

ORDINANCE 2104

BOROUGH OF SOUTH PLAINFIELD

**AN ORDINANCE UPDATING THE PERFORMANCE AND MAINTENANCE
GUARANTEE SECTIONS OF THE BOROUGH'S DEVELOPMENT REVIEW CODE
TO COMPLY WITH STATUTORY UPDATES TO THE MUNICIPAL LAND USE LAW**

WHEREAS the Municipal Land Use Law (N.J.S.A. 40:55D -1 et seq.) delegates to municipalities the power to zone and regulate development and that statute is amended from time to time by the state legislature; and

WHEREAS the provisions regarding performance guarantees, maintenance guarantees and establishing a safety and security obligation were recently amended by the legislature and the Borough now likewise amends its Development Review Code to comply with the revisions to the statute.

NOW, THEREFORE, BE IT ORDAINED THAT the following provisions of Chapter 515 Development Review, Article VIII Subdivision Regulations of the Borough Code shall be amended and supplemented as follows:

Section 515-49 Improvements.

I. (5) Street Trees

- (a) At least two street trees shall be planted on each lot a minimum of 15 feet inside the curb line and a minimum of 40 feet between trees. The minimum caliper of the trees shall be two inches. The minimum height shall be 12 feet.

Section 515-51 Performance guarantee; safety and stability guarantee; escrow fee for inspections.

- A. No final plat or minor subdivision deed shall be approved by any municipal agency or zoning permit issued unless the developer has filed with the Borough a performance guarantee assuring the installation and maintenance of certain on-tract improvements and which meets with the approval of the Borough Engineer and Attorney as to sufficiency, form and execution or unless the required improvements have been installed and approved and a sufficient maintenance guarantee has been posted. In the event that other governmental agencies or public utilities automatically will own the utilities to be installed or the improvements are covered by a performance guarantee to another governmental agency, no performance guarantee shall be required by the municipality for such utilities or improvements.

- (1) Should a successive developer request a permit update under the State Uniform Construction Code for the purpose of updating the name and address of the owner of property on a construction permit, as a condition of such permit update, the new owner shall provide replacement performance guarantees, safety and stability guarantees and or maintenance guarantees as applicable to the then current stage of development.
- B. Such performance guarantee shall cover the cost of the installation of the improvements set forth in Section 515-49 of this article deemed necessary and appropriate, and are to be dedicated to the municipality, including streets, pavement, gutters, curbs, sidewalks, street lighting, street trees, surveyor's monuments as shown on the final map and required by the Map Filing Law P.L. 1960, c.141 (N.J.S.A. 46:26B-1, et seq.), water mains, sanitary sewers or other means of sewage disposal, community septic systems, drainage structures, public improvements of open space, and any grading necessitated by the preceding improvements as well as privately- owned perimeter buffer landscaping as required by ordinance or imposed as a condition of approval for each section or phase of development.
- (1) At the developer's option a separate performance guarantee may be posted for the privately-owned perimeter buffer landscaping.
 - (2) In the event that a developer shall seek a temporary certificate of occupancy for a development, unit, lot, building or phase of development, as a condition of the issuance thereof the developer shall furnish a separate guarantee referred to herein as "temporary certificate of occupancy guarantee" in compliance with the provisions of N.J.S.A. 40:55D-53(1)(c), et seq. The municipal official designated to administer this provisions of this section is the Borough Engineer.

(No change to paragraphs C through E.)

F. Safety and stabilization guarantee.

The developer shall furnish to the municipality a safety and stabilization guarantee to be available to the municipality for the purpose of returning property that has been disturbed to a safe and stable condition or otherwise implementing measures to protect the public from access to an unsafe or unstable condition in compliance with the provisions of N.J.S.A. 40:55D-53(1)(d), et seq.

- (1) At the developer's option the safety and stabilization guarantee may be provided as a separate guarantee or as a line item in the performance guarantee.
- (2) The amount of the safety and stabilization guarantee shall be as follows; for bonded improvements in an amount not exceeding \$100,000 the guarantee shall

be \$5,000. The amount of the safety and stabilization guarantee for a development with bonded improvements exceeding \$100,000 shall be calculated as a percentage of all the bonded improvements, or applicable phase or stage of development, as follows: \$5,000 for the first \$100,000 of bonded improvements plus 2.5% of bonded improvement costs in excess of \$100,000 up to \$1,000,000 plus 1% of bonded improvements costs in excess of \$1,000,000.

- G. When all or substantially all of the-required improvements have been completed, the obligor shall notify the governing body in writing by certified mail addressed care of the Borough Clerk, of the completion of the improvements and shall send a copy thereof to the Borough Engineer. The obligor shall simultaneously therewith submit to the Borough Engineer as built drawings, in ink, on tracing cloth, to such scale as required by the Borough Engineer, accurately showing the location, profile, size and appurtenances of all storm drains, catch basins, sanitary sewers, and water mains and utilities, including service connections, constructed within the subdivision or site. The obligor shall also submit a certification by an Engineer to the placement and installation of monuments.
- H. The Borough Engineer shall then inspect all of the improvements and shall file a report in writing with the governing body, and the obligor, within 45 days, which report shall be detailed and shall indicate either approval, partial approval or rejection of said improvements. If said improvements or any portion thereof shall not be approved or shall be rejected by the borough Engineer, said report shall contain a statement of the reasons for such non-approval or rejection. Where said report indicates partial approval of said improvements, it shall indicate the costs of the improvements for which approval is rejected or withheld.
- I. The governing body, by resolution, shall either, approve, partially approve or reject the improvements, after a public hearing has been held, on the basis of the report of the Borough Engineer. The resolution shall be adopted within 45 days of receipt of the report from the Engineer. Prior to the public hearing, the obligor shall publish a notice in the newspaper and notify all property owners in and within 200 feet of the development, by certified mail, return receipt requested, of the date time and place of hearing, which notice shall be served not later than 10 days prior to the date of the hearing set forth in the notice. Where partial approval is granted, the obligor shall be released from all liability pursuant to its performance guarantee to the extent of such partial approval, except that a portion adequately sufficient to secure provision of the improvements not yet approved shall be maintained as provided for by N.J.S.A. 40:55D-53, et seq. Newspaper notification and notification of property owners within

200 feet by certified mail shall not be required where the amount of the performance guarantee is \$500 or less. An executed copy of the adopted resolution of the governing body shall be provided to the obligor.

- J. Failure of the governing body to adopt such resolution within 45 days of receipt of the report from the engineer shall be deemed to constitute approval of the improvements, and the obligor and surety, if any, shall entitle the obligor to petition the Superior Court for an order compelling such approval.
- K. If any portion of the required improvements shall not be approved or shall be rejected by the governing body, the obligor shall cause the same to be completed, and the appropriate portion of performance guarantees and safety and stabilization guarantees shall be retained by the Borough as provided for in N.J.S.A. 40:55D-53, et seq. Upon completion of the remaining improvements the same procedure of notification as outlined herein shall be followed.
- M. The obligor shall reimburse the municipality for reasonable inspection fees paid to the Borough Engineer for the forgoing inspections and improvements, pursuant to N.J.S.A. 40:55D-53(3) (h), et seq. The obligor shall post inspection fees, in escrow, in the amount determined as follows: the greater of \$500 or 5% of the bonded improvements subject to the performance guarantee under the applicable statute. Further, the escrow fee shall not exceed 5% of the costs of private site improvements that are not subject to the performance guarantee.
 - (1) if the municipality determines that the amount in escrow for the payment of inspection fees, as calculated pursuant to N.J.S.A. 40:55D-53, is insufficient to cover the costs of additional required inspections, the municipality may require the developer to deposit additional funds in escrow provided the municipality delivers to the developer a written inspection escrow deposit request, signed by the municipal engineer, which; informs the developer of the need for the additional inspections, details the items undertakings that require inspection, estimates the time required for those inspections and estimates the cost for performing those inspections.

Section 515-52 Certification of improvements; maintenance guarantee.

- A. Upon final acceptance of the improvements by the governing body consistent with the procedures as outlined above in § 515-51, and before the release of the performance guarantee, the developer shall post a maintenance guarantee with the Borough in the amount of 15% of the costs of the installation of the improvements which are being released. The developer shall also post a maintenance guarantee in an amount not to

exceed 15% of the costs of the installation of the following private site improvements; stormwater management basins, inflow and water quality structures within the basins, and the outflow pipes and structures of the stormwater system if any. Said maintenance guarantee(s) to run for a period of two years after final acceptance of the improvements if such are dedicate to the public or the date of approval by the engineer if private improvements. In the event that other governmental agencies or public utilities automatically will own the utilities to be installed or the improvements are covered by a maintenance guarantee to another governmental agency, no maintenance guarantee shall be required by the municipality for such utilities or improvements.

BE IT FURTHER ORDAINED THAT the provisions of Chapter 515 Development Review, Article IX Site Plan Regulations shall be amended as follows:

Section 515-66 Performance guarantees, safety and stability guarantee, maintenance guarantee and escrow deposit for inspections.

The furnishing, amount, time period and method of release of any performance guarantee, safety and stability guarantee, maintenance guarantee and escrow deposit for inspections shall follow the procedures set forth in § 515-51 and 515-52 of this Chapter.