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Application # TEXT-0076-2024

Application for Text Amendment

Contact Community Development (478) 988-2720

Applicant Information

*Indicates Required Field

Applicant	
*Name	Bryan Wood for the City of Perry
*Title	Director of Community Development
*Address	1211 Washington Street, Perry, GA 31069
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Request

*Please provide a summary of the proposed text amendment:

Amend Sec. 2-3.12 to add expiration and amendment provisions to land disturbance permit; Sec. 2-3.13, Final Plats, to provide consistent language; and Secs. 2-3.16 and 2-3.17 regarding maintenance warranties to reduce the required value and maintenance period, revise provisions for phased developments, and require separate maintenance warranties for stormwater facilities.

Instructions

1. The application, fee (made payable to the City of Perry), and proposed text of the amendment must be received by the Community Development Office no later than 4:30 pm on the date reflected on the attached schedule.
2. Fees: Actual cost of required public notice.
3. The applicant must state the reason for the proposed text amendment. See Sections 2-2 and 2-3.2 of the Land Management Ordinance for more information.
4. The staff will review the application to verify that all required information has been submitted. The staff will contact the applicant with a list of any deficiencies which must be corrected prior to placing the application on the planning commission agenda.
5. Text amendment applications require an informational hearing before the planning commission and a public hearing before City Council.
6. The applicant must be present at the hearings to present the application and answer questions that may arise.
7. **Campaign Notice required by O.C.G.A. Section 36-67A-3:** Within the past two years, have you, the applicant, made either campaign contributions and/or gifts totaling \$250.00 or more to a local government official? **Yes** ___ **No** X ___
If yes, please complete and submit the attached Disclosure Form.
8. The applicant affirms that all information submitted with this application, including any/all supplemental information is true and correct to the best of their knowledge and they have provided full disclosure of the relevant facts.
9. Signatures:

*Applicant	 Bryan Wood, Director of Community Development, for the City of Perry	*Date	6/3/2024
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Standards for Amendments to the Text of the Land Management Ordinance

In reviewing an application for an amendment to the text of the ordinance and acting on said application, the planning commission and city council may consider the following standards:

(1) Whether, and the extent to which the proposed amendment is consistent with the Comprehensive Plan.

This amendment is not inconsistent with these plans.

(2) Whether, and the extent to which the proposed amendment is consistent with the provisions of this chapter and related city regulations.

The proposed amendment is consistent with the format of the Land Management Ordinance.

(3) Whether, and the extent to which there are changed conditions from the conditions prevailing at the time that the original text was adopted.

The original ordinance was modeled after that of a community in the Atlanta metro area. After adoption of the original ordinance, the City became aware of unreasonably excessive requirements that are not consistent with communities outside the metro area, and the City's previous practices.

(4) Whether, and the extent to which the proposed amendment addresses a demonstrated community need.

After consulting representatives of the development community and internal discussions, the amendment provides maintenance warranty requirements that are more consistent with surrounding communities and prior City practices while still maintaining developer responsibility for repairs to newly accepted infrastructure improvements for 12 to 18 months.

(5) Whether, and the extent to which the proposed amendment is consistent with the purpose and intent of the zoning districts in this chapter, will promote compatibility among uses, and will promote efficient and responsible development within the city.

A purpose of the Land Management Ordinance is to "facilitate adequate provision of public facilities and services." The amendment ensures that new infrastructure accepted by the City is maintained and necessary repairs during the warranty period are corrected at the developer's expense.

(6) Whether, and the extent to which the proposed amendment will result in logical and orderly development pattern.

The amendment allows the City to accept ownership of new infrastructure while maintaining the developer's responsibility for maintenance and repairs during the warranty period.

(7) Whether, and the extent to which the proposed amendment will result in beneficial impacts on the natural environment and its ecology, including, but not limited to, water, air, noise, stormwater management, wildlife, vegetation, and wetlands.

The amendment has no impact on the natural environment.

(8) Whether, and the extent to which the proposed amendment will result in development that is adequately served by public facilities and services (roads, potable water, sewerage, schools, parks, police, fire, and emergency medical facilities).

The amendment does not impact the installation of public facilities and services, but protects the City from unreasonable expenses during the maintenance period.

Delete and replace the following sections in their entirety:

2-3.12. *Land disturbance permit.*

(A) *General.*

- (1) *Purpose.* The purpose of this subsection is to ensure that no development or development activity disturbs or alters the surface of land in the city without a land disturbance permit approved pursuant to this section.
 - (2) *Authority.* The administrator is authorized to approve, approve with conditions, or disapprove an application for a land disturbance permit. Conditions imposed by the administrator shall be reasonable to ensure compliance with the requirements of applicable regulations.
 - (3) *Applicability.* No development activity, unless exempted pursuant to subsections 7-1.4(A)(3), 7-2.2 and or 7-3.4(E), shall disturb or alter, for any purpose, the surface of land in the city without a land disturbance permit.
 - (4) *Action by administrator.* The administrator shall review and act on the application for a land disturbance permit.
 - (5) *Pre-construction meeting.* After issuance of the site plan permit and land disturbance permit, the owner's contractor and civil engineer shall attend a pre-construction meeting with the city prior to beginning any work authorized by such permits.
 - (6) *Responsibilities of the owner.*
 - (a) During any land-disturbing operation the owner shall be responsible for carrying out the proposed work in accordance with the permit, approved plan, specifications, and time schedule in compliance with all the requirements of this chapter and any other state or federal permit.
 - (b) The owner shall always maintain on-site the stamped and approved set of plans from the city for the permitted land-disturbing activity.
 - (7) *Inspection.*
 - (a) Representatives of the city are authorized to enter upon any land or water to inspect development activity, to verify the existing conditions of a development site, and to verify compliance with this chapter whenever the city deems necessary.
 - (b) The owner shall contact the administrator to inspect and verify compliance with the provisions of this chapter and the conditions of the permit prior to initiating any activity, once construction is complete, and any other time as determined by the administrator, design and specifications manual, city specifications, or the regulations of this chapter.
 - (c) All public infrastructure or work within the right-of-way must be approved by the administrator or be replaced to the standards of the design and specifications manual, city specifications, or the regulations of this chapter.
- (B) *Expiration.* The land disturbance permit shall be linked to a site plan permit and shall expire upon the expiration of the site plan permit.
- (C) *Amendments.* A land disturbance permit may be amended, extended, or modified only in accordance with the procedures and standards established for its original approval.

2-3.13.3. *Final Plats.*

- (A) When construction of the subdivision or a recordable portion of the subdivision has been completed (except for items for which a performance guarantee can be accepted), the owner may apply to the administrator for Final Plat approval.
- (B) A final plat shall be submitted digitally, along with as-built drawings of streets, water, sewer, gas (if any) and stormwater systems. If any streets, lands, or easements are shown on the Final Plat for dedication to the City, a warranty deed or deeds transferring title to said streets, lands or easements in fee simple, in a form acceptable to the City, shall be submitted with the application for Certificate of Development Conformance.
- (C) The administrator shall indicate on a review copy of the plat or in a written memorandum all comments related to compliance of the Final Plat with this ordinance, conditions of zoning approval, and the regulations of other City departments and State agencies as appropriate. The administrator shall have final staff authority to determine the applicability of any and all comments under this ordinance or conditions of zoning approval.
- (D) The administrator may not approve any Final Plat whereon is shown or by which is otherwise created a lot that would present particularly severe and unusual difficulties for construction of a building, which would clearly require a variance to be reasonably usable, or which is otherwise "unbuildable" due to the presence of floodplain, unusual configuration, lack of public utilities, or for any other reason.

- (E) The owner shall be responsible for compliance with all codes, regulations, zoning requirements and for the satisfaction of all the comments of the administrator.
- (F) Final approval by the administrator shall not be shown on the Final Plat until all requirements of these and other applicable regulations have been met, and the administrator has received a completed request for Certificate of Development Conformance and an executed Development Performance and Maintenance Agreement, prepared in accordance with the requirements of Sections 2-3.14 and 2-3.15.
- (G) The administrator shall further determine that either:
 - (1) All improvements to the subdivision required for approval of the Final Plat under the rules and regulations of the City of Perry have been completed in accordance with the appropriate specifications; or
 - (2) All the required improvements have been completed except final grassing, pavement topping, required landscaping, or sidewalks, in which case, a performance guarantee meeting the requirements of Section 2-3.17 shall have been filed by the subdivider with the Development Performance and Maintenance Agreement.
- (H) Payment of the required plat recording fee shall be made to the City prior to approval of the Final Plat.
- (I) Once the administrator has approved the Final Plat and all other affected departments and agencies of government as required have certified compliance in writing, the administrator shall sign the final plat, certifying that all the requirements of this ordinance and the conditions of zoning approval have been met, and that all other affected departments and agencies having jurisdiction have, if required, approved the plat. The Final Plat shall not be deemed approved until it has been signed by the administrator.
- (J) Recordation of Approved Final Plat.
 - (1) The administrator will forward the executed deeds for the streets, lands, and easements as well as the Development Performance and Maintenance Agreement and documents required under Section 2-3.15, to the City Council for approval.
 - (2) Once the final subdivision plat has been certified and the City Council approvals have been granted, it shall be recorded by the administrator, or by the owner with the administrator's approval, with the Clerk of the Superior Court.
 - (3) If recorded by the owner, one copy of the recorded plat, showing the map book and page numbers where the plat is recorded, shall be immediately returned to the administrator.

2-3.16. *Maintenance Warranty.* The owner shall be responsible for the full cost of maintenance after completion of all improvements required by this ordinance, whether public or private, in accordance with the Development Performance and Maintenance Agreement for the project and the provisions of this Section.

- (A) *Maintenance Surety Required.*
 - (1) Prior to approval of a final subdivision plat, a maintenance warranty in a form of surety as described in this Section is required for all stormwater management facilities, water system improvements, sanitary sewer facilities, natural gas mains, associated easements, and street and right-of-way improvements shown on the record "as-built" surveys, and for all landscaping required by this ordinance.
 - (2) Prior to issuance of a certificate of occupancy for a multi-family or nonresidential development project, a maintenance warranty in a form of surety as described in this section is required for all landscaping required by this ordinance, and for any improvements and associated easements to be dedicated to the City.
 - (3) The provision of such surety shall not limit the owner's responsibility for the full cost of maintenance, repair, or restoration during the maintenance period of all improvements required by this ordinance and included in the pertinent Development Performance and Maintenance Agreement.
- (B) *Phased Developments.* When any development project is to be completed in more than one phase, a separate maintenance warranty is required for the stormwater management facilities which are approved to service more than one phase of the project.
- (C) *Maintenance Period.*
 - (1) Start date: For a subdivision, the start of the maintenance period shall be the date of final subdivision plat approval. For a multi-family or nonresidential development project, the start of the maintenance period shall be the date of issuance of the certificate of occupancy.

- (2) The maintenance period shall extend for 18 calendar months from the start date above, or from the date of completion and City approval of the last deferred improvement covered by a Performance Guarantee, whichever occurs later.
 - (3) The maintenance period for stormwater management facilities will be extended for phased developments. The maintenance period shall extend for 18 calendar months from the date of the last final subdivision plat or the last certificate of occupancy for a multi-family or non-residential project served by the stormwater management facilities.
- (D) *Maintenance Surety Standards.*
- (1) For continuing maintenance of the water system improvements, sanitary sewer facilities, stormwater management facilities, associated easements, natural gas mains, and street and right-of-way improvements, the following shall apply:
 - (a.) The maintenance surety shall be in the form of a valid irrevocable letter of credit issued by a bank or other reputable financial institution chartered to do business in the State of Georgia. Such letter of credit must comply with the requirements of Section 2-3.16(E).
 - (b.) The value of the maintenance sureties shall be equal to 10% of the cost of construction of the water, sanitary sewer, stormwater facilities, gas, street and right-of-way improvements shown on the as-built surveys and as estimated for deferred improvements under Section 2-3.17(B). The administrator shall maintain an updated schedule of unit costs for calculating the cost of construction.
 - (2) A maintenance surety for continued compliance with the buffer and landscaping requirements of this ordinance, as applicable, shall be in the form of a landscaping warranty. The landscaping warranty shall provide for the replacement or restoration of any or all plantings and landscape material for a period of 12 calendar months from the date of City approval following installation of such plantings and landscape material. Such warranty shall be in a form acceptable to the City (see Administrative Manual for an example).
 - (3) Repairs shall be made for any deficiencies identified in the covered improvements within the maintenance period or the surety shall be called by the City to complete same.
- (E) *Letter of Credit for Maintenance Surety.* The letter of credit shall be in a form acceptable to the City (see Administrative Manual for an example). The executed letter of credit shall be submitted with the final Development Performance and Maintenance Agreement and shall certify the following:
- (1) That the issuer guarantees funds as an assignment in an amount no less than the total amount determined in accordance with Section 2-3.16(D).
 - (2) That the issuer guarantees that any liens or encumbrances that exist or may be placed on the improvements will not become the responsibility of the City under any circumstances.
 - (3) That if the owner fails to maintain, repair, replace or restore each of the specified improvements within the maintenance period, upon written demand of the administrator the issuer will pay to the City immediately, and without further action, the full amount of the total assignment stated in the letter of credit (less the actual cost of covered improvements expended as of the date of demand and accepted by the City as to reasonableness).
 - (4) That the letter of credit shall not be terminated less than 60 calendar days after the date of the end of the maintenance period as contained in the pertinent Development Performance and Maintenance Agreement, may not be withdrawn, or reduced in amount, and will be automatically renewed on a month-to-month basis until released in writing by the administrator.
- (F) *Release of Maintenance Warranty.*
- (1) Twelve months from the start date, the administrator will inspect the improvements covered by the maintenance warranty and provide the owner a written list of any repairs, replacement, or restoration needed to maintain or return the improvements to full compliance with the “as-built” standards and requirements for such improvements required by this ordinance.
 - (2) The owner shall undertake and complete all maintenance, repairs, replacement, or restoration identified in paragraph (1) of this subsection prior to the expiration of the maintenance period. The owner shall contact the administrator for inspection upon completion of the required warranty work.
 - (3) When the warranty work identified in paragraph (1) of this subsection has been completed by the owner and approved by the administrator for conformity with this ordinance the maintenance warranty shall be released by the administrator, and written notice of such release shall be provided to the issuer of the letter of credit. Excluding maintenance warranties covering stormwater management

facilities and after twelve months from the start date, the administrator may release the maintenance warranty, or a portion thereof, when improvements covered by the maintenance warranty are determined to meet the requirements of this ordinance.

2-3.17. *Performance Guarantee.* As a prerequisite to approval of a final plat for a subdivision or a certificate of occupancy for a multifamily or nonresidential development project, completion of certain improvements required under this ordinance may be deferred in accordance with the Development Performance and Maintenance Agreement for the project and the provisions of this Section.

(A) *Posting Performance Guarantee.*

- (1) The owner may post a performance guarantee for the construction of certain deferred improvements required under this ordinance as an attachment to the Development Performance and Maintenance Agreement and of a type provided in section 2-3.17(E).
- (2) Improvements eligible for deferral under performance surety are limited to final topping of streets, installation of sidewalks, installation of plantings and landscape materials, and grassing of street shoulders and easements, as applicable to the project. All other improvements required by this ordinance shall have been completed by the owner, inspected, and approved by the administrator, and covered by the Certificate of Development Conformance for the project.
- (3) Such performance guarantee shall comply with all statutory requirements and shall be satisfactory to the City as to form, sufficiency, and manner of execution. (See Administrative Manual for examples.) The period within which required improvements must be completed shall be specified in the Development Performance and Maintenance Agreement and shall not exceed nine months from the date of approval of the Certificate of Development Conformance unless an extension of up to an additional three calendar months has been granted by the administrator.
- (4) The expiration date of the performance guarantee shall be no less than 60 days following the date established in the Development Performance and Maintenance Agreement for completion of the deferred improvements. "Completion of the improvements" shall mean the final inspection and approval by the administrator of the improvements in accordance with the design and construction standards of this ordinance.
- (5) Such guarantee shall be approved by the administrator as to amount and type of surety and conditions satisfactory to the administrator. The administrator may subsequently, upon proof of difficulty, approve extension of the completion date set forth in such guarantee for a maximum period of up to three additional months.

(B) *Cost of Improvements.* The cost of the improvements to be completed shall be established based on a properly executed and binding contract between the owner and the contractor selected to perform the work and shall be supported by detailed cost estimates prepared by the contractor or a qualified design professional. Said contract and cost estimates shall be determined by the administrator to be sufficient to cover the full cost of design, surveying, construction, inspection, and preparation of as-built surveys, construction management and all other costs of the improvements.

(C) *Failure to Complete Improvements.*

- (1) In those cases where a performance guarantee has been posted and required improvements have either not been installed within the terms of such performance guarantee or have not progressed in a timely manner such that completion within the period of the guarantee can be achieved, the administrator may thereupon declare the guarantee to be in default and require that the issuer of the performance guarantee turn over to the City such funds that are due and payable under the terms of the guarantee.
- (2) A default also shall be deemed to have occurred on the part of the owner if, in the sole judgment of the administrator, the owner has:
 - a. Abandoned or unnecessarily delayed the performance of its obligations under the pertinent Development Performance and Maintenance Agreement; or,
 - b. Renounced or repudiated its obligations under the said Agreement; or,
 - c. Clearly demonstrated through insolvency, delay or otherwise, that its obligations under the said Agreement cannot be completed within the time allotted under the said Agreement; or,
 - d. Has not complied with or is not in compliance with the minimum standards of this ordinance for any one or more of the subject improvements, or,
 - e. Transferred ownership of any portion of the project to a third party without assignment of the remaining responsibilities hereunder; or,
 - f. Caused or experienced any damage to new or previously existing improvements creating an emergency situation.

- (D) *Return of Guarantee.* When the improvements have been completed and inspected and approved by the administrator for conformity with this ordinance, the performance guarantee shall be released by the administrator.
- (E) *Types of Acceptable Performance Guarantees.*
- (1) *Letter of Credit.* The developer shall provide a valid irrevocable letter of credit from a bank or other reputable financial institution chartered to do business in the State of Georgia, for approval by the administrator. The letter of credit shall be in a form acceptable to the City (see Administrative Manual for an example). The letter of credit shall certify the following:
- a. That the issuer guarantees funds in an amount equal to 110% of the cost, as established under Section 2-3.17(B), of completing all required improvements.
 - b. That the issuer guarantees that any liens or encumbrances that exist or may be placed on the improvements will not become the responsibility of the City under any circumstances.
 - c. That if the developer fails to satisfactorily complete the specified improvements within the required period or is otherwise in default under Section 2-3.17(D), upon written demand of the administrator the issuer will pay to the City immediately, and without further action, the full amount of the total assignment stated in the letter of credit, less the actual cost of covered improvements expended as of the date of demand. Such expenditures shall be evidenced by invoices and proof of payments and shall be subject to review and acceptance by the City as to reasonableness.
 - d. That the letter of credit shall not be terminated less than 60 calendar days after the date of performance completion as contained in the pertinent Development Performance and Maintenance Agreement, may not be withdrawn, or reduced in amount, and will be automatically renewed on a month-to-month basis until released in writing by the administrator.
- (2) *Performance or Surety Bond.* If a developer prefers not to post an irrevocable letter of credit, the City Manager may allow the developer to post a performance bond as follows:
- a. A performance bond must be provided by a construction bonding or insurance company authorized to do business in the State of Georgia.
 - b. The performance bond shall be in a form acceptable to the City (see Administrative Manual for an example).
 - c. A performance bond shall certify the following:
 - i. That the bonding or insurance company guarantees funds in an amount equal to 150% of the cost, as established under Section 2-3.17(B), of completing all required improvements.
 - ii. That the bonding or insurance company guarantees that any liens or encumbrances that exist or may be placed on the improvements will not become the responsibility of the City under any circumstances.
 - iii. That if the developer fails to complete the specified improvements within the required period or is otherwise in default under Section 2-3.17(C), upon written demand of the administrator the bonding or insurance company will pay to the City immediately, and without further action, the full amount of the limit of insurance stated in the bond, less the actual cost of covered improvements expended as of the date of demand. Such expenditures shall be evidenced by invoices and proof of payments and shall be subject to review and acceptance by the City as to reasonableness.
 - iv. That the bond shall not be terminated less than 60 calendar days after the date of performance completion as contained in the pertinent Development Performance and Maintenance Agreement, may not be withdrawn, or reduced in amount, and will be automatically renewed on a month-to-month basis until released in writing by the administrator.
- (3) *Cashier's Check or cash.* In lieu of a letter of credit or bond the developer may provide cash or a cashier's check drawn from a bank chartered to do business in the State of Georgia. The amount of cash or cashier's check shall be in an amount equal to 110% of the cost, established under Section 2-3,17(B), of completing all required improvements.