

RYE PLANNING BOARD
PROPOSED LAND DEVELOPMENT REGULATIONS AMENDMENT 2024-03
RE: Surety

Amendment to Land Development Regulations § 202-7.1. Performance guarantee requirements as follows
(Note: New text *emboldened and italicized*. Deleted text ~~struck through~~).

§ 202-7.1. Performance guarantee requirements.

~~Before approval of a land development by the~~ *The Planning Board* the applicant must submit *may condition any approval or the authorization for the sale of any parcel associated with a subdivision upon the submission of* a performance guarantee or surety, in the form of a self-calling letter of credit or cash surety, covering the costs of all required on-site and off-site improvements plus a ten-percent contingency, including erosion and sediment control measures during construction. ~~Said bonds must be reviewed and approved as to form and sureties by the Town Counsel, and plans will not be approved until such bond approval is received.~~ The scope and amounts of said performance guarantee must be acceptable to the Planning Board. *Except for performance guarantees related to roads and utilities in subdivisions, such performance guarantee shall be provided as a condition to final approval by the Planning Board; for performance guarantees related to roads and utilizes in subdivisions, such performance guarantee shall be provided as a condition to authorization to convey lots within the subdivision or the issuance of building permits for any structures for human occupation. Any performance guarantee to be provided under this section must be reviewed and approved as to form and sureties by the Town Counsel.*

- A. Letter of credit and other forms of guarantee.
- (1) The Planning Board may accept only irrevocable self-calling letters of credit or cash surety properly endorsed to the Town and retained by the Town. ~~Said performance guarantee or surety shall be reviewed and approved by Town Counsel.~~ Other forms of surety may be accepted by the Planning Board, at its discretion, provided Town Counsel determines that they are enforceable *under all applicable provisions of RSA chapter 674.*
 - (2) As allowed by RSA 674:36, III(c), the Planning Board may assess the costs of completing street and utility work in approved subdivisions against the lots (or land) within the subdivision which benefit from the improvements.
- B. Two-year periods. Performance guarantee or other sureties shall be conditioned upon the completion of all required improvements within two years or as extended by Planning Board approval and reevaluation of the performance guarantee or surety under this section.
- C. Maintenance during development. Said performance guarantee or surety shall guarantee that the applicant constructs per approved plans and maintains all streets and stormwater management, water and sewer facilities in the land development until such facilities are accepted by the Town or Water District. The construction cost estimate, plus a ten-percent contingency, shall be prepared by the applicant and reviewed for accuracy by the Town Engineer, and approved by the Planning Board.
- D. *Partial release of performance guarantee or surety.*

(1) Performance guarantees or other performance sureties shall be entitled to a partial release by the Planning Board upon the completion of improvements or installation or upon the substantial improvements being made. In seeking a partial release, the applicant shall identify the work that has been performed and the cost of the work performed, as against the anticipated project costs. Upon the certification from the project Engineer that the improvements that have been completed or partially completed have been done in a satisfactory manner in accordance with the approved plans, these regulations and standards are adopted herein by reference. Such partial release shall be without reservation of the Planning Board to seek a guarantee and maintenance surety in accordance with Paragraph (E).

E. Release of performance guarantee or surety.

- (1) Performance guarantees or other performance sureties shall be released by the Planning Board and replaced by a guarantee and maintenance surety at such time as the Planning Board Engineer certifies that all required improvements have been satisfactorily completed in accordance with the approved plans, these regulations and any standards adopted herein by reference. The guarantee and maintenance surety shall:
 - (a) Be acceptable to the Planning Board.
 - (b) Be in an amount equal to 25% of the original guarantee.
 - (c) Be acceptable as to form and surety to Town Counsel.
 - (d) Guarantee the maintenance of all street, utility and drainage improvements until accepted by the Town or Water District, including snow plowing.
 - (e) Guarantee the repair of any street, utility or drainage improvement necessary within a period of three years following the release of the performance surety.
- (2) ***Inspections related to release of performance surety.***
 1. ***Bonded parties seeking a full or partial release of any performance guarantee in accordance with Paragraphs D and E shall seek such a release in writing to the Planning Board.***
 2. ***The Planning Board, by and through the Town's Engineer, will conduct an inspection of any infrastructure claimed to have been completed or improved within thirty (30) days of the Town's receipt of such request.***
 3. ***The Planning Board shall notify the bonded party within fifteen (15) days of any inspection regarding any completed or non-compliant conditions.***
 4. ***The bonded party shall complete any incomplete work subject to the bond within 30 days of receipt of notification.***

Explanation

Senate Bill 7 also adds the following two new provisions to RSA 674:25, III and IV. Those new provisions state:

IV. The planning board limitations under this section shall not require letter of credit, cash, or passbook as the only method securing the completion of the work. A planning board shall allow road and utility construction to start without a bond, however, a bond for the infrastructure, roads, and utilities must be in place prior to the sale of any parcel of land within the subdivision or a request for a building permit for structures for human occupation. The planning board shall not require that forfeiture or automatic call bonds be provided by the developer.

V. Inspections required by the municipality for release of a bond shall be completed within 30 business days of written request delivered by hand or sent by courier or service. Any requirements not recognized by the municipality as complete or non-compliant shall require written notification be sent, delivered by hand or sent by courier or service, within 15 business days of the inspection, to the bonded party. The bonded party shall complete the work within 30 days of receipt of notification. The municipality shall inspect for completion of the work cited as incomplete or non-compliant in the first inspection within 15 business days of written notification delivered by hand or sent by courier or service. All bonds shall be released within 90 days of final sign off.
