

O-32-14
Staff Report

January 14, 2014

To: City of Annapolis Planning Commission

From: Frank Biba, AICP, LEED AP
Chief, Environmental Programs
Department of Neighborhood and Environmental Programs

RE: O-32-14
Forest Conservation Requirements and Standards in the City of Annapolis

The State Forest Conservation Act, Natural Resources Article Title 5, Subtitle 16, was passed in 1992 with mandatory adoption by all of the state's jurisdictions. The Natural Resources Article included a recommended Model Ordinance, but the City of Annapolis instead adopted the state law by reference as O-11-92 and included it in City Code 17.09, Trees in Development Areas. The City's action was approved by the Maryland Department of Natural Resources.

A Forest Conservation Working Group was formed by the City Council in June, 2012 to review the Model Ordinance and make recommendations on the City's laws, policies and procedures implementing the Forest Conservation Act. This effort resulted in a proposed Forest Conservation Ordinance for the City of Annapolis, presented to the City Council in April, 2013.

O-32-14 is based upon the State's Model Ordinance, although in many ways different from the 2013 Working Group's proposal.

17.13.015 Terms and Conditions

p. 4, line 35, "FOREST CONSERVATION TECHNICAL MANUAL" ... SHALL HAVE THE FORCE OF LAW (line 42) ...

The State's Forest Conservation Technical Manual is a companion document to the Natural Resources Article and notes on p. 1-5: "This document is the technical manual for the State Forest Conservation Program and is informational only. It is not incorporated by reference into the Natural Resources Article of the Annotated Code of Maryland or the Code of Maryland Regulations (COMAR)..."

The Working Group's proposed ordinance also recommended the separation of the Manual from the Ordinance and the staff concurs.

p.5, line 28, “HEALTHY FORESTS”... “AS THE CITY ENVIRONMENTALIST SHALL SO DETERMINE.” (line 34-35).

Reference is made throughout the Ordinance to the City Environmentalist as the sole staff person with the authority to approve most aspects of the Ordinance’s review and implementation (Notably, 17.13.035 (I), p.15, line 16, and 17.13.40 (G) (12), p. 22, line 25). The Department disagrees with this construct as it identifies a mid-level staff position as a final authority, bypassing that position’s supervisors, the Chief of Environmental Programs and the Department Director. The Department’s preference is to use the typical identifier, “The Department Director or his or her designee.”

17.13.020 Application

17.13.020 (A), p. 10, lines 18, 20, 28

The Ordinance is made applicable to units of land 30,000 square feet or greater. The Natural Resources Article and the Model Ordinance are applicable to units of land 40,000 square feet or greater. The standards contained in City Code 17.09 are currently applicable to land areas of up to 40,000 square feet.

17.13.020 (B), p. 10, line 30.

Retroactivity of the Ordinance, making it applicable to any project subject to the Forest Conservation Act that has not yet received a grading permit. There are currently nine projects that could be affected, some of which have been under review for years.

17.13.020 (C) (11) (A) “WHEN ANY PROVISION OF THE STATE FOREST CONSERVATION ACT, CHESAPEAKE BAY CRITICAL AREA PROTECTION LAW, OR CITY CHARTER AND CITY CODE SHALL CONFLICT, THE DEPARTMENT SHALL EMPLOY THE LAW THAT CONTAINS THE MORE RESTRICTIVE REQUIREMENTS.”

When the Natural Resources Article was incorporated into City Code 17.09 language was included that said when there was a conflict between the State and City regulations the more restrictive *may* be applied. 17.09 requires replacement and mitigation of trees removed in association with any grading or building permit on an individual basis, with the number of replacement trees dependent upon the diameter of the tree trunk. The Forest Conservation Act (FCA) requires mitigation based upon the tree canopy area removed above a certain threshold. 17.09 language acknowledges that tree replacement on a tree by tree basis when applied to large forested parcels can be onerous and instead allows the FCA standard to be applied. The Department prefers that the mitigation standard contained in 17.09 not be mandatory for parcels subject to FCA review and instead prefers that it remain elective, subject to unique circumstances.

The Forest Conservation Act is not applicable to parcels or parts of parcels within the Chesapeake Bay Critical Area. City Code 17.09 includes a section on tree removal and replacement requirements in the Critical Area.

17.13.035 FOREST STAND DELINEATION CRITERIA p. 13, line 9 through p. 15. line 47.

The Natural Resources Article and the Model Ordinance allow 30 days for jurisdictional review of a Forest Stand Delineation with a possible extension of 15 days. The City currently posts all applications and correspondence relating to FCA projects under review within a few days of receipt. The review/notification timeline in O-32-14 can be as much as twice the current review period.

17.13.040 FOREST CONSERVATION PLAN p.15, line 50 through p. 23, line 29

The Natural Resources Article and the Model Ordinance allow 45 days for jurisdictional review of a Forest Conservation Plan with a possible extension of 15 days. The City currently posts all applications and correspondence relating to FCA projects under review within a few days of receipt. The review/notification timeline in O-32-14 can be as much as twice the current review period.

17.13.040 (A) (2), p. 16, line 9: “WHERE THE EXISTING FOREST AND INDIVIDUAL SIGNIFICANT TREES CANNOT BE RETAINED, THE FOREST CONSERVATION PLAN SHALL PROVIDE FOR TREE REPLACEMENT, REFORESTATION AND AFFORESTATION IN ACCORDANCE WITH THIS CHAPTER AND CHAPTER 17.09 OF THE CITY CODE.”

This section appears to require mitigation according to both the FCA and City Code 17.09. As discussed above, the Department would prefer the application of the current FCA standards with the option to apply additional replacement under 17.09 in unique circumstances.

17.13.040 (B) (3) (K), p. 17, line 40: Reference to the City’s canopy coverage as measured in 2006 as 41%. The data has since been re-calibrated to be closer to 45%.

17.13.040 (15), (16), (17) and (18) Defines when appeals can be initiated and to whom appeals of approval or denial of a Final Forest Conservation Plan go to. The Working Group’s recommendation was that there would be one appeal, of the Planning Commission’s decision. These sections dictate that appeals of the Final Forest Conservation Plan go to the Building Board of Appeals. The Department prefers this construct, as it allows for some finality prior to Planning Commission review. (See further references to proposed appeal process below).

17.13.045 RETENTION

17.13.045 (B) (7) p. 24, line 5. Current FCA regulation and the Working Group identify specimen trees as 30 inches in diameter or greater. This Section defines a specimen tree as 24 inches or greater.

17.13.045 (C) p. 24, line 13. New Section regarding priority retention areas.

17.13.045 (D) p. 24, line 36. New Section regarding priority trees.

17.13.050 TREE REPLACEMENT REFORESTATION AND AFFORESTATION

Section (B): Identifies new replacement standards for trees removed that exceed both 17.09 and current FCA requirements. The Department considers this practice to be potentially onerous and prefers its current practice of invoking 17.09 replacement standards for trees of a diameter of 24 inches or greater.

17.13.050 (C) p. 26, line 35, Conservation and Afforestation Thresholds by Land Use Type.

Thresholds are input into the FCA worksheet and determine tree save and replacement requirements. O-32-14 raises all thresholds.

Current FCA regulation and Working Group recommendations are: Agricultural and resources areas, 50% Conservation, 20% Afforestation; Medium density residential, 25% Conservation, 20% Afforestation; Institutional development, 20% Conservation, 15% Afforestation; High density residential, 20% Conservation, 15% Afforestation; Mixed use and PUD, 15% Conservation, 15% Afforestation; Commercial and industrial, 15% Conservation and 15% Afforestation.

17.13.085 STANDARDS FOR PROTECTING TREES FROM CONSTRUCTION ACTIVITIES. P. 32, line 34. These standards exist in City Code 17.09.040, .050, and .060.

CHAPTER 21.24 – PLANNED DEVELOPMENTS p. 35, line 24 – p. 37, line 25.

New Section. Planning Commission standards for findings relative to FCA review and appeals procedure.

APPEALS

Process as proposed requires clarification.

p. 16, line 50 p. 17, line 4: 17.13.040 (B) (2) “A Preliminary Forest Conservation Plan shall be submitted to the Department prior to an applicant’s submission to the Planning Commission. A Preliminary Forest Conservation Plan that has been approved by the City Environmentalist shall be used by the applicant to prepare a submission to the Planning Commission.”

p. 20, line 5 - 8, 17.13.040 (C) “Any decision of the Department Director regarding a preliminary Forest Conservation Plan is not appealable to any City administrative body or to any court, or in any other manner, either by the Applicant or any other person or entity.”

p. 20, line 32 - 34, 17.13.040 (D) (4) (A) “A Final Forest Conservation Plan shall: Be submitted prior to or with an application for a grading permit, or an application for a sediment control permit; ...”

P. 22, line 25 -27, 17.13.040 (D) (12) “ Only with the approval of the City Environmentalist does the Department Director have the authority to approve, deny, suspend or revoke a Final Forest Conservation Plan.”

p. 35, line 51, 52, p.36 line 1 - 5, 21.24.090 (G) “The Planned Development Plan complies with Chapter 17.13 of the City Code. An application for a Planned Development shall not proceed to the Planning Commission for a public hearing until there is a final adjudication by the Department of Neighborhood and Environmental Programs, the building Board of Appeals, or the Courts, as the case may be, on the Final Forest Conservation Plan....”