



City of Annapolis
DEPARTMENT OF PLANNING AND ZONING

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August 16, 2021

MEMORANDUM

To: Planning Commission
From: Sally Nash, Ph.D., AICP, Director of Planning and Zoning
Re: Ordinance O-34-21 (ZTA2021-014) Forest Conservation - Reforestation – For the purpose of requiring reforestation in certain circumstances to maintain the City’s current tree canopy percentage; and generally relating to reforestation requirements.
Encl: O-34-21

Purpose

The purpose of this ordinance is to address changes on sites with approved Forest Conservation Plans and to clarify at what point a new forest conservation plan is required.

Analysis

There are two main requirements for addressing the Forest Conservation Act, which is required for all properties outside of the Critical Area that are greater than 40,000 square feet. The first part called is the forest stand delineation (FSD). The FSD is an inventory of the forest and other environmental features on a site. The existing code states in Section 21.71.060(A)(7) that a forest stand delineation is valid for five years. However, staff may require a new delineation in that time period if there are changes on the site that affect a FSD.

The proposed ordinance adds language that if a new FSD is required in that five-year time frame, it should “identify and account for any forest or trees that may have been removed on the property in the past 10 years if said removal has not already been mitigated for in a current or past forest conservation plan”.

Staff is not concerned about the concept of this amendment, but is unclear how the requirement will work in the field. Staff would prefer if the ordinance required that the applicant “identify and account for any forest or trees that may have been removed on the property since the original approval”.

Furthermore, under Section 21.71.100(A)(1)(iii), staff does not believe existing language should be removed. The existing language of “at least thirty five feet wide and covering at least two thousand five hundred square feet or area” is the minimum within State Law. The proposed language simply states an “equivalent area,” which could be less. Staff recommends that an “equivalent area” is added to existing language.

Report Prepared by

Sally Nash, Ph.D., AICP
Director of Planning and Zoning

1 **..Title**

2 **Forest Conservation - Reforestation** – For the purpose of requiring reforestation in certain
3 circumstances to maintain the City’s current tree canopy percentage; and generally relating to
4 reforestation requirements.

5 **..Body**

6 **CITY COUNCIL OF THE**
7 **City of Annapolis**

8
9 **Ordinance 34-21**

10
11 **Introduced by: Alderman Savidge**
12 **Co-sponsored by:**

13
14 **Referred to**
15 **Planning Commission**
16 **Rules and City Government Committee**
17 **180 day Rule: _____**

18
19 **AN ORDINANCE** concerning

20
21 **Forest Conservation - Reforestation**

22
23 **FOR** the purpose of requiring reforestation in certain circumstances to maintain the City’s
24 current tree canopy percentage; and generally relating to reforestation requirements. .

25
26 **BY** repealing and reenacting with amendments the following portions of the Code of the City
27 of Annapolis, 2021 Edition
28 21.71.060
29 21.71.070
30 21.71.100

31
32
33 **SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY**
34 **COUNCIL** that the Code of the City of Annapolis shall be amended to read as follows:

35
36 **Title 21 – PLANNING AND ZONING**
37 **Chapter 21.71 - FOREST CONSERVATION**

38
39 **Section 21.71.060 Forest stand delineation.**

- 40
41 A. Criteria.
- 42 1. A forest stand delineation shall be submitted to the Department as the first step of making
43 application for the plans or permits specified in Section 21.71.045.
 - 44 2. The delineation shall be prepared by a licensed Forester, licensed Landscape Architect,
45 or a qualified professional who meets the requirements stated in COMAR 08.19.06.01A.

- 1 3. The delineation shall be used during the preliminary review process to determine the most
2 suitable and practical areas for forest conservation and shall contain the following
3 components:
 - 4 i. A topographic map delineating intermittent and perennial streams, and steep slopes;
 - 5 ii. A natural resources inventory;
 - 6 iii. A soils map delineating soils with structural limitations, hydric soils, or soils with a
7 soil k value greater than 0.35 on slopes of fifteen percent or more;
 - 8 iv. Forest stand maps indicating species, location, and size of trees and showing
9 dominant and co-dominant forest types;
 - 10 v. Location of 100-year floodplains;
 - 11 vi. The location and delineation of all tidal and non-tidal wetlands and their buffers;
 - 12 vii. Information required by the Forest Conservation Technical Manual; and
 - 13 viii. Other information the Department determines is necessary to implement this chapter,
14 including a nontidal wetlands plan upon request.
- 15 4. The Department shall post the forest stand delineation on its website within three business
16 days of receipt for at least fifteen calendar days and provide directions as to how the
17 public may send or deliver written comments, testimony, or documentation pertaining to
18 the forest stand delineation. The website posting requirement shall apply to any
19 amendments or revisions to the forest stand delineation. The Department shall promptly
20 post all correspondence between the department, and the applicant. All documents shall
21 be retained by the Department as part of the record of the application.
- 22 5. If approved by the Department, a simplified forest stand delineation, a concept plan or
23 plat, preliminary plat or plan, sediment control plan, or other appropriate document,
24 verified by a site visit, if appropriate, may substitute for the forest stand delineation if:
 - 25 i. No forest cover is disturbed during a construction activity; and
 - 26 ii. Designated to be under a long term protective agreement.
- 27 6. The Department shall consider a simplified forest stand delineation, or other substitute
28 plan described in Subsection A.5. of this section, complete if it includes:
 - 29 i. All requirements under Subsection A.3.i., ii., iii., v., and viii. of this section;
 - 30 ii. A map showing existing forest cover as verified by field inspection; and
 - 31 iii. Other information required by this chapter.
- 32 7. An approved forest stand delineation is valid for five years except that the Department
33 may require submission of a revised forest stand delineation if site conditions change
34 during the five-year period.
 - 35 i. WHEN A NEW FOREST STAND DELINEATION IS REQUIRED TO BE
36 COMPLETED, IT SHALL IDENTIFY AND ACCOUNT FOR ANY FOREST OR
37 TREES THAT MAY HAVE BEEN REMOVED ON THE PROPERTY IN THE
38 PAST 10 YEARS, IF SAID REMOVAL HAS NOT ALREADY BEEN
39 MITIGATED FOR IN A CURRENT OR PAST FOREST CONSERVATION
40 PLAN.
- 41 8. Time for submittal.
 - 42 i. Within thirty calendar days after receipt of the fsd, the Department shall notify the
43 applicant in writing (by email or postal letter) whether the forest stand delineation is
44 complete and correct. In the event a forest stand delineation is not complete and
45 correct, the Department shall transmit to the applicant a detailed and specific listing
46 of deficiencies.

- 1 ii. If the Department fails to notify the applicant in writing within thirty days, the
2 delineation shall be treated as complete and correct.
- 3 iii. The Department may require in writing further information or provide for an
4 additional fifteen calendar days under extenuating circumstances as determined by
5 the Department.
- 6 9. If the applicant submits two forest stand delineations which are not found to be complete
7 and correct by the Department, the Department shall, at the applicant's expense, engage
8 a licensed Forester, licensed Landscape Architect, or a qualified professional who meets
9 the requirements stated in COMAR 08.19.06.01A to complete and submit a forest stand
10 delineation on the applicant's behalf.

11 **Section 21.71.070 - Forest conservation plan.**

12 **A. General Provisions.**

- 13
- 14
- 15 1. A preliminary forest conservation plan cannot be appealed. A final forest conservation
16 plan is appealable as part of the appeal of a final administrative decision, Planning
17 Commission decision or Board of Appeals decision specified in Chapter 21.08. A stay
18 pending appeal shall be imposed during the time allowed to file an appeal, and if an appeal
19 has been filed, for sixty days thereafter.
- 20 2. With regard to (1) a plan of subdivision or a grading or sediment control plan that was
21 administratively approved, or (2) a planned development that has obtained final planned
22 development approval, prior to September 26, 2016, the disposition of which remain
23 governed by former Section 17.09.025.B. of the city Code, any person aggrieved by a
24 decision of the director to approve or disapprove the Forest Conservation Plan associated
25 with such applications shall be entitled to note an appeal to the building board of appeals.
26 Any party to the proceeding before the Building Board of Appeals aggrieved of the
27 decision of the Building Board of Appeals shall be entitled to file a petition for judicial
28 review of the decision of the Building Board of Appeals in the Circuit Court for Anne
29 Arundel County.
- 30 3. The City shall use best efforts to provide weekly electronic mail updates to interested and
31 registered users, if applicable, of newly filed or updated FCA documents and notices that
32 are required under this chapter.
- 33 4. In developing a forest conservation plan, the applicant shall give priority to techniques
34 for retaining existing forest on the site. There is a rebuttable presumption that priority
35 retention areas shall be retained. The presumption can only be rebutted under the criteria
36 specified in Section 21.71.080.B. of this Act.
- 37 5. If existing forest on the site subject to a forest conservation plan cannot be retained, the
38 applicant shall demonstrate to the satisfaction of the Department:
 - 39 i. How techniques for forest retention have been exhausted;
 - 40 ii. Why the priority forests and priority areas specified in Natural Resources Article, §
41 5-1607(c)(1), Annotated Code of Maryland, cannot be left in an undisturbed
42 condition:
 - 43 a. If priority forests and priority areas cannot be left undisturbed, how the sequence
44 for afforestation or reforestation will be followed in compliance with Natural
45 Resources Article, § 5-1607, Annotated Code of Maryland;

- 1 b. Where on the site in priority areas afforestation or reforestation will occur in
2 compliance with Natural Resources Article, § 5-1607, Annotated Code of
3 Maryland; and
- 4 iii. How the disturbance to the priority forests and priority areas specified in Natural
5 Resources Article, § 5-1607(c)(2), Annotated Code of Maryland, qualifies for a
6 variance.
- 7 6. The applicant shall demonstrate to the satisfaction of the Department that the
8 requirements for afforestation or reforestation onsite or offsite cannot be reasonably
9 accomplished if the applicant proposes to make a payment into the forest conservation
10 fund or to purchase credits from a forest mitigation bank.
- 11 7. Nontidal Wetlands. A regulated activity within the net tract area that occurs wholly or
12 partly in areas regulated as nontidal wetlands under Environment Article, Title 9,
13 Annotated Code of Maryland, is subject to both the nontidal wetlands regulatory
14 requirements and the requirements of this chapter, subject to the following:
- 15 i. Any area of forest in the net tract area, including forest in nontidal wetlands that is
16 retained, shall be counted towards forest conservation requirements under this
17 chapter;
- 18 ii. For the purpose of calculating reforestation mitigation under this section, a forested
19 nontidal wetland permitted to be cut or cleared and required to be mitigated under
20 Environment Article, Title 9, Annotated Code of Maryland, shall be shown on the
21 forest conservation plan and subtracted on an acre-for-acre basis from the total
22 amount of forest to be cut or cleared as part of a regulated activity;
- 23 iii. Nontidal wetlands shall be considered to be priority areas for retention and
24 replacement;
- 25 iv. Forested nontidal wetland identification and delineation should be included at the
26 earliest stage of planning to assist the applicant in avoidance and reduction of impacts
27 to the nontidal wetlands and to avoid delay in the approval process.
- 28 8. An approved forest conservation plan is valid for five years.
- 29 i. WHEN A NEW FOREST CONSERVATION PLAN IS REQUIRED TO BE
30 COMPLETED, IT SHALL IDENTIFY AND REQUIRE MITIGATION FOR ANY
31 FOREST OR TREES REMOVED IN THE PAST 10 YEARS, IF SAID REMOVAL
32 HAS NOT ALREADY BEEN MITIGATED FOR IN A CURRENT OR PAST
33 FOREST CONSERVATION PLAN.

34
35 **Section 21.71.100 - Priorities and time requirements for afforestation and reforestation.**

36
37 A. Sequence for Afforestation and Reforestation.

- 38
39 1. After techniques for retaining existing forest on the site have been exhausted, the
40 preferred sequence for afforestation and reforestation, as determined by the Department,
41 is as follows:
- 42 i. Forest creation in accordance with a forest conservation plan using one or more of
43 the following:
- 44 a. Transplanted or nursery stock,
45 b. Whip or seedling stock, or

- c. Natural regeneration where it can be adequately shown to meet the objective of the Forest Conservation Technical Manual;
 - ii. In a municipal corporation with a tree management plan and in an existing population center designated in a county master plan that has been adopted to conform with the Economic Growth, Resource Protection, and Planning Act of 1992, or in any other designated area approved by the Department, the use of:
 - a. Street trees as a permissible step in the priority sequence for afforestation or reforestation and with a mature canopy coverage may be granted full credit as a mitigation technique, and
 - b. Acquisition of an offsite protection easement on existing forested areas within the City boundaries not currently protected in perpetuity as a mitigation technique, in which case the afforestation or reforestation credit granted may not exceed fifty percent of the area of forest cover protected;
 - iii. When all other options, both onsite and offsite, have been exhausted, landscaping as a mitigation technique conducted under an approved landscaping plan that establishes a forest ~~at least thirty five feet wide and covering at least two thousand five hundred square feet of area~~ OF THE EQUIVALENT AREA OF THE REMOVED FOREST REQUIRING MITIGATION.
2. A sequence other than the one described in Subsection A.1. of this article may be used for a specific project, if necessary, to achieve the objectives of the City Land Use Plan or City Land Use Policies, or to take advantage of opportunities to consolidate forest conservation efforts, AS LONG AS THERE IS STILL NO NET LOSS OF FOREST WITHIN THE CITY LIMITS.
3. The following are considered a priority for afforestation and reforestation:
 - i. ~~Those techniques that enhance existing forest by selective clearing or supplemental planting onsite;~~
 - ii. Onsite afforestation and reforestation where the retention options have been exhausted, using methods selected in accordance with Subsection A.6. of this section, and the location being selected in accordance with this subsection.
 - iii. Offsite afforestation or reforestation in the same watershed within the City boundaries or in accordance with an approved master plan where the applicant has demonstrated that no reasonable alternative onsite exists, or where:
 - a. Any onsite priority areas for afforestation or reforestation have been planted in accordance with this subsection; and
 - b. The applicant has justified to the Department's satisfaction that environmental benefits associated with offsite afforestation or reforestation exceed those derived from onsite planting.
4. In the cases cited in Subsection A.3. of this section, the method shall be selected in accordance with Subsection A.6. of this section and the location shall be selected in accordance with Subsection A.3. of this section.
5. Offsite afforestation or reforestation may include the use of forest mitigation banks within the City boundaries which have been so designated in advance by the Department.
6. Standards for meeting afforestation or reforestation requirements shall be established using one or more of the following methods:
 - i. Establish or enhance forest buffers adjacent to intermittent and perennial streams, and coastal bays and their buffers, to widths of at least fifty to one hundred feet to

- 1 prevent activity causing a detrimental effect to the waterway as determined by the
2 director;
- 3 ii. Establish or increase existing forested corridors to connect existing forests within or
4 adjacent to the site and, where practical, forested corridors should be a minimum of
5 three hundred feet in width to facilitate wildlife movement;
- 6 iii. Establish or enhance forest buffers adjacent to critical habitats where appropriate;
- 7 iv. Establish or enhance forested areas in the 100-year floodplains;
- 8 v. Establish plantings to stabilize slopes of twenty-five percent or greater and slopes of
9 fifteen percent or greater with a soil K value greater than 0.35 including the slopes
10 of ravines or other natural depressions;
- 11 vi. Establish buffers adjacent to areas of differing land use when appropriate, or adjacent
12 to highways or utility rights-of-way;
- 13 vii. Establish forest areas adjacent to existing forests to increase the overall area of
14 contiguous forest cover, when appropriate; and
- 15 viii. Use native plant materials for afforestation or reforestation, when appropriate.
- 16 7. A person required to conduct afforestation or reforestation under this chapter shall
17 accomplish it within one year or two growing seasons, whichever is a greater time period,
18 following development project completion.
19

20
21 **SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**
22 **ANNAPOLIS CITY COUNCIL** that this ordinance shall take effect from the date of its passage.
23

24
25 **Explanation:**

26 UPPERCASE indicates matter added to existing law.

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

28 Underlining indicates amendments.
29