



City of Annapolis

DEPARTMENT OF PLANNING AND ZONING

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December 6, 2023

MEMORANDUM

To: Planning Commission
Via: Christopher Jakubiak AICP, Director of Planning & Zoning

From: Eric Leshinsky AICP, Chief of Comprehensive Planning

Re: Ordinance O-26-23: Forest Conservation Plan Appeals - For the purpose of closing a loophole in the Forest Conservation Plan provisions of the City Code concerning forest clearing; changing the Forest Conservation Plan appeals body from the Building Board of Appeals to the Board of Appeals; and generally related to the Maryland Forest Conservation Act and Planned Unit Development regulations.

Attachments: 1. O-26-23 First Reader
2. O-26-23 Legislative Summary

SUMMARY

The purpose of this ordinance is to modify the provisions for appeals of Forest Conservation Plans in three ways:

- Forest Conservation Plans approved prior to September 26, 2016 (when the City's current Forest Conservation requirements took effect) will no longer be exempt from appeals;
- The City's Board of Appeals will replace the Building Board of Appeals as the body which receives the appeals to Forest Conservation Plans;
- Work will be halted on all appealed projects until a settlement by the Board of Appeals which may require a judicial review by the Circuit Court of Anne Arundel County.

ANALYSIS

This legislation will amend Sections 21.71.030 and 21.71.070 of the City's Code of Ordinances to strengthen the enforcement of the Forest Conservation Plan requirements and overall intent. The ordinance achieves this by expanding the provisions to appeal Forest Conservation Plans and creating a mechanism for halting work when an appeal is in progress. Currently, forest

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clearing is allowed to continue while an appeal is in progress, and Forest Conservation Plans approved prior to September 26, 2016 are exempt from appeals. O-26-23 will change both of these provisions.

The ordinance also replaces the Building Board of Appeals, which typically reviews appeals to building inspections, with the Board of Appeals as the body which will receive Forest Conservation Plan appeals. The Board of Appeals is a better fit for this role given that it typically hears planning appeals.

Although there are no pending projects in the city with a Forest Conservation Plan approved prior to September 26, 2016, there is one known project that may seek a major modification to its site plan based on its approved Forest Conservation Plan. Should this major modification move forward, the project's Forest Conservation Plan would be subject to the provisions of O-26-23.

CODE COMPLIANCE AND RECOMMENDATION

Based on the above analysis, the staff recommends the proposed O-26-23 be APPROVED.

Report Prepared by:



Eric Leshinsky AICP
Chief of Comprehensive Planning

..Title

Forest Conservation Plan Appeals – For the purpose of closing a loophole in the Forest Conservation Plan provisions of the City Code concerning forest clearing; changing the Forest Conservation Plan appeals body from the Building Board of Appeals to the Board of Appeals; and generally related to the Maryland Forest Conservation Act and Planned Unit Development regulations.

..Body

CITY COUNCIL OF THE
City of Annapolis

Ordinance 26-23

Introduced by: Ald. Savidge

Co-sponsored by:

Referred to

Planning Commission

Rules and City Government Committee

Environmental Commission

AN ORDINANCE concerning**Forest Conservation Plan Appeals**

FOR the purpose of closing a loophole in the Forest Conservation Plan provisions of the City Code concerning forest clearing; changing the Forest Conservation Plan appeals body from the Building Board of Appeals to the Board of Appeals; and generally related to the Maryland Forest Conservation Act and Planned Unit Development regulations.

BY repealing and reenacting with amendments the following portions of the Code of the City of Annapolis, 2023 Edition

21.71.030

21.71.070

SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that the Code of the City of Annapolis shall be amended to read as follows:

Title 21 – PLANNING AND ZONING**Division V - Regulations of General Applicability****Section 21.71.030 - Application.**

B. This chapter does not apply to:

Explanation:

~~Strikethrough~~ indicates matter stricken from existing law.

Underlining indicates copyediting or reformatting of existing law

Underlining & red indicate new matter added to the code.

1. Highway construction activities under Natural Resources Article, § 5-103, Annotated Code of Maryland;
2. Areas governed by the Chesapeake Bay Critical Area Protection Law, Natural Resources Article, §§ 8-1801—8-1817, Annotated Code of Maryland, including those areas into which critical area forest protection measures have been extended under Natural Resources Article, § 5-1602(c), Annotated Code of Maryland;
3. Commercial logging and timber harvesting operations, including harvesting conducted subject to the forest conservation and management program under Tax-Property Article, § 8-211, Annotated Code of Maryland, that are completed:
 - i. Before July 1, 1991; or
 - ii. After July 1, 1991, on property which:
 - a. Has not been the subject of application for a grading permit for development within five years after the logging or harvesting operation, and
 - b. Is the subject of a declaration of intent as provided for in Subsection C. of this section, approved by the Department;
4. Agricultural activities not resulting in a change in land use category, including agricultural support building and other related structures built using accepted best management practices, except that a person engaging in an agricultural activity clearing forty thousand square feet or greater of forest within a one-year period, may not receive an agricultural exemption, unless the person files a declaration of intent as provided for in Subsection C. of this section which includes:
 - i. A statement that the landowner or landowner's agent will practice agriculture on that portion of the property for five years from the date of the declaration; and
 - ii. A sketch of the property which shows the areas to be cleared;
5. The cutting or clearing of public utility rights-of-way licensed under Public Utilities Article, §§ 7-207 and 7-208 or 7-205, Annotated Code of Maryland, or land for electric generating stations licensed under Public Utilities Article, §§ 7-207 and 7-208 or 7-205, Annotated Code of Maryland, if:
 - i. Required certificates of public convenience and necessity have been issued in accordance with Natural Resources Article, § 5-1603(f), Annotated Code of Maryland; and
 - ii. Cutting or clearing of the forest is conducted to minimize the loss of forest;
6. Routine maintenance or emergency repairs of public utility rights-of-way licensed under Public Utilities Article, §§ 7-207 and 7-208 or 7-205, Annotated Code of Maryland;
7. Except for a public utility subject to Subsection B.5. of this section, routine maintenance or emergency repairs of a public utility right-of-way if:

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- i. The right-of-way existed before the effective date of this section; or
 - ii. The right-of-way's initial construction was approved before the effective date of this section;
8. A residential construction activity conducted on an existing single lot of record of any size at the time of application, or a linear project not otherwise exempted under this section, if the activity:
 - i. Does not result in the cumulative cutting, clearing, or grading of more than twenty thousand square feet of forest;
 - ii. Does not result in the cutting, clearing, or grading of a forest that is subject to the requirements of a previous forest conservation plan approved under this section; and
 - iii. Is the subject of a declaration of intent filed with the department, as provided in Subsection C. of this section, stating that the lot will not be the subject of a regulated activity within five years of the cutting, clearing, or grading of forest;
9. Strip or deep mining of coal regulated under Environment Article, Title 15, Subtitle 5 or 6, Annotated Code of Maryland;
10. Noncoal surface mining regulated under Environment Article, Title 15, Subtitle 8, Annotated Code of Maryland;
11. An activity required for the purpose of constructing a dwelling house intended for the use of the owner, or a child of the owner, if the activity:
 - i. Does not result in cutting, clearing, or grading of more than twenty thousand square feet of forest; and
 - ii. Is the subject of a declaration of intent filed with the Department, as provided for in Subsection C. of this section, which states that a transfer of ownership may result in a loss of exemption;
12. A plan of subdivision or a grading or sediment control plan administratively approved before the effective date of this chapter and that is not subsequently overturned on appeal;
- ~~13. A planned development, prior to the effective date of this chapter, that has obtained final planned development approval in accordance with Section 21-24.070 and that is not subsequently overturned on appeal;~~
13. A real estate transfer to provide a security, leasehold, or other legal or equitable interest, including a transfer of title of a portion of a lot or parcel, if:
 - i. The transfer does not involve a change in land use, or new development or redevelopment, with associated land-disturbing activities; and
 - ii. Both the grantor and grantee file a declaration of intent, as provided for in Subsection C. of this section;

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- 1 ~~15~~14. Maintenance or retrofitting of a stormwater management structure that may include
 2 clearing of vegetation or removal and trimming of trees, if the maintenance or
 3 retrofitting is within the original limits of disturbance for construction of the existing
 4 structure, or within any maintenance easement for access to the structure;
- 5 ~~16~~15. A stream restoration project, as defined in Section 21.71.020 of this chapter, for
 6 which the applicant for a grading or sediment control permit has executed a binding
 7 maintenance agreement of at least five years with the affected property owner or
 8 owners;
- 9 ~~17~~16. A special exception application that is only a change of use that does not involve new
 10 development or redevelopment with associated land-disturbing activities.

12 Title 21 – PLANNING AND ZONING

13 Division V - Regulations of General Applicability

14 Section 21.71.070 - Forest conservation plan.

16 A. General Provisions.

- 17 1. A preliminary forest conservation plan cannot be appealed. A final forest
 18 conservation plan is appealable as part of the appeal of a final administrative
 19 decision, Planning Commission decision or Board of Appeals decision specified
 20 in Chapter 21.08. A stay pending appeal shall be imposed during the time allowed
 21 to file an appeal, and if an appeal has been filed, for sixty days thereafter.
- 22 2. ~~With regard to (1) a plan of subdivision or a grading or sediment control plan that~~
 23 ~~was administratively approved, or (2) a planned development that has obtained final~~
 24 ~~planned development approval, prior to September 26, 2016, the disposition of~~
 25 ~~which remain governed by former Section 17.09.025.B. of the city Code, any~~
 26 ~~person aggrieved by a decision of the director to approve or disapprove the Forest~~
 27 ~~Conservation Plan associated with such applications shall be entitled to note an~~
 28 ~~appeal to the building board of appeals. Any party to the proceeding before the~~
 29 ~~Building Board of Appeals aggrieved of the decision of the Building Board of~~
 30 ~~Appeals shall be entitled to file a petition for judicial review of the decision of the~~
 31 ~~Building Board of Appeals in the Circuit Court for Anne Arundel County.~~

32 a. With regard to:

- 33 i. A plan of subdivision or a grading or sediment control plan
 34 that was administratively approved; or
- 35 ii. Planned development that has obtained final planned
 36 development approval, prior to September 26, 2016, the
 37 disposition of which remains governed by former section
 38 17.09.025.b. of the city code;

39 Any person aggrieved by a decision of the Director to approve or
 40 disapprove the forest conservation plan associated with such

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1 applications shall be entitled to note an appeal, and said project shall
2 halt work on any forest clearing until the Board of Appeals settles the
3 appeal.

- 4 b. Any party to the proceeding before the ~~Building~~ Board of Appeals
5 aggrieved of the decision of the ~~Building~~ Board shall be entitled to file a
6 petition for judicial review of the decision of the ~~Building~~ Board in the
7 Circuit Court for Anne Arundel County. The Department may require any
8 forest clearing to be halted until the judicial review has been completed.

9
10 **SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**
11 **ANNAPOLIS CITY COUNCIL** that this ordinance shall take effect upon passage.

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LEGISLATIVE SUMMARY

O-26-23

Planning and Zoning - Forest Conservation Plan Appeals

This summary was prepared by the City of Annapolis Office of Law for use by members of the Annapolis City Council during consideration of the legislation.

BILL SUMMARY

O-26-23 eliminates Forest Conservation Act exemptions in the City Code for planned developments and activities that were approved before September 26, 2016.

According to the Planning & Zoning Department, there are no pending projects where this would apply. There could be a request for a major modification to one project approved before 9.26.2016 that is not currently completed.

The legislation also:

- 1) Changes the appeals body for this section of the code. Those appealing Planning and Zoning Department decisions would go to the Board of Appeals (which reviews developer applications and special exception requests) rather than the Building Board of Appeals (which hears challenges to City building inspectors).
- 2) Requires projects to stop if the development's forest conservation plan is being challenged, and all potential forest clearing needs to halt until the appeal is settled.
- 3) Allows the Planning and Zoning Department to halt any forest clearing until the Anne Arundel Council Circuit Court judicial review has been completed. Previously there was no ability for P&Z to halt such work pending such an appeal.

Sponsor's Note on Legislative Intent:

"This ordinance would do the following:

1. Remove an old loophole (not in State code/model ordinance) that permanently exempts Planned Unit Developments (PUD) that have older approvals. (There are no pending Planned Development projects that have not started work yet, so this would not kick in unless there was a further major modification to the project.



LEGISLATIVE SUMMARY

O-26-23

Planning and Zoning - Forest Conservation Plan Appeals

2. Change the appeals body to Zoning Board of Appeals vs. Board of Appeals. The latter deals more with structural, built appeals, the former zoning appeals, which is where the Forest Conservation code resides."

3. Requires that any forest clearing be halted (stayed) when an appeal is made to any local appeal body, and gives P&Z the discretion to require a stay pending any appeal to a State body."

- *Ald. Robert Savidge, Ward 7*