



STAFF REPORT

CASE:	ZC16-8
REQUEST:	TEXT AMENDMENT REGARDING PERFORMANCE BONDS AND PROCEDURES FOR ACCEPTING NEW STREETS
APPLICANT:	TOWN OF MINT HILL

EXECUTIVE SUMMARY:

The purpose of the amendment is to comply with North Carolina Session Law 2015-187 by reducing the Town 150% bond multiplier to 125% (see 6.10). Additionally, the text amendment proposes changes to the Town ordinance regarding procedures for accepting public streets for town maintenance (see 8.4).

STAFF CONTACT:

Planning Staff
704-545-9726

Section 6.10 - Guarantees and Performance Bonds.

6.10.1 Authorizing Use, Occupancy, or Sale Before Completion of Development.

- A. In cases when, because of weather conditions or other factors beyond the control of the Applicant (exclusive of financial hardship), it would be unreasonable to require the Applicant to comply with all requirements of this Ordinance before commencing the intended use of the property or occupying any buildings or selling lots in a subdivision, the Administrator may release the hold on the Certificate of Occupancy and authorize the commencement of the intended use or the occupancy of buildings or the sale of subdivision lots (insofar as the requirements of this Ordinance are concerned) if the Applicant provides a performance bond or other security in accordance with the requirements of this Section 6.10.
- B. With respect to residential and nonresidential subdivisions in which the Applicant is selling only undeveloped lots and with respect to residential subdivisions in which the Applicant is selling developed lots, the Administrator may authorize Final Plat approval and the sale of lots before all the requirements of this Ordinance are fulfilled if the Applicant provides a performance bond or other security in accordance with the requirements of this Section 6.10 to ensure that all of these requirements will be fulfilled within a reasonable time after Final Plat approval.

6.10.2 Bond or Other Surety Required to Secure Construction of Required Improvements. Whenever occupancy, use or sale is allowed before the completion of all facilities or improvements intended for dedication, the Applicant shall post a performance bond or other sufficient surety to guarantee such facilities or improvements shall be completed by the Applicant within two (2) years (unless otherwise mandated by State law). The amount of such performance bond or other surety shall be equal to 125% estimated cost of installing all required improvements, such estimate to be determined by the Town or its authorized agent. To assist the Town, or its authorized agent, in determining the estimated cost of all required improvements, the owner shall cause a licensed engineer or general contractor to submit a written cost estimate for review and consideration by the Town or its authorized agent.

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6.10.3 Maintenance Bonds.

A. When the Administrator, or his/her designee, determines that construction will likely cause defects in either (i) existing public streets or infrastructure or (ii) public streets or other improvements to be offered for dedication to the Town, the Applicant shall post a performance bond or other sufficient surety to guarantee that any such defects that are caused by the Applicant shall be corrected by the Applicant. For purposes of this Section, the term "defects" refers to any condition in such existing or to be publicly dedicated facilities or improvements that requires repair over and above the normal amount of maintenance normally expected or required. If such defects appear, the guaranty may be enforced regardless of whether the facilities or improvements were constructed in accordance with the requirements of this Ordinance.

B. For determining the amount of the bond required by this Section, the Administrator shall consider the following:

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1. The length of streets in the existing subdivision or previously completed sections of the subject subdivision from the new subdivision site out to the nearest arterial street which is most likely to be used to provide access to the site;
2. The condition of any existing streets which are likely to be utilized for access to the property being developed;
3. Any existing defects noted by the Public Works Director of the Town of Mint Hill as provided for in Subsection 6.10.3(C) below;
4. Number of lots in the proposed development.

- C. The maintenance bond required by this Section shall not be released until the phase under development has met the criteria for acceptance of streets as outlined in Article 8, Section 8.4, of this Ordinance and it has been determined by the appropriate inspector(s) and the Public Works Director of the Town of Mint Hill that streets which were used for access to future phases or adjoining tracts are in an acceptable condition and that any damage suffered by said streets has been repaired. For the purpose of this Section, any damage suffered by a street used for access to property being developed shall be presumed to have been caused by construction traffic except any defects noted by the Public Works Director of the Town of Mint Hill as herein provided for. The Public Works Director shall, on request from the developer inspect existing streets likely to be used by construction traffic and document the condition of said streets prior to commencement of development of said subdivision. Any existing defects in streets will be noted and the developer will not be responsible for repair of such existing defects.

6.10.4 Inspections and Certifications.

- A. All subdivision construction, whether or not guaranteed by a surety bond or irrevocable letter of credit or other approved form of security, shall be inspected at all phases by appropriate inspector(s) as designated by the Administrator, accompanied as appropriate by the Public Works Director of the Town of Mint Hill. Notice of all such inspection requests by the developer shall be given to the Administrator or his/her designee's office at least ~~forty-eight (48) hours~~ prior to the date such inspection is requested to be made. Upon completion of all the improvements required by this Ordinance, written notice shall be given by the developer to Administrator or his/her designee. The authorized inspector(s), accompanied by Public Works Director shall inspect said improvements and within thirty (30) days either authorize the release of the security given or indicate to the developer any areas of noncompliance. In no case shall securities be released prior to the installation of the improvements required by this Ordinance except that the phased release of a bond or other form of security may be allowed in accordance with the current Mecklenburg Land Development Standards Manual, provided such phased release is recommended by the Administrator or as provided for in Subsection 6.10.5(C).
- B. ~~An engineer retained by the Applicant shall certify to the Town that all facilities and improvements to be dedicated to the Town have been constructed in accordance with the requirements of this Ordinance and the Land Development Standards Manual as applicable.~~ This certification shall be a condition precedent to acceptance by the Town of the offer of dedication of such facilities or improvements.

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6.10.5 Completing Developments in Phases.

- A. If a development is constructed in phases or stages in accordance with this Section, then, subject to Subsection (C), the provisions of this Ordinance shall apply to each phase as if it were the entire development.
- B. As a prerequisite to taking advantage of the provisions of Subsection (A), the Applicant shall submit plans that clearly show the various phases or stages of the proposed development and the requirements of this Ordinance that will be satisfied with respect to each phase or stage.
- C. In the event there is no definite beginning date for the commencement of future phases and it would be, in the opinion of the Administrator, unreasonable to require the continuation of securities, LUESA (or other Town agent) may release the posted securities. This may be done only after appropriate inspector(s) and the Public Works Director of the Town of Mint Hill have determined that all work guaranteed by the securities filed has been completed within the subject phase in compliance with the standards set forth in this Ordinance and that barricades approved in accordance with Article 6, Section 6.2, have been installed at the termination point of any street leading into future phases of the development.
- D. All subsequent development of future phases or development of adjoining tracts, whether or not such phases are shown on the Site Plan or plat required by Article 8 of this Ordinance, shall not be allowed nor shall the removal of barricades required by Article 6, Section 6.2, of this

Ordinance be allowed and no access to adjoining property for development purposes shall be allowed via previously completed sections of a subdivision within the Town of Mint Hill until the developer shall first have filed a bond or irrevocable letter of credit or other form of security in accordance with the requirements of this part.

- 6.10.6 Maintenance of Common Areas, Improvements, and Facilities. The recipient, or his or her successor, of any permit, Site Plan or Plat approval or Conditional District approval, shall be responsible for maintaining all common areas, improvements or facilities required by this Ordinance or any permit issued in accordance with its provisions, except those areas, improvements or facilities with respect to which an offer of dedication to the public has been accepted by the appropriate public authority. As illustrations, and without limiting the generality of the foregoing, this means that private drives and parking areas and recreational facilities must be properly maintained so that they can be used in the manner intended, and required vegetation and trees used for screening, landscaping or shading must be replaced if they die or are destroyed. Such areas shall be maintained by the owner unless and until such offer of dedication is accepted by the appropriate public authority.

(Ord. No. 598, 4-14-2011)

8.4 Procedures and Approval Requirements Specific to Subdivisions

F. Plat Approval Not Acceptance of Dedication Offers.

1. The approval of a Site Plan (Preliminary Plat) or Final Plat by the Town of Mint Hill shall not constitute the acceptance by the Town of Mint Hill of any street, public utility line or other public facility or ground shown upon such plat.
2. The Town of Mint Hill shall not maintain any street unless such street has been accepted as a public street by a resolution adopted by the Board of Commissioners.
3. The Board of Commissioners of the Town of Mint Hill shall not adopt any resolution accepting a street for public maintenance unless the improvements have been inspected by the Town of Mint Hill, and:
 - a. The Board of Commissioners has received a written request from the subdivider or from a majority of the property owners along a street that such street be accepted as a public street for maintenance by the Town of Mint Hill.
 - b. The Board of Commissioners has received a recommendation from the Town Engineer or designee. (Note: See the Mint Hill Land Development Standards Manual for additional information and guidance related to the dedication and road acceptance process.)
 - c. An engineer retained by the Applicant has certified to the Town that all facilities and improvements to be dedicated to the Town have been constructed in accordance with the requirements of this Ordinance and the Land Development Standards Manual as applicable. This certification shall be a condition precedent to acceptance by the Town of the offer of dedication of such facilities or improvements.

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Deleted: (i) . Either final approval of said street or streets was granted by the Mecklenburg County engineer (and Town Public Works Director) at least one year prior to the time of such request for maintenance or that such street or streets existed as a public street prior to the effective date of this Ordinance and as such have functioned as a street or streets for at least one year; provided however, the Town Board may, but is not required to, waive this one year testing period if the density requirement of Subsection (ii) below is satisfied and the Board of Commissioners finds the street or streets requested for maintenance would suffer damage from further delay of application of the final surface course; and ¶

(ii) . Subject to Section 6.10.5, which allows development in phases, at least seventy-five (75) percent of the total lots or project parcels slated for building improvements in a given phase of development have obtained a Certificate of Occupancy for such building improvements; and ¶

(iii) . Any defects which have appeared in new streets during the one-year waiting period or in the case of existing streets, any defects existing at the time such request for maintenance is made, have been repaired. ¶

c. . The Board of Commissioners determines such street corresponds in its location and aligns with a street shown on a Final Plat formally approved by the Planning Board of Mint Hill or that said street was established as a public st(... [1]

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