

**Environmental Matters, Rules and City Government and Economic Matters  
Committee’s Proposed Amendments to  
O-22-16 City of Annapolis Forest Conservation Act  
July 21, 2016**

**Amendment #1:**

Page 4, line 15: After “CHAPTER” insert “ONLY”

*As amended:*

FOR THE PURPOSES OF THIS CHAPTER ONLY, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED:

**Rationale:**

During their review, the Department of Planning and Zoning and the Planning Commission noted that the terms “Lot” and “Subdivision” have different meanings in the FCA then in other parts of City Code. This amendment is intended to clarify that those terms, and others, are defined in the FCA for purposes of the FCA only.

**Amendment #2:**

Page 6, lines 31-32: After “OF” strike “NEIGHBORHOODS AND ENVIRONMENTAL PROGRAMS” and insert “PLANNING AND ZONING”.

*As amended:*

O. “DEPARTMENT” MEANS THE CITY DEPARTMENT OF ~~NEIGHBORHOODS AND ENVIRONMENTAL PROGRAMS~~ PLANNING AND ZONING.

**Rationale:**

Since the time that the Ordinance was drafted and introduced, the City Council approved of a department reorganization that eliminated DNEP and transferred responsibilities pertaining to the FCA to the Department of Planning and Zoning. This amendment makes the corresponding change.

**Amendment #3:**

Page 13, lines 21-24: After “YEAR.” strike remainder of paragraph.

*As Amended:*

ZZ. “100-YEAR FLOOD” MEANS A FLOOD WHICH HAS ONE PERCENT CHANCE OF BEING EQUALED OR EXCEEDED IN ANY GIVEN YEAR. ~~EXCEPT FOR CLASS III WATERS (NATURAL TROUT STREAMS), A BODY OF WATER WITH A WATERSHED LESS THAN 400 ACRES IS EXCLUDED.~~

Rationale:

The City proposes not to exclude any of its watersheds from this definition because it is scientifically irrational to exclude certain floodplains based solely on size.

**Amendment #4:**

Page 14, line 23-24: After “TECHNICAL MANUAL” strike “DESCRIBED IN PARAGRAPH X OF THESE DEFINITIONS”

*As amended:*

... AS FURTHER DEFINED IN THE FOREST CONSERVATION TECHNICAL ~~MANUAL DESCRIBED IN PARAGRAPH X OF THESE DEFINITIONS;~~

Rationale:

The deleted text is superfluous; its removal is not a substantive change.

**Amendment #5:**

Page 18, Line 6: After “DEMONSTRATED” delete the colon and insert: “THAT, WITHOUT A VARIANCE, AN APPLICANT WOULD BE DENIED REASONABLE AND SIGNIFICANT USE OF THE ENTIRE PARCEL OR LOT FOR WHICH THE VARIANCE IS REQUESTED.”

Page 18, Strike: Lines 7-16

*As amended:*

ZZZ. “UNWARRANTED HARDSHIP” MEANS THE APPLICANT HAS DEMONSTRATED: THAT, WITHOUT A VARIANCE, AN APPLICANT WOULD BE DENIED REASONABLE AND SIGNIFICANT USE OF THE ENTIRE PARCEL OR LOT FOR WHICH THE VARIANCE IS REQUESTED.

~~(1) THAT THE LAND IN QUESTION CANNOT YIELD A RETURN IF THE REQUIREMENT FROM WHICH THE SPECIAL VARIANCE IS REQUESTED IS IMPOSED AND WILL DEPRIVE THE APPLICANT OF ALL BENEFICIAL USE OF THE APPLICANT'S PROPERTY;~~

~~(2) THAT THE PLIGHT OF THE APPLICANT IS DUE TO UNIQUE CIRCUMSTANCES AND NOT THE GENERAL CONDITIONS IN THE NEIGHBORHOOD; OR~~

~~(3) THAT THE SPECIAL VARIANCE REQUESTED WILL NOT ALTER THE ESSENTIAL CHARACTER OF THE NEIGHBORHOOD.~~

Rationale:

The original definition is overly broad because of the use of the word “or”, so the City proposes to use the definition found in state law (the Critical Area Act) finding it applicable and appropriate, plus having the benefit of using terms defined by state case law.

**Amendment #6:**

Page 21, Lines 39-40: Strike remainder of paragraph following "CHAPTER" and append "AND THAT IS NOT SUBSEQUENTLY OVERTURNED ON APPEAL "

Page 21, Line 43: Insert "THAT" prior to "HAS", strike the colon

Page 22, Lines 1-5: Strike Lines 1-4, Strike Line 5 through "ii."

Page 22, Lines 5-6: Strike "~~APPROVAL FROM THE PLANNING COMMISSION~~"

Page 22, Line 7: After "21.24.070" append "AND THAT IS NOT SUBSEQUENTLY OVERTURNED ON APPEAL "

*As amended:*

12. A PLAN OF SUBDIVISION OR A GRADING OR SEDIMENT CONTROL PLAN ADMINISTRATIVELY APPROVED BEFORE THE EFFECTIVE DATE OF THIS CHAPTER ~~SO LONG AS THE PROJECT COMPLIES WITH THE PREVIOUSLY APPROVED FOREST CONSERVATION PLAN~~ 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 FROM THE PLANNING COMMISSION IN ACCORDANCE WITH SECTION 21.24.070 AND THAT IS NOT SUBSEQUENTLY OVERTURNED ON APPEAL;

Rationale:

The Council proposes to clarify its "grandfathering" provision in response to concerns expressed during the public comment period. This provision will ensure that previously approved FCPs will not have to be redone, unless subsequently an appellate court strikes down the approval.

**Amendment #7:**

Page 24, line 23: Append a new sentence the end of the paragraph: "WHENEVER THE DEPARTMENT ADOPTS OR AMENDS THE MANUAL, IT MUST PROVIDE NOTIFICATION AND INFORMATION ABOUT THE MANUAL AND ANY CHANGES THEREIN TO THE ANNAPOLIS ENVIRONMENTAL COMMISSION, THE CITY COUNCIL, AND THE CITY'S PLANNING COMMISSION."

*As Amended:*

A. THE DEPARTMENT SHALL ADOPT WITHIN SIX MONTHS OF THE EFFECTIVE DATE OF THIS ORDINANCE A FOREST CONSERVATION TECHNICAL MANUAL. THE DEPARTMENT MAY AMEND THE MANUAL FROM TIME TO TIME. UNTIL SUCH TIME AS THE DEPARTMENT ADOPTS A FOREST CONSERVATION TECHNICAL MANUAL, THE DEPARTMENT SHALL USE THE STATE OF MARYLAND FOREST CONSERVATION TECHNICAL MANUAL. WHENEVER THE DEPARTMENT ADOPTS OR AMENDS THE MANUAL, IT MUST PROVIDE NOTIFICATION AND INFORMATION ABOUT THE MANUAL AND ANY CHANGES THEREIN TO THE ANNAPOLIS ENVIRONMENTAL COMMISSION, THE CITY COUNCIL, AND THE CITY'S PLANNING COMMISSION.

Rationale:

The provision was added in response to requests by the public for approval oversight over changes to the technical manual by various City entities. The Council proposes not to have approval authority, but rather to ensure that the Department provides notice and explanation of changes.

**Amendment #8:**

Page 29, line 12: at paragraph end, append: "A STAY PENDING APPEAL SHALL BE IMPOSED DURING THE TIME ALLOWED TO FILE AN APPEAL, AND IF AN APPEAL HAS BEEN FILED, FOR SIXTY (60) DAYS THEREAFTER."

*As amended:*

1. A PRELIMINARY FOREST CONSERVATION PLAN CANNOT BE APPEALED. A FINAL FOREST CONSERVATION PLAN IS APPEALABLE AS PART OF THE APPEAL OF A FINAL ADMINISTRATIVE DECISION, PLANNING COMMISSION DECISION OR BOARD OF APPEALS DECISION SPECIFIED IN CHAPTER 21.08. A STAY PENDING APPEAL SHALL BE IMPOSED DURING THE TIME ALLOWED TO FILE AN APPEAL, AND IF AN APPEAL HAS BEEN FILED, FOR SIXTY (60) DAYS THEREAFTER.

Rationale:

During the public hearing, requests were made for a complete stay during the entire appeal process. The Council proposes not to go that far, but rather to provide for a temporary stay so that a person or body making an appeal has time to request longer-lasting court relief with enough time before an applicant can initiate ground clearing.

**Amendment #9:**

Page 29, line 14: Insert a new paragraph 2 and re-number the following paragraphs accordingly: "2. THE CITY SHALL USE BEST EFFORTS TO PROVIDE WEEKLY ELECTRONIC MAIL UPDATES TO INTERESTED AND REGISTERED USERS IF APPLICABLE OF NEWLY FILED OR UPDATED FCA DOCUMENTS AND NOTICES THAT ARE REQUIRED UNDER THIS CHAPTER."

Rationale:

Throughout the public comment process, requests for additional transparency have been made. To date, to follow developments in a particular FCA project, one needs to go to the City's website on a daily basis to avoid the risk of missing an update on a timely basis. However, the City currently makes use of email systems to provide notice to interested people of Council meetings, police updates, and more. This change would add FCA updates to the list of email lists, but to ensure that updates do not have to be made more than once per week, for efficiency sake.

**Amendment #10:**

Page 29, line 17: after "RETAINED." append: "THE PRESUMPTION CAN ONLY BE REBUTED UNDER THE CRITERIA SPECIFIED IN SECTION 21.71.080 (B) OF THIS ACT."

*As amended:*

2. IN DEVELOPING A FOREST CONSERVATION PLAN, THE APPLICANT SHALL GIVE PRIORITY TO TECHNIQUES FOR RETAINING EXISTING FOREST ON THE SITE. THERE IS A REBUTTABLE PRESUMPTION THAT PRIORITY RETENTION AREAS SHALL BE RETAINED. THE PRESUMPTION CAN ONLY BE REBUTTED UNDER THE CRITERIA SPECIFIED IN SECTION 21.71.080 (B) OF THIS ACT.

Rationale:

During the public comment period, members of the public asked the City to clarify what criteria would apply to an applicant seeking to rebut the presumption that Priority Retention Areas be protected. DNR has made similar requests. This change proposes to use the criteria in the Act referring to Reforestation as the relevant criteria.

**Amendment #11:**

Page 31, Line 18-19: Strike “PRELIMINARY PLAN OF SUBDIVISION OR”

Page 31, Line 19: Strike “PROJECT” and insert “DEVELOPMENT” in its place.

*As amended:*

2. THE PRELIMINARY FOREST CONSERVATION PLAN SHALL:

i. BE SUBMITTED WITH THE ~~PRELIMINARY PLAN OF SUBDIVISION OR~~ PROPOSED ~~PROJECT~~ DEVELOPMENT PLAN;

Rationale:

This change seeks to clean up the references by using the defined term “Development Plan”.

**Amendment #12:**

Page 35, Line 29: Insert new paragraph: “v. THE DEPARTMENT SHALL POST THE NOTIFICATIONS DESCRIBED IN THIS SECTION AND THE FINAL FOREST CONSERVATION PLAN ON THEIR WEBSITE.”

Rationale:

The Act as introduced provided for the Department to post online a submitted FSD or preliminary FCP, but failed to add that requirement for final FCPs. This amendment remedies that oversight.

**Amendment #13:**

Page 38, line 43: After: “TREE” strike: “HAVING A DBH OF”

Page 39, line 2: Insert “HAVING A DBH OF” before “THIRTY”.

*As amended:*

iii. ANY TREE ~~HAVING A DBH OF:~~

a. ~~HAVING A DBH OF THIRTY INCHES OR MORE, OR~~

b. WHICH HAS BEEN DESIGNATED AS A SIGNIFICANT TREE PURSUANT TO THIS CHAPTER.

Rationale:

This is a grammar correction. The phrase "having a DBH" does not apply to paragraph (b), just to (a), so that phrase is moved down from the opening line to just paragraph (a).

**Amendment #14:**

Page 44, Lines 13-14: After "CITY COUNCIL" Strike: "AFTER CONSIDERATION OF LAND ACQUISITION COSTS," and insert: "SUFFICIENT TO PROVIDE FOR SITE IDENTIFICATION, ACQUISITION, PREPARATION, "

*As amended:*

i. FOR A PROJECT INSIDE A PRIORITY FUNDING AREA, AS DEFINED IN NATURAL RESOURCES ARTICLE, §5-1610, ANNOTATED CODE OF MARYLAND, AT A RATE PER SQUARE FOOT OF THE AREA OF REQUIRED PLANTING TO BE SET BY RESOLUTION OF THE CITY COUNCIL ~~AFTER CONSIDERATION OF LAND ACQUISITION COSTS,~~ SUFFICIENT TO PROVIDE FOR SITE IDENTIFICATION, ACQUISITION, PREPARATION, ONGOING MAINTENANCE COSTS AND OVERHEAD, AND

Rationale:

These changes are proposed to add clarity that if the Council is to pass a resolution with a new rate, then that rate should not only "consider" certain costs, but that it be sufficient to provide for those related land acquisition costs.

**Amendment #15:**

Page 44, Lines 23-25: After "PAID" strike: "WITHIN NINETY CALENDAR DAYS AFTER DEVELOPMENT PROJECT COMPLETION" and insert "PRIOR TO THE ISSUANCE OF A GRADING PERMIT".

*As amended:*

3. MONEY CONTRIBUTED INSTEAD OF AFFORESTATION OR REFORESTATION UNDER THIS CHAPTER SHALL BE PAID ~~WITHIN NINETY CALENDAR DAYS AFTER DEVELOPMENT PROJECT COMPLETION~~ PRIOR TO THE ISSUANCE OF A GRADING PERMIT.

Rationale:

The City proposes to increase the likelihood that applicable fees be paid without issue by requiring their payment before a grading permit is issued, rather than after the applicant has all the necessary permits.