

## ARTICLE XXII. MODIFICATIONS

Whenever, in the opinion of the County Planning Commission, the strict application of the requirements contained in Articles XX and XXI would result in extreme practical difficulties or undue misuse of property, the Commission may modify such requirements as necessary so that the developer is allowed to develop his property in a reasonable manner, providing that public interests are protected and the general intent and spirit of these regulations are preserved. The Commission shall grant such a modification only upon determination that:

- (a) The modification will not be detrimental to the public health, safety, and general welfare of the County;
- (b) The modification will not adversely affect the reasonable development of adjacent property;
- (c) The modification is justified because of topographic or other special conditions unique to the property involved, in contra-distinction to more inconvenience or financial disadvantage;
- (d) The justification does not generally apply to similar developments that meet the standards of which the modification is sought; and
- (e) The modification is consistent with the objectives of this Ordinance and will not have the effect of nullifying the intent or purpose of this Ordinance.

No modification granted by the Planning Commission shall affect the developer's obligation to comply with requirements that are established by separate authority in accordance with State or County laws.

All modifications shall be considered at a public meeting of the Dorchester County Planning Commission. The Planning Commission shall adopt written findings of fact supporting its decision regarding approval of a modification request.

## **ARTICLE XXIII. FINANCIAL IMPROVEMENT GUARANTEES**

### **Section 23.1 Purpose**

Improvement guarantees shall be provided to ensure the proper installation and maintenance of required streets, utility and other improvements. The nature and duration of the guarantee shall be structured to achieve this goal without adding unnecessary costs to the developer.

### **Section 23.2 Application**

- (a) Submission of a plan for Final Plat Approval will include a licensed professional engineer's certification that all the required improvements have been installed as per the approved plans and specifications as well as all provisions of this Ordinance.
- (1) Prior to final plat approval all required improvements shall be installed in accordance with the approved Preliminary Plan. Due to the potential damage to sidewalks in front of lots and required landscaping on or in front of lots, the developer may performance bond sidewalk and landscaping when located on or in front of lots at one hundred fifty percent (150%) of the cost to complete outstanding improvements. The Planning Director may allow for the bonding of other landscaping on a case by case basis as needed to ensure the health of new plant materials.
  - (2) The provisions for a maintenance guarantee shall be for that period required prior to final acceptance of the improvement and in an amount not to exceed seventy-five percent (75%) of the cost of the streets and drainage improvements.
    - a. Application for a maintenance guarantee shall be made to the Director of Public Works who will be responsible for reviewing and approving.
    - b. To ensure adequate funding, financial guarantee estimates shall be resubmitted every two years to the Director of Public Works who will evaluate and determine if the financial guarantee on file needs to be updated.
  - (3) In the event that other governmental agencies or public utilities are proposed to own the utilities to be installed, or the improvements are a covered by a performance or maintenance guarantee to another governmental agency, no performance or maintenance guarantee, as the case may be, shall be required for such utilities or improvements.
- (b) Upon substantial completion of the remaining sidewalk and landscaping improvements, the developer may notify the County in writing of the progress being made and request a reduction in the amount of the performance bond.

- (1) The developer may seek a one-time reduction of the required performance bond amount when the bonded improvements are fifty percent (50%), or more, complete.
- (2) The developer may not seek such a reduction for six (6) months after the bond is posted.

**Section 23.3 Foreclosure**

In the event that any or all of the required improvements are not completed within the time specified, the County may let or re-let the contract, using the posted security to defray the cost of such required improvements.

## ARTICLE XXIV. MAINTENANCE

### Section 24.1 Performance and Maintenance Mechanisms

- (A) Performance and Maintenance guarantees shall be provided by a variety of means. The selected guarantee will show "Dorchester County" as the payee or beneficiary. The guarantee shall be made to the County in one of the following means.
- (a) **Security Bond:** The applicant may obtain a security bond from a surety bonding company authorized to do business in the State of South Carolina.
  - (b) **Letter of Credit:** The applicant may provide an irrevocable Letter of Credit from a bank or other reputable financial institution acceptable to Dorchester County. There will be a provision for the lending institution to provide Dorchester County a written sixty (60)-day notice of expiration date.
  - (c) **Escrow Account:** The applicant shall deposit cash, or other instruments readily convertible into cash at face value acceptable to the Director of Public Works, with the County.

### Section 24.2 Dedication

A "Dedication Statement" on a plat involving streets, easements and drainage systems is not an automatic process. The sub-divider/developer must initiate the process by submitting a "Maintenance Acceptance" Application. This application is routed through county government for inspections and recommendations and for County Council to accept or reject the application.

- (a) The date of the Council's action is the start date of the sub-divider/developer's liability period to maintain the subject improvements for a minimum period of twelve (12) months and seventy-five percent (75%) build-out.
- (b) Following this maintenance liability period, the developer will notify the County Public Works Department that this period has elapsed and the developer is ready for a final inspection. The County Engineer or his designee will re-inspect the subject streets, easements and drainage systems and issue the "Release of Maintenance Responsibility" letter to the applicant within thirty (30) days.
- (c) Should this inspection reveal conditions of abnormal wear and tear to the streets, easements, or drainage systems, a letter indicating such will be submitted to the developer. The developer will then have ninety (90) days to correct these conditions and request another re-inspection. Failure to comply with time limits may result in starting the entire process over.

**Section 24.3 General Maintenance Provisions**

- (a) The developer shall make such adequate provisions as shall be approved by the Planning Commission for the perpetual maintenance of all sewer and water facilities in the subdivision unless and until such obligations have been assumed by another entity.
- (b) To provide for continued maintenance of private roads and drainage, the following conditions must be met by the developer:
  - (1) Organization of the property owner's association for purposes of (but not limited to) operating and maintaining roads and right-of-way. The association must be charged with the responsibility of providing services otherwise provided by the county government with respect to the maintenance of roads, drainage and associated rights-of-way.
  - (2) The association must be duly chartered by the State of South Carolina and recorded with the Dorchester County Clerk of Court.
  - (3) If at anytime the association desires public maintenance on any facilities, said facilities must first meet county standards.
- (c) Unless otherwise specified by this Ordinance, the County shall maintain only those easements specifically accepted for public maintenance. Other easements shall stipulate that contiguous owners shall be responsible for general maintenance of such easements. The governing authority or utility companies with lines in such easements shall have full right of access.
- (d) The maintenance of drainage structures by Dorchester County shall be limited to the work necessary to insure the proper flow of water within the structure. This work includes repairs to damaged pipes and removal of sedimentation and vegetation that impedes the proper flow of water within a structure as determined by the Public Works Department. The cutting of vegetation and removal of foreign material from areas around the drainage structures that are a part of the overall drainage plan of a subdivision as required by this Ordinance and/or duly accepted by County Council is the responsibility of the owners of the property on which the drainage structure is located.