

Division 6 | Administration and Enforcement

Sec. 6.01 Director

For all Subdivision Plats, Subdivision Construction Plans, Site Plans, Minor Site Plans, Mini Site Plans, Site Plan Waivers and related documents (with the exception of Capital Improvement Construction Plans managed by the Department of Capital Plans Managements), “Director” shall mean: the Director of Plan Review unless otherwise noted within these Subdivision and Land Development Regulations.

For all Capital Improvement Construction Plans managed by the Department of Capital Plans Management, “Director” shall mean: the Director of Capital Plans Management unless otherwise noted herein.

- (a) The Director shall make and enforce reasonable rules and regulations necessary and appropriate for the administration of this Article and file such rules and regulations with the Clerk of Council.
- (b) The Director shall have the responsibility of acting on behalf of the Commission in making determinations that a particular applicant has or has not complied with the requirements of this Article and shall perform the following functions:
 - (1) Establish that all the requirements of this Article have been fully met by the applicant.
 - (2) Make certain inspection of improvements with proposed subdivisions and developments maintaining a vigil on the quality of the improvements and the adherence of the applicant’s work to the timetables specified in this Article.
 - (3) Distribute copies of all plans and plats to appropriate officials and agencies for their study and review comments.
 - (4) Determine instances of non-compliance with this Article on the basis of an interpretation of this Article and review comments of officials and agencies to whom review copies of the plan and plat were sent.
 - (5) Review final subdivision plats, site plans, Minor Site Plans, Mini Site Plans, Site Plan Waivers, Capital Improvement Construction Plans and all project related plats. Verify that the final subdivision plat is in accordance with the preliminary plat and associated construction drawings. Verify that the final site plan is in accordance with this Article and such standards for design and construction as Council may adopt, determine that the requirements of this Article have been met, and either approve or disapprove the final plat or plan.
 - (6) Issue orders for compliance to applicants including orders to discontinue work in instances of non-compliance with this Article.

The Director of Plan Review and Zoning Administrator shall:

- (a) Review the preliminary plat submitted by an applicant and either approve or disapprove the preliminary plat.
- (b) Evaluate the recommendation of all Town Departments and other applicable review agencies relative to subdivision applications.
- (c) Make recommendations to the Planning Commission and Town Council concerning the need for, and type of, amendments to this Article.

Sec. 6.02 Commission

The Commission shall:

- (a) Make recommendations to the Council concerning the need for, and type of, amendments to this Article.

Sec. 6.03 Variation

- (a) Upon application by an applicant, the Commission may authorize a variation in the substantive regulations contained in Division 4 and 5 of this Article when it finds that a variation is warranted due to an unusual situation or when strict adherence to the general regulations would result in substantial injustice or hardship.
- (b) In making application for a variation, the applicant must demonstrate in writing that:
 - (1) The requested variation is in keeping with the purpose and intent of the Subdivision and Land Development Regulations;
 - (2) The granting of said variation would not be of substantial detriment to adjacent property;
 - (3) The granting of said variation would not be contrary to the public health, safety and general welfare;
 - (4) The situation is not of a general or recurring nature for similarly situated properties within the Town.
- (c) In deciding an application for variation, the Planning Commission shall be guided by its findings with regard to the preceding test, together with the following items and any other such pertinent information as is necessary for the Commission to make its findings:
 - (1) The construction drawing reflecting the requested variation is approved by the Director;
 - (2) Any variation in street requirements is reasonable in relation to ultimate projected traffic generation and will not result in street sections that do not satisfy minimum Virginia Department of Transportation standards;

- (3) Any variation in sidewalk standards is compensated through an adequate alternative provision for pedestrian traffic.
- (d) No variation granted pursuant to this section shall relieve the obligation of the applicant to comply with any other applicable local or state regulations.
- (e) In authorizing a variation the Commission may impose such conditions regarding location, character and other features of the proposed subdivision or development as it may deem necessary in the public interest, and may require a guarantee or bond to insure compliance with the conditions imposed.
- (f) Applications for variation may be made by any applicant. Once the application has been determined to be complete by the Director, the application and accompanying maps, plans or other information shall be transmitted promptly to the Commission for consideration and action. The Director shall also transmit a copy of the application to the Town Council.
- (g) Upon the initial public meeting to consider a variation application, the Planning Commission shall determine whether the potential public impacts of the request warrant a public hearing. If it is determined that a public hearing is warranted, such hearing shall be scheduled within thirty (30) days of said determination. Notice of public hearing shall satisfy all Code of Virginia requirements for such hearings. The Planning Commission shall take action to approve, or deny the application within thirty (30) days of the initial public meeting if no public hearing is held or within sixty (60) days of the initial public meeting if a public hearing is held.

Sec. 6.04 Bonding of Required Improvements

- (a) The purpose of the bonding process is to obtain guarantees acceptable to the Town insuring the timely and proper installation of required development and subdivision improvements. Bonds shall be posted to guarantee the installation of improvements for all developments described below:
 - (1) All improvements described in Section 15.2-2241 of the Code of Virginia, as amended, that will be accepted for public use and public maintenance by the Town of Leesburg.
 - (2) All other improvements required by the Zoning Ordinance and Subdivision and Land Development Regulations and also as specified in Section 15.2-2241(5) of the Code of Virginia, as amended and as determined by the Director.
 - (3) For improvements proffered as part of any zoning map amendment application and required by the Zoning Administrator in accordance with Section 15.2-2299 of the Code of Virginia, as amended.
 - (4) Improvements offered as part of any variance or special exception application or required by the Board of Zoning Appeals in accordance with Section 15.2-2309(2) and 15.2-2309(6) of the Code of Virginia, as amended.
- (b) All improvements proffered during the rezoning process shall be bonded at the time the first site plan or subdivision plat is approved.
- (c) These bonding procedures shall not apply to the following developments:

- (1) Developments that only require the installation of entrances to public streets. All such improvements shall be guaranteed through the issuance of a right-of-way permit.
- (d) For any development or subdivision requiring a performance agreement for public improvements, the Town Manager or his/her designee shall have the authority to:
 - (1) Review and approve, disapprove and modify performance agreements.
 - (2) Grant or deny an applicant's request for more time than the initial two (2) year period to complete the construction of public improvements associated with a site plan or subdivision application.
 - (3) Accept public improvements which have been installed in accordance with final plans, subject to the requirements of 6.09 of these Subdivision and Land Development Regulations.
 - (4) Release applicants from obligations of performance agreements for installation of public improvements and release performance bonds posted to guarantee such contracts as described in 6.09 of these Subdivision and Land Development Regulations.

Sec. 6.05 Procedure for Establishing a Bond Agreement

- (a) To establish a bond agreement with the Town of Leesburg the following forms shall be executed:
 - (1) Performance Agreement
 - (2) Estimate of improvements
 - (3) Bond guarantee, as described in Section 6.06 of these Subdivision and Land Development Regulations.
 - (4) Water Extension Permit, if applicable
 - (5) Sanitary Sewer Extension Permit, if applicable

The bond agreement forms must be filed with the Director of Public Works. The Town Attorney shall review all proposed amendments to the standard bond agreement forms and provide the Director of Public Works with a recommendation.

- (b) Any improvement in a proposed subdivision or development may be bonded in sections provided that these sections are indicated on the approved subdivision or development plans and the Director of Public Works has found that provisions have been made to insure that these improvements can be enjoyed without undue risk to public safety. Improvements such as temporary cul-de-sacs and traffic barricades will be included in the estimate of improvements. Where possible, sections shall begin and terminate at street intersections or other logical points.

Sec. 6.06 Bond Guarantee

- (a) The purpose of the bond guarantee is to provide the Town with a source of funds to complete the required improvement if the applicant is in default of the performance agreement as described in Section 6.09 of these Subdivision and Land Development Regulations.
- (b) The following bond guarantees are acceptable provided they are consistent with the regulations below:
 - (1) Cash may be posted to guarantee any performance agreement. The funds on deposit shall generate market-rate interest as earned by the Town. Interest will be available to the Town in the case of default or breach of the performance agreement. If the improvements are successfully completed this interest shall be refunded to the applicant.
 - (2) Irrevocable letters of credit from financial institutions are acceptable provided they are approved by the Town Attorney and the following conditions are met:
 - ((a)) All letters of credit shall conform to the letter of credit form provided by the Town or shall be approved by the Town Attorney.
 - ((b)) Letters of credit shall extend at least three (3) months beyond the expiration date of the performance agreement.
 - ((c)) The financial institution must notify the Director of Public Works in writing at least 60 days in advance of any cancellation including normal expiration of term. Failure to do so will automatically extend the letter of credit for an additional three (3) months. (Amended 08/12/08)
 - ((d)) The financial institution issuing the letter of credit must have a rating of 20 or higher as evaluated by Highline Financial.
 - ((e)) The financial institution issuing the letter of credit shall be insured by the Federal Depository Insurance Corporation or the Federal Savings and Loan Insurance Corporation and be chartered in the State of Virginia or shall have a designated agent (i.e., Branch Bank) in Virginia.
 - (3) Corporate surety bonds are an acceptable method of guaranteeing performance agreements provided the following conditions are met:
 - ((a)) All corporate surety bonds shall conform to the form provided by the Town or shall be approved by the Town Attorney.
 - ((b)) Bonds shall be furnished by an insurance company licensed to transact fidelity and surety insurance in Virginia.
 - ((c)) The surety shall have a rating of XV or better as evaluated by A.M. Best's Rating or must be on the Federal Government, Treasury Department's List of Certified Companies. These lists will be maintained by the Director of Public Works.

Sec. 6.07 Extensions and Reduction of Performance Bonds

- (a) Performance agreements may be extended for one year periods or less. Any request for extension shall be accompanied by an estimate of the remaining work and a timetable for the completion of the improvements. Upon recommendation of the Director of Public Works, the Town Manager or his/her designee shall act within thirty (30) days of any written request to extend a performance agreement. In considering an extension of a performance agreement, the Town Manager or his/her designee should consider the following factors:
- (1) Current rating of corporate surety and status of the financial institution.
 - (2) Progress in completing the development plan or subdivision.
 - (3) Complaints received about nuisances resulting from development of the property.
 - (4) Cost estimate of completing the site plan or subdivision.
- (b) The amount of bonded improvements may be reduced by action of the Town Manager or his/her designee. Upon recommendation of the Director of Public Works, the Town Manager or his/her designee shall act within thirty (30) days of the receipt of any written request for a bond reduction. If any deficiencies in completed improvements remain, the Director of Public Works shall transmit a list of the deficiencies to the applicant within thirty (30) days of the reduction request. The Town Manager or his/her designee shall act or respond within thirty (30) days of any request for an extension or reduction of a performance bond.

Sec. 6.08 Establishment of a Maintenance Agreement

A maintenance agreement shall be executed for the repair or replacement of defective materials and workmanship within the required public improvements for a period of time extending for one year from the actual date of Town Manager or his/her designee acceptance of such improvements. The maintenance bond shall equal five percent of the original total cost of the bonded improvements in the subdivision or development.

Sec. 6.09 Acceptance of Improvements and Release of Performance Agreement

- (a) Within their authority as described in Section 6.04 of these Subdivision and Land Development Regulations, the Town Manager or his/her designee shall accept public improvements installed by an applicant which meet the following conditions:
 - (1) The completed improvements comply with the design standards of Division 4.
 - (2) Public improvements have been completed in accordance with the requirements of Division 5.
 - (3) Installation of public improvements has been completed in accordance with approved plans.
 - (4) All final inspections required by this Article have been completed by the Town and the bonded improvements were found to be acceptable by the Director of Public Works. (Amended 08/12/08)
 - (5) The applicant shall have prepared and submitted one reproducible set and two sets of prints of plans that accurately depict the bonded improvements for which the Town is to be responsible for operation and maintenance.
 - (6) The applicant, by appropriate instrument in a form approved by the Town Attorney, has conveyed to the Town good title free of all liens to all public improvements for which the Town is to be responsible for operation and maintenance.
- (b) Within their authority as described in Section 6.04 of these Subdivision and Land Development Regulations, the Town Manager or his/her designee shall release applicants from performance agreements when the subdivisions are vacated pursuant to Section 2.14 of these Subdivision and Land Development Regulations.

Sec. 6.10 Required Approvals of Final Site Plan, Minor Site Plan, Mini Site Plan, Site Plan Waiver, Town Capital Improvement Plan and Final Plat(s)

The following approvals shall accompany or be shown on a final site plan, minor site plan, or final plat and shall be necessary for its approval:

- (a) Certification by a registered surveyor that the final plat is correct.
- (b) Certification by a registered engineer, or a licensed 3(b) land surveyor that the final or minor site plan has been prepared in accordance with requirements of this Article.
- (c) Director of Plan Review and Zoning Administrator approval is required for all Site Plans, Minor Site Plans, Mini Site Plans, Site Plan Waivers, Final Plats and related documents (with the exception of Capital Improvement Construction Plans managed by the Department of Capital Plans Managements, unless otherwise noted within these Subdivision and Land Development Regulations.

- (d) Director of Capital Plans Management and Zoning Administrator approval is required for all Capital Improvement Construction Plans managed by the Department of Capital Plans Management unless otherwise noted herein.
- (e) Director of Utilities approval of the construction drawings for public water and sanitary sewer service associated with the final site plan, minor site plan, and final plat.
- (f) Agreement of public improvements authorized by the Town Manager or his/her designee and one of the requirements of Section 2.02(e), Section 2.10(b)(4), Section 2.11(c), Section 2.12(b), Section 3.11(e), Section 3.15(d)(3) and Section 3.21(b)(4) completed.

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