



MONTGOMERY COUNTY PLANNING DEPARTMENT
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING

CODE INTERPRETATION POLICY

DATE	SECTION OF CODE	TITLE OF CODE/SUBSECTION/POLICY DEVELOPMENT STANDARDS
March 3, 2022	50-4.3.A 50-4.3.E.3.b 49-32(a) 49-33(e)	Applicability of Payments in Lieu of Transportation Frontage Improvements

CODE PROVISION

50-4.3.A Relation to master plan.

1. A preliminary plan must substantially conform to the applicable master plan or Urban Renewal Plan, including maps and text. However, if a site plan is not required under Chapter 59, Article 59-7.3.4, the Board may find that events have occurred to render the relevant master plan or Urban Renewal Plan recommendation no longer appropriate.

50-4.3.E.3.b Existing public roads

b. *Existing public roads.* In a preliminary plan application containing lots fronting on an existing State, County, or municipally maintained road, the subdivider must provide any additional required right-of-way dedication and reasonable improvement to the road in front of the subdivision, including sidewalks and bicycle facilities, as required by Master Plan, the Road Design and Construction Code or by a municipality, whichever applies.

49-32 (a)

The design standards adopted under this Article govern the construction or reconstruction of any County road except Rustic Roads and Exceptional Rustic Roads. If the Planning Board, in approving a subdivision or site plan, finds that a waiver from any applicable design standard is necessary to promote context-sensitive design of a specific road, the Executive or the Executive’s designee must adopt the Board’s recommendation unless the Executive or the Executive’s designee notifies the Board why approving the waiver would significantly impair public safety. The County Council may adopt alternative standards for a specific road constructed or reconstructed in a project in the approved capital improvements program.

49-33(e)

(1) If a lot or lots front on a public road, the permittee must install sidewalks, master-planned bikeways, ramps, curbs, and gutters, except any sidewalk:

- (A) in front of a lot that is larger than 25,000 square feet for a single-family detached dwelling in a rural zone;
- (B) on any roadway classified as exceptional rustic, rustic, country arterial, or country road;
- (C) on a tertiary residential street, or in an environmentally sensitive area with limits on the amount of impervious surface allowed, if in either case the Planning Board finds that a sidewalk is unnecessary for pedestrian movement; or
- (D) on a secondary or tertiary residential street or service drive where the Department of Permitting Services finds that a sidewalk will not connect potentially to other sidewalk segments.

(2) However, the Planning Board may require the applicant to install sidewalks, ramps, curbs, and gutters if the Board finds, as a condition of approval of a preliminary subdivision plan or site plan, that sidewalks, bikeway connections, ramps, curbs, and gutters at that location are necessary to allow access:

- (A) to a sidewalk or bikeway;
- (B) to a bus or other public transit stop;
- (C) to an amenity or public facility that will be used by occupants of the site or subdivision; or
- (D) by persons with disabilities.

Before the Planning Board approves any requirement under this paragraph, the Board must give the Departments of Permitting Services and Transportation a reasonable opportunity to comment on the proposed requirement.

STATEMENT/BACKGROUND OF ISSUE

Over the past few years, the Department has received requests to make a payment for all or parts of pedestrian and bicycle improvements along a property's frontage. The Planning Board needs a consistent, criteria-based approach for determining when payments can be made in lieu of constructing frontage improvements.

AGENCY INTERPRETATION/POLICY

Applicability of Payments

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

- 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:

- 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 by others.

Payment Determination

Payment amounts will 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

The condition of approval will include:

- An estimated cost of the full or partial payment that is indexed to the Federal Highway Administration’s (FHWA) 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).
- The type of transportation improvement: transit, bikeway or pedestrian.
- The target policy area(s): the same policy area, or—for a Red policy area or an Orange town center policy area—either in that area or an adjacent one.

<p>INTERPRETATION/POLICY NO. M-NCPPC 2022-02</p>	<p>DATE</p>	<p>M-NCPPC LEGAL STAFF</p>
	<p>DATE</p>	<p>DIRECTOR</p>
	<p>DATE</p>	<p>PLANNING BOARD</p>