

7/30/09

**MEMORANDUM**

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FROM: Jessica Richman  
RE: Zoning Code Replacement—**Update Packet 133**

**Contents of Update Packet #133 (effective 7/31/09)**

This Code update is the result of Ordinance No. 182962, passed 07/01/09, which establishes a new Original Art Mural regulatory and permitting program.

**Code Update Packet:** 133  
**Effective Date:** July 31, 2009  
**Contact:** Phil Nameny, 503-823-7709  
**Amends Chapters:** 420, 445, 663, 730, 930

**Substantive Changes:**

Amends Title 33, Planning and Zoning, Sections 33.420.045, 33.445.320, and 33.445.420.

Currently, there are two ways that murals can be installed in the City. The first is through the City's Public Art Mural Program which is administered by the Regional Arts and Culture Council (RACC). Through this program, murals can gain funding and are incorporated into the City's public art collection. Murals that do not go through the City's Public Art Program are regulated as signs through Title 32, Signs and Related Regulations.

The Original Art Murals Project has developed code and procedures to distinguish between murals and signs by broadly defining and requiring murals to be original works of art for which no compensation or thing of value is given or received for the display or right to place the mural. This project creates an additional permitting option separate from the sign code and the RACC public art process for original art murals, including community based murals. Most of the new code and procedures are in the new Title 4, Original Art Murals, and Administrative Rules adopted by the Bureau of Development Services.

**CONTENTS OF UPDATE PACKET #133 (effective 7/31/09)**

<b>Chapter</b>	<b>Remove Pages</b>	<b>Insert Pages</b>	<b>Changed because of:</b>
420	1-4	1-4	Amend 33.420.045.W
445	1-2 and 11-22	1-2 and 11-22	Amend 33.445.320.B and 33.445.420.B
663	1-2	1-2	Typo
730	27-30	27-30	Typo
930	9-10	9-10	Typo



**CHAPTER 33.420  
DESIGN OVERLAY ZONE**

(Amended by: Ord. No. 163697, effective 1/1/91; Ord. No. 167054, effective 10/25/93; Ord. No. 169987, effective 7/1/96; Ord. No. 171589, effective 11/1/97; Ord. No. 171849, effective 4/1/98; Ord. No. 174263, effective 4/15/00; Ord. No. 175204, effective 3/1/01; Ord. No. 175837, effective 9/7/01; Ord. No. 176587, effective 7/20/02; Ord. No. 176742, effective 7/31/02; Ord. No. 177920, effective 11/8/03; Ord. No. 178172, effective 3/5/04; Ord. Nos. 178423 and 178480, effective 6/18/04; Ord. No. 178452, effective 7/10/04; Ord. No. 178509, effective 7/16/04; Ord. No. 178946, effective 01/07/05, Ord. Nos. 179980 and 179994, effective 4/22/06; Ord. No. 180372, effective 9/30/06; Ord. No. 181357, effective 11/9/07; Ord. No. 182072, effective 8/22/08; Ord. No. 182429, effective 1/16/09; Ord. No. 182962, effective 7/31/09.)

Sections:

- 33.420.010 Purpose
  - 33.420.020 Map Symbol
  - 33.420.021 Applying the Design Overlay Zone
  - 33.420.025 Where These Regulations Apply
  - 33.420.041 When Design Review is Required
  - 33.420.045 Exempt From Design Review
  - 33.420.051 Design Guidelines
  - 33.420.055 When Community Design Standards May Be Used
  - 33.420.060 When Community Design Standards May Not Be Used
- Maps 420-1 through 420-4, Design District maps

**33.420.010 Purpose**

The Design Overlay Zone promotes the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural value. The Design Overlay Zone also promotes quality high-density development adjacent to transit facilities. This is achieved through the creation of design districts and applying the Design Overlay Zone as part of community planning projects, development of design guidelines for each district, and by requiring design review or compliance with the Community Design Standards. In addition, design review or compliance with the Community Design Standards ensures that certain types of infill development will be compatible with the neighborhood and enhance the area.

**33.420.020 Map Symbol**

The Design Overlay Zone is shown on the Official Zoning Maps with a letter "d" map symbol.

**33.420.021 Applying the Design Overlay Zone**

The Design Overlay Zone is applied to areas where design and neighborhood character are of special concern. Application of the Design Overlay Zone must be accompanied by adoption of design guidelines, or by specifying which guidelines will be used.

Many applications of the Design Overlay Zone shown on the Official Zoning Maps are referred to as design districts. A design district may be divided into subdistricts. Subdistricts are created when an area within a design district has unique characteristics that require special consideration and additional design guidelines. The location and name of each design district and subdistrict is shown on maps 420-1 through 420-6 at the end of this chapter.

Other applications of the Design Overlay Zone shown on the Official Zoning Maps are not specific design districts. Some are adopted as part of a community planning project, and some are applied automatically when zoning is changed to CX, EX, RX, or IR.

### **33.420.025 Where These Regulations Apply**

The regulations of this chapter apply to all design overlay zones. Design review may also be a requirement of a plan district, other overlay zone, or as a condition of approval of a quasi-judicial decision.

### **33.420.041 When Design Review is Required**

Unless exempted by Section 33.420.045, Exempt From Design Review, design review is required for the following:

- A.** New development;
- B.** Exterior alterations to existing development;
- C.** Nonstandard improvements in the public right-of-way such as street lights, street furniture, planters, public art, sidewalk and street paving materials, and landscaping, which have received prior approval of the City Engineer. Improvements that meet the City Engineer's standards are exempt from design review;
- D.** Items identified in the Citywide Policy on Encroachments in the Public Right-of-Way or Title 17, Public Improvements, as requiring design review;
- E.** Removal of trees in the South Auditorium plan district;
- F.** Exterior signs larger than 32 square feet, except in the South Auditorium plan district, where all signs are subject to design review;
- G.** Where City Council requires design review of a proposal because it is considered to have major design significance to the City. In these instances, the City Council will provide design guidelines by which the proposal will be reviewed, and specify the review procedure;
- H.** Proposals using one of the provisions of the a, Alternative Design Density Overlay Zone, specified in Sections 33.405.040 through .080;
- I.** Proposals in the Albina Community plan district using the provisions of Section 33.505.220, Parking Requirement Reduction, or Section 33.505.230, Attached Residential Infill on Vacant Lots in R5-Zoned Areas;
- J.** Floating structures, except individual houseboats; and
- K.** In the Marquam Hill plan district, proposals to develop or improve formal open area required by Chapter 33.555. This includes designating existing open areas as formal open areas.

### **33.420.045 Exempt From Design Review**

The following items are exempt from design review:

- A.** If the site is a Historic or Conservation Landmark, or in a Historic or Conservation District, it is instead subject to the regulations for historic design review as set out in Chapter 33.445, Historic Resource Protection Overlay Zone;
- B.** Repair, maintenance, and replacement with comparable materials or the same color of paint;
- C.** Within the Terwilliger Design District, development that will not be visible from Terwilliger Boulevard;
- D.** Alterations to residential structures in RF through R1 zones, where the alterations are valued at \$10,000 or less;
- E.** Skylights;
- F.** Development associated with Rail Lines And Utility Corridors uses;
- G.** Exterior activities and development for Agriculture uses;
- H.** Modifications to a structure to meet the Americans With Disabilities Act's requirements in C, E, and I zones;
- I.** Development associated with Parks and Open Areas uses that do not require a conditional use review;
- J.** Proposals where a building or sign permit is not required;
- K.** In the IR zone:
  - 1. Development proposed or approved through a Conditional Use or Conditional Use Master Plan; or
  - 2. An expansion or alteration that does not require conditional use review under 33.815.040;
- L.** Parking lot landscaping that meets the development standards of this Title;
- M.** Rooftop mechanical equipment, other than radio frequency transmission facilities, that is added to the roof of an existing building if the building is at least 45 feet tall at the point of installation, and the mechanical equipment is set back at least 4 feet for every 1 foot of height of the equipment, measured from the edges of the roof or top of parapet;
- N.** Radio frequency transmission facilities operating at 1,000 watts ERP or less that meet the following:
  - 1. The antennas are added to the facade of an existing penthouse that contains mechanical equipment provided the antennas are no higher than the top of the penthouse, are flush mounted, and are painted to match the façade of the penthouse; and
  - 2. Accessory equipment is within 2 feet of the existing penthouse, is no higher than the top of the penthouse, and is painted to match the façade of the penthouse.
- O.** Exterior alterations to existing development and construction of detached accessory structures within the Sellwood-Moreland Design District;

- P.** Houseboats;
- Q.** Within the Marquam Hill Design District:
  - 1. Additions of floor area less than 25,000 square feet;
  - 2. Alterations that affect less than 50 percent of the area of a façade where the area affected is also less than 3,000 square feet;
  - 3. Exterior improvements less than 5,000 square feet, except for exterior improvements affecting areas counting towards the formal open area requirements of Section 33.555.260; or
  - 4. Landscaping not associated with formal open areas.
- R.** Awnings for each ground floor tenant, which meet the following requirements;
  - 1. If existing awnings on the same building façade have been approved through design review, or have been placed under the provisions of this subsection, the proposed awnings must match the following elements of the existing awnings: the sectional profile, structure, degree of enclosure, and placement vertically on the building. The awning also must meet R.2.c through f, below;
  - 2. If there are no existing awnings on the same building façade that have been approved through design review or placed using the provisions of this subsection, the proposed awnings must be a flat or shed configuration in sectional profile (see Figure 420-1), and meet the following:
    - a. Awnings must project at least three feet from the building wall façade;
    - b. The front valance of each awning may be no more than 12 inches high. See Figure 420-2;
    - c. Illumination may not be incorporated into awnings or awning structures;
    - d. One or more awnings may be proposed for each ground floor tenant, but the total area of awnings per ground floor tenant may not exceed 50 square feet, measured from the building elevation. See figure 420-2;
    - e. Awning covers must be made of Sunbrella™, Dickson Awning Fabrics™, Para Tempotest™, or a material with equivalent characteristics in terms of: durability, texture, and no-gloss sheen; and
    - f. Awnings must be at least 18 inches from all other awnings.
- S.** Within the St. Johns plan district, alterations to single-dwelling detached structures;
- T.** Public Art as defined in Chapter 5.74;
- U.** New Permit-Ready houses as described in Chapter 33.278, Permit-Ready Houses;
- V.** Within the North Interstate plan district, alterations to detached houses and accessory structures on sites not fronting on Interstate Avenue; and
- W.** Permitted Original Art Murals as defined in Title 4.

**CHAPTER 33.445**  
**HISTORIC RESOURCE PROTECTION OVERLAY ZONE**

(Added by Ord. No. 169987, effective 7/1/96. Amended by Ord. No. 171220, effective 6/27/97; Ord. No. 171589, effective 11/1/97; Ord. No. 174263, effective 4/15/00; Ord. No. 175204, effective 3/1/01; Ord. No. 175837, effective 9/7/01; Ord. No. 176193, effective 2/1/02; Ord. No. 176587, effective 7/20/02; Ord. No. 178832, effective 10/21/04; Ord. No. 178946, effective 1/7/05; Ord. No. 181357, effective 11/9/07; Ord. No. 182429, effective 1/16/09; Ord. No. 182962, effective 7/31/09.)

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## General

### **33.445.010 Purpose**

This chapter protects certain historic resources in the region and preserves significant parts of the region's heritage. The regulations implement Portland's Comprehensive Plan policies that address historic preservation. These policies recognize the role historic resources have in promoting the education and enjoyment of those living in and visiting the region. The regulations foster pride among the region's citizens in their city and its heritage. Historic preservation beautifies the city, promotes the city's economic health, and helps to preserve and enhance the value of historic properties.

### **33.445.020 Where These Regulations Apply**

Sections 33.445.010 through .810 apply to all historic resources. Sections 33.445.100 through .150 apply to Historic Landmarks, including those within Historic Districts and Conservation Districts. Sections 33.445.200 through .240 apply to Conservation Landmarks, including those within Historic Districts and Conservation Districts. Sections 33.445.300 through .330 apply to historic resources in Historic Districts. Sections 33.445.400 through .430 apply to historic resources in Conservation Districts. Sections 33.445.500 through .520 apply to historic resources listed in the City's Historic Resource Inventory.

### **33.445.030 Types of Historic Resource Designations and Map Symbols**

- A. Historic Landmark.** This type of resource may be an individual structure, site, tree, landscape, or other object that is of historic or cultural significance. A Historic Landmark generally derives its significance from at least two of the following:
- The importance of its designer, previous owners, or builder in local, state, or national history;
  - The quality of its architecture or landscaping;
  - The fact that it is one of a few remaining examples of a building type that is of significance in local, state, or national history;
  - Association with a significant cultural or ethnic group; or
  - The role it has played in shaping local, state, or national history.

Information supporting a specific resource's designation is found in the City's Historic Resource Inventory, its National Register nomination, or the local evaluation done in support of the resource's designation.

- B. Conservation Landmark.** This type of resource may be an individual structure, site, tree, landscape, or other object that is of historical or cultural interest at the local or neighborhood level. Conservation Landmarks are examples of developments that have helped create the character of the region's districts and neighborhoods. A Conservation Landmark generally derives its significance from at least two of the following:

4. Parking lot landscaping that meets the standards of this Title and does not include a wall or fence;
5. Improvements in the public right-of-way, such as street lights, street furniture, planters, public art, sidewalk and street paving materials, and landscaping, that meet the City Engineer's standards;
6. Rooftop mechanical equipment, other than radio frequency transmission facilities, that is added to the roof of an existing building if the building is at least 45 feet tall and the mechanical equipment is set back at least 4 feet for every 1 foot of height of the mechanical equipment, measured from the edges of the roof or top of parapet;
7. Public Art as defined in Chapter 5.74; and
8. Permitted Original Art Murals as defined in Title 4 if the mural is proposed on a building that is not identified as contributing to the historic significance of a Historic District.

### **33.445.330 Demolition of Historic Resources in a Historic District**

Historic Landmarks in a Historic District are subject to the regulations of Section 33.445.150. Conservation Landmarks in a Historic District are subject to the regulations of Section 33.445.240. Demolition of other historic resources within a Historic District requires demolition review to ensure their historic value is considered. The review period also ensures that there is an opportunity for the community to fully consider alternatives to demolition.

#### **A. Demolition review.**

1. When demolition review is required. Unless exempted by Subsection B, below, demolition of a historic resource in a Historic District is subject to demolition review if:
  - a. It is a structure that is identified as contributing to the historic significance of a Historic District; or
  - b. There is a covenant with the City that requires the owner to obtain City approval before demolishing or relocating the historic resource.
2. Issuance of a demolition permit after demolition review. If the review body for demolition review approves demolition of the resource, a permit for demolition will not be issued until the following are met:
  - a. The decision in the demolition review is final;
  - b. At least 120 days have passed since the date the Director of the Bureau of Development Services determined that the application was complete; and
  - c. A permit for a new building on the site has been issued. The demolition and building permits may be issued simultaneously.

**B. Exempt from demolition review.** Historic resources in Historic Districts required to be demolished because of the following are exempt from demolition review:

1. The Bureau of Development Services requires demolition due to an immediate danger to the health, safety, or welfare of the occupants, the owner, or that of the general public, as stated in Section 29.40.030 of Title 29, Property Maintenance Regulations; or
2. The Code Hearings Officer requires demolition, as provided for in Section 29.60.080 of Title 29, Property Maintenance Regulations.

### **Conservation Districts**

#### **33.445.400 Designation of a Conservation District**

Conservation Districts may be designated by the Historic Landmark Commission through a legislative procedure or may be designated through a quasi-judicial procedure.

- A. Designation by Historic Landmark Commission.** Conservation District designation may be established by the Historic Landmark Commission through a legislative procedure, using the approval criteria of Section 33.846.030.C.
- B. Quasi-judicial designation.** Conservation District designation may be established through a quasi-judicial procedure; historic designation review is required.

#### **33.445.410 Removal of a Conservation District Designation**

Removal of a resource's designation as a Conservation District requires a historic designation removal review.

#### **33.445.415 Preservation Agreements in Conservation Districts**

Historic resources in Conservation Districts are eligible for the preservation agreement detailed in Section 33.445.600.

#### **33.445.420 Development and Alterations in a Conservation District**

Building a new structure or altering an existing structure in a Conservation District requires historic design review. Historic design review ensures the resource's historic value is considered prior to or during the development process.

- A. When historic design review is required in a Conservation District.** Unless exempted by Section 33.445.420.B., below, the following proposals in a Conservation District are subject to historic design review. Some may be eligible to use the Community Design Standards as an alternative; see Section 33.445.710:
  1. Exterior alteration of a primary structure;
  2. Building a new structure;
  3. Exterior signs;
  4. Nonstandard improvements in the public right-of-way, such as street lights, street furniture, planters, public art, sidewalk and street paving materials, and landscaping, that have not received prior approval of the City Engineer;
  5. Proposals using one of the provisions of the a, Alternative Design Density Overlay Zone, specified in Sections 33.405.040 through .080; and

6. Proposals in the Albina Community plan district using the provisions of Section 33.505.220, Parking Requirement Reduction, or Section 33.505.230, Attached Residential Infill on Vacant Lots in R5-Zoned Areas.

**B. Exempt from historic design review.**

1. Construction of a detached accessory structure with 300 square feet or less of floor area when the accessory structure is at least 40 feet from a front property line;
2. Changes that do not require a building, site, zoning, or sign permit from the City, and that will not alter the exterior material or color of a resource having exterior materials or color specifically listed in the Historic Resource Inventory, Historic Landmark nomination, or National Register nomination as an attribute that contributes to the resource's historic value;
3. Normal repair and maintenance other than change of facade color where exterior material or color is specifically listed in the Historic Resource Inventory, Historic Landmark nomination, or National Register nomination as an attribute that contributes to the resource's historic value;
4. Parking lot landscaping that meets the standards of this Title and does not include a wall or fence;
5. Improvements in the public right-of-way, such as street lights, street furniture, planters, public art, sidewalk and street paving materials, and landscaping, that meet the City Engineer's standards;
6. Rooftop mechanical equipment, other than radio frequency transmission facilities, that is added to the roof of an existing building if the building is at least 45 feet tall and the mechanical equipment is set back at least 4 feet for every 1 foot of height of the mechanical equipment, measured from the edges of the roof or top of parapet;
7. Public Art as defined in Chapter 5.74; and
8. Permitted Original Art Murals as defined in Title 4 if the mural is proposed on a building that is not identified as contributing to the historic significance of a Conservation District.

**33.445.430 Demolition of Historic Resources in a Conservation District**

Historic Landmarks in a Conservation District are subject to the regulations of Section 33.445.150. Conservation Landmarks in a Conservation District are subject to the regulations of Section 33.445.240. Demolition of other historic resources in a Conservation District requires one of two types of review to ensure the resource's historic value is considered prior to or during the development process. The review period also ensures that there is an opportunity for the community to fully consider alternatives to demolition.

**A. Demolition review.**

1. When demolition review is required. Unless exempted by Subsection C, below, demolition of a historic resource in a Conservation District is subject to demolition review if there is a covenant with the City that requires the owner to obtain City approval before demolishing or relocating the resource.

2. Issuance of a demolition permit after demolition review. If the review body for demolition review approves demolition of the resource, a permit for demolition will not be issued until the following are met:
    - a. The decision in the demolition review is final;
    - b. At least 120 days have passed since the date the Director of the Bureau of Development Services determined that the application was complete; and
    - c. A permit for a new building on the site has been issued. The demolition and building permits may be issued simultaneously.
- B. Demolition delay review.** Unless addressed by Subsection A, above, or exempted by Subsection C, below, all primary structures in Conservation Districts are subject to demolition delay review.
- C. Exempt from demolition review and demolition delay review.** The following are exempt from demolition review and demolition delay review:
1. Historic resources in Conservation Districts required to be demolished because:
    - a. The Bureau of Development Services requires demolition due to an immediate danger to the health, safety, or welfare of the occupants, the owner, or that of the general public, as stated in Section 29.40.030 of Title 29, Property Maintenance Regulations; or
    - b. The Code Hearings Officer requires demolition, as provided for in Section 29.60.080 of Title 29, Property Maintenance Regulations.
  2. Demolition of a structure that is identified as noncontributing to the historic significance of a Conservation District.

### **Historic Resource Inventory Listing**

#### **33.445.500 Listing in the Historic Resource Inventory**

A historic resource may be listed in the City's Historic Resource Inventory by the Historic Landmarks Commission as the result of an area planning study reviewed through a legislative procedure. Consent of the owner of the resource is required.

#### **33.445.510 Removal of Historic Resource Inventory Listing**

- A. Automatic removal of listing in the Historic Resource Inventory.** When a resource listed in the City's Historic Resource Inventory is demolished or destroyed by causes beyond the control of the owner, its listing in the Inventory is automatically removed.
- B. Requests for removal.** A resource listed in the City's Historic Resource Inventory will be removed from the Inventory if the owner sends a written request to the Bureau of Development Services. The resource will be removed from the Inventory on the date that the Bureau of Development Services receives the request.

- C. Removal after demolition.** When a resource listed in the City's Historic Resource Inventory is demolished, after either approval of demolition through demolition review or after demolition delay, its listing in the Inventory is automatically removed.

**33.445.515 Preservation Agreements for Resources Listed in the Historic Resource Inventory**

Resources listed in the Historic Resource Inventory are eligible for the preservation agreement detailed in Section 33.445.600.

**33.445.520 Demolition of Resources Listed in the Historic Resource Inventory**

**A. Demolition review.**

1. When demolition review is required. Unless exempted by Subsection C, below, demolition of a resource listed in the Historic Resource Inventory is subject to demolition review if there is a covenant with the City that requires the owner to obtain City approval before demolishing or relocating the resource.
2. Issuance of a demolition permit after demolition review. If the review body for demolition review approves demolition of the resource, a permit for demolition will not be issued until the following are met:
  - a. The decision in the demolition review is final;
  - b. At least 120 days have passed since the date the Director of the Bureau of Development Services determined that the application was complete; and
  - c. A permit for a new building on the site has been issued. The demolition and building permits may be issued simultaneously.

- B. Demolition delay review.** Unless addressed by Subsection A, above, or exempted by Subsection C, below, Rank I, II, or III resources listed in the City's Historic Resource Inventory are subject to demolition delay review.

- C. Exempt from demolition review and demolition delay review.** Rank I, II, or III resources listed in the City's Historic Resource Inventory that are required to be demolished because of the following are exempt from demolition review and demolition delay review:

1. The Bureau of Development Services requires demolition due to an immediate danger to the health, safety, or welfare of the occupants, the owner, or that of the general public, as stated in Section 29.40.030 of Title 29, Property Maintenance Regulations; or
2. The Code Hearings Officer requires demolition, as provided for in Section 29.60.080 of Title 29, Property Maintenance Regulations.

## **Historic Preservation Agreements and Historic Preservation Incentives**

### **33.445.600 Preservation Agreements**

- A. Purpose.** Preservation agreements increase the potential for historic resources to be used, protected, renovated, and preserved. They provide a mechanism for owners to commit to good stewardship of their historic resources.
- B. Eligibility for preservation agreements.** All historic resources are eligible to use the preservation agreement described in this Section.
- C. Covenant.** Owners who wish to enter into a preservation agreement must execute a covenant with the City. The covenant may not be revoked or rescinded. The covenant must:
  - 1. State that the owner agrees that the historic resource is subject to demolition review, and the owner will not demolish the historic resource unless the City approves the demolition or relocation-through demolition review;
  - 2. State that the owner agrees that the historic resource may be relocated only if the City approves the relocation through the following reviews:
    - a. Sending site. The sending site is subject to Section 33.846.080, Demolition Review; and
    - b. Receiving site. The receiving site is subject to both Section 33.846.060, Historic Design Review and Section 33.846.030, Historic Designation Review; and
  - 3. Meet the requirements of Section 33.700.060, Covenants with the City.

### **33.445.610 Historic Preservation Incentives**

- A. Purpose.** Historic preservation incentives increase the potential for historic resources to be used, protected, renovated, and preserved. Incentives make preservation more attractive to owners of historic resources because they provide flexibility and economic opportunities.
- B. Eligibility for historic preservation incentives.** Conservation Landmarks and Historic Landmarks are eligible to use the historic preservation incentives in Subsection C if the requirements of Subsection D are met. Sites with resources identified as contributing to the historic significance of a Historic District or a Conservation District are eligible to use the incentives in Paragraphs C.3 through C.8 if the requirements of Subsection D are met.
- C. Incentives.** The following incentives are allowed if the requirements of Subsection D, Covenant, are met. The incentives are:
  - 1. Transfer of density and floor area ratio (FAR). Transfer of density from a landmark to another location is allowed in Multi-Dwelling, Commercial, and Employment zones. In Multi-Dwelling zones, the transfer is regulated by Subsection 33.120.205.E, Transfer of Density. In Commercial and Employment zones, the transfer of FAR is regulated by Subsections 33.130.205.C and 33.140.205.C.

2. Additional density in Single-Dwelling zones. Landmarks in Single-Dwelling zones may be used as multi-dwelling structures, up to a maximum of one dwelling unit for each 1,000 square feet of site area. No additional off-street parking is required, but the existing number of off-street parking spaces must be retained. The landmark may be expanded and the new floor area used for additional dwelling units only if the expansion is approved through historic design review.
  3. Additional density in Multi-Dwelling zones. Structures located in multi-dwelling zones may be used as multi-dwelling structures, with no maximum density. No additional off-street parking is required, but the existing number of off-street parking spaces must be retained. The building may be expanded and the new floor area used for additional dwelling units only if the expansion is approved through historic design review.
  4. Daycare in residential zones. Daycare is an allowed use in residential zones.
  5. Conditional uses in R, C, and E zones. In R, C, and E zones, applications for conditional uses are processed through a Type II procedure.
  6. Exemption from minimum density. Minimum housing density regulations do not apply.
  7. Nonresidential uses in the RX zone. In the RX zone, except on sites which front on the Park Blocks frontages shown on Map 510-12, up to 100 percent of the floor area of a structure may be approved for Retail Sales And Service, Office, Major Event Entertainment, or Manufacturing And Production through Historic Preservation Incentive Review.
  8. Nonresidential uses in the RH, R1 and R2 zones. In the RH, R1 and R2 zones, up to 100 percent of the floor area of a structure may be approved for Retail Sales And Service, Office, or Manufacturing And Production as follows:
    - a. Review required. The nonresidential uses must be approved through Historic Preservation Incentive Review; and
    - b. Previous nonresidential use required. The last use in the structure must have been in a nonresidential use category and have been allowed when established; if part of the structure was in residential use, the proposal must include at least as many dwelling units as were part of the last allowed use or uses. If the last allowed use was residential only, the structure is not eligible for this incentive.
- D. Covenant.** The owner must execute a covenant with the City. The covenant may not be revoked or rescinded. The covenant must:
1. State that the owner agrees that the historic resource is subject to demolition review, and the owner will not demolish or relocate the historic resource unless the City approves the demolition or relocation through demolition review; and
  2. Meet the requirements of Section 33.700.060, Covenants with the City.

### Community Design Standards

#### 33.445.700 Purpose

The Community Design Standards provide an alternative process to historic design review for some proposals. For some proposals, the applicant may choose to go through the historic design review process set out in Chapter 33.846, Historic Reviews, or to meet the objective standards of Chapter 33.218, Community Design Standards. The standards for signs are stated in Title 32, Signs and Related Regulations. Proposals that do not meet the Community Design Standards—or where the applicant prefers more flexibility—must go through historic design review.

#### 33.445.710 When Community Design Standards May Be Used.

Unless excluded by Section 33.445.720, When Community Design Standards May Not Be Used, proposals that meet all of the requirements of this section may use the Community Design Standards as an alternative to historic design review.

**A. Location.** The proposal is:

1. A Conservation Landmark located outside of the Central City plan district;
2. In a Conservation District; or
3. In the Albina Community plan district shown on Map 505-1.

**B. Maximum limits.** The proposal is within the maximum limits of Table 445-1.

<b>Table 445-1 Maximum Limits for Use of the Community Design Standards</b>	
<b>Zones</b>	<b>Maximum Limit—New Dwelling Units or Floor Area</b>
Single Dwelling Zones	5 dwelling units
R2 & R3 Zones	10 dwelling units
R1, RH, RX, C, & E Zones	20,000 sq. ft. of floor area
I Zones	40,000 sq. ft. of floor area
IR Zone	See institution's Impact Mitigation Plan.
<b>Zones</b>	<b>Maximum Limit—Exterior Alterations</b>
All except IR	<ul style="list-style-type: none"> <li>•Alterations to the street-facing facade that affect less than 50 percent of the area of the facade, regardless of the square footage of the area affected; and</li> <li>•Alterations to the street-facing facade that affect less than 1,500 sq. ft. of the facade, regardless of the percentage of the facade affected.</li> </ul>
IR Zone	See institution's Impact Mitigation Plan.

#### 33.445.720 When Community Design Standards May Not Be Used.

The Community Design Standards may not be used as an alternative to historic design review as follows:

- A.** For institutional uses in residential zones, except when specifically allowed by an approved Impact Mitigation Plan or Conditional Use Master Plan;
- B.** For alterations to sites where there is a nonconforming use;

- C. For mixed-use or non-residential development in the RF through R1 zones;
- D. If the site is in a Historic District or the proposal is for alteration to a Historic Landmark; and
- E. If the proposal uses Section 33.405.050, Bonus Density for Design Review.

### **Demolition Reviews**

#### **33.445.800 Types of Reviews.**

There are two types of review that may be required before a historic resource is demolished. Other sections of this chapter describe when each review is required. The types of review are:

- A. **Demolition Delay Review.** See Section 33.445.810;
- B. **Demolition Review.** See Section 33.846.080.

#### **33.445.805 Supplemental Application Requirements.**

- A. **Applicability.** In addition to the application requirements of Section 33.730.060, a demolition review application requesting approval based on criterion 33.846.080.C.1, or on both 33.846.080.C.1 and 33.846.080.C.2, requires two copies of a written statement that includes the information listed in Subsection B. An application requesting approval based solely on criterion 33.846.080.C.2 requires two copies of a written statement that includes the information listed in Paragraphs B.1 through B.4. Applicants may also submit any additional information relevant to the specific review and approval criteria.
- B. **Application requirements.**
  1. Statements from a licensed engineer and a licensed architect with experience in renovation, restoration, or rehabilitation as to the structural soundness of the structure and its suitability for continued use, renovation, restoration, or rehabilitation;
  2. Statements from developers, real estate consultants, appraisers, or other real estate professionals experienced in rehabilitation as to the economic feasibility of restoration, renovation, or rehabilitation of existing structures or objects;
  3. All studies commissioned by the owner as to profitable renovation, rehabilitation, or utilization of any structures or objects for alternative use, or a statement that none were obtained;
  4. A summary of the historic preservation incentives and programs available and the extent to which they were explored by the applicant;
  5. The amount paid for the property by the owner, the date of purchase, and the party from whom purchased, including a description of the relationship, if any, between the owner and the person from whom the property was purchased;
  6. The current balance of any mortgages or any other financing secured by the property and the annual debt service, if any, for the previous two years;

7. All appraisals obtained within the previous two years by the owner or applicant in connection with purchase, offerings for sale, financing or ownership of the property, or a statement that none were obtained;
8. All listings of the property for sale or rent, price asked and offers received, if any, within the previous four years, or a statement that none were obtained;
9. Itemized income and expense statements for the property for the previous two years;
10. Estimate of the cost of the proposed demolition; and
11. Form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture, or other.

**C. Exceptions.** The Director of BDS may waive items listed if they are not applicable to the specific review and the applicant may choose not to submit any or all missing information requested by the Director of BDS, as specified in Section 33.730.060.

### **33.445.810 Demolition Delay Review.**

**A. Purpose.** Demolition delay allows time for consideration of alternatives to demolition, such as restoration, relocation, or architectural salvage.

**B. Procedure for Demolition Delay Review.** Demolition delay review is a nondiscretionary administrative process with public notice but no hearing. Decisions are made by the Director of BDS and are final.

1. Application. The applicant must submit an application for a demolition permit.
2. Notice of application.
  - a. Posting notice on the site. Within 14 days of applying for a demolition permit, the applicant must post a notice on the site of the historic resource proposed for demolition. The posting must meet the following requirements:
    - (1) Number and location of posted notices. Notice must be placed on each frontage of the site occupied by the historic resource proposed for demolition. Notices must be posted within 10 feet of the street lot line and must be visible to pedestrians and motorists. Notices may not be posted in a public right-of-way;
    - (2) Content of the posted notice. The notice must include the following information:
      - The statement, “Structure to be demolished;”
      - The statement, “Demolition of this structure has been delayed to allow time for consideration of alternatives to demolition. Alternatives to demolition might include restoration, relocation, or architectural salvage;”

- The address of the structure proposed for demolition;
  - The name, address, and telephone number of the owner or the party acting as an agent for the owner;
  - The date of the posting; and
  - A statement that a demolition permit may be issued 120 days after application was made for demolition, and the date that the permit will be issued.
- (3) Removal of the posted notice. The posted notice must not be removed until the demolition permit is issued. The posted notice must be removed within 30 days of the issuance of the demolition permit.
- b. Mailed notice.
- (1) Notice to recognized associations. Within 14 days of receiving the application for a demolition permit, the Director of BDS will mail a notice of the proposed demolition to all recognized organizations within 1,000 feet of the site of the resource and to the State Historic Preservation Office. If the proposal is to demolish a resource in a Conservation District or Historic District and the district has a Historic Advisory Committee that has been recognized by the neighborhood association, notice will also be sent to the Historic Advisory Committee. The notice will include the same information as in Subparagraph B.1.b, above.
- (2) Notice to other interested parties. The Director of BDS will maintain a subscription service for organizations and individuals who wish to be notified of applications for demolition of historic resources subject to demolition delay review. There is a fee for this notification service. Within 14 days of receiving the application for a demolition permit, the Director of BDS will mail a notice of the proposed demolition to all subscribers. The notice will include the same information as in Subparagraph B.1.b, above.
3. Decision. The Director of BDS will issue the demolition permit 120 days after receiving the application if the following requirements have been met:
- a. Photographic documentation. The applicant must submit photographs of the features of the resource that were identified when the resource was nominated, designated, placed within a Historic District or Conservation District, or placed on the Historic Resource Inventory. BDS will retain a copy of the documentation for the purpose of public information.
- b. Response to offers of relocation or salvage. The applicant must submit a letter stating that the applicant responded to all offers to relocate the resource, or to salvage elements of the resource during demolition. The letter must also identify those who submitted offers, and the applicant's response to those offers.



## CHAPTER 33.663

### FINAL PLATS

(Added by: Ord. No. 179980, effective 4/22/06. Amended by: Ord. No. 182429, effective 1/16/09; Ord. No. 182810, effective 5/27/09.)

#### Sections:

##### General

33.663.010 Purpose

33.663.020 Where These Regulations Apply

##### Review of Final Plats

33.663.100 Review Procedures

33.663.110 Voiding of Final Plat Application

##### Standards for Approval

33.663.200 Approval Standards

33.663.210 Staged Final Plat

##### Changes to Final Plat

33.663.310 Changes to Final Plat Before Recording

33.663.320 Changes to Final Plat After Recording

### General

#### **33.663.010 Purpose**

These regulations ensure that Final Plats are processed with the appropriate level of city review. This chapter contains clear procedures and approval standards for Final Plats.

#### **33.663.020 Where These Regulations Apply**

- A. Generally.** The regulations of this chapter apply to proposals for Final Plats in all zones, except those listed in Subsection B and C.
- B. Final Plats of Manufactured Dwelling Parks.** The regulations for the review of Final Plats of Manufactured Dwelling Parks are in Chapter 33.670, Review of Land Divisions of Manufactured Dwelling Parks.
- C. Final Plats for Large Sites in Industrial Zones.** The regulations for the review of Final Plats for Large Sites in Industrial Zones are in Chapter 33.664, Review of Land Divisions on Large Sites in Industrial Zones.

### Review of Final Plats

#### **33.663.100 Review Procedure**

Final Plats are reviewed through a non-discretionary, administrative procedure. The decision of the Director of BDS is final and is indicated through a signature on the Final Plat.

### **33.663.110 Voiding of Final Plat Application**

- A. Generally.** An application for Final Plat review will be voided where:
1. The Director of BDS has sent written comments to the applicant, requesting additional information or identifying outstanding requirements that must be completed prior to final plat approval; and
  2. The final plat review has remained inactive for 180 days from the date the Director's letter was mailed. The plat is considered inactive if the applicant has not provided any of the requested information, or completed steps toward meeting any of the outstanding requirements for final plat approval.
- B. Exception.** For final plat applications that were submitted before December 31, 2009, the 180 day period identified in A.2, above, is extended to 365 days. This exception applies only to applications that have not expired or been voided as of May 27, 2009.

### **Standards for Approval**

#### **33.663.200 Approval Standards**

These approval standards apply to land divisions where the Preliminary Plan was reviewed under the regulations of Chapter 33.660 or Chapter 33.662. The Final Plat for land divisions will be approved if the Director of BDS finds that the applicant has shown that all of the approval standards have been met. The approval standards are:

- A. Conformance with Preliminary Plan.** The Final Plat must conform to the approved Preliminary Plan. The Preliminary Plan approval, through its conditions of approval, may provide for a specific range of variations to occur with the Final Plat. If the Preliminary Plan does not state otherwise, and the regulations of this Title continue to be met, variations within the following limits are allowed and are considered to be in conformance with the Preliminary Plan. Allowed variations are:
1. A decrease in the number of lots by one, if minimum density requirements continue to be met;
  2. An increase or decrease in the width or depth of any lot by less than 5 percent;
  3. A decrease in the area of any lot by less than 5 percent;
  4. An increase in the area of any lot;
  5. An increase or decrease of up to 5 percent in the area of a stormwater tract;
  6. An increase of up to 5 percent in the area of a shared parking tract;
  7. An increase in the area of the following tracts or easements:
    - a. Environmental resource tracts;

### **33.730.110 Ex parte Contact**

- A. Private contacts.** Prior to rendering a decision, a member of a review body may not communicate, directly or indirectly, with any person interested in the outcome concerning the decision or action pending before the review body. "Person interested in the outcome" means a person who has some concern, interest in, or relationship to the decision or action pending before the review body. Should such communication occur, at the beginning of the first hearing after which the communication occurs, the member of the review body must:
1. Publicly announce the content of the communication and provide any person an opportunity to rebut the substance of the communication; and
  2. If the communication was in written or tangible form, place a copy of the communication into the record.
- B. BDS contact.** The Director of BDS and BDS staff may communicate with applicants, owners, their representatives, citizens, City agencies and other public and private organizations as part of the processing of land use applications.

### **After the Final Decision**

#### **33.730.120 Recording an Approval**

To record a final decision for approval, the applicant pays the recording fee to the County Recorder. The County Recorder records the final decision in the appropriate county records. The decision must be recorded before the approved use is permitted, any permits are issued, or any changes to the Comprehensive Plan Map or Zoning Map are made.

#### **33.730.130 Expiration of an Approval**

- A. Expiration of unused land use approvals issued prior to 1979.** All unused land use approvals issued prior to 1979, except for zoning map or Comprehensive Plan map amendments, where the proposed development is not constructed or where a subdivision or partition is not recorded, are void.
- B. When approved decisions expire.**
1. Land use approvals, except as otherwise specified in this section, expire if:
    - a. Generally.
      1. Within 3 years of the date of the final decision a City permit has not been issued for approved development; or
      2. Within 3 years of the date of the final decision the approved activity has not commenced.
    - b. Exception. Final decisions that became effective between May 27, 2006 and December 31, 2008 expire if a City permit has not been issued for approved development or the approved activity has not commenced by June 30, 2012.
  2. Zoning map and Comprehensive Plan map amendments do not expire.

3. Conditional Use Master Plans and Impact Mitigation Plans expire as specified in Chapters 33.820 and 33.848, or in the plans themselves.
4. Multiple developments.
  - a. Generally. Where a site has received approval for multiple developments, and a City permit is not issued for all development within 3 years of the date of the final decision, the approval does not expire but no additional development may occur without another review. All conditions of approval continue to apply. Examples of multiple developments include phased development and multi-building proposals.
  - b. Exception. On sites where the final decisions became effective between May 27, 2006 and December 31, 2008, and a City permit is not issued for all development by June 30, 2012, the approval does not expire but no additional development may occur without another review. All conditions of approval continue to apply.
5. Planned Developments. Where a Planned Development (PD) has been approved, and a building permit is not issued for all development within 10 years of the date of the final decision, the approval does not expire but no additional development may occur without another review. All conditions of approval continue to apply.
6. Preliminary plans.
  - a. Generally. Approved preliminary plans for land divisions expire if within 3 years of the date of the final decision an application for approval of Final Plat has not been submitted.
  - b. Exception. Final decisions on preliminary plans that became effective between May 27, 2006 and December 31, 2008 expire if an application for approval of Final Plat has not been submitted by June 30, 2012.
7. Final Plats. Final Plats expire if they are not submitted to the County Recorder to be recorded within 90 days of the final decision.
8. Large industrial sites. Where the Preliminary Plan is approved under the provisions of Chapter 33.664, Review of Land Divisions on Large Sites in Industrial Zones, the following applies:
  - a. Generally.
    1. The approved Preliminary Plan expires if within 3 years of the final decision an application for approval of a Final Plat for part or all of the site has not been submitted.
    2. Applications for approval of a Final Plat for the entire site must be submitted within 5 years of the date of final approval of the Preliminary Plan. Where Final Plat approval has not been requested for portions of the site within this time limit, the Preliminary Plan approval does not expire, but can no longer be used as a basis for Final Plats; all conditions continue to apply, but no new lots may be created without another Preliminary Plan Review.
  - b. Exception. Final decisions for Preliminary Plans that became effective between May 27, 2006 and December 31, 2008 expire if an application for approval of a Final Plat for part or all of the site has not been submitted

by June 30, 2012. Where Final Plat approval has not been requested for portions of the site within this time limit, the Preliminary Plan approval does not expire, but can no longer be used as a basis for Final Plats; all conditions continue to apply, but no new lots may be created without another Preliminary Plan Review.

9. Staged Final Plats. Where the Preliminary Plan is approved under the provisions of Sections 33.633.200 through .220, Staged Final Plats, the following applies:
  - a. Application for approval of a Final Plat for part or all of the site.
    1. Generally. The approved Preliminary Plan expires if within 3 years of the final decision an application for approval of a Final Plat for part or all of the site has not been submitted.
    2. Exception. Final decisions for Preliminary Plans that became effective between May 27, 2006 and December 31, 2008 expire if an application for approval of a Final Plat for part or all of the site has not been submitted by June 30, 2012.
  - b. Applications for approval of a Final Plat for the entire site. Applications for approval of a Final Plat for the entire site must be submitted within 5 years of the date of submittal of the first Final Plat application. Where Final Plat approval has not been requested for portions of the site within this time limit, the Preliminary Plan approval does not expire, but can no longer be used as a basis for Final Plats; all conditions continue to apply, but no new lots may be created without another Preliminary Plan Review.
10. Land use approvals in conjunction with a land division. Land use approvals reviewed concurrently with a land division do not expire if they meet all of the following. This includes Planned Unit Developments (PUDs) and Planned Developments (PDs) reviewed in conjunction with a land division. This also includes amendments made to land use approvals where the original approval was reviewed concurrently with a land division:
  - a. The decision and findings for the land division specify that the land use approval was necessary in order for the land division to be approved;
  - b. The final plat of the land division has not expired; and
  - c. Development or other improvements have been made to the site. Improvements include buildings, streets, utilities, grading, and mitigation enhancements. The improvements must have been made within 3 years of approval of the final plat. For final plats approved between May 27 2006 and December 31, 2008, the improvements must have been made by June 30, 2012.
11. Land use approvals in conjunction with a Planned Unit Development (PUD) or Planned Development (PD). Land use approvals reviewed concurrently with a PUD or PD do not expire if they meet all of the following. If the PUD or PD is as described in Paragraph B.5, the land use approvals reviewed in conjunction with the PUD or PD do not expire, but no additional development may occur without another review.

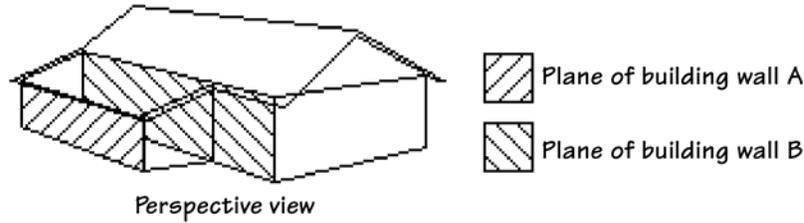
Land use approvals reviewed in conjunction with a PUD or PD and a land division are subject to Paragraph B.10 rather than the regulations of this paragraph:

- a. The decision and findings for the PUD or PD specify that the land use approval was necessary in order for the PUD or PD to be approved;
  - b. The PUD or PD has not expired;
  - c. Development or other improvements have been made to the site. Improvements include buildings, streets, utilities, grading, and mitigation enhancements. The improvements must have been within 3 years of final approval of the PUD or PD. For a PUD or PD receiving final approval between May 27, 2006 and December 31, 2008, the improvements must have been made by June 30, 2012.
12. Expedited Land Divisions. Land Divisions reviewed through the Expedited Land Division procedure in 33.730.013, are subject to the regulations of ORS 197.365 through .375. When the regulations of ORS 197.365 through .375 conflict with the regulations of this section, the regulations in ORS supercede the regulations of this section.
- C. Deferral of the expiration period.** If a decision is appealed beyond the jurisdiction of the City, the expiration period will not begin until review before the court(s) or administrative agency has been completed, including proceedings on remand to the City. In this case, the expiration period will begin to run on the date of final disposition of the case (the date when an appeal may no longer be filed).
- D. Expiration of adjustments approved prior to March 16, 2001.** Adjustments to parking lot interior landscaping requirements approved prior to March 16, 2001 became void on March 16, 2001. Parking lot interior landscaping approved through an adjustment prior to March 16, 2001 is nonconforming development.

#### **33.730.140 Requests for Changes to Conditions of Approval**

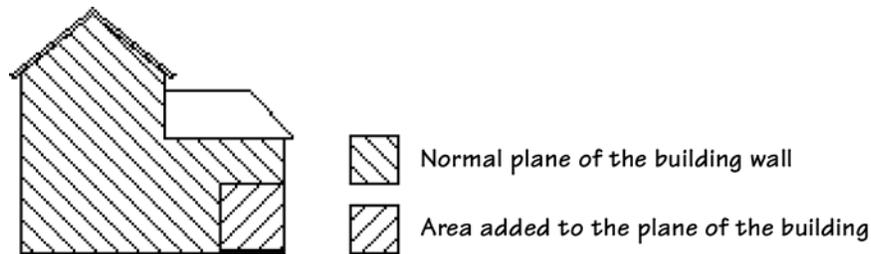
Requests for changes to conditions of approval are processed using the current procedure assigned to the land use review and the current approval criteria for the original land use review, unless this Title specifies another procedure or set of approval criteria. In the case of zone change requests filed before January 1, 1981, the Type II procedure applies. In the case of land use reviews that are no longer required by this Title, the most comparable review and procedure applies. For example, for variance requests, the procedures for adjustments apply. See also Section 33.700.110, Prior Conditions of Land Use Approvals.

**Figure 930-11**  
**Plane of a Building Wall**



Where the plane of a building wall contains portions that are wider than areas of the wall that are below it, the calculation of area is made using the wider dimension and extending the plane to the open area below. See Figure 930-12.

**Figure 930-12**  
**Additions to the Plane of a Building Wall**



### **33.930.090 Determining the Garage Wall Area**

The garage wall area is determined by calculating the area of the specific side of a structure that is backed by garage space. The garage wall area is not limited to the area of the garage door; it includes all the area on the specified side of a structure between the ceiling, floor, and walls of the garage (see Figure 930-13). For carports, the garage wall area is determined by calculating the area of a vertical plane extending from the outer edges of the roof to the nearest grade. The area within a gable is not included in the calculation. (See Figure 930-14).

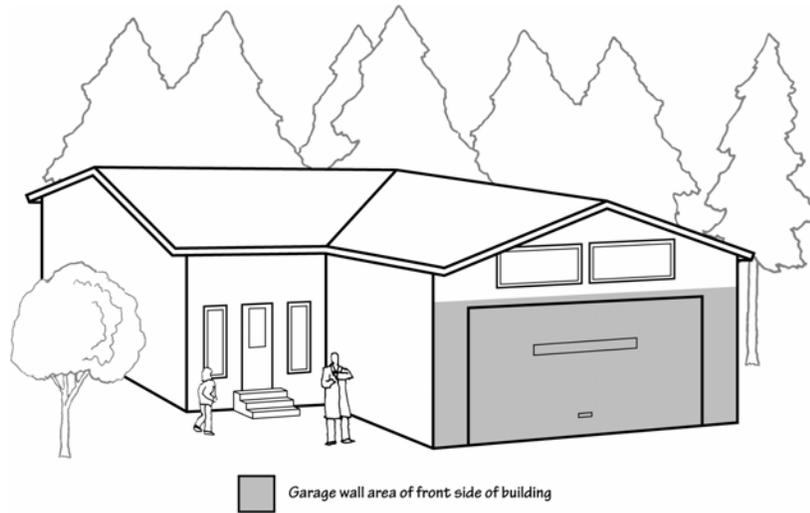
### **33.930.100 Measuring Lot Widths and Depths**

- A. Single-Dwelling zones.** In the single-dwelling zones, lot width is measured by placing a rectangle along the minimum front building setback line. Where the setback line is curved, the rectangle is placed on the line between the intersection points of the setback line with the side lot lines. See Figure 930-20.

The rectangle must have a minimum width equal to the minimum lot width specified for the zone in Chapters 33.610 and 33.611. The rectangle must have a minimum depth of 40 feet, or extend to the rear property line, whichever is less. The rectangle must fit entirely within the lot. See Figure 930-20.

- B. All other zones.** In all other zones, lot widths and depths are measured from the midpoints of opposite lot lines. See Figure 930-15.

**Figure 930-13  
Garage Wall Area**



**Figure 930-14  
Garage Wall Area (Carport)**

