

**ORDINANCE 2762**

**AN ORDINANCE OF THE CITY OF LAKE OSWEGO AMENDING LOC 50.06.003.1, LOC 50.07.007.2 AND LOC 50.10.003.2 OF CHAPTER 50 (COMMUNITY DEVELOPMENT CODE) FOR THE PURPOSE OF UPDATING THE FLAG LOT STANDARDS REGARDING LANDSCAPING, SETBACKS AND PARKING; LIMITING THE NUMBER OF FLAG LOTS SERVED BY AN ACCESS LANE TO TWO AND NUMBER OF LOTS SERVED BY AN ACCESS LANE TO THREE LOTS; REMOVING THE REQUIREMENT TO CONNECT ACCESS LANES; AMENDING THE DEFINITION OF FLAG LOT, AND ADOPTING FINDINGS (LU 17-0052).**

WHEREAS, notice of the public hearing for consideration of this Ordinance was duly given in the manner required by law; and

WHEREAS, public hearings before the Planning Commission were held on October 9 and November 27, 2017, at which the staff report, testimony, and evidence were received and considered; and

WHEREAS, the Planning Commission has recommended that LU 17-0052 be approved by the City Council; and

WHEREAS, public hearings on LU 17-0052 was held before the Lake Oswego City Council on January 2 and February 6, 2018, at which the staff report, testimony, and evidence were received and considered; and

WHEREAS, the Council finds that the Community Development Code should be amended to update the Access and Flag Lot standards; and

The City of Lake Oswego ordains as follows:

**Section 1.** The City Council adopts the Findings and Conclusions (LU 17-0052), attached as Attachment 1.

**Section 2.** The Lake Oswego Code is amended by adding the new text shown in underlined type and deleting text shown in ~~striketrough~~ type as shown in Attachment 2.

**Section 3. Severability.** The provisions of this ordinance are severable. If any portion of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

**Section 4. Effective date.** As provided by Section 35.C. of the Lake Oswego Charter, this ordinance shall take effect on the 30th day following enactment.

Enacted at the meeting of the Lake Oswego City Council of the City of Lake Oswego held on the 6th day of March, 2018.


AYES: Mayor Studebaker, Kohlhoff, O'Neill, Buk, Manz, LaMotte, Gudman

NOES: None

ABSENT: None

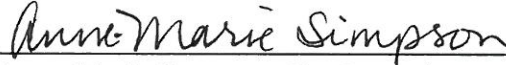
ABSTAIN: None

EXCUSED: None


  
\_\_\_\_\_  
Kent Studebaker, Mayor

Dated: March 7, 2018

ATTEST:

  
\_\_\_\_\_  
Anne-Marie Simpson, City Recorder

APPROVED AS TO FORM:

  
\_\_\_\_\_  
David Powell  
City Attorney



1 B. City of Lake Oswego Comprehensive Plan:  
2 Development (Community Development Code): Policy A-1.b  
3 Design Standards and Guidelines: Policies C-1 and C-5  
4 Land Use Administration: Policy D-1  
5 Inspiring Spaces and Places: Goal 1, Policy 1  
6 Housing Choice and Affordability: Policy B-1  
7 Complete Neighborhoods: Policy C-7  
8 Community Culture: Civic Engagement Policies 1 and 9

6 C. City of Lake Oswego Community Development Code:  
7 LOC 50.07.003.3.c Published Notice for Legislative Hearing  
8 LOC 50.07.003.16.a Legislative Decisions Defined  
9 LOC 50.07.003.16.b Criteria for Legislative Decision  
10 LOC 50.07.003.16.c Required Notice to DLCD  
11 LOC 50.07.003.16.d Planning Commission Recommendation Required  
12 LOC 50.07.003.16.e City Council Review and Decision

11 **FINDINGS AND REASONS**

12 As findings supporting its decision, the City Council incorporates the staff reports dated  
13 September 29, 2017 and December 22, 2017 for LU 17-0052, with all exhibits, and the Planning  
14 Commission’s December 11, 2017 Findings, Conclusions and Order, supplemented by the  
15 further findings and conclusions below. In the event of any inconsistency between the  
16 supplemental findings and the incorporated materials, the supplemental findings control.

17 Following are the supplemental findings and conclusions of the City Council:

18 The Council heard testimony from the Home Builder’s Association of Metropolitan  
19 Portland that the reduction in the number of lots served by an access lane from eight to three  
20 total, and the requirement that a public street be constructed for developments of four to eight  
21 lots, would negatively impact the density potential in the city. The Council finds that the  
22 density impact will not affect compliance with Metropolitan Housing Rule’s [OAR 660-07-  
23 035(3)] requirement that overall density in Lake Oswego will equal or exceed 10 dwelling units  
24 per net buildable acre, for the reasons identified in the Planning Commission’s Findings.

25 The Council also heard testimony that the requirement to provide a public street, at 50  
26 feet in minimum width, for developments of more than three lots would potentially affect  
property values and, as a result, tax revenues to the City. The Council notes that the City

1 Engineer has the authority to recommend a smaller street width, and that the Council will  
2 review options for smaller street widths in April of 2018.

3 As detailed in the incorporated materials, the City Council finds that the proposed Code  
4 amendments as recommended by the Planning Commission comply with the cited criteria,  
5 most notably Policy A.1.b. of the Land Use Planning Chapter of the Comprehensive Plan, which  
6 requires that development standards promote compatibility between new development and  
7 desired neighborhood character, and Policy C.7 of Compete Neighborhoods, which requires  
8 that infill housing be designed to be compatible with existing neighborhood character.

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10 **CONCLUSION**

11 The City Council concludes that LU 17-0052, as recommended by the Planning  
12 Commission, complies with all applicable criteria and should be approved. The Council also  
13 concludes that proposed Ordinance 2762, which implements LU 17-0052, should be enacted.

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**50.06.003 CIRCULATION AND CONNECTIVITY**

**1. ACCESS/ACCESS LANES (FLAG LOTS)**

**a. Definition of Access**

For the purposes of this section, access shall be defined as: "area within public right-of-way directly affected by the traffic generated by the particular development and necessary to provide safe and efficient ingress and egress to the property."

**b. Applicability**

This section is applicable to all major developments and to the following minor developments:

- i. Construction or alteration of multi-family dwelling;
- ii. Construction or alteration of major public facilities;
- iii. Construction or alteration of commercial development;
- iv. Construction or alteration of institutional development;
- v. Construction or alteration of industrial development; and
- vi. Land divisions (partitions and subdivisions).

**c. Standards for Approval**

- i. Every residentially zoned lot shall abut a street for the following minimum length:

<b>TABLE 50.06.003-1: MINIMUM STREET FRONTAGE</b>	
Residentially Zoned Lot	Minimum Street Frontage
Rowhouse	17 ft.
Flag Lot	LOC 50.07.007.2.c
All Other	25 ft.

- ii. Access design shall be based on the following five criteria:

- (1) Topography;
- (2) Traffic volume to be generated by the development;
- (3) Classification of the public street from which the access is taken (~~residential~~ local, collector or arterial);
- (4) Traffic volume presently carried by such street; and
- (5) Projected traffic volumes.

- iii. Direct permanent access from a development to an arterial street is prohibited where an alternate access is either available or is expected to be available. A temporary access may be allowed only where approved by the City Engineer under LOC Chapter 42.
- iv. Direct access from a development or a structure to a local residential street is required unless such access is not available.
- v. The City may require shared access with a neighboring site or an extension of residential streets across adjacent properties to provide access to the development if necessary to prevent adverse impacts on traffic flow.
- vi. If no satisfactory access from a public street to a development is available, the City shall require postponement of the development until such time as a satisfactory access becomes available.
- ~~vii. Access lanes created by a partition or private streets created by a subdivision shall contemporaneously provide an option of dedication to the City.~~

**d. Standards for Access Lanes**

Access lanes shall meet the following minimum standards:

- i. Twenty-ft. wide easement.
- ii. Access to two to ~~three~~four dwelling units – 12 ft. of pavement with a four ft. shoulder on each side.
- ~~iii. Access to five to eight dwelling units – 16 ft. of pavement with a two ft. shoulder on each side.~~
- ~~iiiv. One standard "on lane" parking space shall be provided for each flag lot served by an access lane. When providing access for seven to eight dwelling units, the access lane shall be designed to provide "on-lane" parking for a minimum of four standard vehicles or provide an "off-lane" parking area for a minimum of four standard vehicles.~~
- iv. Access lanes shall align with existing and/or planned streets or access lanes where practicable.
- vi. All new or modified access lanes shall follow access spacing as shown in Table 50.06.003-2, Access Spacing, where practicable, and, as determined by the City Engineer, shall not create a traffic operational or safety conflict.

TABLE 50.06.003-2: ACCESS SPACING	
Functional Classification	Minimum Spacing Private Driveways (ft.)
Major Arterial	300
Minor Arterial	200
Major Collector	150
Neighborhood Collector	100

<b>TABLE 50.06.003-2: ACCESS SPACING</b>	
<b>Functional Classification</b>	<b>Minimum Spacing Private Driveways (ft.)</b>
Local Residential Street	50
Local Commercial/Industrial Street	50

**e. Traffic Study**

Determination of the location and configuration of an access shall be based on a traffic study, unless otherwise approved by the City Manager.

**f. Expenses Borne by Developer**

The expense related to modification of an existing street to accommodate proposed access including all traffic control devices and lighting shall be paid for by the developer.

**g. Distance between Access and Nearest Intersection**

Except for partitions, access from a development to a collector or an arterial shall be not less than 100 ft. from the nearest intersection of street centerlines.

**50.07.007 LAND DIVISIONS**

**1. REQUIREMENTS FOR LAND DIVISIONS**

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All land divisions shall meet the requirements of this Code including all zone district standards and dimensions except as modified in this section.

**2. FLAG LOTS**

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**a. Purpose; Applicability**

i. The purpose of the flag lot section is to:

- (1) Enable the efficient use of residential land and public facilities and services,
- (2) Provide standards for site, building, and design compatibility of the new development with the existing neighborhood character,
- (3) Reduce the area of impervious surface resulting from redundant access paving, and improve the appearance where pavement is necessary, and
- (4) Minimize the disturbance of natural resources.



- ii. The provisions of this section shall apply to all land divisions and lot line adjustments creating flag lots in residential zones after September 6, 1998, and to any development occurring on a flag lot in a residential zone created after September 6, 1998.

Exception: These provisions do not apply to existing flag lots that are reconfigured through a Lot Line Adjustment; the standards in effect at the time of the existing flag lot's creation remain applicable.

- iii. Compliance with Zone Standards. Flag lots shall comply with the requirements of the underlying zone except where noted in this article. A land division or lot line adjustment creating a flag lot shall also comply with any specific residential design criteria contained within an applicable adopted neighborhood plan.

**iv. Parcelization Plan**

In addition to the general application requirements for land divisions or lot line adjustments, an application to create a flag lot shall include a conceptual plan of complete parcelization of the subject property illustrating the maximum potential density, and shall include a site plan illustrating the location of existing structures on adjacent parcels. The reviewing authority may impose conditions in order to ensure that parcelization of the subject property will not preclude the development of surrounding properties. Such conditions may be related (but not limited) to access, circulation, building location, utility availability, and natural resource protection.

**b. Exceptions**

The reviewing authority may allow exceptions to this section without the need to obtain a formal variance pursuant to LOC Article 50.08, Variances, in one or more of the following circumstances:

- i. Landscaping required by LOC 50.07.007.2.f.i as separation between driveways, which would not result in screening or buffering as intended due to topography, lot configuration, or existing natural resources which would be preserved, may be modified or may not be required;
- ii. Setback adjustments of up to two ft. which are necessary to site a dwelling in compliance with this article, or will result in additional separation from existing dwellings on surrounding lots, may be permitted;
- iii. If an existing structure(s) would be located on a proposed flag lot created by partition and the structure(s) would become noncomplying with any regulation of this Code, the proposed partition may be approved if the standard causing the noncompliance can be adjusted under LOC 50.04.003.2, General Exception to Lot Area and Dimension Requirements.
- iv. Minimum driveway widths of 12 ft. required by LOC 50.07.007.2.c.iii may be reduced, when approved by the City of Lake Oswego Fire Marshal.

**c. Access**

- i. When creating flag lots, the reviewing authority shall require that access to the flag lots is consolidated into a single shared access lane with ~~access to the non-flag lot(s) parent parcel~~ or off site, wherever practicable. If not practicable, then new lots may have individual access points~~an additional access may be allowed on site or off site. Access lanes shall extend through the partition site and be extended to abutting developable property to provide a continuous connecting access lane where practicable.~~
- ii. Flag lots shall have access to a public or private street; however, actual street frontage shall not be required.

- iii. A driveway shall be used to serve a single ~~property~~ lot. An access lane shall serve no more than two flag lots (the access lane may also provide access for one non-flag lot) ~~eight properties~~.
  - (1) Driveway widths shall be a minimum of 12 ft. Driveway length, construction standards, and turnaround requirements shall be determined by LOC 50.06.003.2, On-Site Circulation – Driveways and Fire Access Roads.
  - (2) See LOC 50.06.003.1.d, Standards for Access Lanes, for width of access lanes.
- iv. No more than two driveways (whether to flag lot or non-flag lots) or access lanes shall be permitted within a distance equal to the minimum lot width of the underlying zone, or within 50 ft. of each other if no minimum exists, as measured from the closest edge of each driveway or access lane.
- v. All ~~dwelling buildings~~ on flag lots must post an address at the beginning of the driveway or access lane. The address shall be no less than six in. tall, must be on contrasting background, plainly visible, and must indicate the direction to the ~~building~~ dwelling.

**d. Lot Configuration Requirements**

**i. Determination of Front Yard**

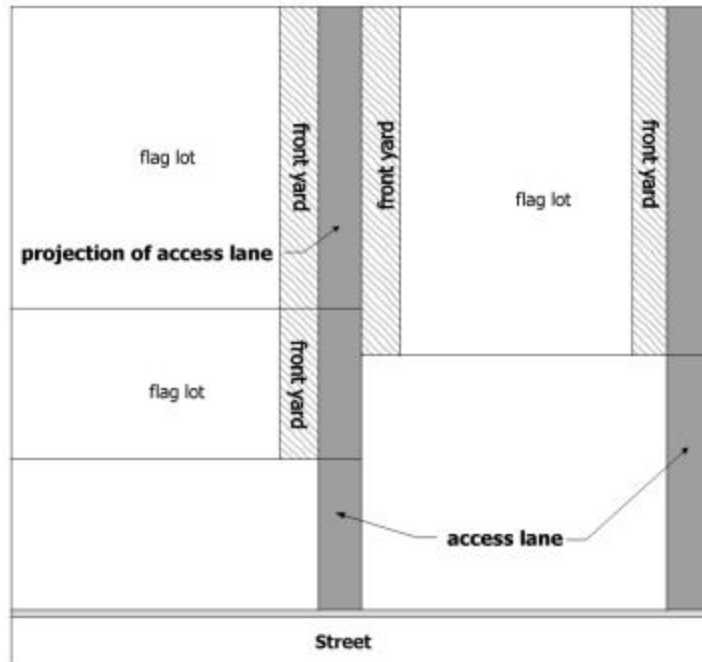
The front yard shall be determined as follows:

- (1) ~~Except for a lot that fronts on a public street, as provided below, the front yard(s) of a flag lot shall be measured from the access lane or from a projected extension of the access lane through the property (see LOC 50.07.007.2.e.v for setback requirements).~~

**Exception:** For a flag lot at the farthest end of the access lane or a flag lot served by a driveway, the zone front yard setback shall apply and is measured from either the property line most parallel to the public street or the property line most parallel to the orientation of the projected access lane or driveway (see Figure 50.07.007-B).

- ~~(2) A front yard occurs on either side of the access lane of the flag lot. See Figure 50.07.007 A: Flag Lot Front Yard.~~

**Figure 50.07.007 A: Flag Lot Front Yard**



**[Editor's Note: Figure 50.07.007-A was repealed by Ord. 2762, and the reference is reserved for future use.]**

**ii. Lot Width**

Lot width shall be measured by a line connecting two points on opposite side yard property lines, that will result in a line parallel to the front yard.

**iii. Lot Size**

Area of access easement or flagpole shall be deducted from the gross acreage of the flag lot. The "flag" portion of the lot shall be equal to or exceed the square footage of the underlying zone.

**e. Building and Site Design Standards**

**i. Building Orientation**

The reviewing authority shall require the following:

- (1) ~~Except for dwellings on flag lots(s) at the farthest end of the access lane or flag lots served by a driveway, n~~ New dwellings on flag lots shall have the front of the house oriented towards the access lane ~~or from a projected extension of the access lane through the property.~~
- (2) Buildings shall be oriented to provide the maximum separation and privacy from existing dwellings on abutting lots outside of the partition site. The reviewing authority may require conditions of approval to include measures such as specific building locations, increased setbacks, additional height restrictions, location and orientation of windows and other openings.

~~ii. Garage placement shall be reviewed at the time of building permit application to ensure minimum visibility of the garage from the street. Garage placement shall meet the following requirements:~~

- ~~(1) Be side loading where a turning radius can be provided that allows for a minimum of 24 ft. separation from the garage door and any obstructions or property lines, or~~
- ~~(2) Be placed such that no more than 40% of garage wall area is visible from the intersection of the flag lot driveway and street.~~
- ~~(3) Garage Wall Facing Street. When a garage has wall(s) facing a street, these wall(s) shall have more than one plane or shall include fenestration equal to at least 10% of the garage wall. When the lot is a corner lot (abutting two or more streets), this subsection is applied to each wall that faces a street.
  - ~~(a) To demonstrate compliance with this standard, building elevations shall be submitted which depict the facade area facing the street at a width equal to the access easement.~~
  - ~~(b) The area of a specific facade of a building is determined by adding the square footage of surface area of each section of wall facing the street. For buildings with more than one wall (plane) along one facade (for example, rooms jutting out from the main building or a building where each floor is set back from the floor below), all of the walls are included in the total area. The total area does not include any roof area.~~~~

### iii. Maximum Structure Height

The height of a single-family residential structure and any accessory structures on a flag lot shall not exceed:

- (1) For flag lots created after August 14, 2003, the taller of:
  - (a) Twenty-two ft., or
  - (b) The average height of all dwellings on properties abutting the development site, as determined prior to the time of creation of the flag lot. Where there is no dwelling on the abutting property or where a dwelling is located more than 100 ft. away from the development site:
    - (i) The maximum height permitted in the underlying zone shall be used for calculating the average, except:
      - 1. In cases where the abutting property is zoned to permit a height greater than that allowed on the subject site, then the maximum height for the zone in which the subject site is located shall be substituted and used to calculate the average.
- (2) For flag lots created before August 14, 2003, the taller of:
  - (a) The maximum building height limitation established at the time of creation of the flag lot. The methodology used to calculate the maximum building height permitted by this subsection shall be the same methodology used at the time of lot creation to establish the maximum building height, or
  - (b) Twenty-two ft. (see LOC 50.10.003.2, Height of Building, for methodology).

The City Manager may execute and record amendments to previously recorded development restrictions, upon the owner's or adjacent property owner's request, or at the City's discretion, if necessary to reflect a taller building height limitation than previously approved.

### **(3) Modification of Approved Building Height**

The maximum building height of single-family residential structures and accessory structures on a flag lot (whether created prior to or after August 14, 2003) may be modified from that previously determined at the time of creation of the flag lot to the average height of all dwellings on properties abutting the development site. Where there is no dwelling on the abutting property or where a dwelling is located more than 100 ft. away from the development site, then the maximum height permitted in the underlying zone shall be used for calculating the average. In cases where the abutting property is zoned to permit a height greater than that allowed on the subject site, then the maximum height for the zone in which the subject site is located shall be substituted and used to calculate the average. Where an existing structure on an abutting lot exceeds the maximum height allowed by the underlying zone, then the maximum height permitted by the underlying zone shall be used for purposes of calculating the average.

An application for modification of maximum building height for a flag lot shall be processed pursuant to LOC 50.07.003.11, Modification of Development Permits, as a new application. The City Manager may execute and record amendments to previously recorded development restrictions.

### **(4) Exceptions to Maximum Structure Height**

A greater height than otherwise permitted for roof forms or architectural features, such as cupolas or dormers, may be allowed pursuant to LOC 50.04.001.1.g.ii, 50.04.001.2.g.ii, or 50.04.001.3.f.v(2).

#### **iiiv. Access Lane Siting**

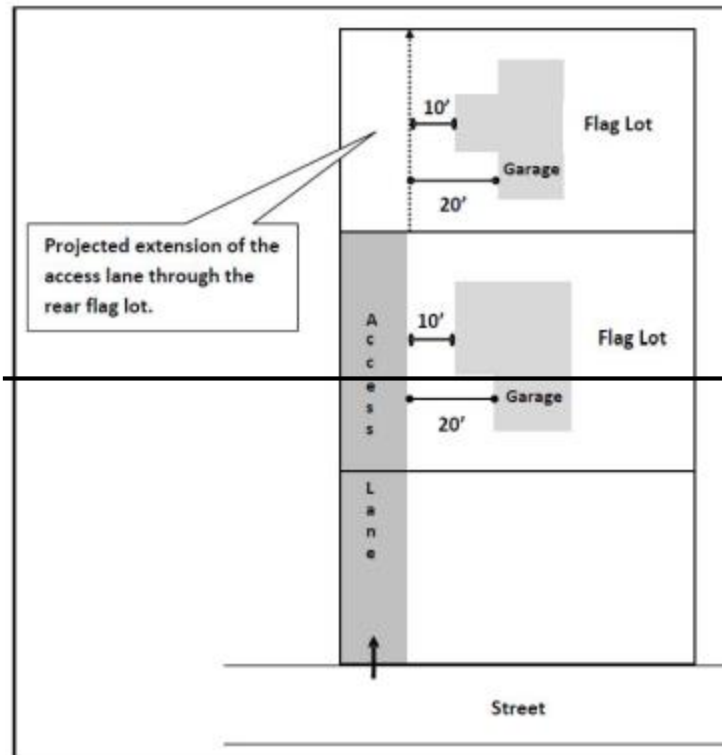
The access lane shall be located no closer than five ft. to any existing dwellings.

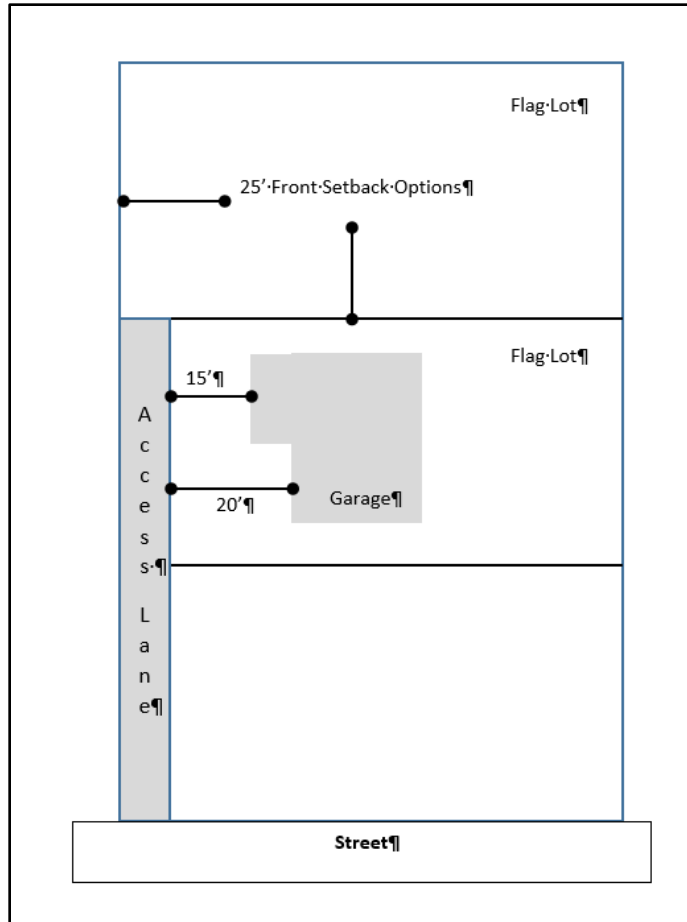
#### **iv. Setback Requirements**

- (1)** The standard front yard setback of the zone shall be superseded by the following front yard requirement: A minimum ~~15~~ ten-ft. front yard setback is required from the access lane, except that a 20-ft. setback is required from the access lane to the front of a garage or carport when the garage or carport opening faces the access lane. For flag lot partitions or subdivisions that receive a minor variance to the determination of the front yard, per LOC 50.08.002.2.m, the setbacks from the access lane described above shall apply. For purposes of this standard, the access lane shall include the projected extension of the access lane through the property as illustrated in Figure 50.07.007-B: Access Lane.

**Exception:** This provision does not apply to the flag lot(s) at the farthest end of the access lane. In such case, the zone front yard shall apply and be measured from either the property line most parallel to the public street or the property line most parallel to the orientation of the projection of the access lane.

**Figure 50.07.007-B: Access Lane**





- (2) Where a flag lot abuts a lot in a residential district of lower density, the greater setback requirements of the more restrictive district shall apply for those yards ~~which~~ that have abutting property lines.
- (3) The side and rear yard setbacks shall be established at the time of flag lot creation, subject to the following requirements:
- (a) The sum of the side and rear yard setbacks on flag lots shall be not less than:
- (i) ~~50~~ Fifty ft. in R-10 and R-15 zones; and
  - (ii) ~~45~~ Forty-five ft. in the R-7.5 zone ~~residential zones other than R-10 and R-15;~~ and
  - (iii) 35 ft. in the R-5, R-3 and R-0 zones.
- (b) In applying the flexible standard, provide yard dimensions that are similar to the yard dimensions of primary structures on abutting properties that are not part of the partition site and that abut the rear or side yards of the flag lots, but in no event shall the rear or side yard established under this section be less than:
- (i) ~~10~~ Ten ft. in the R-15, R-10 and R-7.5 zones, and
  - (ii) 7.5 ft. in the R-5, R-3 and R-0 zones.

**vi. Lot Width Requirements**

The lot width dimension of a flag lot shall ~~be not~~ be less than the minimum lot width requirements of the underlying zone.

**vi. Lot Coverage and Floor Area**

For the purposes of calculating lot coverage and floor area on flag lots, the area of access easement or flagpole shall be deducted from the gross acreage of the flag lot.

**f. Screening, Buffering and Landscape Installation**

i. A minimum five-ft. landscape strip shall be provided between the access lane and the exterior lot line perimeter of the development site when the shared access lane is provided ~~located along the perimeter of the development site site, and along both sides of the access lane when the shared access is provided at the interior of the development site, abutting both sides of the access lane serving flag lots except for pedestrian and vehicle access to the flag lot(s) served by the access lane.~~ Where land area is not sufficient to accommodate ~~a~~ the five-ft. wide landscape strip ~~on either side of the new access lane,~~ the reviewing authority may impose conditions of approval to include measures that will provide effective buffering and screening. These measures may include landscaped islands, fencing, and meandering access lane.

**Exception:** If a new lot is provided on both sides of an access lane, the landscape strip is not required.

The reviewing authority shall require the landscape strip to be planted with trees and shrubs in order to mitigate the visual impact of wide expanses of pavement, and to provide a visual buffer between the access lane and the affected dwelling(s) located on abutting parcels. Plant materials used for screening and buffering shall be of a size to provide an effective screen within two years of planting. Trees shall be a minimum two-in. caliper, and shrubs shall be a minimum of five-gallon at time of planting. Maintenance of the buffer is an ongoing obligation of the property owner.

Exception: Trees are not required when the trees would conflict with utilities.

ii. Existing mature vegetation and trees shall be integrated as screening where practicable. The reviewing authority may require dwelling and garage placement or orientation in a manner that will minimize the removal of specific trees, hedges, or other vegetation that would serve to screen the proposed structures from existing and potential surrounding homes.

iii. ~~The perimeter of the rear and side yards of the flag lot(s) shall be screened from abutting lots outside of the development partition site with a six-ft. tall fence, except:~~

**(1)** Where a four-ft. fence is required by LOC 50.06.004.2.b.i, Fences, or where such screening would conflict with standards for Sensitive Lands Overlay Districts; or

**(2)** Where the fence would be located within a wetland or stream channel.

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iv. A landscaped buffer within the ~~rear-deepest side or rear yard~~ provided in compliance with the flexible setback standard of LOC 50.07.007.2.v(3), ~~setback~~ a minimum of six ft. in width, shall be created along the ~~rear~~-property line and planted with a deciduous or evergreen hedge, a minimum four ft. in height at planting, which shall grow to a height of six ft. within two years and shall be maintained at a minimum of that height. ~~These above~~ requirements ~~pertaining to the "rear yard" is~~ are not applicable where the ~~deepest~~ rear yard abuts Oswego Lake or railroad rights-of-way.

v. **Tree Removal Mitigation**

A minimum of one evergreen or deciduous tree shall be planted at a 1:1 ratio where practicable in order to mitigate the removal of existing trees necessary for site development as a part of the creation of the lot or for the first dwelling constructed on the lot. The mitigation trees shall be of a species which will attain a minimum of 30 ft. in height. Deciduous trees at planting shall be a minimum of two-in. caliper and evergreen trees shall be a minimum of eight ft. tall.

**50.10.003 DEFINITIONS**

**2. DEFINITION OF TERMS**

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The following terms shall mean:

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**Access Lane**

The area on private property that extends from the public right-of-way and is permitted to provide ingress and egress ~~to~~ for two to three lots ~~the property or properties~~ by applicable surface modes of travel.

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**Flag Lot**

A lot that was created after September 6, 1998 and:

- a. Has the actual building site located behind another lot; and
- b. Takes access from the street via:
  - i. A driveway or access lane that is part of the lot and the width narrows to less than the minimum lot width for the zone; or
  - ii. An access easement.

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