

AMENDMENT TO PLANNING BOARD POLICY 2022-01 (DE MINIMIS PAYMENTS)

Description

Request to amend Planning Board Policy 2022-01 to update the per linear foot de minimis payment rate and establish a method for calculating future increases. De minimis payments may be accepted in lieu of constructing pedestrian and bicycle frontage improvements on very small residential and commercial projects. Planning Board Policy 2022-01 determines when to approve waivers for pedestrian and bicycle frontage improvements and how to calculate applicable de minimis payments.

COMPLETED: JUNE 8, 2023

MCPB
Item No. 9
June 22, 2023

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BACKGROUND

BACKGROUND

De minimis payments may be accepted in lieu of constructing pedestrian and bike frontage improvements on very small residential and commercial projects. Planning Board [Policy 2022-01](#) (Attachment A) determines when to approve waivers for pedestrian and bicycle frontage improvements and how to calculate applicable de minimis payments.

PURPOSE AND INTENT OF PLANNING BOARD POLICY 2022-01

The Planning Board adopted Policy 2022-01, De Minimis Criteria for Very Small Residential and Commercial Development Projects, in March 2022. In the preceding years, the Planning Department received requests for waivers from constructing all or parts of pedestrian and bicycle improvements along the property frontage as part of very small residential and commercial projects.

One of the most common reasons that applicants request waivers 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 may outweigh the project’s projected impacts.

[Policy 2022-01](#) provides a consistent, criteria-based approach for determining when to approve these requests and how to set a de minimis payment.

The policy established a de minimis payment rate of \$115.20 per linear foot. It specifies that the Planning Board will adjust the payment every odd-numbered year. The current rate expires on June 30, 2023.

ANALYSIS AND RECOMMENDATION

ANALYSIS

Planning staff proposes adjusting the de minimis rates based on the two-year cumulative change in the Engineering-News Record’s Baltimore Construction Cost Index. This is the same source used by the Montgomery County Director of Finance to adjust Development Impact Taxes for Transportation

Improvements and Public School Improvements. For the two-year period encompassing calendar years 2021 and 2022, the cumulative increase is 19.72%. Applying this index to the \$115.20 per linear foot de minimis rate results in an increase of \$22.72 to \$137.91 per linear foot.

Planning staff proposes the following edits to Policy 2022-01:

- Establishment of De Minimis Payments: The Planning Board will adjust the de minimis payment every odd-numbered year based on the two-year cumulative change in the Engineering-News Record's Baltimore Construction Cost Index. The de minimis payment will be ~~\$115.20~~ \$137.91 per linear foot for ~~FY 22 and FY 23~~ through June 30, 2025.

RECOMMENDATION

Planning staff recommends increasing the de minimis rate by \$22.72 to \$137.91 per linear foot. The new de minimis rate will become effective July 1, 2023. The increased rate will apply to development applications accepted by the Planning Department beginning July 1, 2023. The proposed updated policy for De Minimis Criteria for Very Small Residential and Commercial Development Projects is included in Attachment B.

ATTACHMENTS

- Attachment A: Planning Board Policy on De Minimis Criteria (2022-01)
- Attachment B: Revised Planning Board Policy on De Minimis Criteria

Attachment A: Policy 2022-01 (De Minimis Criteria)



MONTGOMERY COUNTY PLANNING DEPARTMENT

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

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	De Minimis Criteria for Very Small Residential and Commercial Development Projects
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. <i>Existing public roads.</i> 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.		
STATEMENT/BACKGROUND OF ISSUE		
Over the past few years, the Department has received requests for waivers from constructing all or parts of pedestrian and bicycle improvements along the property frontage as part of very small residential and commercial projects because these improvements may not be reasonable or proportional to the impact of the project on public infrastructure. The Planning Board needs a consistent, criteria-based approach for determining when to approve these requests and how to set a de minimis payment.		
AGENCY INTERPRETATION/POLICY		
<u>Criteria 1:</u> 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:		
<i>Cost per linear foot X # of proposed units X the “Lot width at front building line (min)”</i>		
<u>Criteria 2:</u> 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 will be equal to:

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

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 will be equal to: *Cost per linear foot X length of frontage*

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*

Establishment of De Minimis Payments: The Planning Board will adjust the de minimis payment every odd-numbered year. The de minimis payment will be \$115.20 per linear foot for FY 22 and FY 23.

INTERPRETATION/POLICY NO.	DATE	M-NCPPC LEGAL STAFF
M-NCPPC 2022-01	03/04/2022	
	DATE	DIRECTOR
	03/04/2022	Gwen Wright
	DATE	PLANNING BOARD
	03/06/2022	Casey Anderson

Attachment B: Revised Planning Board Policy on De Minimis Criteria



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

CODE INTERPRETATION POLICY

DATE	SECTION OF CODE	TITLE OF CODE/SUBSECTION/POLICY DEVELOPMENT STANDARDS
June 15, 2023	50-4.3.A 50-4.3.E.3.b	De Minimis Criteria for Very Small Residential and Commercial Development Projects
CODE PROVISION		
50-4.3.A Relation to master plan.		
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Establishment of De Minimis Payments: The Planning Board will adjust the de minimis payment every odd-numbered year based on the two-year cumulative change in the Engineering-News Record's Baltimore Construction Cost Index. The de minimis payment will be \$137.91 per linear foot through June 30, 2025.

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