

SUBDIVISIONS:

Per Section 7.4.4 *Performance Guarantees* of the Orange County Unified Development Ordinance (hereafter 'UDO") a financial surety is allowed for the purpose of ensuring the proper installation of all required subdivision improvements in a timely manner, in accordance with previously approved plats and construction plans.

For subdivisions, Orange County requires a financial surety (i.e. performance guarantee) from the developer to guarantee that privately constructed public improvements are completed. Examples of public improvements are roadway, water and sewer, landscaping, and pedestrian access (i.e. sidewalks/trails/bicycle). The bond allows the developer to record the plat prior to completing the required improvements.

The following general guidelines shall be observed when preparing for the submittal of a performance guarantee to the County for processing:

- (a) The term of the guarantee shall not exceed two years.

STAFF COMMENT: Per Section 7.4.4 (B) of the UDO the Planning Director has the authority to grant an extension subject to the approval of the provider of the guarantee.

Extensions shall not exceed one year in duration and must be requested, in writing, six months prior to the expiration of the original guarantee.

Extension request(s) should not be considered granted until a formal approval of same is received in writing.

- (b) Performance guarantees must be in the form of a performance bond, irrevocable letter of credit, or cash escrow account as determined by the developer.

STAFF COMMENT: Once an application/request is submitted, the performance guarantee shall be submitted to the County's Attorney Office for legal sufficiency review.

This review process can take approximately 14 to 21 days.

A performance guarantee request shall not be considered complete and/or suitable for approval until legal sufficiency has been determined by the County's Attorney Office.

- (c) Per Section 7.4.4 (E) of the UDO, the amount of the performance guarantee shall equal at least 125% of the estimated cost, including project management costs, of the required improvements that have not been installed by the time of request submittal.

STAFF COMMENT: Per Section 7.4.4 (F) of the UDO the estimated cost of required improvements, including project management costs, must be itemized by improvement type and certified by a licensed professional engineer.

Submittal Requirements: A completed Orange County Current Planning Performance Bond application, including all required information, shall be submitted for processing prior to the submittal of a Final Plat for a subdivision if a performance guarantee is requested. Once submitted the application shall abide by the following review process:

- i. Staff shall complete a sufficiency review to ascertain the completeness of the application.

TIMELINE FOR REVIEW: 5 business days from date of submittal. Applicants shall be notified in writing if an application is formally accepted/rejected for review. In case of a rejection, the letter shall document identified deficiencies associated with the request to aid the applicant with re-submittal.

- i. Completed applications shall be forwarded to the following County agencies for review and comment:

- a. Attorney Office – legal sufficiency of proposed surety;
- b. Engineer – review of cost estimates;
- c. Finance;
- d. Current Planning – review of request’s conformance to previously approved preliminary subdivision plat(s) and construction plans;
- e. Development Advisory Committee (DAC) – review by additional County agencies including, but not limited to:
 - i. Building Inspections;
 - ii. Environmental Health – well and septic division;
 - iii. NC Department of Transportation;
 - iv. Solid Waste.

TIMELINE FOR REVIEW: Approximately 30 business days from date of formal acceptance of the application.

Any and all comment(s) shall be provided in writing to the developer.

Please note the need for additional information will require re-review of the request consistent with the 30 business day review timeline as articulated herein.

- ii. Once all application components have been approved, staff shall issue a formal letter approving the performance guarantee request. This formal approval shall outline:

- a. Timeline for installation of improvements;
- b. Inspection requirement(s);
- c. Procedure for requesting inspection(s) of those improvements required to be approved by County staff.

- iv. Submittal of final performance guarantee document(s) for review and final processing.

TIMELINE FOR REVIEW: Approximately 7 business days from date of submittal for routing and final approval.

- v. Final plat shall be submitted to the Planning Department for processing and signature.

TIMELINE FOR REVIEW: Approximately 15 to 30 business days from date of submittal to obtain all required signatures.

- vi. Recordation of Plat at the Orange County Registrar of Deeds Office.

With respect to approved performance guarantees the following needs to be remembered:

1. Per Section 7.4.4 (D) of the UDO all performance guarantees shall be conditioned upon: *'the performance of all work necessary to complete the required improvements within the time period specified at the time of preliminary plat or construction plan approval'*.
2. It is the sole responsibility of the applicant to complete required improvements and request the necessary inspection(s) of same as detailed within the County's approval letter and the UDO.
3. All improvements shall be completed in accordance with the conditions associated with the approved plat(s), construction plans, and the applicable standards contained in the UDO.

No financial guarantee may be released until all required certifications of completion have been provided. Please note this may require the submittal of as-built surveys to the County.

4. In those instances where required improvements have been at least 50% certified as completed, the financial guarantee **may** be reduced by the ratio that the completed improvements bear to the total improvements required at the discretion of the Planning Director.

However, only one such reduction shall be permitted prior to releasing the entire performance guarantee.

5. Once the conditions of the performance guarantee have been completed to the satisfaction of the appropriate agencies, and any required maintenance guarantee has been provided in accordance with the provisions of the UDO, the guarantee shall be released.

If an applicant fails to properly install required improvements within the term of the guarantee, the guarantee will be deemed in default. In the case of default, the County is authorized to use the guarantee funds to complete the required subdivision improvements or to let a contract for installation of the required improvements.

With respect to maintenance of required improvements, per Section 7.4.5 of the UDO the developer/application bears sole responsibility for the maintenance of required improvements until same are accepted for maintenance by:

- The North Carolina Department of Transportation (public roads);
- Individual utility provider (gas, water, electric, sewer, telephone, etc.);
- Individual homeowner(s), Homeowners' or Property Owners' association (private roads, common open space, landscaped area, required land use buffers, etc.)

NON-RESIDENTIAL DEVELOPMENT(S):

Per Section 2.5.6 *Guarantee of Improvements* of the UDO, a financial surety is allowed for the purpose of ensuring the proper installation of all required improvements in a timely manner, in accordance with submitted/approved site plans.

For non-residential developments, a guarantee of improvement(s) may be required as a condition of approval in those circumstances where a developer may not be able to complete all aspects of a project in a specified timeframe or completion of required improvements is not viable at time of construction initiation. Examples include:

- Delay in installation of landscaping due to drought conditions, time of year, etc.
- Phasing of parking lot installation;
- Delay in installation of lighting due to availability of conforming illumarie, etc.

The performance guarantee (i.e. bond) allows the developer to commence land disturbing activity/be issued a final occupancy permit prior to completing the required improvements.

The following general guidelines shall be observed when preparing for the submittal of a performance guarantee to the County for processing:

- (a) Per Section 2.5.6 (A) of the UDO the term of the guarantee shall not exceed 12 months from date of approval.
- (b) Performance guarantees must be in the form of a performance bond, irrevocable letter of credit, or cash escrow account as determined by the developer.

STAFF COMMENT: Once an application/request is submitted, the performance guarantee shall be submitted to the County's Attorney Office for legal sufficiency review.

This review process can take approximately 14 to 21 days.

A performance guarantee request shall not be considered complete and/or suitable for approval until legal sufficiency has been determined by the County's Attorney Office.

- (c) Per Section 2.5.6 (B) of the UDO, the amount of the performance guarantee shall equal at least 110% of the estimated cost of the required improvements.

STAFF COMMENT: Per current policy, the estimated cost of required improvements must be itemized by improvement type and certified by a licensed professional engineer.

Please note per Section 2.5.6 (D) of the UDO, in absence of a request to submit a financial guarantee, or denial of same, **all improvements shall be installed.**

Submittal Requirements: A completed Orange County Current Planning Performance Bond application, including all required information, shall be submitted for processing. Once submitted the application shall abide by the following review for process:

- i. Staff shall complete a sufficiency review to ascertain the completeness of the application.

TIMELINE FOR REVIEW: 5 business days from date of submittal.

Applicants shall be notified in writing if an application is formally accepted/rejected for review. In case of a rejection, the letter shall document identified deficiencies associated with the request to aid the applicant with re-submittal.

- i. Completed applications shall be forwarded to the following County agencies for review and comment:
 - a. Attorney Office – legal sufficiency of proposed surety;
 - b. Engineer – review of cost estimates;
 - c. Finance;
 - d. Current Planning – review of request’s conformance to previously site and construction plans;
 - e. Development Advisory Committee (DAC) – review by additional County agencies including, but not limited to:
 - i. Building Inspections;
 - ii. Environmental Health – well and septic division;
 - iii. NC Department of Transportation;
 - iv. Solid Waste.

TIMELINE FOR REVIEW: Approximately 30 business days from date of formal acceptance of the application.

Any and all comment(s) shall be provided in writing to the developer.

Please note the need for additional information will require re-review of the request consistent with the 30 business day review timeline as articulated herein.

- ii. Once all application components have been approved, staff shall issue a formal letter approving the performance guarantee request. This formal approval shall outline:
 - a. Timeline for installation of improvements;
 - b. Inspection requirement(s);
 - c. Procedure for requesting inspection(s) of those improvements required to be approved by County staff.

- iv. Submittal of final performance guarantee document(s) for review and final processing.

TIMELINE FOR REVIEW: Approximately 7 business days from date of submittal for routing and final approval.

- v. Final approval of guarantee/issuance of zoning compliance permit.

With respect to approved performance guarantees the following needs to be remembered:

1. All performance guarantees shall be conditioned upon the completion of all work necessary associated with the required improvements within the time period specified at time of approval.
2. It is the sole responsibility of the applicant to complete required improvements and request the necessary inspection(s) of same as detailed within the County's approval letter and the UDO.
3. All improvements shall be completed in accordance with the conditions associated with the approved site plan, construction plans, and the applicable standards contained in the UDO.

No financial guarantee may be released until all required certifications of completion have been provided. Please note this may require the submittal of as-built surveys to the County.

4. Once the conditions of the performance guarantee have been completed to the satisfaction of the appropriate agencies, and any required maintenance guarantee has been provided in accordance with the provisions of the UDO, the guarantee shall be released.

If an applicant fails to properly install required improvements within the term of the guarantee, the guarantee will be deemed in default. In the case of default, the County is authorized to use the guarantee funds to complete the required subdivision improvements or to let a contract for installation of the required improvements.