



City of Annapolis
Planning Commission
Department of Planning & Zoning
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June 15, 2016

To: Annapolis City Council

From: Planning Commission

Re: Findings for O-22-16: Forest Conservation Act

SUMMARY

O-22-16 is legislation intended to adopt the standards of the Maryland Forest Conservation Act into the Annapolis City Code. Although incorporated by reference in the City Code in 1992, the processes that are particular to the review and approval of development activities within the City of Annapolis needed to be defined. The purpose of Ordinance 22-16 is to prohibit certain development projects from cutting or clearing certain forests within the City of Annapolis unless a forest stand delineation and forest conservation plan associated with such projects are in effect.

BACKGROUND AND ANALYSIS

On June 2, 2016 the Planning Commission held a public hearing on proposed Ordinance O-22-16, Forest Conservation Act (FCA) enabling legislation.

The Forest Conservation Act has had a number of drafts introduced for consideration by the City Council. A side by side comparison chart outlining the differences was distributed with the legislation. The Department of Planning and Zoning outlined the main points identified in O-22-16. The Department had identified some concerns primarily focused on clarifications and consistency with Title 21 and the proposed legislation.

In section 21.71.020 Forest and Tree Conservation Definitions the definitions of "Lot" and "Subdivision" are different in Title 21.74 and Title 20 respectively.

In Title 21.72 "Lot" means a zoning lot, except when the context indicates a lot of record, in which case a "lot" is a lot of record. Lot includes "piece," "parcel" and "plot."

"Zoning lot" means a single tract of land located within a single block which, at the time of filing for a building permit, is designated by its owner or developer as a tract to be used, developed or built upon as a unit, under single ownership or control. Therefore, a "zoning lot" may or may not coincide with a "lot of record."

"Lot of record" means a lot which is part of a subdivision, the plat of which has been recorded in the office of the recorder of deeds of Anne Arundel County; or a parcel of land, the deed to which was recorded in the office of the recorder prior to the effective date of this Zoning Code.

In O-22-16 "Lot" means a unit of land, the boundaries of which have been established by subdivision of a larger parcel and which will not be the subject of further subdivision, as defined by Natural Resources Article section 5-601, annotated code of Maryland and this chapter, and without an approved Forest Stand Delineation and Forest Conservation Plan.

In Title 20.04.130 "Subdivision" means the division or development of any part or parcel of land for sale, lease, transfer of ownership or building development, including the creation of a new street or streets, public or private. The term includes resubdivision, apartment subdivision, and, when appropriate to the context, relates to the process of subdividing or to the land subdivided.

In O-22-16 "Subdivision" means a division of a unit of land into two or more lots of parcels for the purpose, whether immediate or future, of transfer of ownership, sale, lease or development.

In Section 21.71.070 B.(5) the ordinance requires a public meeting for Preliminary Forest Conservation Plans. Major Subdivisions, Planned Developments and Special Exceptions have public hearings for each of those applications. This provision would require the Department to hold an additional public meeting on the Preliminary Conservation Plan.

Section 21.71.110 and 21.71.120 of the ordinance allows payment (in monetary value or credits respectively) instead of Afforestation and Reforestation requirements. Section A.3 establishes that payment to the City must be made 90 days after the development of the project is completed. Enforcement of requiring the payment after the development is completed may be problematic and would be challenging from an administrative perspective.

Section 21.71.160 states the City should adopt standards for protecting trees from construction activity. Section 17.09.050 of the City Code already established these standards.

PUBLIC HEARING AND DELIBERATION

The Planning Commission on June 2, 2016 held a public hearing, took testimony from staff, two of the legislation sponsors, several organizations, and members of the community. The Planning Commission discussed the "no net loss" amendments proposed by the two Alderperson. In addition, Planning Commission discussed the necessity to clarify several definitions and terminology utilized in the Forest Conservation Act. Planning Commissioners also discussed several processes that should be clarified including the fee in lieu process and procedures as well as the development of the Technical Manual and update process. The Planning Commission urges there be no delay in passage of this legislation.

RECOMMENDATION

After extensive discussion, the Planning Commission decided by a vote, 6-0 to RECOMMEND passage of O-22-16, the Forest Conservation Act, with the following specific recommendations:

1. Ensure consistency with the recent departmental reorganizations by changing DNEP references to Planning & Zoning;
2. Pass the "no net loss" amendment;
3. Revise the definition of "unwarranted hardship" to conform to current definitions in the City Critical Areas code and elsewhere in City and State codes and regulations;

4. Resolve differences between definitions of “lot” and “subdivision” in this proposed Act and elsewhere in City Code by making the definitions in this Act relevant only to this Act;
5. Clarify “100 year flood” definition;
6. Establish the effective date for this ordinance as “earliest date practicable after City Council passage;”
7. The proposed minimum of “^Acontinuous forest” acres is 20 acres; determine what is the lowest acreage practical and desirable in determining “contiguous forest;”
8. Clarify that development applications exempt from this Act must have received “final” approval from the Planning Commission, the Board of Appeals, or the Director as the case may be.
9. Establish that payments-in-lieu of afforestation or reforestation must be made before any permits are issued.
10. Consult with the Environmental Commission as to whether there should be a payments-in-lieu program either through a Forest Conservation Fund or a Forest Mitigation Bank and, if so, what should be the magnitude of the payments.
11. Consider whether there can be and if so should there be a stay of grading and construction during appeals to the courts.
12. Clarify that appeals of FCA decisions made by the Director of Planning & Zoning ^{shall} ~~made~~ be made to the Board of Appeals; consider the language suggested by the Chesapeake Bay Foundation;
13. Investigate whether the City can email to interested parties notifications of modifications to Forest Conservation Delineations, Preliminary Forest Conservation Plans and Final Forest Conservation Plans;
14. Require that the initial Technical Manual and significant changes thereafter must be reviewed and approved by the Planning Commission.

Adopted this 15th day of June, 2016


David Iams, Chair



City of Annapolis
Committee Referral Action

June 16, 2016

To: Jacquelyn Lee, Legislative Analyst

The Planning Commission has reviewed Ordinance O-22-16 and has taken the following action:

_____ Favorable

 x Favorable with amendments

_____ Unfavorable

_____ No Action

_____ Other _____ findings attached

_____ Comments:

