



POLICY GUIDANCE ON CONSTRUCTION AND FEE-IN-LIEU FOR FRONTAGE IMPROVEMENTS

Description

Approve two policies related to frontage improvements:

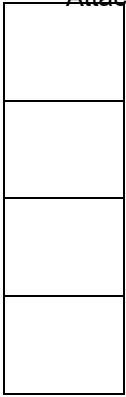
- 1) When to approve waivers for pedestrian and bicycle frontage improvements on very small residential and commercial projects and how to set a de minimis payment.
- 2) When a payment in lieu of constructing a frontage improvement is to be permitted.

Completed: 2-10-2022

MCPB
Item No. 9
2022

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Attachment A: Staff Report from February 17, 2022



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SECTION 1

BACKGROUND

Over the past few years, staff from Montgomery Planning, Department of Permitting Services (DPS) and Montgomery County Department of Transportation (MCDOT) have been evaluating requests from applicants for waivers and payments in lieu of constructing all or parts of pedestrian and bicycle improvements, primarily on the frontage of their property. Initially, the requests for waivers and payments in lieu of constructing frontage improvements were on state roads where the impact of the development on the surrounding transportation infrastructure was not proportional to the extent of improvements requested, and where the Maryland State Highway Administration (MDSHA) would not permit the improvements on only a portion of their right-of-way. The requests have expanded to projects throughout the County where pedestrian and bicycle improvements may be more costly.

In July 2021, staff presented a preliminary plan for a residential single-family project that supported a payment in lieu of constructing a sidewalk and bikeable shoulder that were not reasonable based on the small number of lots proposed. The Planning Board agreed with the methodology of using a \$16,000 per lot payment (based on the LATR calculation) for this project, however the Planning Board asked for staff to return with a broader policy discussion on the topic of waivers, de minimis payments and payments in lieu of constructing frontage improvements.

In October 2021, staff presented initial recommendations to the Planning Board for two policies related to frontage improvements: 1) when to approve waivers for pedestrian and bicycle frontage improvements on very small residential and commercial projects and how to set a de minimis payment, and 2) when a payment in lieu of constructing a frontage improvement is to be permitted. The staff report for that Planning Board item is included as Attachment A. Since October 2021, Planning staff has coordinated extensively with MCDOT, DPS, transportation engineers, civil engineers and land use attorneys to seek their feedback on these policies, as summarized in Section 5.

SECTION 2

INTENT AND PURPOSE

Staff's preference is always to require that applicants build frontage improvements, including sidewalks, sidepaths, conventional bike lanes, separated bike lanes, bikeable shoulders and protected intersections identified in relevant master plans, sector plans, functional plans, the Complete Streets Design Guide or the County Code. However, for some very small residential and commercial projects the Planning Board should waive requirements for pedestrian and bicycle infrastructure when these improvements are not reasonable or proportional to the impact of the project on public infrastructure. Additionally, in limited instances payments in lieu of constructing frontage improvements should be permitted as an alternative to the required improvements based on established criteria.

The intent of this staff report is to develop a consistent, criteria-based approach to de minimis payments and payments in lieu of constructing frontage improvements for pedestrian and bicycle frontage improvements recommended in relevant master, sector and functional plans, as well as the Complete Streets Design Guide, within the respective rights-of-way. Specifically, the criteria would accomplish the following:

- Establish a consistent, criteria-based approach for determining when to approve waiver requests for pedestrian and bicycle frontage improvements and how to set a de minimis payment.
- Develop a consistent, criteria-based approach for determining when payments in lieu of constructing frontage improvements are to be permitted.
- Ensure that payments in lieu of constructing frontage improvements result in construction by the County of similar improvements within a reasonable distance of the proposed development project.

In developing the approach described in this staff report, staff considered how it would interact with future Urban Mobility Program (UMPs). Planning staff believes that this approach will need to be revisited when the UMPs are instituted.

Planning Staff is requesting the Planning Board's approval of two draft policies included as attachments to this staff report:

- Attachment B: Draft Policy – De Minimis Criteria for Very Small Residential and Commercial Development Projects
- Attachment C: Draft Policy – Applicability of Payments in Lieu of Constructing Frontage Improvements

SECTION 3

RECOMMENDED DE MINIMIS PROJECT APPROACH

One of the most common reasons that waivers are requested for pedestrian and bicycle frontage improvements is the excessive nature and cost of frontage improvements compared to the size and impact of the project. In these instances, the cost of the frontage improvements is considered to outweigh the projected impacts caused by the project. These projects are often administrative subdivisions where a few units are proposed. The reasons for the high cost of the frontage improvement varies but some include: a very long frontage, topography that generates the need for extensive grading or substantial retaining walls, replacement of culverts, relocating utilities, and the extensive cost to widen the road to implement bikeable shoulders and conventional bike lanes.

A recent example of where a frontage improvement was waived was the bikeable shoulders along 20035 New Hampshire Avenue. This project was for small improvements to a landscaping company and would have required over 600 feet of bikeable shoulder construction.

Original Recommendation

On October 21, 2021, Planning staff presented the Planning Board with an initial recommendation that would provide applicants with a choice to either construct sidewalk, sidepath, or bikeable shoulder improvements along their frontage, or make a de minimis payment for these improvements when the following criteria are met (see Attachment A):

Criteria 1

Projects with 5 or fewer residential units may make a de minimis payment instead of constructing **master-planned bikeable shoulders**.

Criteria 2

Projects with 3 or fewer residential units may make a de minimis payment instead of constructing **master-planned sidepaths** and required **sidewalks** when these improvements would:

- Require relocating utilities, utility poles and stormwater facilities or require large retaining walls.
- Have an excessive length, defined as:
 - Projects with one frontage: frontage length > 2 X # of proposed units X the “Lot width at front building line (min)”
 - Projects with multiple frontages: frontage length > 3 X # of proposed units X the “Lot width at front building line (min)”

De Minimis Payment

The de minimis payment, in that initial recommendation from October 2021, was recommended to be determined with input from MCDOT. The intent was that the payment would reflect the cost of a sidewalk, sidepath or bikeable shoulder in locations where topography and other obstructions do not exist. However, even with these assumptions, it was anticipated that the cost of bikeable shoulders might be too high.

Current Recommendation

Planning staff's current recommendation is the same as proposed in the October 21, 2021 staff report, with three modifications:

1. Criteria 1 now includes conventional bike lanes.
2. Criteria 3 is now recommended for very small commercial projects.
3. A de minimis payment is recommended for sidewalk, sidepath, conventional bike lane and bikeable shoulder frontage improvements based on the cost of constructing a basic sidewalk project.

Applicants would have the choice to either construct sidewalk, sidepath, conventional bike lane or bikeable shoulder improvements along their frontage, or make a de minimis payment for these improvements when the following criteria are met:

Criteria 1

Projects with 5 or fewer residential units may make a de minimis payment instead of constructing **master-planned bikeable shoulders** and **conventional bike lanes** equal to:

$$\text{Cost per linear foot} \times \# \text{ of proposed units} \times \text{the "Lot width at front building line (min)"}'$$

The five residential unit threshold is based on the threshold for an administrative subdivision approval in the Agricultural Reserve zone (Sec 50.6.1.B), where most bikeable shoulders are located.

Criteria 2

Projects with 3 or fewer residential units may make a de minimis payment instead of constructing **master-planned sidepaths** and required **sidewalks** when these improvements would:

- Require relocating utilities, utility poles and stormwater facilities or require large retaining walls.
- Have an excessive length, defined as:
 - Projects with one frontage: frontage length > 2 X # of proposed units X the "Lot width at front building line (min)"
 - Projects with multiple frontages: frontage length > 3 X # of proposed units X the "Lot width at front building line (min)"

The de minimis payment for criteria 2 will be equal to:

Cost per linear foot X # of proposed units X the “Lot width at front building line (min)”

The three residential unit threshold is based on the threshold for an administrative subdivision approval in any Residential or Rural Residential zone (Sec 50.6.1.C), where most sidepaths and sidewalks are located.

Criteria 3

Commercial projects may make a de minimis payment instead of constructing pedestrian and bicycle frontage improvements if they meet the following conditions:

- New buildings and additions:
 - < 5,000 square feet, and
 - < 40 net new peak hour person trips
- Changes in use:
 - No additional square footage, and
 - < 40 net new peak hour person trips

The de minimis payment for criteria 3 will be equal to:

Cost per linear foot X Length of frontage

The 5,000 square foot threshold is based on the “small land disturbance activity” threshold for sediment control permits issued by DPS. The 40 net new peak hour person trips threshold was established to be somewhat less than the trigger for a Local Area Transportation Review (LATR) study (50 net new peak hour person trips).

Establishment of De Minimis Payments

The Planning Board would adjust the de minimis payment every odd-numbered year. The de minimis payment would be \$115.20 per linear foot for FY22 and FY23, which represents the average cost per square foot of constructing a six-foot-wide sidewalk as part of MCDOT’s Sidewalk Program Minor Projects funding program (see Attachment D). Applying this payment to a single-family dwelling unit with a 60-foot frontage would result in a de minimis payment of \$6,912.

Staff considered establishing different de minimis payments for each type of improvement, but found that the cost of sidepaths, bikeable shoulders and conventional bike lanes would be excessive. For instance, the average cost per linear foot of a 10-foot-wide sidepath is \$726.62 (see Attachment D). Applying this payment to one single-family dwelling unit with a 60-foot frontage would result in a de minimis payment of \$43,597.20.

Detailed costs for bikeable shoulders and conventional bike lanes are not available, but analysis conducted for the Bicycle Master Plan shows that these facility types are even more costly.

SECTION 4

RECOMMENDED PAYMENT IN LIEU OF CONSTRUCTING FRONTAGE IMPROVEMENTS APPROACH

To develop a consistent approach for applying payments in lieu of constructing frontage improvements, Planning staff reviewed approximately 20 projects where payments were approved since 2019 (see Attachment A). In the context of these cases, the five reasons that support payments in lieu of constructing frontage improvements are:

1. Severe Environmental Impacts
2. Changes to the Roadway Section that Would be Unsafe
3. Continuity of Bikeways
4. Timing with a Public Project
5. State Highway Access Permits

While no process can anticipate all reasons why payments in lieu of constructing frontage improvements might be appropriate, the intent is to create a consistent process to determining if payments in lieu of constructing frontage improvements should be applied and how to do so in most regulatory projects.

The criteria for evaluating whether each of the five reasons for approving alternatives to constructing a full frontage improvement are described below. If none of these criteria are met, a full frontage improvement would be required. This process is largely unchanged from the approach proposed on October 21, 2021 (see Attachment A).

Criteria for Alternatives to Frontage Improvements

Applicants may request a full payment in lieu of constructing a transportation frontage improvement if the improvement would either:

- Lead to severe environmental impacts in areas with wetlands, floodplains, significant grades or forest conservation easements.
- Require removing a lane of traffic for a very short distance to construct separated bike lanes or conventional bike lanes in a manner that MCDOT or SHA determine to be unsafe.

Applicants may request a partial payment and construct a partial improvement if any of the following conditions are met:

- The improvement is separated bike lanes or conventional bike lanes that would be constructed outside of the paved area of the roadway and would not connect to intersections of roadways, bikeways or walkways in the near term.
- The Montgomery County Department of Transportation (MCDOT) cannot resolve timing issues between the development project and a capital project.

- The Maryland State Highway Administration (MDSHA) is unwilling to issue an access permit for a frontage improvement.

For projects where partial payments and partial improvements are recommended, applicants are required to prepare the site for the future frontage improvement and pay the difference between the full cost of the project and the cost of the partial frontage improvement. Site preparation includes dedicating land or establishing other necessary easements to accommodate the future improvement, grading the site and ensuring that utilities, stormwater management facilities, streetscape improvements, landscaping and other features do not conflict with the future implementation of the frontage improvement. Where the frontage improvement is two-way separated bike lanes outside of the roadway, the applicant may instead be required to construct a sidepath as an interim improvement while facilitating future implementation of the permanent frontage improvement.

Payment Determination

Payments are to be determined by MCDOT based on the “permanent” design condition as defined by the Complete Streets Design Guide, the Bicycle Master Plan and other relevant master or sector plans. The “permanent” design condition includes:

- Separated bike lanes at an “intermediate level”
- Protected intersections
- Breezeways constructed to public road standards

Condition of Approval

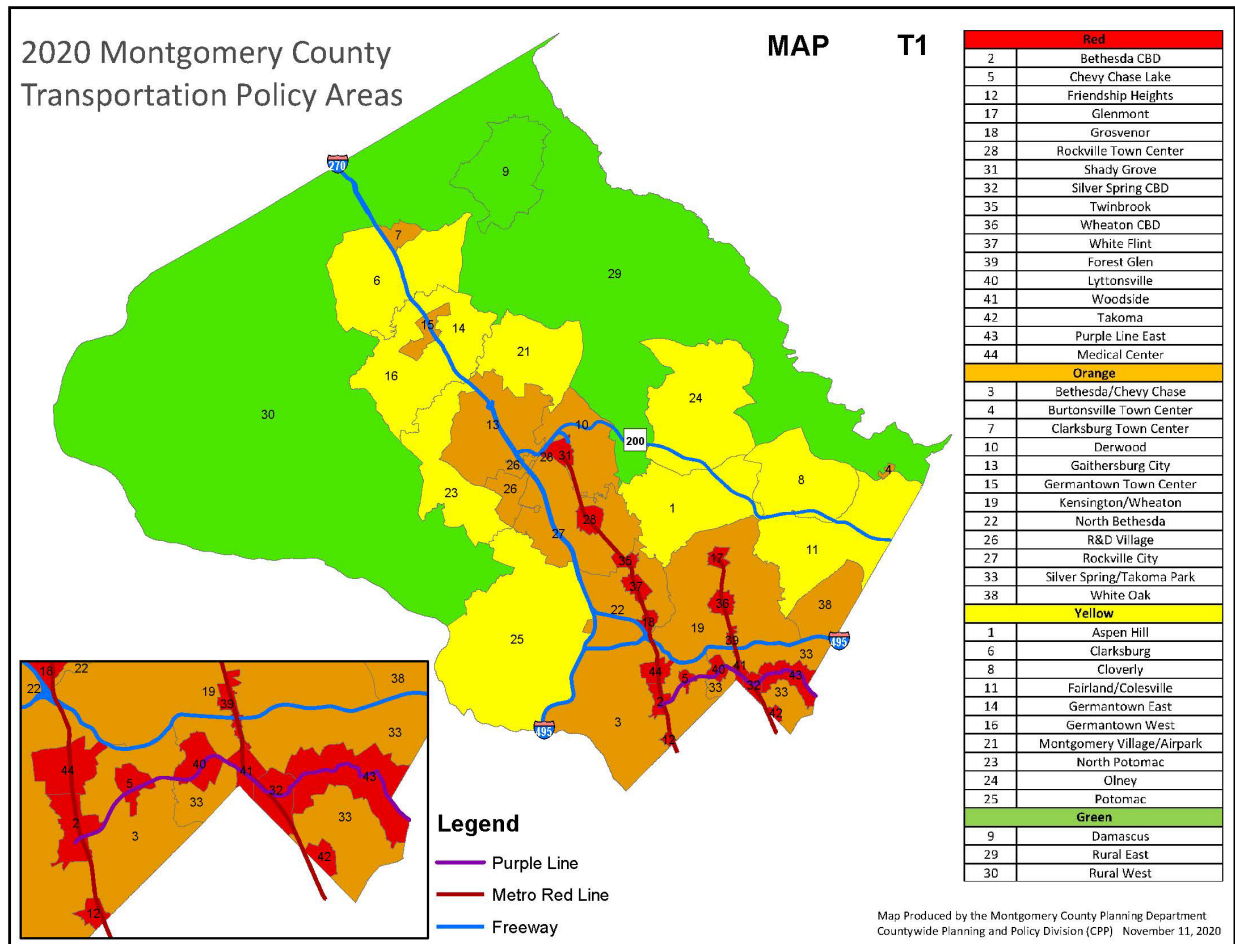
To ensure consistency with the Growth and Infrastructure Policy, the condition of approval must include the following:

- The type of improvement (pedestrian, bicycle and/or bus transit); and
- The policy area(s) where the funds must be used (based on where the project is located).

The County’s 44 transportation policy areas are shown in Map 1.

Additionally, as it may be several years before the payment is made, the payment will be inflation-adjusted based on the Federal Highway Administration’s National Highway Construction Cost Index from the mailing date of the Planning Board resolution to the date of the first above-grade building permit or right-of-way permit (whichever comes first).

Map 1: Transportation Policy Areas



A model condition could include the following:

Prior to issuance of first above-grade building permit or right-of-way permit (whichever comes first), the Applicant must make a payment of \$[specify amount] to the Montgomery County Department of Transportation towards the construction of a [transit, bikeway or pedestrian] improvement in the [identify policy area(s)] policy area(s). The payment will be inflated based on the Federal Highway Administration’s National Highway Construction Cost Index from the mailing date of the Planning Board resolution to the date of the first above-grade building permit or right-of-way permit (whichever comes first).

SECTION 5

STAKEHOLDER ENGAGEMENT

Since the Planning Board briefing on October 21, 2021, Planning staff has coordinated extensively with stakeholders and partner agencies for feedback on the proposed applicability of de minimis payments and approach to payments in lieu of frontage improvements. This included 12 meetings:

- 2 listening sessions on November 8, 2021 and November 22, 2021 with transportation engineers, civil engineers and land use attorneys.
- 2 coordination meetings with MCDOT and DPS.
- 8 coordination meetings with transportation engineers, civil engineers and land use attorneys.

SECTION 6

ATTACHMENTS

Attachment A: Planning Board Staff Report, Fee-in-Lieu and Reasonable Requirements for Frontage Improvements, October 21, 2021.

Attachment B: Draft Policy - De Minimis Criteria for Very Small Residential and Commercial Development Projects

Attachment C: Draft Policy - Applicability of Payments in Lieu of Constructing Transportation Frontage Improvements

Attachment D: Average Costs of Sidewalks and Sidepaths