



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 319, 2022 2026	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
<p>CODE PROVISION</p> <p>50-4.3.A Relation to master plan.</p> <p>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.</p> <p>50-4.3.E.3.b Existing public roads</p> <p>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.</p> <p>49-32 (a)</p> <p>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.</p> <p>49-33(e)</p> <p>(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:</p>		

- (A) ~~in front of a lot that is larger than 25,000 square feet for a single-family detached dwelling in a rural zone~~ any sidewalk or sidepath in front of a lot that is larger than 25,000 square feet for a single-family detached dwelling in a rural area;
- (B) ~~on any roadway classified as exceptional rustic, rustic, country arterial, or country road~~ any sidewalk or sidepath on any roadway that is classified as rustic or exceptional rustic;
- (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~~ any sidewalk or sidepath on a neighborhood street or neighborhood yield street serving fewer than 75 dwelling units if the Planning Board and Department of Transportation find that a sidewalk is not expected to be necessary for pedestrian movement;
- (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~~ any sidewalk if the site is located in an environmentally sensitive area with limits to the amount of pervious surface allowed if the Planning Board and Department of Transportation find that a sidewalk is not expected to be necessary for pedestrian movement.
- (E) any sidewalk or sidepath on a neighborhood street, neighborhood yield street, or service drive where the Department of Permitting Services find that a sidewalk or sidepath is infeasible, will not connect to other sidewalk segments within the foreseeable future, or qualifies for fee payments in lieu of construction under Section 49-40; or
- (F) any sidewalk or master-planned bikeway where the Planning Board establishes criteria to accept a payment in lieu of a transportation improvement.

(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~~ receives requests to make a payment for all or parts of pedestrian and bicycle improvements along a property's frontage. ~~The This policy establishes Planning Board needs a consistent, criteria-based approach~~ for determining

when payments can be made in lieu of constructing frontage improvements, consistent with Chapter 49.

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 in SPAs or 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.~~
- Require relocating major utilities including but not limited to high-transmission power lines and/or high pressure gas lines.

Applicants may request a partial payment and construct a partial improvement if:

- The improvement is a ~~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, adequately improved 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 and provides documentation supporting this issue.
- The Maryland State Highway Administration (MDSHA) is unwilling to issue an access permit for a frontage improvement and provides documentation supporting this issue.

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 and reviewed by Montgomery Planning and the Department of Permitting Services based on the “permanent” design condition as defined by the Complete Streets Design Guide, the Bicycle Master Plan, the Pedestrian Master Plan, and other relevant master or sector plans utilizing the most recent Local Area Transportation Review (LATR) Cost Estimation Tool or other cost estimated deemed sufficient by Planning Staff. ~~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~~specify:

- ~~An~~ The 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 payment as required in the Planning Board’s resolution.~~first above grade building permit or right-of way permit (whichever comes first).~~
- ~~The type of transportation improvement: transit, bikeway or pedestrian.~~
- The policy area where the payment must be used, which is either the same policy area, or an adjacent one. 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.

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