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Approval of the Possibility of Traffic Entering a Road in Connection with a Change of Land Use

Uzgodnienie możliwości włączenia ruchu drogowego do drogi w związku ze zmianą zagospodarowania terenu

ABSTRACT

According to Article 35(3) of the Public Roads Act, for a change in the use of land adjacent to a right of way, in particular one that involves the construction of a building structure or the performance of other construction work, as well as a change in the use of a building structure or its part, the operator of the road must grant an approval regarding the possibility for the traffic occurring as a result of the change to merge into the road. This provision does not clearly indicate whether the approval in question is required only at the stage of the planning or the procedure regarding the construction and land development conditions, or whether it is required again at the stage of obtaining a building permit. On the other hand, requiring investors to obtain such an approval can significantly prolong the time needed to obtain a building permit and increase its cost. Therefore, the authors of this article analyzed the entirety of the proceedings of public administration bodies in matters related to the approval referred to in Article 35(3) of the Public Roads Act, as well as its evaluation by courts and the doctrine. They determined that this approval is not required at the stage of the building permit

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Data: 18/11/2026 15:56:29

procedure. The purpose of this article is to demonstrate that, in light of the totality of the regulations currently in force, taking into account the current output of the doctrine and the case law of the administrative courts, requiring this approval again is groundless and violates the constitutional principle of legalism and the principle of citizens' trust in public authorities. It should be noted that the problem discussed herein, although important for science and practice, has not yet been studied extensively.

Keywords: change in land use; approval; building permit; road; road operator

INTRODUCTION

The possibility of traffic exiting from a property affected by a change in land use involving the implementation of a specific investment project entering a road is one of the main criteria for the future use and functioning of the property. This criterion is derived from Article 35(3) APR,[1] which provides that for a change in the use of land adjacent to a right of way, in particular one that involves the construction of a building structure or the performance of other construction work, as well as a change in the use of a building structure or its part, the operator of the road must grant an approval regarding the possibility for the traffic occurring as a result of the change to merge into the road. At the same time, the approval in question is mandatory in a situation where a change in the use of land adjacent to a specific right of way is combined with the possibility of the traffic occurring as a result of this change entering the road.

Due to the ambiguous wording of the aforementioned provision, the subject of this article is an analysis of the conduct of public administration bodies in matters related to the approval referred to in Article 35(3) APR, as well as its evaluation by courts and doctrine. If the problem is to be treated comprehensively, research must be done taking into account all the regulations pertaining to this matter. Of course, the scope of the article does not include the issue of access to a public road as defined in the provisions of the Construction Law[2] and the Spatial Planning Act.[3] The purpose of this article is to demonstrate that, in light of the totality of the regulations currently in force, taking into account the current output of the doctrine and the case law of the administrative courts, requiring this approval again is not grounded in legislation and therefore violates the constitutional principles of legalism and citizens' trust in public authorities. On the other hand, requiring investors

[1] Act of 21 March 1985 on public roads (consolidated text, Journal of Laws 2025, item 889, as amended).

[2] Act of 7 July 1994 – Construction Law (consolidated text, Journal of Laws 2025, item 418, as amended).

[3] Act of 27 March 2003 on spatial planning and development (consolidated text, Journal of Laws 2024, item 1130, as amended), hereinafter: ASPD.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 18/11/2026 15:56:29

to obtain such an approval can result in longer times required for the construction process and increased construction costs.

The main research hypothesis is that the approval referred to in Article 35(3) APR is required only at the stage of planning proceedings or the stage of issuance of construction and land development conditions, and therefore may not be required again at the stage of obtaining a building permit. An analysis of positive law leads to the conclusion that the legislature has indicated criteria based on the norms of substantive administrative law that determine whether or not the approval in question is required in a specific factual and legal situation.

This article employs several research methods. The formal and dogmatic method was used to describe concepts that are of fundamental importance to defining both the subject and scope of the research undertaken. Therefore, the authors analysed normative acts and case law, as well as the limited views of representatives of the legal doctrine. The historical and descriptive method was also employed to demonstrate the evolution of the norms of the Construction Law and the Public Roads Act regarding the approvals required in the procedure for obtaining a building permit, as this has changed over the years. The hypothesis advanced in the article justifies the need to juxtapose this regulation with other regulations, competing ones in a sense, arising from substantive administrative law. Accordingly, the article also employs the comparative-law method.

RESEARCH PART

1. General comments

According to Article 35(3) APR, for a change in the use of land adjacent to a right of way, in particular one that involves the construction of a building structure or the performance of other construction work, as well as a change in the use of a building structure or its part, the operator of the road must grant an approval regarding the possibility for the traffic occurring as a result of the change to merge into the road. When analyzing the content of this provision, it should first of all be noted that it does not specify what prerequisites should guide the road manager in granting the approval in question, and the phrases "land adjacent to a right of way" and "possibility to merge into the road" are imprecise and can be interpreted in many ways. This is of fundamental importance to the answer to the question of whether the approval referred to in Article 35(3) APR is required only at the stage of the planning or investment project location procedure, or whether it can also be required at the stage of obtaining a building permit.

Case law presents the view that the lack of a legal definition of the concept of land adjacent to a right of way means that when using this concept, its common

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 18/11/2026 15:56:29

understanding should be assumed, i.e. an area that shares a common boundary with a right of way. This is the case when the land is directly adjacent to a public road.[4] A different view was expressed by the Supreme Administrative Court in its judgment of 14 October 2009.[5] The Court stated that the issue of "adjacent" location of a land requires individual assessment in each case, since in certain situations even an indirect connection to a public road can result in a requirement to obtain an approval.[6] The determination of whether an investment project is located in an "area adjacent to a right of way" should be based on distance or a functional criterion. Therefore, even if a building structure fulfills the criterion of a minimum distance from a public road, this does not mean that a specific change in land use does not require an approval from the competent road operator. This is because such an approval is required for projects that affect the area adjacent to a right of way and the road itself, and the functional nature of the connection between the investment project and the public road may vary.[7] However, it should be emphasized that the general rule is that an approval is required for a change in the use of properties that are in close functional and spatial relationship with a right of way ("land adjacent to a right of way"). Therefore, the expansive interpretation of the concept of "adjacent land" must be used with caution and be supported by the specific circumstances of each case.[8] The road operator is therefore competent to approve a planned investment project when the project is located within a right of way or affects an area adjacent to a right of way and the road itself.

In its judgment of 5 January 2021, the Voivodeship Administrative Court of Gdańsk[9] stated that the possibility of traffic entering a road in accordance with Article 35(3) APR should be understood as a real and existing provision of a traffic service to a specific plot of land. The Voivodeship Administrative Court in Warsaw, in its judgment of 13 February 2020,[10] held that the phrase "the possibility of traffic

[4] See judgment of the Voivodeship Administrative Court in Kraków of 8 September 2017, II SA/Kr 654/17, CBOSA; judgment of the Voivodeship Administrative Court in Warsaw of 10 March 2020, IV SA/Wa 2742/19, Legalis; judgment of the Voivodeship Administrative Court in Olsztyn of 21 March 2007, II SA/Ol 93/07, CBOSA. Similarly, M. Bator, *Uzgodnienie projektu miejscowego planu zagospodarowania przestrzennego z zarządcą drogi*, "Nowe Zeszyty Samorządowe" 2015, no. 1, p. 3; J. Człowiekowska, *O współdziałaniu organów administracji publicznej na przykładzie postępowania w sprawie ustalenia warunków zabudowy i zagospodarowania terenu*, "Casus" 2005, no. 3, p. 29.

[5] II OSK 1596/08, CBOSA.

[6] Similarly, judgment of the Supreme Administrative Court of 6 March 2022, II OSK 295/22, CBOSA.

[7] See judgment of the Supreme Administrative Court of 2 October 2015, II OSK 357/14, CBOSA; judgment of the Supreme Administrative Court of 28 August 2023, II OSK 884/22, CBOSA; judgment of the Voivodeship Administrative Court in Gliwice of 8 September 2021, II SA/Gl 281/21, CBOSA.

[8] Similarly, judgment of the Supreme Administrative Court of 26 June 2025, II OSK 151/23, CBOSA.

[9] II SA/Gd 823/20, CBOSA.

[10] IV SA/Wa 2707/19, CBOSA.

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Data: 18/11/2026 15:56:29

entering a road" should be understood as providing traffic service to the property in question with the road, and that the merging of traffic into the road in certain places and in a certain manner is aimed primarily at ensuring the safety and smooth flow of the traffic taking place on the road, and is under the exclusive control of the road operator, which is obliged to ensure the safety and smooth flow of traffic for all road users.[11]

For example, the authority issuing the construction conditions decision assesses whether it is possible to connect the investment project site to a public road. Such a possibility exists, first, when the site is directly adjacent to a public road (direct access). In other words, since the property on which the planned investment project is to be carried out is directly adjacent to the road property, which is a public road, it should be considered to have access to the public road.[12] Second, access to a public road can be provided by means of an easement or an internal road (it is beyond the scope of these considerations whether the investor must hold title to the internal road). The role of the approving authority under Article 53(4)(9) ASPD[13] in conjunction with Article 35(3) APR, i.e. the road operator, is to assess only the possibility of the traffic caused by the change entering the road. The key criterion for the road operator to make this assessment is the issue of traffic safety.[14] At the same time, in light of the above, it is clear that the assessment of "the possibility of the road of traffic caused by the change entering the road" cannot be equated with the premise of access to a public road, as referred to in Article 61(1)(2) ASPD.[15] For the purposes of the procedure to establish the construction conditions in accordance with Article 2(14) ASPD, access to a public road should be understood as direct access to that road or access to it through an internal road or by establishing an appropriate road easement.[16] In the case of the approval referred to in Article 35(3) APR, the above provision does not apply.[17]

[11] Similarly, judgment of the Voivodeship Administrative Court in Warsaw of 2 June 2020, IV SA/Wa 343/20, CBOSA.

[12] Cf. judgment of the Supreme Administrative Court of 27 February 2019, II OSK 963/17, CBOSA.

[13] Pursuant to Article 53(4)(9) ASPD, the decisions referred to in Article 51(1) are issued after approval by the competent road operator – with respect to areas adjacent to the right of way.

[14] Judgment of the Supreme Administrative Court of 15 January 2020, II OSK 3330/17, CBOSA. Similarly, judgment of the Supreme Administrative Court of 13 June 2018, II OSK 3164/17, CBOSA; judgment of the Voivodeship Administrative Court in Warsaw of 10 March 2020, IV SA/Wa 2742/19, Legalis.

[15] Pursuant to Article 61(1)(2) ASPD, a decision on construction conditions may be issued only if certain conditions are met jointly, among other things, the site has access to a public road.

[16] Judgment of the Voivodeship Administrative Court in Warsaw of 21 April 2020, IV SA/Wa 50/20, LEX no. 3065193.

[17] Judgment of the Supreme Administrative Court of 9 September 2008, II OSK 995/07, CBOSA.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 18/11/2026 15:56:29

Thus, as the above provisions indicate, the road operator has the right to express its opinion about the possibility of traffic caused by a change in land use entering the road, which does not necessarily equate to the sufficiency of the construction of appropriate facilities for the road. This is because Article 35(3) APR does not provide a basis for evaluating the parameters of a public road and the possibility of running traffic on a public road. The road operator also does not state whether the public road meets the technical conditions for running traffic on it. The only element analyzed by the road operator is related to the possibility of traffic entering the road, which should be understood as the real, existing provision of traffic service to a given plot, which should not be equated, in principle, with the possibility of locating a specific exit. This is because the issue of the permissibility and location of an exit is resolved in another administrative procedure, in which all technical conditions are examined, including the distance of the exit from other structures and road facilities.

Article 35(3) APR corresponds to the content of Article 17(6)(b), third indent, and Article 53(4)(9) ASPD. According to the wording of the first of these provisions, after the municipal council adopts a resolution to proceed with the preparation of a local plan, the commune head or mayor/president of a city applies for an approval of the draft plan with the competent road operator, if the manner of development of the land adjacent to the right of way or a change in this manner may affect traffic or the road itself. The second provision, in turn, stipulates that decisions on the location of public purpose investment projects and decisions on construction conditions are issued after an approval by the competent road operator – for areas adjacent to the right of way. It should be noted that the above provisions of the Spatial Planning Act give no indication of the substantive scope of these approvals. This is because the scope results from the tasks that have been delegated to the road operator by the provisions of the Public Roads Act. In fact, as stated in Article 19(1) APR, the competence of a road operator includes matters related to road planning, construction, reconstruction, repair, maintenance, and protection. Protection of a road means measures taken to prevent premature destruction of the road, downgrading of the road, reduction of its function, or improper use of the road and deterioration of traffic safety conditions (Article 4(21) APR). Thus, pursuant to Article 19(1) in conjunction with Article 4(21) APR, the road operator's tasks include road planning and protection, which consists in preventing the reduction of the road's functions and deterioration of traffic safety conditions. It is therefore clear that a road operator should take into consideration, first and foremost, the compliance of planned activities with traffic safety principles. Traffic safety is a prerequisite for assessing the permissibility of a road manager's approval of a change in the land use for a site adjacent to a right of way, and falls within the concept of "the possibility of traffic entering a road", as referred to in Article 35(3) APR. At the same time, the primacy of the principle of traffic safety over the legitimate interest of the applicant is widely accepted in case law, since the protection of the life and safety of citizens in conflicting situations outweighs the

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 18/11/2026 15:56:29

interest of an individual.[18] It should also be noted that the approval issued on the basis of Article 35(3) APR at the stage of drawing up a local spatial development plan or a decision on construction conditions, or the refusal of such approval, normally takes the form of an appealable decision referred to in Article 106 of the Code of Administrative Procedure.[19] However, the manner in which an investor may challenge this decision is different, although the right to a court, as stipulated in Article 45(1) of the Polish Constitution,[20] is fully guaranteed to the investor.[21]

2. Approval of the possibility of traffic entering a road at the stage of the building permit – key judgments

In its judgment of 29 January 2020, the Supreme Administrative Court[22] stated that "it is a fact that Article 35(3) APR does not specify at what stage of the proceedings concerning the construction of a building structure the road operator is to issue its approval. However, it is unacceptable to adopt an interpretation according to which an approval at the stage of enacting a local spatial development plan excludes, in

[18] Cf. judgment of the Supreme Administrative Court of 17 July 2025, II GSK 2280/24, LEX no. 3894361; judgment of the Supreme Administrative Court of 27 June 2019, I OSK 1682/17, CBOSA; judgment of the Supreme Administrative Court of 8 February 2012, I OSK 276/11, CBOSA; judgment of the Supreme Administrative Court of 12 May 2011, I OSK 1068/10, LEX no. 863287; judgment of the Supreme Administrative Court of 13 July 2010, I OSK 1243/09, LEX no. 594986; judgment of the Supreme Administrative Court of 11 July 2007, I OSK 1148/06, CBOSA.

[19] Act of 14 June 1960 – Code of Administrative Procedure (consolidated text, Journal of Laws 2024, item 572, as amended). Article 106 of the Code of Administrative Procedure: § 1. If a provision of law makes the issuance of the decision conditional on the official position by another authority (the expression of an opinion or consent, or the expression of a position in another form), the decision is issued after that authority has taken its position. § 2. When requesting another body to take a position, the authority handling the case notifies the party concerned. § 3. The authority requested to take a position is obliged to present it immediately, but no later than within two weeks from the date of service of the relevant request to that authority, unless a different time limit is prescribed by law. § 4. The authority obliged to take a position may, if necessary, conduct investigation proceedings. § 5. The position of that authority takes the form of a decision, which is subject to an appeal by the party concerned. § 6. If a position is not taken within the time limit specified in § 3, the provisions of Articles 36–38 shall apply, whereby the authority obliged to take a position immediately informs the authority handling the case that a reminder has been filed.

[20] Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483, as amended). English translation of the Constitution is available at https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm (access: 9.7.2026). Article 45(1) of the Polish Constitution provides that everyone is entitled to a fair and public hearing without undue delay by a competent, independent, and impartial court.

[21] For more information on this topic, see A. Gołąb, *Uzgodnienie możliwości włączenia do drogi ruchu drogowego spowodowanego zmianą zagospodarowania terenu przyległego do pasa drogowego (art. 35 ust. 3 u.d.p.)*, [in:] *Prawo do dobrego samorządu w kontekście realizacji zadań publicznych*, eds. K. Małysa-Sulińska, M. Stec, Warszawa 2021, pp. 137–138.

[22] II OSK 3832/18, CBOSA.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 18/11/2026 15:56:29

principle, the need to obtain an approval for a specific investment project at the stage of issuing a building permit". According to the Supreme Administrative Court, "the indicated provision of Article 35 APR, in addition to the obligation to an approval for changes to land use (paragraph 3), also imposes an obligation on the road operator to prepare road network development plans (paragraph 1) and imposes restrictions on the development of land designated for future roads (paragraphs 2, 4, 5). The provisions of Article 35(1), (2), (4), and (5) directly refer to the local land development plan, indicating that provincial and local land development plans allocate for future road construction a strip of land with a width that takes into account the protection of road users and the adjacent land from mutual adverse impacts. Article 35(4) and (5) APR also indicates what development is permitted on that strip of land. Thus, these provisions concern the stage of adoption of local spatial development plans. On the other hand, Article 35(3) APR is a separate regulation that applies when there is a change in the development of land adjacent to the right of way, in particular one that involves the construction of a building structure or the performance of other construction work. At the same time, the road operator's approval is required only in cases where a change in the use of land adjacent to the right of way is combined with the possibility of traffic caused by such change entering the road". In addition, "in the opinion of the Supreme Administrative Court, obtaining an approval from the road operator at the stage of enacting the local spatial development plan, where the intended use of the land and the principles of its development are determined (Article 15(1)(1–12) APR), does not exempt from the obligation to obtain an approval for a specific investment project, at the stage of issuing a building permit, where the impact of the land use specified in the design, in this case the construction of a hotel with infrastructure, on road traffic is analyzed. It is clear that at the stage of adoption of the local spatial development plan it is impossible to accurately determine the impact of potential use of the property on traffic, which can be done only by evaluating the submitted building design and the specific solutions contained therein. It is only at this stage that the road operator agrees on the possibility of traffic entering the road due to the change resulting from the implementation of the investment project described in the design, which in essence means assessing the possibility of road access to and from the property in question from the point of view of the applicable regulations and the road operator's tasks relating to traffic safety. At the stage of adoption of a local plan, when the land use and the method of connection of area to the public road were determined, it was not possible to establish specific traffic parameters resulting from the size of the planned investment project, hence the need to obtain an approval at the stage of obtaining a permit for the implementation of the investment project in question".[23]

[23] Similarly, judgment of the Supreme Administrative Court of 26 June 2025, II OSK 151/23, CBOSA.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 18/11/2026 15:56:29

A different view was presented by the Voivodeship Administrative Court in Gorzów Wielkopolski in its judgment of 15 July 2020.[24] The Court pointed out that the provision of Article 35(3) APR does not specify at what stage of the proceedings concerning the construction of a building structure the road operator must approve the possibility of entering the road of traffic caused by a change in the use of land adjacent to a right of way, in particular in connection with the construction of a building structure or the performance of other construction work, as well as a change in the use of a building structure or a part thereof. This issue is regulated primarily by the provisions of the Spatial Planning Act. It follows precisely from that Act that, as a rule, the approval in question is granted at the stage of drawing up a local spatial development plan (Article 17(6)(b), third indent, and Article 24(1) ASPD) or drawing up a decision on the construction conditions (Article 60(1) in conjunction with Article 53(4)(9) ASPD). According to this Court, there is no legal basis for requiring the investor to obtain a new approval for a change in the use of land adjacent to a right of way at the stage of applying for a building permit, since such a permit is issued on the basis of the local spatial development plan, and in the absence of such a plan – on the basis of a construction conditions decision, which have previously been approved in this regard by the road operator. The Court also pointed to "the literature and case law, which accept that the authorities making decisions on the issuance of a building permit are bound by the provisions of the local spatial development plan in the provision of traffic access for the plot. Thus, since the plan has been approved by the road operator, there is no need to approve the change in the use of the plot and the investor may not be required to get an approval from the road operator under Article 35(3) APR".

3. The authors' position

In the opinion of the authors of this article, it is the second view presented that is correct, and there are more arguments for its validity. First, already during the procedure for approval of the local spatial development plan under Article 17(6)(b), third indent, in conjunction with Article 24(1) ASPD, information is provided to the road operator that allows it to determine how the potential use of land adjacent to the right of way, or a change in that use, will affect road traffic or the road itself in terms of road traffic safety. This is because the mayor (city president) submits to the road operator a draft of the local land development plan that obligatorily takes into account the principles regarding the shape of development and indicators of land use, i.e. the maximum and minimum above-ground building density, the minimum proportion of biologically active area, the maximum proportion of built--over area, the maximum height of buildings, the minimum number and manner of

[24] II SA/Go 66/20, LEX no. 3034982.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 18/11/2026 15:56:29

implementation of parking spaces, including spaces for parking vehicles provided with a parking card, the building alignment, and the dimensions of building structures.[25] At the same time, the arrangements for the shape of development and the use of land should include the principles, parameters, and indicators referred to in Article 15(2)(6) ASPD, including the minimum number of parking spaces in relation to the number of dwelling units, the number of persons who may simultaneously reside in the building, as well as the number of employees or the area of service and manufacturing facilities, and, as the case may be, the arrangements referred to in Article 15(3)(8) and (10) ASPD (i.e., the manner of location of building structures in relation to roads and other publicly accessible areas and to the boundaries of adjacent properties, the colors of building structures and their roof covers, and the minimum area of newly designated building lots).[26]

From the point of view of the regulations and tasks of the road operator set forth in the Public Roads Act, the above information sufficiently allows an assessment of the impact of a potential use of a site or its change on road traffic parameters, including, most importantly, the scale of its intensity, and also provides a possibility of verifying the general rules of connecting the site. With such data, it is even possible to determine the potential type of vehicles that will use the road. This is because the types of vehicles that may ultimately access a site intended for a multifamily residential complex (e.g., cars and vans) will be different from those accessing industrial or manufacturing complexes (e.g., trucks). Besides, having obtained such data, the road operator can also determine or revise the schedule of its tasks regarding the planning, construction, modification, repair, maintenance, and protection of roads both in the area covered by the plan and in the area immediately adjacent to it.

Undoubtedly, the local spatial development plan should be drafted in a way that ensures the possibility of traffic access to the areas it covers, including by containing provisions regarding solutions specifying access from plots of land intended for buildings to a public road. Such a conclusion follows from the function of the plan and the provisions of the Spatial Planning Act, including the definitions of a building plot and access to a public road.[27] As K. Bandarzewski rightly pointed out, a local plan that would allow construction in a specific area without at the same time providing for the possibility of connecting that area to a public road would have to be considered defective, since each building plot should have access to a public

[25] See Article 15(2)(6) ASPD.

[26] See § 4(6) of the Regulation of the Minister of Development and Technology of 17 December 2021 on the required scope of the draft local spatial development plan (Journal of Laws 2021, item 2404).

[27] For more information on this topic, see A. Plucińska-Filipowicz, A. Kosicki, [in:] *Planowanie i zagospodarowanie przestrzenne. Komentarz*, eds. A. Plucińska-Filipowicz, T. Filipowicz, M. Wierzbowski, Warszawa 2024, p. 369.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 18/11/2026 15:56:29

road ensured in the plan in such a way that both the content and the drawing of that plan should provide for a connection between such a plot and a public roads. This is especially true in areas adjacent to a public road. At the same time, it would be unacceptable if owners of plots of land adjacent to a right of way for which a local plan approved by a road operator has been adopted were unable to use their properties in accordance with the content of that plan due to the inability of the traffic created as a result of the development of these properties in accordance with the local plan to merge into the road.[28] However, it should be noted that the provisions of the local spatial development plan may not prohibit the construction of exits, as this would consequently lead to a modification of the provisions of the Public Roads Act. This is because the permissibility of building an exit from a public road is decided on a case-by-case basis by the public road operator.[29]

The situation is similar with regard to the drafting of a construction conditions and land use decision. In the course of the approval procedure referred to in Article 53(4)(9) ASPD, the competent authority shall submit to the road operator a draft decision on the construction conditions containing information on: the type of investment project; the conditions and detailed rules for the use of and the building structures to be built on the site resulting from separate regulations, in particular, relating to the conditions and requirements for the protection and shaping of spatial order, protection of the environment and human health, as well as cultural heritage and historic monuments and modern cultural assets, service in the field of technical infrastructure and transport, requirements for the protection of the interests of third parties and the protection of buildings in mining areas; as well as the lines of demarcation of the investment project site, drawn on a map at the appropriate scale, subject to Article 52(2)(1) ASPD.[30] Such a design should also include arrangements

[28] K. Bandarzewski, *Dostęp działki budowlanej do drogi publicznej*, "Przegląd Prawa Publicznego" 2020, vol. 159(6), pp. 38–51.

[29] Cf. judgment of the Voivodeship Administrative Court in Gorzów Wielkopolski of 25 June 2015, II SA/Go 218/15, CBOSA; judgment of the Supreme Administrative Court of 1 April 2011, II OSK 109/11, CBOSA; judgment of the Supreme Administrative Court of 12 April 2017, II OSK 2097/15, CBOSA; judgment of the Supreme Administrative Court of 29 March 2022, II OSK 981/21, CBOSA; judgment of the Voivodeship Administrative Court in Wrocław of 20 February 2013, II SA/Wr 859/12, CBOSA; judgment of the Voivodeship Administrative Court in Wrocław of 20 February 2013, II SA/Wr 14/13, CBOSA; judgment of the Voivodeship Administrative Court in Poznań of 14 February 2024, IV SA/Po 787/23, CBOSA; judgment of the Voivodeship Administrative Court in Poznań of 23 May 2024, IV SA/Po 252/24, CBOSA; judgment of the Voivodeship Administrative Court in Poznań of 20 August 2025, IV SA/Po 634/25, CBOSA; judgment of the Voivodeship Administrative Court in Bydgoszcz of 10 April 2019, II SA/Bd 1298/18, CBOSA.

[30] Article 54 ASPD. What is also significant for the importance of this study is that 24 September 2023 is the effective date of the Act of 7 July 2023 amending the Act on spatial planning and development and certain other acts (Journal of Laws 2023, item 1688, as amended), which amended the content of Article 54 ASPD. However, in accordance with the wording of Article 59(2)(1) of that amending Act, Article 54 of the Act amended by Article 1, in the previous wording, applies to cases

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 18/11/2026 15:56:29

for the alignment of buildings; the maximum building density and the maximum and minimum above-ground building density; the proportion of built-up area; the width of the front facade; the height of the buildings; the roof geometry (angle of inclination, arrangement of roof slopes); the minimum proportion of biologically active area; and the minimum number of parking spaces.[31] The above data also allow the road operator to determine how the potential use of land adjacent to the right of way, or a change in that use, will affect traffic or the road itself in terms of road traffic safety. The data indicate what the potential traffic volume may be, how the investment project will be connected, and even the type of vehicles (e.g., trucks, cars, or buses) that may use the adjacent road in connection with the implementation of the investment project. Therefore, an indispensable element of the settlement of a case concerning the approval of a decision on construction conditions is the road operator's determination of the nature of the specific investment project with regard to its impact on the change in traffic service to the investment project site, and in particular the change in the road traffic.[32] This is a prerequisite for the permissibility of an investment project to be implemented on a site adjacent to a road. A failure to ensure the necessary level of traffic safety is a legitimate rationale for refusing to grant an approval for a specific construction conditions decision.[33]

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concerning the determination of the location of a public purpose investment project or the issuance of a decision on construction conditions that had been initiated as of the date of entry into force of the amending Act and before the date on which the municipality's study of the conditions and directions for spatial development in a given municipality became invalid. At the same time, Article 65(1) of the amending Act, as amended by Article 4(2) of the Act of 4 April 2025 amending the Act on spatial planning and development and certain other acts (Journal of Laws 2025, item 527), amending the Act as of 7 May 2025, provides that municipal spatial development conditions and directions studies remain in force until the date of entry into force of the general plan of the specific municipality, but no longer than until 30 June 2026, and the current provisions shall apply to them. This means that the new wording of Article 54 ASPD is currently not yet in force, and will come into effect when the municipality's spatial development conditions and direction studies expire, i.e., after 30 June 2026.

[31] See Article 61(1)(1) ASPD (in the wording prior to the amendment by the Act of 7 July 2023 amending the the Act on spatial planning and development and certain other acts) in conjunction with § 1 of the Regulation of the Minister of Development and Technology of 15 July 2024 on the manner of determining the requirements for new buildings and land development in the absence of a local spatial development plan (Journal of Laws 2024, item 1116).

[32] Judgment of the Supreme Administrative Court of 15 January 2020, II OSK 3330/17, CBOSA; judgment of the Voivodeship Administrative Court in Łódź of 23 June 2022, II SA/Łd 390/22, CBOSA.

[33] Judgment of the Supreme Administrative Court of 7 February 2018, II OSK 1966/17, CBOSA; judgment of the Supreme Administrative Court of 19 February 2021, II OSK 2985/20, CBOSA; judgment of the Supreme Administrative Court of 14 June 2023, II OSK 2102/20, CBOSA; judgment of the Supreme Administrative Court of 5 October 2021, II OSK 262/21, CBOSA; judgment of the Supreme Administrative Court of 5 February 2023, II OSK 412/20, CBOSA; judgment of the Supreme Administrative Court of 18 July 2024, II OSK 1191/23, CBOSA; judgment of the Supreme Administrative Court of 15 April 2025, II OSK 2237/22, CBOSA.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 18/11/2026 15:56:29

Second, in the opinion of the authors of this article, the validity of the above proposition is also supported by the explanatory memorandum to the Act of 14 November 2003 amending the Act on public roads and certain other acts,[34] by which the legislature amended, as of 9 December 2003, the content of, among other provisions, Article 35(3) APR. The legislature clearly indicated "that the approval referred to in Article 53(4)(9) of the Act of 27 March 2003 on spatial planning and development (Journal of Laws 2003, no. 80, item 717) shall specify, in particular, the possibility of traffic entering existing or planned roads".[35] The above clearly demonstrates that Article 35(3) APR should apply only to cases concerning spatial planning and development. This is also supported by an internal systematic interpretation, which consists in determining the actual meaning of a provision due to its location in the internal systematics of a specific normative act or the entire branch of law. The location of a specific provision in a specific place is not accidental and provides an interpretative guideline for the reader of the text. Thus, the location of Article 35(3) in the Public Roads Act among the provisions explicitly relating only to spatial planning (Article 35(1), (2), (4), and (5) APR) indicates that it should not apply to matters other than spatial planning.

Third, the validity of the proposition that the approval referred to in Article 35(3) APR is not required at the stage of obtaining a building permit decision is also supported by a systemic interpretation of the provisions of the Construction Law and the Public Roads Act. Pursuant to Article 32(1)(2) of the Construction Law, a decision to permit the construction or demolition of a building structure may be issued after the investor obtains permits, approvals or opinions of other authorities, as required by specific regulations. On the basis of this provision, in the aforementioned judgments, the Supreme Administrative Court indicates that the approval referred to in Article 35(3) APR is required for an application for a building permit. However, it should be noted that this is a blanket provision that specifies the framework for the actions that should be taken prior to the issuance of a building permit. However, there is no doubt that both the investor's obligation to obtain and the power of the competent authority to issue permits, approvals or opinions must result from specific special laws.[36] On the other hand, it follows *expressis verbis* from special laws, i.e. the Public Roads Act, that only the road operator's permit for the location of an exit or the reconstruction of an exit, as referred to in Article 29 APR, must be submitted with the application for a building permit. This is because, as stipulated in Article 29(3a) APR, such a permit must be attached to the application for a building permit and

[34] Journal of Laws 2003, no. 200, item 1953, as amended.

[35] Sejm RP, IV kadencja, Uzasadnienie do rządowego projektu ustawy o zmianie ustawy o drogach publicznych oraz o zmianie niektórych innych ustaw, Druk nr 1933, 22.8.2003, https://orka.sejm.gov.pl/Druki4ka.nsf/wgdruku/1933 (access: 15.10.2025).

[36] Judgment of the Supreme Administrative Court of 12 May 2011, II OSK 809/11, LEX no. 795464.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 18/11/2026 15:56:29

notification of construction or execution of construction works, as referred to in the Construction Law. In its explanation for the introduction of this provision, the legislature indicated that these are organizational changes resulting from the changes to the concept of building design as well as its scope and form.[37] The obligation to attach this permit to an application for a building permit (or a notification of construction or construction works) resulting from the Public Roads Act is therefore reserved exclusively for this permit.

It should also be noted that it follows from Article 34(3)(4) of the Construction Law that a building design subject to approval by an architectural and construction administration body as part of the procedure for approval of a building design and the granting of a building permit should include "as needed – in the case of a national or provincial road – a statement by the competent road operator that the plot of land can be connected to the road, in compliance with the laws on public roads". This statement is part of the building design, which means that the investor is required to obtain such a statement, if necessary, before applying for a building permit. However, the statement is not needed when the investor's property has an existing exit to a public road built in compliance with applicable law (based on a decision of the competent road authority). On the other hand, the statement is necessary when the property for which the investor has the right to use the land for construction purposes is located next to a road, but due to its category, it may be necessary to consider an appropriate solution allowing access to the public road.[38]

It is also worth noting that prior to the amendment to the Construction Law made by the Act of 20 February 2015 amending the Construction Law and certain other acts,[39] the legislature required that a building design be accompanied by a statement from the competent road operator on the possibility of connecting the plot to a public road. This obligation was not limited exclusively, as it is now, to national and provincial roads, but applied to all categories of public roads, including municipal and district roads. The rationale for the aforementioned amendment was the intent to formalize the construction process by, among other things, abolishing

[37] Article 29(3a) was added by Article 2(3) of the Act of 13 February 2020 amending the Construction Law and certain other acts (Journal of Laws 2020, item 471, as amended), which amended the Public Roads Act as of 19 September 2020. See Sejm RP, IX kadencja, Uzasadnienie do rządowego projektu ustawy o zmianie ustawy – Prawo budowlane oraz niektórych innych ustaw, Druk nr 121, 23.12.2019, https://www.sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?nr=121 (access: 15.10.2025).

[38] A. Kosicki, *Komentarz do art. 34*, [in:] *Prawo budowlane. Komentarz aktualizowany*, eds. A. Plucińska-Filipowicz, M. Wierzbowski, LEX/el. 2024; A. Ostrowska, [in:] *Prawo budowlane. Komentarz*, ed. A. Gliniecki, Warszawa 2016, pp. 451–452; A. Gołąb, *op. cit.*, p. 142. Similarly, Sejm RP, VII kadencja, Uzasadnienie do rządowego projektu ustawy o zmianie ustawy – Prawo budowlane oraz niektórych innych ustaw, Druk nr 2710, 28.8.2014, https://www.sejm.gov.pl/Sejm7.nsf/druk.xsp?nr=2710 (access: 15.10.2025).

[39] Journal of Laws 2015, item 443.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 18/11/2026 15:56:29

the obligation to attach to the building design statements of competent organizational units on the supply of electricity, water, heat and gas and on the conditions for connections to electrical, telecommunications, heat, gas, water, and sewage networks, and a statement of the competent road operator on the possibility of access to a public road. According to the legislature, the requirements for connecting a building plot to a network, including a road network, are contained in the provisions of the Regulation of the Minister of Infrastructure of 12 April 2002 on the technical conditions to be met by buildings and their location;[40] moreover, these requirements are specified and verified at the stage of issuing a decision on the construction and land development conditions (and if a local spatial development plan is in force, they are specified in that plan).[41]

In the authors' opinion, this confirms that an application for a building permit should not be accompanied by any acts from a road operator other than the statement referred to explicitly in Article 34(3)(4) of the Construction Law or the permit referred to in Article 29(3) APR. Therefore, their absence may not constitute grounds for an architectural and construction administration body to refuse to grant a building permit. Besides, all public authorities should act on the basis of the law and within its limits. The law should not only establish the power to act, but also be the source of orders and prohibitions that set the legal framework for that action. The power to act cannot be presumed, as it is constructed by laws of different nature (substantive, procedural, and constitutional). Therefore, in a situation where there is no legal basis in the current legislation for requiring, in the course of the building permit procedure, that the investor obtain the approval specified in Article 35(3) APR, such action by the architectural and construction administration bodies should be considered inconsistent with the principle of legalism set forth in Article 7 of the Polish Constitution. In addition, such conduct violates the principle of citizens' trust in public authority set forth in Article 8(1) of the Code of Administrative Procedure, which is based on the assumption that public authorities should act in a loyal and honest manner toward individuals, instilling in them a sense of stability and legal security.

Fourth, in its position presenting the view that the approval referred to in Article 35(3) APR may also be required at the stage of the building permit, as an argument supporting the validity of this view, the Supreme Administrative Court pointed out that at the stage of the adoption of the local plan, when the land use of a site and the way in which this site is to be connected to a public road were determined, it was not possible to establish specific road traffic parameters resulting from the size of the planned construction investment project and to assess them from the point of view of the applicable regulations as well as the tasks of the road operator relating to road traffic safety. It should be pointed out that it is possible

[40] Consolidated text, Journal of Laws 2022, item 1225, as amended.

[41] Sejm RP, VII kadencja, *op. cit*.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 18/11/2026 15:56:29

to do so as part of the procedure for issuing a permit by the road operator for the location of an exit or modification of an exit, as referred to in Article 29 APR.[42] According to that article, it is up to the owner or user of the property adjacent to the road to build or modify the exit, after obtaining a permission, in the form of an administrative decision, from the road operator for a construction or modification of an exit. This permit specifies the location of the exit and its technical parameters or – in the case of a permit for the modification of an exit – its technical parameters.[43] At the same time, Article 29(4) APR provides that due to the conditions set forth in the regulations adopted under Article 7 of the Construction Law or the principles of technical knowledge as defined in Article 5(1) thereof, the road operator may refuse to issue a permit for the location of an exit or its modification or may issue a permit for the location of an exit. In the rulings of the administrative courts, it is an established position that road traffic safety is the overarching principle that applies when issuing a permit for the construction of a new exit and may limit the rights of the property owner in the free use of the property. Thus, when considering an application for the location of a new exit, the road operator is obliged to consider how the construction of the exit will affect the flow of vehicular traffic and whether the location of that exit will be important for the safety of road users.[44] Therefore, in the opinion of the authors of this article, there is no legitimate reason to conduct a repeated assessment in this regard at the stage of the building permit procedure, since all the necessary determinations could be made at the stage of the exit location procedure. A repeated assessment would be unreasonable and would unnecessarily formalize, lengthen, and increase the cost of the entire construction process, which is already high. It would also violate the principle of citizens' trust in public authorities.

In addition, in a situation where the same principles that guide the road operator in issuing a decision on the possibility of building or modifying an exit under Article 29 APR, i.e. the need to ensure road traffic safety,[45] apply to the road operator's statements issued in connection with Article 34(3)(4) of the Construction Law, it should be considered that under current legislation there is no basis for

[42] See judgment of the Supreme Administrative Court of 29 April 2025, II GSK 2230/21, LEX no. 3866671; judgment of the Supreme Administrative Court of 22 January 2025, II GSK 1936/24, LEX no. 3835605; judgment of the Voivodeship Administrative Court in Lublin of 6 June 2024, III SA/Lu 196/24, LEX no. 3749711.

[43] See Article 29(2) APR.

[44] Cf., among others, judgment of the Supreme Administrative Court of 11 July 2007, I OSK 1148/06, CBOSA; judgment of the Supreme Administrative Court of 13 February 2001, II SA 770/00, CBOSA; judgment of the Supreme Administrative Court of 31 March 1999, II SA 188/99, CBOSA; judgment of the Supreme Administrative Court of 15 July 1998, II SA 705/98, CBOSA; judgment of the Supreme Administrative Court of 25 August 2020, I OSK 2936/19, CBOSA; judgment of the Voivodeship Administrative Court in Poznań of 22 August 2019, IV SA/Po 543/19, CBOSA.

[45] A. Gołąb, *op. cit.*, p. 142.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 18/11/2026 15:56:29

requiring the investor to submit any acts from the road operator other than those mentioned above.

CONCLUSIONS

The research conducted for this article and the considerations based on its findings made it possible to achieve the stated objective and confirmed the hypothesis. It was shown that under the current legal framework, there are no norms authorizing architectural and construction administration authorities to require the investor, citing Article 35(3) APR, to submit in the building permit procedure any acts from the road operator other than the statement explicitly referred to in Article 34(3)(4) of the Construction Law or the permit specified in Article 29(3) APR. Nor can their absence constitute grounds for refusing to grant such a permit.

An internal systemic interpretation and the explanatory memorandum for the act establishing the current wording of Article 35(3) APR indicate that this provision should apply only to cases involving spatial planning or construction and land development conditions. In addition, the clarification of these matters by the legislature in both the Public Roads Act and the Construction Law should be viewed positively, as it helps avoid interpretation differences in the actions of the authorities. On the other hand, from the point of view of the legislation and the tasks of the road operator set forth in the Public Roads Act, the data provided to the road operator in the procedure for issuing the approval in question by the authorities drawing up local spatial development plans and issuing construction and land development conditions sufficiently enable the assessment of the potential impact of that development on road traffic or the road itself in terms of road safety. Therefore, there is no valid reason to repeat the assessment in this regard at the stage of the building permit procedure, as this would be unreasonable and would unnecessarily formalize, prolong, and increase the cost of the entire construction process, which is already high.

In addition, by studying the rulings of administrative courts and the views expressed in the literature, the authors of the article attempted to determine the rationale that should guide the road operator in the provision of the approval in question, and to define the expressions "land adjacent to a right of way" and "possibility of entering the road", which are of fundamental importance in answering the question. It was found out that, as a general rule, a change in the use of a property that is in close functional and spatial relationship with a right of way ("land adjacent to a right of way") is subject to approval, and the broadening interpretation of this concept should be applied with caution and be based on the specific unique circumstances of the case. On the other hand, "the possibility of traffic entering a road" should be understood as the real, existing provision of road traffic access

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 18/11/2026 15:56:29

to a specific plot, which should not be equated, in principle, with the possibility of building a specific exit. At the same time, there is no doubt that a road operator should take into consideration, first and foremost, the compliance of planned activities with traffic safety principles.

The general conclusion that emerges from the considerations presented in this article seems to clearly indicate that the imposition of additional obligations that are not provided for in law on investors by the architectural and construction administration authorities in the course of the process for granting a building permit generally results in a violation by these authorities of the constitutional principle of legalism and the principle of citizens' trust in public authorities.

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Data: 18/11/2026 15:56:29

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Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 18/11/2026 15:56:29

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ABSTRAKT

Zgodnie z art. 35 ust. 3 ustawy o drogach publicznych zmianę zagospodarowania terenu przyległego do pasa drogowego, w szczególności polegającą na budowie obiektu budowlanego lub wykonaniu innych robót budowlanych, a także zmianę sposobu użytkowania obiektu budowlanego lub jego części, zarządca drogi uzgadnia w zakresie możliwości włączenia do drogi ruchu drogowego spowodowanego tą zmianą. Przepis ten nie wskazuje w sposób jednoznaczny, czy przedmiotowe uzgodnienie jest wymagane wyłącznie na etapie postępowania planistycznego lub warunków zabudowy i zagospodarowania terenu, czy też może być zastosowane ponownie na etapie uzyskania decyzji o pozwoleniu na budowę. Natomiast żądanie od inwestorów takiego uzgodnienia może znacznie wydłużyć czas uzyskiwania pozwolenia na budowę i zwiększyć jego koszty. Dlatego autorzy artykułu objęli obszarem analizy całokształt postępowania organów administracji publicznej w sprawach związanych z uzgodnieniem, o którym mowa w art. 35 ust. 3 ustawy o drogach publicznych, a także jego ocenę przez sądy oraz doktrynę. Ustalono, że przedmiotowe uzgodnienie nie jest wymagane na etapie postępowania w sprawie pozwolenia budowlanego. Celem artykułu jest wykazanie, że jego ponowne żądanie w świetle całokształtu obowiązujących regulacji, z uwzględnieniem dotychczasowego dorobku doktryny i orzecznictwa sądów administracyjnych, jest bezpodstawne oraz narusza konstytucyjną zasadę legalizmu i zasadę zaufania obywateli do władzy publicznej. Należy zaznaczyć, że poruszony problem, choć istotny dla nauki i praktyki, dotychczas nie doczekał się szerszego opracowania.

Słowa kluczowe: zmiana zagospodarowania terenu; uzgodnienie; pozwolenie na budowę; droga; zarządca drogi