



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 22, 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.

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.

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

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:

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

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 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 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.

INTERPRETATION/POLICY NO.	DATE	M-NCPPC LEGAL STAFF
M-NCPPC 2022-01A	07/11/2023	<i>Emily Weiss</i>
	DATE	DIRECTOR
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	07/12/2023	<i>Artie L. Harris</i>