that there would a chance for a public hearing at the city council meeting.

Chairman Nicholas: All in favor.

Ayes: Commissioners: Ream, Bouwhuis, Wardle and Garland

Nays: Whitney and Clifton

Motion: Passed

POSSIBLE FINDINGS:

- Preserving view corridors and open space is an important goal for the community
- Extending setbacks will preserve the rural atmosphere of Midway
- Increasing residential setbacks will likely make many structures legally non-conforming
- Increasing setbacks may limit the size of some dwellings on smaller lots
- Increasing setbacks may limit the ability to construct detached accessory structures on lots in some zones
- Some developments may be exempt from newly adopted setbacks for a period of up to 10 years based on provisions adopted in state code

ALTERNATIVE ACTIONS:

1. Approval. This action can be taken if the City Council that the proposed language is an acceptable addition to the City's Municipal Code.
 - a. Accept staff report
 - b. List accepted findings
 - c. Place condition(s)

2. Continuance. This action can be taken if the City Council would like to continue exploring potential options for the amendment.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for continuance
 - i. Unresolved issues that must be addressed
 - d. Date when the item will be heard again

3. Denial. This action can be taken if the City Council feels that the proposed amendment is not an acceptable revision to the City's Municipal Code.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for denial

Exhibits

Exhibit 1 – R-1-7 Setback Diagram

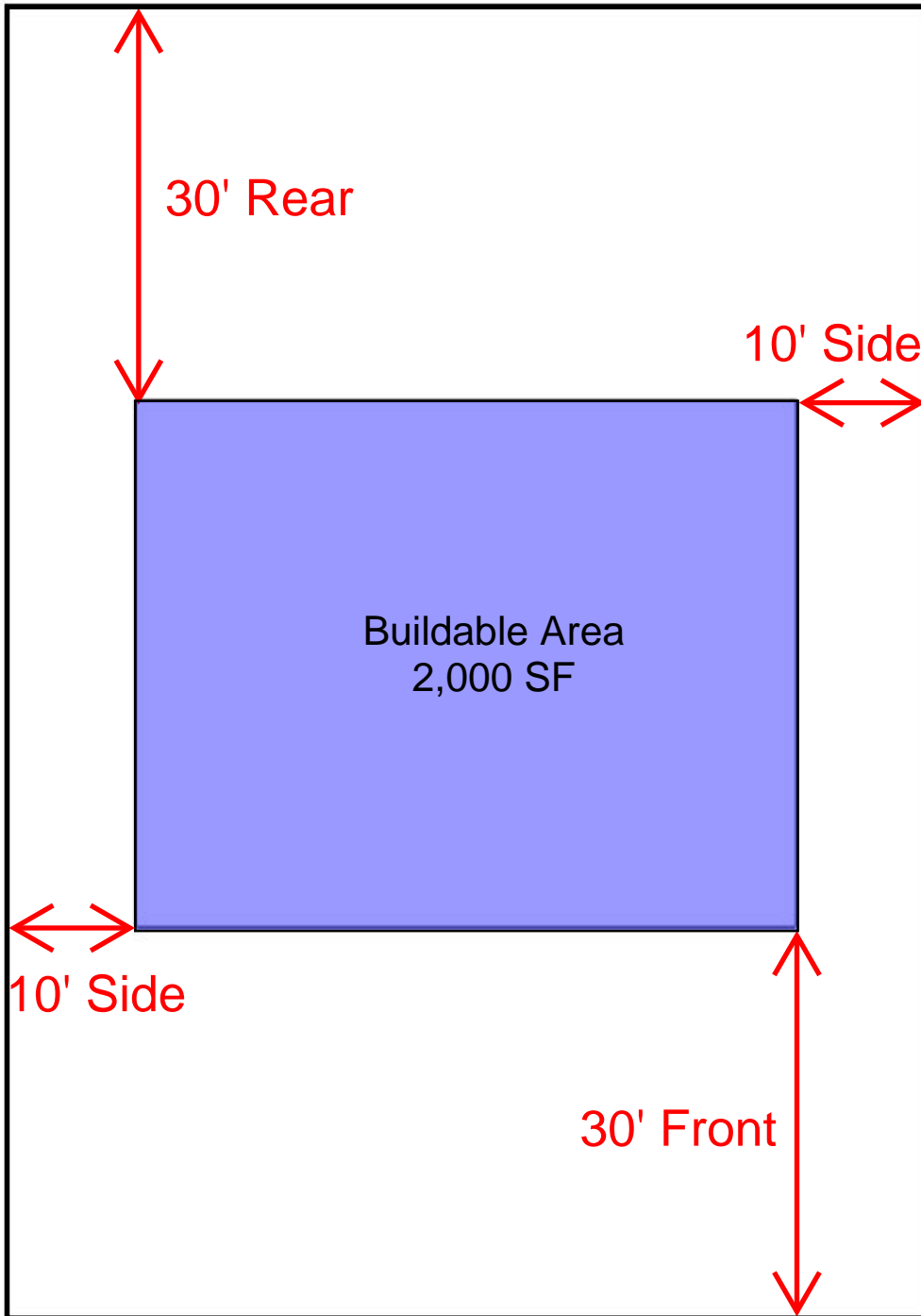
Exhibit 2 – R-1-22 Setback Diagram

Exhibit 3 – RA-1-43 Setback Diagram

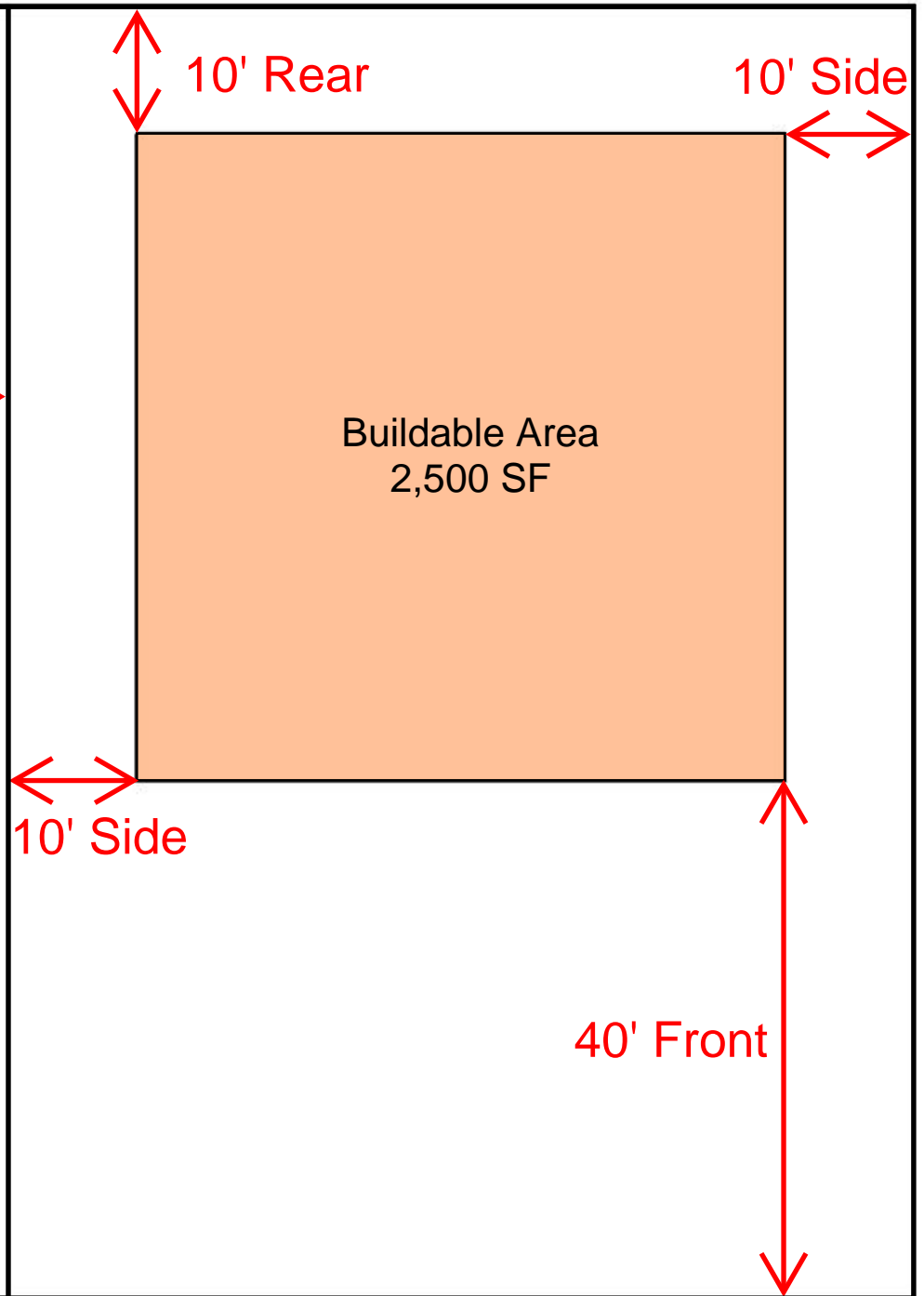
Exhibit 4 – Accessory Structure Side Setback Example

Exhibit 1

R-1-7 Main Dwelling Setbacks



R-1-7 Accessory Structure Setbacks

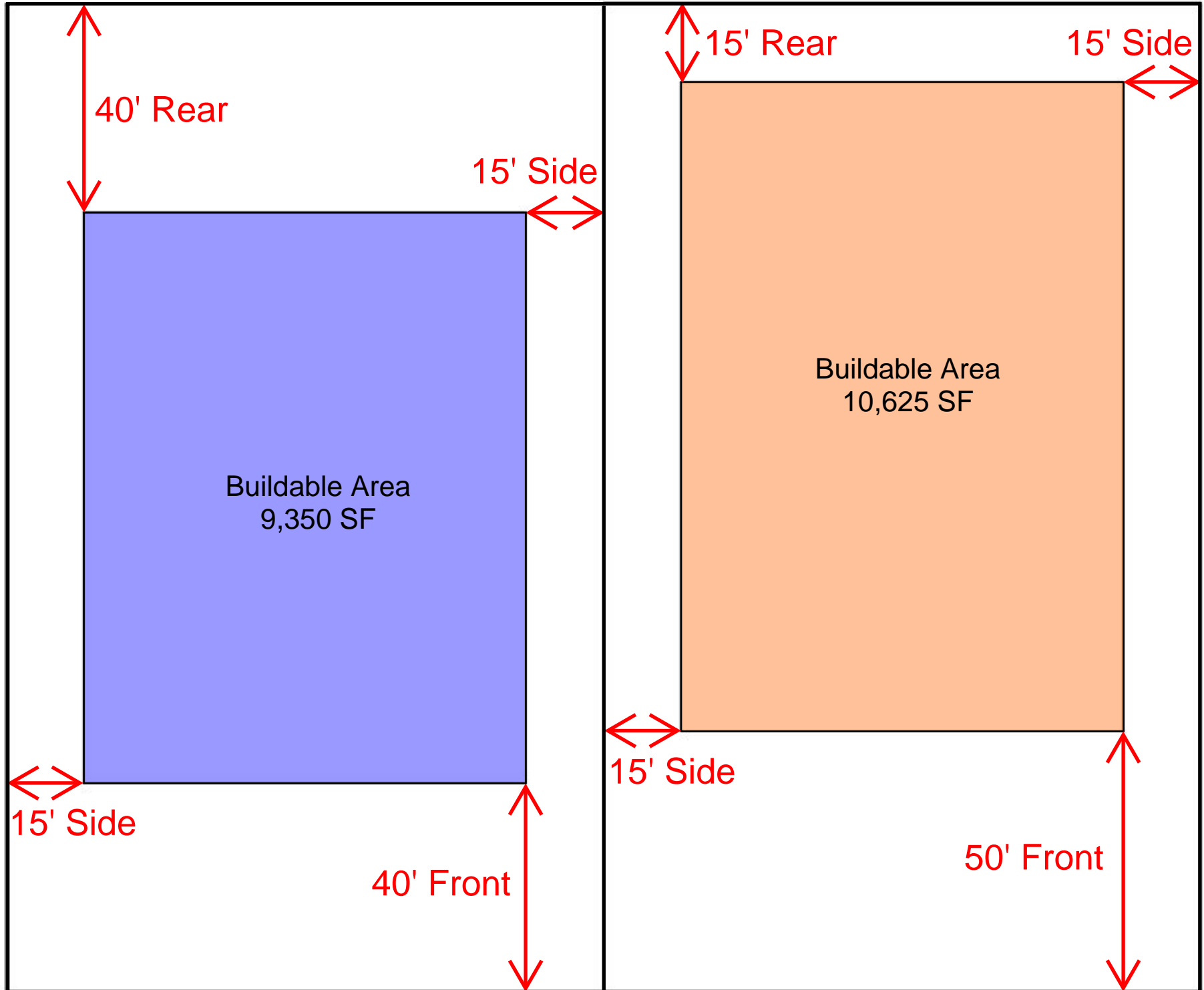


Street

Exhibit 2

R-1-22 Main Dwelling Setbacks

R-1-22 Accessory Structure Setbacks

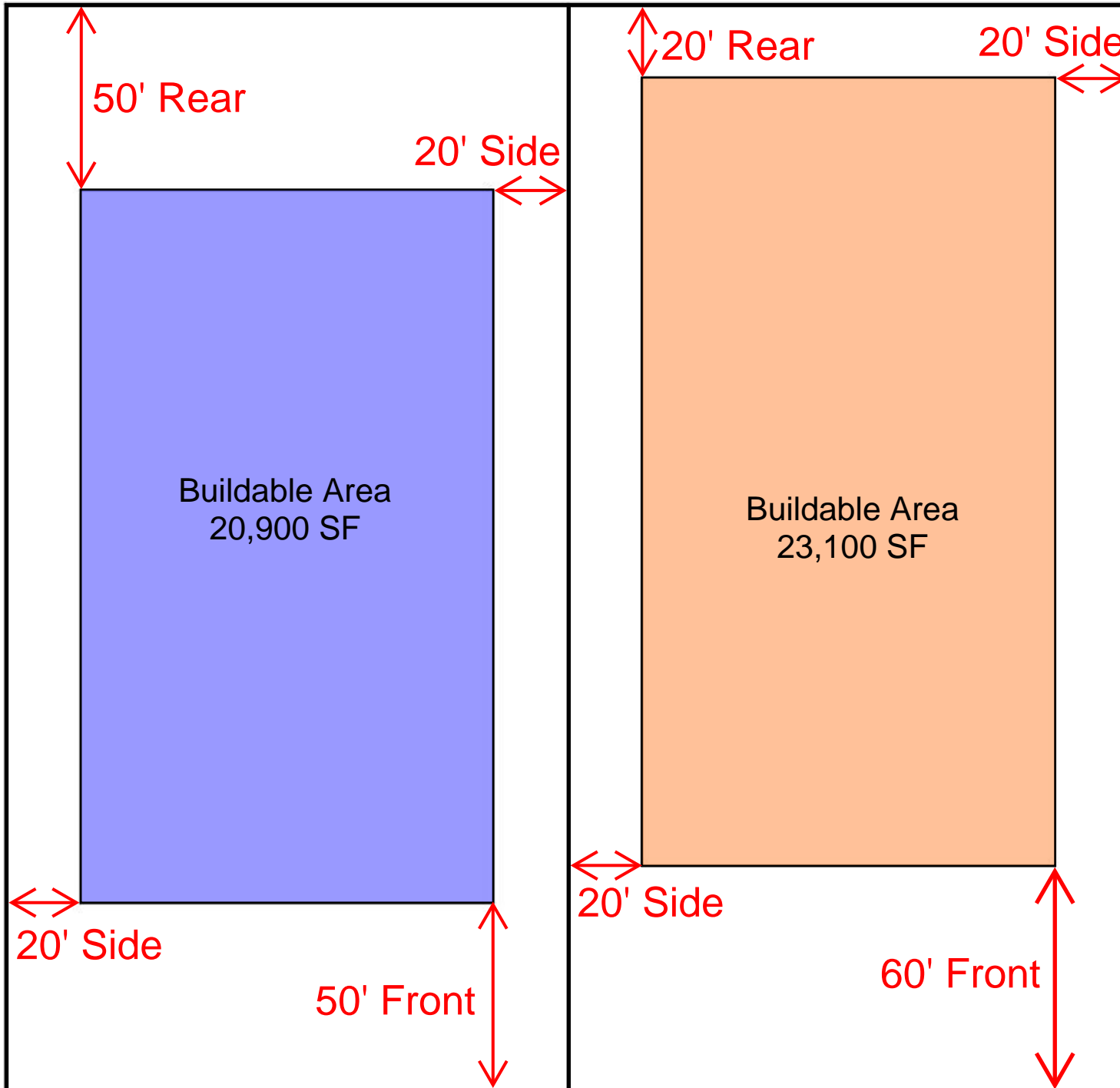


Street

Exhibit 3

RA-1-43 Main Dwelling Setbacks

RA-1-43 Accessory Structure Setbacks



Street

Exhibit 4

