

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.

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MCPB
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SECTION 1

BACKGROUND

On October 17, 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. Since that time, Planning staff has coordinated extensively with the Montgomery County Department of Transportation (MCDOT), Department of Permitting Services (DPS), transportation engineers, civil engineers and land use attorneys to seek their feedback on these draft policies.

On February 17, 2022, Planning staff presented revised policies to the Planning Board. The Board made two recommendations:

1. Add language to the “De Minimis Criteria for Very Small Residential and Commercial Development Projects” policy document that permits staff to recommend a de minimis payment in lieu of constructing a complete or partial frontage improvement when that improvement would create a similar burden to that identified in Criteria 1, Criteria 2 and Criteria 3.
2. Collaborate with MCDOT to revise Chapter 49 to explicitly permit the Planning Board to waive frontage improvements when the criteria in the “De Minimis Criteria for Very Small Residential and Commercial Development Projects” and “Applicability of Payments in Lieu of Constructing Frontage Improvements” policy documents are met.

The February 2022 staff report is included as Attachment A. The revised “De Minimis Criteria for Very Small Residential and Commercial Development Projects” policy document is included as Attachment B. The “Applicability of Payments in Lieu of Constructing Frontage Improvements” policy document is included as Attachment C.

SECTION 2

STAFF RECOMMENDATION

Additional De Minimis Criteria

Planning Staff recommends adding the following language to the “De Minimis Criteria for Very Small Residential and Commercial Development Projects” policy document:

Additional De Minimis Findings

Planning Staff may recommend a de minimis payment in lieu of constructing a complete or partial frontage improvement when the improvement would create a similar burden to that identified in Criteria 1, Criteria 2 and Criteria 3.

The de minimis payment will be equal to: *Cost per linear foot X length of frontage*

Changes to Chapter 49

Planning Staff believes that Chapter 50, Section 9.3 allows the Planning Board to waive any section of the subdivision code. It states:

Section 9.3. Findings

- A. To grant a waiver, the Board must find that:
 1. due to practical difficulty or unusual circumstances of a plan, the application of a specific requirement of the Chapter is not needed to ensure the public health, safety, and general welfare;
 2. the intent of the requirement is still met; and
 3. the waiver is:
 - a. the minimum necessary to provide relief from the requirements; and
 - b. consistent with the purposes and objectives of the General Plan

However, MCDOT is currently drafting revisions to Chapter 49 to reflect the Complete Streets Design Guide and staff will recommend that these changes also include language that acknowledges the Planning Board’s ability under Chapter 50 to waive frontage improvements consistent with both policy documents.

SECTION 3

ATTACHMENTS

Attachment A: Planning Board Staff Report, Policy Guidance on Construction and Fee-in-Lieu for Frontage Improvements, February 17, 2022

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