



City of Annapolis
Annapolis Environmental Commission
145 Gorman Street, 3rd Floor
Annapolis, MD 21401-2517

ANNAPOLIS ENVIRONMDENTAL COMMISSION (AEC)

June 2, 2016

SUBJECT: Comments regarding Ordinance, O-22-16 (City Ordinance for compliance with the state Forest Conservation Act (FCA))

The AEC respectfully requests the PC to extend the comment period to allow the AEC to submit a detailed response.

Additionally, we would like to point out a few big picture issues:

- * The AEC wants Annapolis to be a leader in the state in terms of protecting its urban forests. Ordinance O-22-16 is lacking in this respect.
- * This Ordinance does not address long-standing issues the public has brought to the commission - namely the broken appeals process and the public wanting a voice.
- * The importance of the comprehensive plan's tree canopy goal and a "no net loss" policy need to be addressed.
- * Neither the OAG nor the DNR will prevent requiring the City from creating a strong ordinance.
- * Ensuring transparency in the process and limiting Director Discretion is what the Director has maintained would make the job easier.

Finally, if this is our only chance to comment on details, below are some of the minimum improvements we believe the Planning Commission can make. Indeed, many of these provisions were carefully considered and contained in the Planning Commission's daft version of the FCA.

1) Insert the no net loss provision; the argument that DNR will not allow this is not valid. This is substantiated by the Attorney General's opinion dated October 21, 2015. The relevant three pages are attached: Page #120 introduces the topic and pages #134 and #135 present the conclusion. In essence the Attorney General concludes that ... "local jurisdictions may enact forest conservation programs with requirements and standards that are more stringent than those set forth in the Forest Conservation Act," and need not ... "justify the greater level of protection." (100 Opinions of the Attorney General at 121.

2) Return to the PC's 2013 language on unwarranted hardship. The current version is inconsistent, and convoluted. The PC's definition was based on the case law and is objective, clear and straightforward.



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- 3) Require a variance to remove all trees with greater than 24" DBH. Again DNEP has fought for this provision and included it in its policies for enforcing FCA in April of 2012, which drop it now since the AG said it is fine to be more stringent than the FCA and we have reason to enforce some more stringent standard.
- 4) Codify what is the City's current policy of enforcing a 20% the Conservation Threshold for the land use category that is "mixed use and planned unit development areas" or its land use equivalent from our P & Z Department.
- 5) Clarify the appeals process by including language proposed by CBF which allows any person aggrieved by the Department to appeal to the Board of appeals in the same manner as other decisions of administrative officials. Appeals from the Board of Appeals go to the Circuit Court
- 6) Codify the City's position on Fee in Lieu- The city has never accepted a fee in lieu and has taken the position that since there are no open spaces to plant mitigated trees, we can't plant the trees within the City and thus, the County's situation is not better. This provision will work against reaching our tree Canopy Goal of 50% by 2036, which is in our Comprehensive Plan, and which our Law Office has said has the force of law.
- 7) Variances should not be granted by the Director with no public hearing. Requiring a public hearing in order to obtain a variance to the FCA ordinance is clearly the intent of the law.

Annapolis Environmental Commission
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