

## CHAPTER 33. PLANNING AND DEVELOPMENT

### Sec. 33-121. - Application.

- (a) The requirements of this division shall only apply to a building site where any of the following conditions is present:
- (1) There is new construction of a nonresidential or multifamily residential building for which a building permit is required;
  - (2) There is an enlargement exceeding 1,000 square feet in area of the exterior dimensions of an existing nonresidential or multifamily residential building for which a building permit is required;
  - (3) There is either a new parking lot for which site plans are required for initial construction under the provisions of chapter 26 of this Code or an existing parking lot which is expanded in area to provide additional parking spaces; or
  - (4) There is a city-funded construction or reconstruction project that includes the entire width of the pavement of a public street and is at least 30 feet in length.
- (b) The requirements of this division apply to the entirety of the building site if 1) it is completely developed by the new construction of a building (or buildings) and appurtenant surface parking area, or 2) it is a city-funded construction or reconstruction project that includes the entire width of the pavement of a public street and is at least 30 feet in length. In case the entirety of the building site is only partially developed by new construction or enlargement, the requirements of this division shall be applied incrementally. Trees, shrubs, and landscape buffers are required with respect to and in proportion to 1) the area of the new or increased building and off-street parking spaces, or 2) the length of street pavement, if the building site is a city-funded construction or reconstruction project that includes the entire width of the pavement of a public street and is at least 30 feet in length. This subsection shall control over any other conflicting or inconsistent provision.
- (c) The requirements of this division do not apply to:
- (1) The reconstruction of an existing building of which 50 percent of the existing building floor area ratio or less was physically destroyed or ruined by flooding, fire, windstorm or act of God. This exemption shall apply only where reconstruction of that building will not result in an increase in the paving area of the parking facilities to be provided; or
  - (2) The placement of a temporary classroom building if there is a reasonable likelihood that the condition necessitating a temporary classroom building will not continue for more than five years and an analysis of the public school site and the buildings thereon support the conclusion that timely compliance with the statutory student/teacher ratio cannot be achieved without the installation of the temporary classroom building(s).
- (d) Nothing in this division shall be construed to require a landscape plan or landscape plan review for finish work performed by an owner, a tenant or on behalf of a tenant, in a portion of a building unless that tenant finish work or remodeling results in an increase in the paving area of the parking facilities to be provided or in an enlargement of the exterior dimensions of an existing building.

- (e) Nothing in this division shall be construed to preclude the filing of a landscape plan where the requirements of this division are not otherwise applicable and the property owner desires to plant trees and obtain a credit under section 33-123(c) of this Code.

(Ord. No. 03-159, § 5, 2-12-03; Ord. No. 09-1266, §§ 3, 4, 12-9-09)

**Sec. 33-122. - Landscape plan required.**

- (a) A landscape plan for the building site shall be submitted to the department by an applicant for a building permit for approval in accordance with the provisions of this division.
- (b) The landscape plan may be depicted on either the development plans or parking lot site plan, provided the drawing scale is sufficient to properly depict the landscape plan requirements. The landscape plan shall identify and show the locations of existing and proposed utility lines (both above and below ground), roadways, sidewalks, street lights, trees, shrubs, understory, natural features, other landscape elements, and planting or construction details. Where credit is being requested for the preservation of existing trees and associated understory, the landscape plan shall also demonstrate the manner in which the requirements for preservation established under section 33-130 are to be satisfied. A plant schedule shall be provided which includes quantities, minimum size at time of planting, and botanical and common names keyed to the plan.
- (c) If the building site includes any protected trees, then the landscape plan shall depict the location of each and indicate whether each is to be removed or preserved. If any protected trees are to be removed, then a protected tree replacement requirement shall be applicable, in addition to any other tree planting requirements of this division, which may be satisfied as follows:
  - (1) By the planting anywhere on the building site or in the adjacent parkway area of additional trees on the basis of one caliper inch of tree planted for one caliper inch of tree removed;
  - (2) By contributing to the fund created under section 33-123(a)(2) of this Code an amount equal to either:
    - a. If the tree is a parkway tree, \$225.00 per caliper inch of tree removed for a 6 inch caliper tree and smaller, \$375.00 per caliper inch of tree removed for over 6 inch and up to 12 inch caliper trees, and \$500.00 per caliper inch of tree removed for over 12 inch caliper trees; or
    - b. If the tree is a corridor tree or green corridor tree, \$103.00 per caliper inch of tree removed,which shall be subject to a cost adjustment from January 2002 in accordance with the formula established in the definition of the term "cost adjustment".
  - (3) By preservation credits as provided in section 33-123(b) of this Code; or
  - (4) By a combination of the foregoing.

- (d) The protected tree replacement requirement shall not be applied to trees;
- (1) That must reasonably be removed in order to:
    - a. Install or maintain public utilities;
    - b. Construct or maintain access drives, streets and sidewalks;
    - c. Prevent visual impairment in a visibility triangle;
    - d. Prevent visual impairment where a driveway intersects with a street; or
    - e. Conduct emergency repairs of utilities on public or private property; or
  - (2) That are in poor condition.
- (e) Based upon the landscape plan as filed, the department shall review the landscape plan to verify compliance with all requirements of this article prior to the issuance of a building permit. If an artificial lot is delineated, it shall be depicted on the building plans prior to the issuance of the building permit. Nothing in this section shall be construed to require that city personnel perform a site inspection prior to the issuance of the building permit.
- (f) No building permit shall be issued by the building official for the construction or alteration of a building within the city unless the planning official approves the landscape plan verifying that the applicant has provided for the planting of trees and shrubs to the extent required in this article. If the landscape plan calls for the removal of any protected tree, then the building permit shall be conditioned such that the protected tree may not be removed until the twentieth day following the date of filing of the landscape plan.
- (g) Except as provided in subsection (h) below, no final certificate of occupancy shall be issued by the building official for the occupancy of a new or altered building unless the plantings required by this article have been provided. Prior to the issuance of a certificate of occupancy, the building official shall inspect the planting provided to verify compliance with the approved landscape plan.
- (h) A six-month conditional certificate of occupancy may be issued if the owner provides the building official with either the documented assurances specified in section 33-132 or a bond or assigned certificate of deposit as set forth in section 33-133
- (i) No provision of this article shall be deemed to excuse compliance with article VI of this chapter. If a landscape plan calls for the removal of a tree situated in a public right-of-way that is protected under article VI of this chapter, then written permission for its removal issued by the department of parks and recreation shall be submitted with the landscape plan filed under this section.

(Ord. No. 03-159, § 5, 2-12-03; Ord. No. 09-84, §§ 7, 8, 2-11-09)

**Sec. 33-123. - Tree planting equivalency credits.**

- (a) The following credits may be claimed against the total tree requirement under this division:

- (1) Credit for planting trees exceeding the minimum caliper required. Credit toward the total tree requirement shall be given for the planting of trees that exceed the minimum caliper required by this division at the rate of two trees for each tree with a caliper of four inches or more that is planted.
- (2) Credit for depositing with the city's department of parks and recreation a sum of money equal to the cost of planting the required trees. Money so deposited shall be placed in a special fund designated for the purposes of planting street trees in city parks or public street rights-of-way that are located within the park sector in which the removed trees were located. The credit shall be calculated based on a planting cost per tree of \$500.00 per fifteen-gallon container-grown tree, planted and maintained for a year, subject to a cost adjustment from January 2002 in accordance with the formula established in the definition of the term "cost adjustment." The maximum allowable credit under this option shall not exceed 30 percent of the total tree requirement.
- (3) Credit for preserving existing on-site trees. Credit for the preservation of existing on-site trees (including any to be transplanted) may be granted when requested and depicted on the landscape plan in accordance with section 33-122. In order to be eligible for credit, an existing tree to be preserved on the site shall have a minimum caliper of 1½ inches, shall be in good condition, and shall be true to species habit and form. Credit for preserving existing trees shall be granted based upon the caliper of the trees preserved, with a credit of one tree to be allowed for each 1½ total caliper inches of eligible trees that are preserved, subject to the limitations otherwise provided in this division. This item (3) shall not apply to trees situated in the abutting street right-of-way.
- (4) Credit for preserving existing right-of-way street trees. Credit for the preservation of existing trees situated within the abutting street right-of-way that are designated on the street tree list may be granted when requested and depicted on the landscape plan in accordance with section 33-122 of this Code. In order to be eligible for credit, an existing street tree to be preserved shall have a minimum caliper of 1½ inches, shall be situated in the street right-of-way, be in good condition, and be true to a species listed on the street the list in habit and form. Credit for preserving existing street trees shall be granted on the basis of one street tree preserved for each street tree otherwise required to be planted in the same blockface under this article, with no additional credit being allowed for preservation of a street tree that exceeds 1½ inches in caliper. Preservation methods for the tree must be at a minimum those specified in section 33-130 of this Code.

Provided, however, that:

- (5) The combined credit under items (1) and (2) above may not exceed 50 percent of the total tree planting requirement, and
  - (6) The total number of street trees, whether planted or preserved, shall never be less than 50 percent of the number required in section 33-126 of this Code as applied separately to each side of the property that abuts a street right-of-way and, if any side abuts two or more block faces, then separately to each block face.
- (b) A credit may be claimed for up to the entire protected tree replacement requirement for preservation of existing trees in the same manner provided in subsection (a)(3), above,

except that the credit shall be based upon one caliper inch of tree preserved for one caliper inch of tree removed. However, a tree or caliper inch portion of a tree preserved may only be used for credit against the total tree requirement or the protected tree replacement requirement, but not both.

- (c) Any owner who proposes to plant trees when no planting requirement exists under this division or desires to plant trees in excess of the requirements of this division may, at the time of filing of a landscape plan, request future credit against tree requirements upon the same building site. Upon completion of the work and verification of the unrequired planting or excess in planting by the planning official, a certificate of credit shall be provided by the planning official to the owner.

(Ord. No. 03-159, § 5, 2-12-03; Ord. No. 04-1015, § 25, 9-27-04; Ord. No. 09-84, § 9, 2-11-09)

**Sec. 33-124. - Artificial lot delineation.**

If the building site is over two acres in size, the applicant may request that the planning official designate an artificial lot to satisfy the requirements of this division. If requested, the planning official shall designate an artificial lot consistent with the purposes and policies of this division as determined from the criteria established below. No artificial lot may be delineated by the planning official unless it:

- (1) Wholly includes the area on which the construction work is to be done;
- (2) Has an area that does not exceed 50 percent of the area of the building site; and
- (3) Depicts and includes all proposed and existing buildings and structures, access drives, appurtenant parking required for the building expansion or new building construction, and other areas functionally appurtenant to the buildings or structures.

(Ord. No. 03-159, § 5, 2-12-03; Ord. No. 04-1015, § 26, 9-27-04)

**Sec. 33-125. - Review of documents.**

- (a) The planning official shall review building permit applications for the construction or expansion of a building or parking lot, and construction drawings for city-funded construction or reconstruction projects that include the entire width of the pavement of a public street and are at least 30 feet in length, to determine if the proposed landscape plan complies with the provisions of this article.
- (b) When a certificate of occupancy is sought, the building official shall determine whether the applicant has complied with this article.
- (c) An application for a building permit or certificate of occupancy shall not be issued or approved unless the applicant demonstrates compliance with the provisions of this article.

(Ord. No. 03-159, § 5, 2-12-03; Ord. No. 09-1266, § 5, 12-9-09)

**Sec. 33-126. - Street trees required.**

- (a) Street trees shall be planted within the public street rights-of-way, or on private property within ten feet parallel and adjacent to a local street right-of-way, or on private nonresidential property within 25 feet parallel and adjacent to a major thoroughfare, or in the esplanade pursuant to the requirements of section 33-129(b) (see figure E). When the building site abuts a designated state or federal highway or road or any designated county road and street trees are not otherwise required by law, street trees shall be planted on private property in accordance with this section. The number of street trees planted shall equal the total number of trees (T) required under the following formula:

$T = (X/30)$ , where X shall represent the length in linear feet measured along each side of the property line on the public street(s). (See figure B.)

This formula and all resulting planting requirements under this section shall be applied separately to each side of the property that abuts a street right-of-way, and if any side abuts two or more block faces, then separately to each block face.

- (b) Street trees planted in accordance with this section shall be of a species listed on the street tree list. In the case of trees planted within the public rights-of-way, trees shall be planted in a location which conforms with the requirements of section 33-129 of this division. The trees shall be planted so as not to interfere with existing utilities, roadways, sidewalks, or street lights.
- (c) The planting scheme for street trees shall be such that no street tree is planted closer than 20 feet to any other street tree (whether an existing tree or a tree planted hereunder) with the trees being spaced without extreme variation in distance across each blockface frontage taking into account existing site conditions and driveway locations. The director may authorize a partial waiver under the credit terms of section 33-123 of this Code if he determines that planting all of the otherwise required street trees upon any given side of the property that abuts a street right-of-way or block face would result in excessive tree canopy, based upon existing trees that are to be preserved during construction. Any request for a waiver shall be in writing and shall specify the preservation methods that will be used for the existing trees, which shall meet or exceed the requirements of section 33-130 of this Code. Additionally, the director may authorize the spacing to be reduced from 20 feet to no less than 18 feet if he determines that the conditions in the right-of-way make compliance at 20-foot spacing impracticable.

(Ord. No. 03-159, § 5, 2-12-03)

**Sec. 33-127. - Parking lot planting of trees and shrubs required.**

- (a) In addition to any street trees that may be required pursuant to section 33-126, the owner of a building site included under section 33-121 shall provide one tree for every ten parking spaces, rounding up or down in the case of a fraction to the nearest whole number, but in no case less than one tree. There shall be at least one parking lot or street tree within 120 feet of each parking space as measured from the center of the trunk of the tree to some point on the marked parking space. Not fewer than one-half of the parking lot trees so required shall be large parking lot trees, and the remainder may be either large or small parking lot trees. In the case of a parking lot that is being expanded, the trees required pursuant to this subsection may be planted in the same manner as those required for a new parking lot.

- (b) In addition to the street tree and parking lot tree requirements established within section 33-126 and subsection (a), above, the owner of a building site included under section 33-121 shall plant or cause shrubs to be planted along the perimeter of all parking surfaces so that the parking lot is screened from all adjacent public streets, exclusive of driveway entrances, pedestrian walkways and visibility triangles. Shrubs shall be maintained at a height of no more than 36 inches nor less than 18 inches as measured from the surrounding soil line. The number of shrubs required under this subsection shall be equal to the total number of street trees required under this division multiplied by ten. No less than 75 percent of the shrubs required under this section shall be planted along the perimeter of the parking surface adjacent to the public street.

(Ord. No. 03-159, § 5, 2-12-03)

**Sec. 33-128. - Landscape buffer required.**

The owner of a building site included under section 33-121 and which is to be developed or expanded for a nonresidential or a multifamily residential use adjacent to any existing single-family residential property shall provide a landscape buffer adhering to at least one of the following two buffer types:

- (1) Except as may otherwise be provided in chapter 19 of this Code, either a wood, concrete or masonry opaque screening fence with a minimum height of six feet along the entire property line or entire artificial lot line, if any, adjacent to the single-family residential property.
  - (2) Evergreen screening on the property line or artificial lot line.
- a. The evergreen screening shall contain a minimum width of 15 feet of green space as measured from the property line. This area shall extend along that portion of the property line or artificial lot line where proposed nonresidential and multifamily residential projects abut existing single-family residential developments. The area shall be planted in combinations of compatible evergreen trees and shrubs. The arrangement of plantings in buffer areas shall provide maximum protection to adjacent properties and avoid damage to existing plant material. Possible arrangements include planting in parallel, serpentine, or broken rows. Plant materials shall be sufficiently large and planted in such a fashion as to be capable of forming a continuous year-round screen of at least six feet in height as measured from the root collar or surrounding soil line within three annual growing seasons. All plantings shall be installed and maintained in accordance with the standards contained within appendices B and E. No buildings, structures, storage of materials, or parking shall be permitted within the buffer area; buffer areas shall be maintained and kept free of all debris, rubbish, weeds, and tall grass.
  - b. The preservation of existing vegetation within the landscape buffer may be used to meet the requirements of this section provided the vegetation is preserved in accordance with section 33-130 of this Code.

(Ord. No. 03-159, § 5, 2-12-03; Ord. No. 09-84, § 10, 2-11-09)

**Sec. 33-129. - General planting standards.**

- (a) Trees and shrubs planted in a parkway shall be planted in accordance with the applicable standards required by appendix B or E. The following additional limitations shall apply:
- (1) When located in the visibility triangle, trees shall be headed to a minimum height of seven feet, and shrubs shall be maintained at a maximum height of 30 inches as measured from the surrounding soil line.
  - (2) For streets with curbs or proposed curbs, trees shall be planted at least three feet from the back of the existing curb or the city's final approved design line of the back of the curb of any public street as measured from the center line of the tree trunk. Provided, the city engineer may in writing authorize the planting distance to be reduced after review of the specific location, with the preference that at least two feet of open space should be maintained between the street side of the tree and the back of the curb.
  - (3) For streets without curbs or proposed curbs, trees shall be planted at least four feet behind the roadside drainage ditch as measured from the back (private property) side of the top of the roadside drainage ditch bank to the center line of the tree trunk. Provided, the city engineer may in writing authorize the planting distance to be reduced, after review of the specific location, with the preference that the roots not interfere with ditch maintenance.
- (b) In addition to the tree and shrub planting standards contained within appendices B and E, trees and shrubs in esplanades shall be planted according to the following requirements as illustrated in figure C:
- (1) Trees in any major thoroughfare street esplanade shall not be planted closer to the end of the esplanade than 75 feet.
  - (2) Trees in any local street esplanade shall not be planted closer to the end of the esplanade than 50 feet.
  - (3) Trees planted in any esplanade shall be located not closer than 50 feet from any mid-block opening in the esplanade.
  - (4) Shrubs planted in any esplanade shall not be planted closer to the end of the esplanade than 25 feet or closer than three feet from the back of the curb or the final approved design line for the curb of any public street. Use of ground covers or annuals and perennials conforming with the height restrictions of a visibility triangle shall not be restricted.
  - (5) Trees planted in the esplanade shall not be located closer than five feet from the back of the curb or the final approved design line for the curb. Trees shall not be spaced at intervals of less than 30 feet.
- (c) Any tree located within a parking lot must be planted and maintained within a permeable area which has a radius of not less than three feet. No tree shall be planted closer than three feet from a curb or tire stop.

(Ord. No. 03-159, § 5, 2-12-03)

**Sec. 33-130. - Preservation of existing trees and associated understory.**

- (a) The following procedure shall be required where credit for the preservation of existing trees and associated understory is being requested to be applied toward the total tree planting requirement pursuant to section 33-123(a) of this Code or the protected tree replacement requirement. Where such credit is being requested, the applicant shall also supply to the building official for review with the building plans a tree and associated understory preservation plan, which shall be integrated into the proposed landscape plan and shall include:
- (1) Delineation of proposed limit of clearance and establishment of tree protection zones which shall extend to just outside the dripline of the tree and understory to be protected, if any;
  - (2) Proposed soil stabilization practices, i.e., silt fence, hay bales;
  - (3) The species of each tree to be preserved and for which credit is being requested;
  - (4) The proposed finished grade and elevation of land within six feet of or within the dripline of any tree to be preserved, whichever is greater, shall not be raised or lowered more than three inches unless compensated for by welling or retaining methods;
  - (5) Existing and proposed location of all trees and plant materials to be relocated at the drawing scale;
  - (6) A landscaping tabulation, and itemized credit requests for existing trees to be preserved which have a minimum of four inches in caliper and greater;
  - (7) Tree and associated understory preservation details; and
  - (8) Specification of ground plane treatment as either turf or sod. If a combination of both is utilized, the limit of each shall be indicated.
- (b) The following tree relocation information shall be provided on the landscape plan or in a report for the transplantation of existing specimen trees when preservation credit is being requested for them. This information shall include an assessment of the cost of transplanting the trees as opposed to the potential mortality rate which may result from the attempted transplantation. If relocation is elected, the following information shall be provided:
- (1) Transplanting techniques;
  - (2) Equipment to be utilized;
  - (3) Locations of existing trees and proposed locations for transplanted trees;
  - (4) Genus, species, caliper, height and general condition of the existing tree;
  - (5) Pruning and maintenance schedule and methods to be followed; and
  - (6) Which form of assurance of performance will be provided, i.e., executed contract, bond or assigned certificate of deposit.

- (c) If preservation credit is requested, the trees shall be protected and preserved as set forth in Chapter 16 of the Infrastructure Design Manual promulgated by the director of the public works and engineering department.
- (d) The department shall make recommendations to minimize damage to existing vegetation during the site construction phase. The department shall also suggest possible uses for those trees removed as a result of development such as the creation of wood chip mulch from removed hardwood trees.

(Ord. No. 03-159, § 5, 2-12-03; Ord. No. 09-84, § 11, 2-11-09)

**Sec. 33-131. - Duty; affirmative defenses.**

- (a) All owners of building sites included under section 33-121 shall plant or cause the planting of trees or shrubs required in sections 33-126 and 33-128 or secure the planting equivalency credits allowed in section 33-123, and if protected trees are being removed, shall further satisfy the protected tree replacement requirement in accordance with this division.
- (b) All owners and lessees of new or expanded parking lots on building sites included under section 33-121 shall additionally plant trees or shrubs in compliance with section 33-127, and if protected trees are being removed, shall further satisfy the protected tree replacement requirement in accordance with this article.
- (c) It shall be an affirmative defense to prosecution under this section that:
  - (1) The person caused the tree or shrub to be planted and maintained in accordance with this article, but the tree or shrub died more than two years after the issuance of the certificate of occupancy;
  - (2) The person caused the tree or shrub to be planted and maintained on the public right-of-way in accordance with this article, but the tree or shrub died and was removed by the owner with the written permission of the department of parks and recreation obtained under article VI of this chapter, or the period allowed by this article for replacing the tree or shrub has not yet elapsed;
  - (3) The person caused the tree or shrub to be planted or maintained on private property in accordance with this article but the tree or shrub died and the period allowed by this article for replacing the tree or shrub has not yet elapsed;
  - (4) The building permit for the person's property is for single-family residential use;
  - (5) The person's property has an unexpired conditional certificate of occupancy, and the person has provided an executed contract or a bond or assigned certificate of deposit in accordance with this article; or
  - (6) A variance or waiver was secured for the building site in conformity with the requirements of this article.

(Ord. No. 03-159, § 5, 2-12-03; Ord. No. 09-84, § 12, 2-11-09)

**Sec. 33-132. - When required landscaping (trees, shrubs or fences) must be installed; documented assurance.**

- (a) Except as otherwise provided in subsection (b) and section 33-133, all proposed landscaping must be installed in accordance with the approved landscape plan prior to issuance of a final certificate of occupancy on a building site.
- (b) The property owner may elect to provide the building official with documented assurances that the landscaping will be completed within a six-month period. If so, a conditional certificate of occupancy may be issued by the building official for six months. For purposes of this section, 'documented assurance' shall mean a copy of an executed contract for the proper installation of the required landscaping in accordance with the approved landscape plan within a six-month period.
- (c) The property owner is responsible for notifying the building official when the landscape installation is complete. If the property owner fails to notify the building official within the prescribed six-month period, the building official shall revoke the conditional certificate of occupancy.

(Ord. No. 03-159, § 5, 2-12-03)

**Sec. 33-133. - Bond; assigned certificate of deposit.**

- (a) Prior to the issuance of any conditional certificate of occupancy, any applicant who has not provided the documented assurance set forth in section 33-132 shall file with the planning official a bond which bond shall be executed by the applicant as principal and by a good and sufficient corporate surety company licensed to do business in the State of Texas. The bond in the sum of one and one-quarter times the proposed cost to install the required landscaping improvements and fences, based upon the adjusted costs established in appendix F, shall be payable to the city and conditioned that the principal and surety will pay all amounts required to install the landscaping and fences required by this division. The bond shall provide that it will remain in full force and effect until released by the planning official pursuant to this division.
- (b) In lieu of such bond, an applicant for a conditional certificate of occupancy may, upon payment to the city of a nonrefundable fee of \$100.00, assign an account with a financial institution insured by the Federal Deposit Insurance Corporation to the city. Such account shall have a deposit of not less than the amount required under subsection (a). Under such an assignment, the financial institution must agree not to release, make payment from, or otherwise divert or dispose of the funds in such account, except it shall agree to disburse all or such portion of the funds in the account as may be directed by city council resolution.

Upon installation and inspection of the required landscaping, the city shall release the assigned deposit to the property owner.

When requesting a conditional certificate of occupancy, the owner must grant the city permission to enter upon his land for the purpose of installing the required landscaping if the owner does not fulfill his obligation to install the required landscaping within the specified six-month period. If permission is not granted, the owner's application for a conditional certificate of occupancy shall be denied.

- (c) In the event that any holder of a conditional certificate of occupancy who has previously furnished an account assignment under subsection (b) elects to furnish a bond under subsection (a) instead, then the holder shall be entitled to disbursement of the account proceeds in the same manner and under the same terms provided in subsection (b).

(Ord. No. 03-159, § 5, 2-12-03)

**Sec. 33-134. - Appeal of denial of building permits.**

Appeals from the denial of a building permit for noncompliance with this division shall be reviewed in the same manner as appeals from development plat disapprovals under section 42-87 of this Code.

(Ord. No. 03-159, § 5, 2-12-03)

**Sec. 33-135. - Variance procedure.**

- (a) An applicant for a building permit may make written application to the planning official for a variance from the requirements of this division other than those which may be made the basis of a request for a waiver under section 33-139. A completed application for a variance shall include:

- (1) Completed application on form supplied by the city; and
- (2) A nonrefundable fee of \$200.00.

This application package shall be reviewed by the department.

- (b) Within seven days of the date the application is accepted, the planning official shall forward a copy of the application to the traffic engineer who shall file his report and recommendations regarding the proposed variance with the secretary of the commission.
- (c) A staff report regarding the variance request shall be provided to the commission prior to the meeting at which the variance shall be considered.

(Ord. No. 03-159, § 5, 2-12-03)

**Sec. 33-136. - Standards for variance.**

- (a) The commission is authorized to consider and grant variances from the provisions of this division by majority vote of those members present and voting, when the commission determines that the first four of the following conditions exist, and if applicable, the fifth condition, exists:

- (1) The imposition of the terms, rules, conditions, policies and standards of this division would deprive the owner or applicant of the property of reasonable use of the land or building;
- (2) The circumstances supporting the granting of the variance are not the result of a hardship imposed or created by the applicant, and the general purposes of this division are observed and maintained; and

- (3) The intent of this article is preserved;
- (4) The granting of such a variance will not be injurious to the public health, safety or welfare; and
- (5) For a development that is subject to the requirements of article VII, chapter 33, of this Code, the granting of the variance is necessary to accomplish the purposes of a certificate of appropriateness issued pursuant to article VII of chapter 33 of this Code.

(Ord. No. 03-159, § 5, 2-12-03)

**Sec. 33-137. - Applicability of variance.**

Any variance granted under the provisions of this section will apply only to the specific property and use upon which the commission was requested to grant a variance by the applicant. All variances as granted shall be in writing, shall be signed by the secretary of the commission and maintained as a permanent record of the commission.

(Ord. No. 03-159, § 5, 2-12-03)

**Sec. 33-138. - Mitigation for loss of installed and preserved vegetation.**

- (a) All proposed, existing or relocated vegetation shall be maintained in accordance with this article and appear healthy for a minimum of two years from the issuance of the final certificate of occupancy. Dying, damaged or removed trees shall be replaced at the owner's expense with another living plant that complies with the approved landscape plan. The tree replacement quantity shall be equal to or greater than the original or credited quantity for the tree in question.
- (b) The planning official shall notify the owner of a building site in writing when a plant is discovered which does not meet the requirements of subsection (a), above. The owner shall then replace the plant within one year from receipt of the written notice or between November 1st and April 1st, whichever period is less.

(Ord. No. 03-159, § 5, 2-12-03)

**Sec. 33-139. - Interference with existing utilities, curbs, sidewalks, drainage facilities, roadways, street lights, appeal of denial of waiver.**

- (a) The planning official shall grant a waiver when requested in the application if the area in which the planting is required by this division is too small to accommodate the required planting without damage to existing utilities, curbs, sidewalks, roadways, street lights or drainage facilities, and the planting requirements of this division may not be otherwise satisfied pursuant to this division.
- (b) A waiver shall be granted where the planning official finds the following:
  - (1) That a literal application of this division will result in damage to existing utilities, roadways, street lights, curbs, sidewalks or drainage facilities;

- (2) The waiver, if granted, will not be contrary to the public interest;
  - (3) The waiver, if granted, will not be detrimental to the public health, safety, or welfare; and
  - (4) The waiver, if granted, will not result in a violation of any other applicable ordinance, regulation or statute.
- (c) No later than the thirtieth calendar day following the filing of the required application for a waiver, the planning official shall issue to applicant a written notice that the waiver has been granted or refused. Any notice of refusal of an application for a waiver must include a written report explaining in detail the reasons for such refusal. The issuance of a written notice to the applicant shall be complete upon deposit of such notice in the United States mail, first class postage paid, addressed to the applicant at address given on the application for the waiver.
- (d) The applicant may appeal the denial of a waiver to the commission in the manner provided in section 33-134 of this Code.
- (e) Notwithstanding the provisions of this section, the planning official and the public works director shall use their best efforts to resolve any disputes regarding the application of this division to city-funded projects that include the entire width of the pavement of a public street and are at least 30 feet in length. The public works director is authorized to promulgate guidelines for administration of this article, in consultation with the planning official, that are consistent with this chapter.

(Ord. No. 03-159, § 5, 2-12-03; Ord. No. 09-1266, § 6, 12-9-09)

**Secs. 33-140—33-150. - Reserved.**