

ORDINANCE 2938

AN ORDINANCE OF THE LAKE OSWEGO CITY COUNCIL AMENDING LOC CHAPTER 50 (COMMUNITY DEVELOPMENT CODE) FOR THE PURPOSE OF CLARIFYING AND UPDATING VARIOUS PROVISIONS (2023); AND ADOPTING FINDINGS (LU 23-0036).

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

WHEREAS, a public hearing before the Planning Commission was held on February 12, 2024, at which the staff report, testimony, and evidence were received and considered; and

WHEREAS, the Planning Commission has recommended that LU 23-0036 be approved by the City Council; and

WHEREAS, a public hearing on LU 23-0036 was held before the City Council of the City of Lake Oswego on March 19, 2024, at which the staff report, testimony, and evidence were received and considered; and

WHEREAS, these amendments to the Lake Oswego Code, Chapter 50 (Community Development Code) are intended to remove ambiguous and conflicting language, correct the text, and add clarifying text that is consistent with past interpretations;

The City of Lake Oswego ordains as follows:

Section 1. The City Council hereby adopts the Findings and Conclusions (LU 23-0036), attached as **Attachment 1**.

Section 2. The Lake Oswego Code, Chapter 50 (Community Development Code) is hereby amended by deleting the text shown by ~~striketrough~~ type and adding new text shown in underlined type, in **Attachment 2**. (Sections or subsections within LOC Chapter 50 that are omitted in **Attachment 2**, and not marked for deletion or addition, are neither amended nor deleted by this Ordinance.)

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.

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Section 4. Effective Date. As provided in Section 35C of Chapter VII of the Lake Oswego Charter, this ordinance shall take effect on the thirtieth day following enactment.

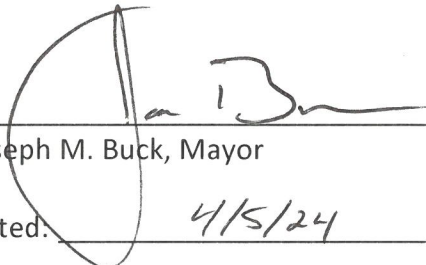
Enacted at the meeting of the City Council of the City of Lake Oswego held on the 2nd day of April, 2024.

AYES: Mayor Buck, Afghan, Wendland, Verdick, Mboup, Rapf, Corrigan

NOES: None

ABSTAIN: None

EXCUSED: None



Joseph M. Buck, Mayor
Dated: 4/5/24

ATTEST:



Kari Linder, City Recorder

APPROVED AS TO FORM:



Ellen Osoinach, City Attorney

1	LOC 50.06.004.2.b.x(4)	Update the retaining wall height exception to include middle housing and access lanes.
2	LOC 50.06.007.1.b	Exempt lots created through Middle Housing Land Divisions (MHL D) from the solar access standard.
3	LOC 50.07.003.7.g.i	Update practices for notice of appeal hearings to allow staff to email commenters who submitted electronic comments and did not provide a mailing address.
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5		
6	LOC 50.07.003.7.k(ii)	Update the deadline for submittal of written testimony for closed record appeals to City Council.
7	LOC 50.07.007.2.f.iii	Clarify that screening fences for flag lots must be sight-obscuring, and exempt property lines within flood management areas and along Oswego Lake or Canal from the fence installation requirement.
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9		
10	LOC 50.07.007.2.f.v	Prohibit the installation of new invasive species plantings to meet flag lot landscaping requirements.
11	LOC 50.10.003.2	Clarify that construction or placement of an accessory structure is considered a minor alteration for Historic Preservation purposes.
12		
13	LOC 50.10.003.2	Clarify that Duplexes, Triplexes, and Quadplexes must share common wall(s) or floor(s).
14	LOC 50.03.003.1.d.iii(3)	Establish cottage orientation for cottage cluster sites that abut an unimproved or unopened street right-of-way.
15		
16	LOC 50.06.001.4.a.v	Allow a third (or more) garage opening to be offset two feet from the previous garage plane rather than requiring the two feet to be stepped back specifically.
17		
18	LOC 50.06.004.2.b.x(2)	Exempt open fences around playgrounds and athletic facilities such as tennis and basketball courts, baseball backstops, etc. from the evergreen hedge screening requirement.
19		
20		
21	LOC 50.08.002.2.e	Allow minor variance applications to all fence standards.

22

23 **HEARINGS**

24 The Planning Commission held a public hearing and considered this application at its

25 meeting on February 12, 2024. The Commission adopted its Findings, Conclusion and Order

26 recommending approval of LU 23-0036 on February 26, 2024.

 The City Council held a public hearing and considered the Commission’s recommendation

1 on March 19, 2024.

2 **CRITERIA AND STANDARDS**

- 3 A. City of Lake Oswego Comprehensive Plan
 - 4 Land Use Planning - Policies A-1, A-2, C-1, C-3 and D-1
 - 5 Inspiring Spaces and Places - Goal 1, Policies 1, 2, 3 and 8; Goal 2, Policies 4 (d and e)
 - 6 Complete Neighborhoods & Housing - Policies A-4, B-1 and C-7
 - 7 Economic Vitality - Policy B-1 (b, c, and d)
 - 8 Community Health and Public Safety - Sound Quality - Policy 1
- 9 B. City of Lake Oswego Community Development Code
 - 10 LOC 50.07.003.3.c. Published Notice for Legislative Hearing
 - 11 LOC 50.07.003.16.a Legislative Decisions Defined
 - 12 LOC 50.07.003.16.b Criteria for Legislative Decision
 - 13 LOC 50.07.003.16.c Required Notice to DLCD
 - 14 LOC 50.07.003.16.d.iii Planning Commission Recommendation Required
 - 15 LOC 50.07.003.16.e City Council Review and Decision

16 **FINDINGS AND REASONS**

17 The City Council incorporates the Planning Commission Staff Report dated February 1,
18 2024 (Exhibit D-1), with all exhibits, and the Findings and Conclusions in the Commission’s
19 February 26, 2024 Findings, Conclusions and Order, for LU 23-0036, as support for the Council’s
20 decision.

21 Following are the supplemental findings and conclusions of the Commission:

- 22 1. **Addition to Definition of Minor Alteration (Historic Preservation).** The Council
23 amended the proposed code text in LOC 50.10.003.2 Definitions to include an
24 additional sentence in the definition of “minor alteration (historic preservation)” to
25 mirror the definition of “major alteration (historic preservation)” by stating that an
26 alteration that is not a Minor Alteration is a Major Alteration.

ALTERATION, MAJOR (HISTORIC PRESERVATION)

An exterior alteration that is not a minor alteration.

ALTERATION, MINOR (HISTORIC PRESERVATION)

An alteration (historic preservation) that does not:

- a. Change the height of the building;

- b. Make a substantial change to an elevation visible from the public right-of-way, a public open space, or Oswego Lake;
- c. Increase the floor area more than 20% provided the building addition is not visible from the public right-of-way, a public open space, or Oswego Lake; and
- d. Reduce the square footage of the original structure other than removing previous additions or treatments that did not contribute to the historical or architectural significance of the landmark as stated in the findings of fact for the landmark designation.

An Alteration that is not a Minor Alteration is a Major Alteration.

The Council finds that this adds to the clarity of Alteration (historic preservation) classifications for the reader and does not alter the meaning of the definitions.

- 2. **Cottage Cluster Common Courtyard.** Public testimony raised the topic of ownership of common courtyards in cottage clusters. This is outside the scope of the notice of the 2023 code amendments as presented and will be explored at a later time.

CONCLUSION

The Council concludes that LU 23-0036 / Ord. 2938, as recommended by the Planning Commission, complies with all applicable criteria and should be approved.

ATTACHMENT 2
LU 23-0036
(Ordinance 2938)

LOC 50.03.003.1.d.iii Cottage Orientation

iii. Cottage Orientation

(3) Cottages within 20 ft. of a property line abutting a public street must have a primary entrance into the living area of the cottage facing the street, unless:

(a) The street is an unimproved or unopened right-of-way; or

(b) The cottage is required otherwise by to face the courtyard to comply with subsection 1.d.iii(2) of this section.

LOC 50.03.003.1.d.vi(1)

(1) **Clustered Parking.** Off-street parking shall be arranged in clusters, subject to the following standards:

- (a) Cottage cluster developments ~~with fewer than 16 cottages~~ are permitted parking clusters of not more than five abutting spaces.
- ~~(b) Cottage cluster developments with 16 cottages or more are permitted parking clusters of not more than eight abutting spaces.~~
- ~~(e)b~~ Parking clusters must be separated from other parking spaces by at least four ft. of landscaping.
- ~~(e)c~~ Clustered parking areas may be covered.

LOC Table 50.04.002-1 Special Street Setbacks Table

TABLE 50.04.002-1: SPECIAL STREET SETBACKS			
Affected Streets	From	To	Special Setback
Bangy Rd.	South of Alyssa Terrace		30 ft.
Bergis Rd.	Cornell St.	Stafford Rd.	30 ft.
Bergis Rd.	Cornell St.	Skylands Rd.	25 ft.
Boones Ferry Rd.	Mercantile Dr.	Madrona St.	50 ft., unless reduced by the City Engineer, finding that the purpose is met by a lesser amount.
Boones Ferry Rd.	Madrona St.	West Sunset Dr.	50 ft.
Bonita Rd.			30 ft.
Bryant Rd.	Boones Ferry Rd.	Lake View Blvd.	40 ft.
Bryant Rd.	Lake View Blvd.	Childs Rd.	30 ft.

TABLE 50.04.002-1: SPECIAL STREET SETBACKS			
Affected Streets	From	To	Special Setback
Burma Rd.			25 ft.
"C" Ave.	State St. alley	Country Club Rd.	30 ft.
Carman Drive		South and west of Kruse Way	40 ft.

LOC 50.04.003.6.c Special Determination of Yards and Yard Requirements

C. Determination of Front Yard for Flag Lots Created ~~Prior to September 6, 1998~~ Other Than Under Flag Lot Section [LOC 50.07.007.2], and Lots Accessing by Easement

The front yard shall be the area abutting the property line of the "flag" portion of the lot parallel to the street providing access to a flag lot created prior to September 6, 1998 or any other lot that would qualify as a Flag Lot but for the date of creation. If this standard is not practical due to placement of structures on adjacent lots, topography or similar reasons, then the front yard will be that portion of the lot abutting the property line of the greatest length abutting the access portion of the flag or easement.

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LOC 50.04.001.2.f.ii(4) - R-6 Zone Dimensional Standards

f. Lot Coverage/Impervious Surfaces – Additional Standards

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ii. R-6 Lot Coverage/Impervious Surfaces

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(4) Cottage clusters are exempt from maximum lot coverage ~~and standards.~~ impervious surface limitations. See LOC 50.03.003.1.d.ii(1) for maximum impervious surface coverage standards applicable to cottage clusters.

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LOC 50.04.001.2.f.iii – R-DD Zone Dimensional Standards

f. Lot Coverage/Impervious Surfaces – Additional Standards

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iii. R-DD Lot Coverage/Impervious Surfaces

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LOC 50.05.001.4 – Glenmorrie R-15 Overlay District

4. LIMITATION ON CERTAIN ELEMENTS

No more than 50% of a lot shall be covered with any of the following elements: structures, patios, paving or impervious walks. However, pervious decks and natural-appearing constructed ponds shall not be included within this limitation. Where a paved area contains mixed nonplant and plant elements, only the nonplant portions of the area shall be included within this limitation. (See Figure [50.05.001-B: Illustrative Mixed Paved Areas and Natural-Appearing Ponds](#) for illustrations of natural-appearing constructed ponds and paved areas with mixed nonplant and plant elements.)

[Exception: Cottage clusters are exempt from impervious surface or certain element limitations. See LOC 50.03.003.1.d.ii\(1\) for maximum impervious surface coverage standards applicable to cottage clusters.](#)

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LOC 50.05.003.5 – Lake Grove R-7.5/R-10 Overlay District

5. LIMITATION ON CERTAIN ELEMENTS

No more than 50% of a lot shall be covered with any of the following elements: structures, patios, paving or impervious walks. However, pervious decks and natural-appearing constructed ponds shall not be included within this limitation. Where a paved area contains mixed nonplant and plant elements, only the nonplant portions of the area shall be included within this limitation. See Figure [50.05.001-B: Illustrative Mixed Paved Areas and Natural-Appearing Ponds](#) for examples.

[Exception: Cottage clusters are exempt from impervious surface or certain element limitations. See LOC 50.03.003.1.d.ii\(1\) for maximum impervious surface coverage standards applicable to cottage clusters.](#)

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LOC 50.05.012.6 – Uplands R-10 Overlay District

6: LIMITATION ON ~~IMPERVIOUS~~ HARDSCAPE SURFACES AND STRUCTURES (INCLUDING ROOF AREAS)

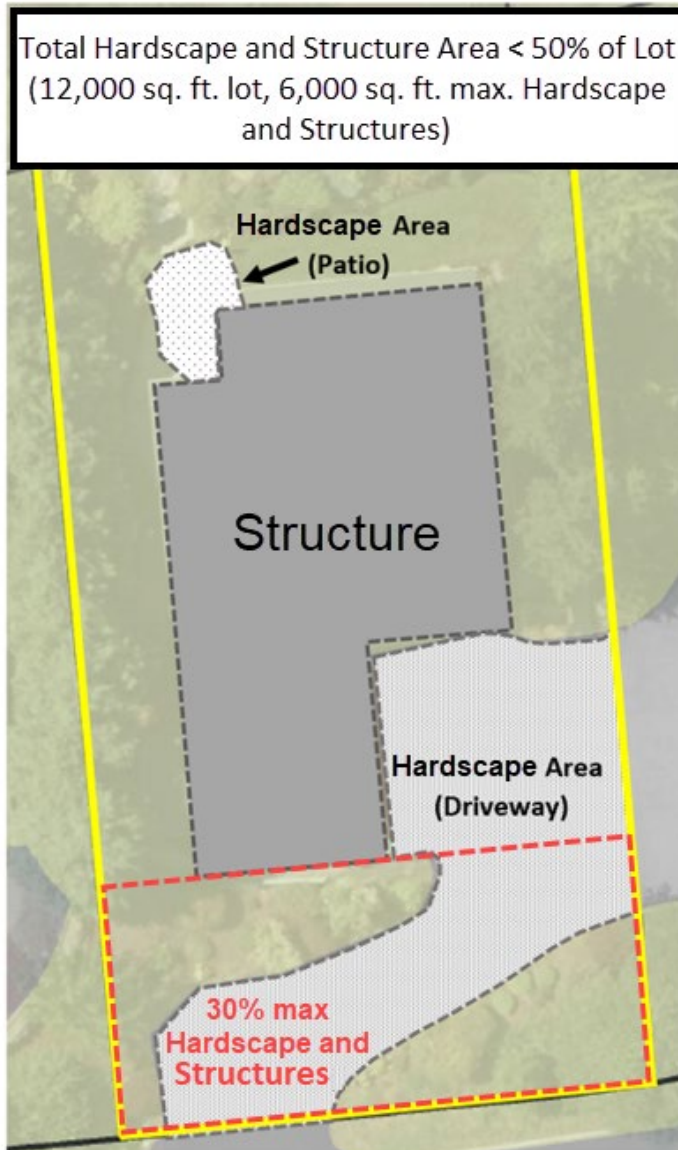
a. No more than 50% of the lot may be covered with ~~impervious~~ hardscape surfaces and structures.

[Exception: Cottage clusters are exempt from impervious surface or hardscape limitations. See LOC 50.03.003.1.d.ii\(1\) for maximum impervious surface coverage standards applicable to cottage clusters.](#)

- b. The area between the front lot line and the nearest edge of the building footprint shall not be covered by more than 30% of **impervious hardscape surfaces and structures**.

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Figure 50.05.012-C: Limitation on Hardscape Surfaces and Structures



LOC 50.05.010.6.c.ii(1)(b) Tree Removal

(b) Tree Removal

Tree removal within an RP district shall be subject to the following criteria:

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[\(vi\) Invasive tree removal permit, in accordance with LOC 55.02.042\(6\), except that mitigation shall be required as described in LOC 55.02.084,](#)

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Note to Codifier: Upon codification, remove the following cross reference:

[Cross-Reference: Invasive Trees may be removed from RP Districts under the exemption in LOC [50.05.010.2.c.vi](#) ("other development that does not remove any native vegetation ..." is exempt from the Sensitive Lands section).]

LOC 50.06.001.4.a.v Multiple Garage Opening Setbacks

v. Multiple Garage Opening Setbacks

In any instance where a garage or a set of adjacent garages is designed to park three or more vehicles, only the garage openings for the first two vehicles may occupy the same building plane. Each additional building plane with a garage opening shall be ~~offset back~~ by a minimum of two ft. from the previous garage building plane.

Exceptions:

- (1) The lot is a steeply sloped lot;
- (2) The width of a parcel is less than 50 ft.; or
- (3) The garage is proposed to be set back at least 60 ft. from the public right-of-way.

LOC 50.06.002.2.e Side Yard Setback Plane – Interior Yards

e. Side Yard Setback Plane – Interior Yards

Except as set forth in subsection 2.e.ii of this section, the side profile of a structure shall fit behind a plane that starts at the side property line and extends upward to 12 ft. and slopes toward the center of the lot at a slope of 12:12 up to the maximum allowed height at the peak as illustrated in Figure [50.06.001-G: Side Yard Setback Plane](#), below. The finished grade at the foundation shall be used as the grade elevation at the ~~setback~~ [property](#) line for purposes of measuring the setback plane.

LOC 50.06.003.1.c Standards for Approval

c. Standards for Approval

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

TABLE 50.06.003-1: MINIMUM STREET FRONTAGE	
Residentially Zoned Lot	Minimum Street Frontage
Rowhouse <u>Townhouse</u>	17 ft. <u>15 ft.</u>
Flag Lot	LOC <u>50.07.007.2.c</u>
All Other	25 ft.

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LOC 50.06.004.2.b.x(2)

b. Location and Height

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x. Exceptions from Height Limitations

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(2) An open (80% open) fence which is not located in the front yard (forward of the primary structure to the front lot line) and which encloses part or all of a tennis court, swimming pool, playing field, park, commercial recreational facility, public or semi-public utility structure, or courtyards or play areas for day care and educational institutions. The evergreen hedge screening requirement in LOC 50.06.004.2.b.iv does not apply to these fences; or

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LOC 50.06.004.2.b.x(4) Exceptions from Height Limitations

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(4) Retaining walls used to directly support a driveway, access lane, or car parking area for a single-family residence or middle housing; or

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LOC 50.06.007.1.b.9. IMPROVEMENTS AND SECURITY

b. Applicability

The solar design standard in LOC 50.06.007.1.c shall apply to subdivision applications (except Middle Housing Land Divisions (ORS 92.031)), that create lots intended for single-family detached or middle housing dwellings in any zone, except to the extent the reviewing authority finds that the

applicant has shown one or more of the conditions listed in LOC [50.04.004.1](#), Exemptions from Solar Design Standard, and LOC [50.04.004.2](#), Adjustments to Solar Design Standard, exist and exemptions or adjustments provided for therein are warranted.

LOC 50.07.003.7.g Notice of the Appeal Hearing

g. Notice of the Appeal Hearing

i. Written notice of the appeal hearing before the City Council shall be sent by ~~regular~~ [electronic](#) mail [to the email address provided, or if no email address is provided then by regular mail](#), no later than 14 days prior to the date of the hearing to the appellant, the applicant if different from the appellant, and all persons who testified either orally or in writing before the hearing body, or, for a minor development decision of the City Engineer, submitted written testimony to the City Engineer.

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LOC 50.07.003.7.k Presenting Testimony

k. Presenting Testimony

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ii. ~~Written testimony may be submitted prior to or at the public hearing.~~ Written testimony [may be](#) submitted prior to the public hearing [and](#) must be received by the City Recorder by [512:00 p.m.](#) ~~on the two business days of prior to~~ the scheduled hearing ~~to be submitted by staff at the public hearing. Written testimony submitted at the hearing must be filed with the recording secretary and placed before the City Council.~~ Written comments that are merely referred to in testimony but which are not placed before the hearing body pursuant to this section shall not become part of the record of the proceedings. Written comments that attempt to present new evidence or raise new issues not presented or raised before the hearing body shall be rejected.

LOC 50.07.007.2.f Screening, Buffering and Landscape Installation

f. Screening, Buffering and Landscape Installation

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iii. The perimeter of the flag lot(s) shall be screened from abutting lots outside of the development site with a six-ft.-tall [solid, sight-obscuring](#) 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, [Flood Management Areas, or where the property line abuts Oswego Lake or Oswego Canal](#); or

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LOC 50.07.007.2.f Screening, Buffering and Landscape Installation

f. Screening, Buffering and Landscape Installation

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[v. Plant materials listed as nuisance or invasive in LOC 50.11.004, Appendix D, and the Invasive Tree Species List on file at the Planning Department are prohibited in landscaping required by this section.](#)

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LOC 50.08.002.2 Minor Variance Classifications

2. Minor Variance Classifications

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e. A variance to [standards in LOC 50.06.004.2 for a maximum](#) fence, wall, retaining wall, or a combination thereof, ~~height restrictions pursuant to LOC 50.06.004.2.~~

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LOC 50.10.003.2 Definitions – Alteration (Historic Preservation); Alteration, Minor (Historic Preservation)

Alteration (Historic Preservation)

Alteration: An addition to, or removal of a portion of, or reconfiguration of a landmark that changes an elevation of a landmark or contributing resources (not applicable to National Register properties; see "Demolition:"). [Construction or placement of an accessory structure on a property that contains a historic landmark, except on sites over one acre in size or placement of an accessory structure more than 300 feet from the landmark structure or resource, is an "alteration" of the Landmark.](#)

Alteration, Minor (Historic Preservation)

An alteration (historic preservation) that does not:

- a. Change the height of the building;
- b. Make a substantial change to an elevation visible from the public right-of-way, a public open space, or Oswego Lake;
- c. Increase the floor area more than 20% provided the building addition [or accessory structure](#) is not visible from the public right-of-way, a public open space, or Oswego Lake; and

d. Reduce the square footage of the original structure other than removing previous additions or treatments that did not contribute to the historical or architectural significance of the landmark as stated in the findings of fact for the landmark designation.

An Alteration that is not a Minor Alteration is a Major Alteration.

Duplex

Two attached dwelling units on a lot **where each unit shares at least one common wall or floor/ceiling with an adjacent dwelling unit. The common wall shall consist of a structural wall that is shared for at least 25% of the length of the side of each dwelling unit or the common floor/ceiling shall consist of at least 25% of the floor area of each dwelling unit.**

Quadplex

Four attached dwelling units on a lot **where each unit shares at least one common wall or floor/ceiling with an adjacent dwelling unit. The common wall shall consist of a structural wall that is shared for at least 25% of the length of the side of each dwelling unit or the common floor/ceiling shall consist of at least 25% of the floor area of each dwelling unit.**

Triplex

Three attached dwelling units on a lot **where each unit shares at least one common wall or floor/ceiling with an adjacent dwelling unit. The common wall shall consist of a structural wall that is shared for at least 25% of the length of the side of each dwelling unit or the common floor/ceiling shall consist of at least 25% of the floor area of each dwelling unit.**