



Legislation Details (With Text)

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On agenda: 9/27/2021 **Final action:** 10/25/2021
Title: 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.
Sponsors: Rob Savidge
Indexes: Environmental Matters Committee, Planning Commission
Code sections:
Attachments: 1. O-34-21 First Reader, 2. O-34-21 Staff Report, 3. O-34-21 Fiscal Impact Note, 4. O-34-21 Staff Report to PC, 5. O-34-21 PC Findings and Recommendations, 6. O-34-21 Amendments 1-3 - Savidge, 7. O-34-21 SIGNED

Date	Ver.	Action By	Action	Result
10/25/2021	1	City Council	adopt on second reader	Pass
10/25/2021	1	City Council	amended	Pass
10/25/2021	1	City Council	adopt as amended	Pass
10/25/2021	1	City Council	adopt on third reader	Pass
10/21/2021	1	Rules and City Government Committee	Recommend Favorably-Amendment	Pass
10/21/2021	1	Rules and City Government Committee	no action taken	Pass
10/21/2021	1	Rules and City Government Committee	recommend with amendments	Pass
10/20/2021	1	Environmental Matters Committee	recommend with amendments	Pass
10/20/2021	1	Environmental Matters Committee	Recommend Favorably-Amendment	Pass
10/20/2021	1	Environmental Matters Committee	Recommend Favorably-Amendment	Pass
10/13/2021	1	Rules and City Government Committee		
10/5/2021	1	Rules and City Government Committee	postpone	Pass
9/27/2021	1	City Council	declare the public hearing closed	
7/26/2021	1	City Council	adopt on first reader	Pass
7/26/2021	1	City Council	refer to Annapolis Education Commission	
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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.

**CITY COUNCIL OF THE
City of Annapolis**

Ordinance 34-21

**Introduced by: Alderman Savidge
Co-sponsored by:**

**Referred to
Planning Commission
Rules and City Government Committee**

AN ORDINANCE concerning

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. .

BY repealing and reenacting with amendments the following portions of the Code of the City of Annapolis, 2021 Edition
21.71.060
21.71.070
21.71.100

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

**Title 21 - PLANNING AND ZONING
Chapter 21.71 - FOREST CONSERVATION**

Section 21.71.060 Forest stand delineation.

- A. Criteria.
1. A forest stand delineation shall be submitted to the Department as the first step of making application for the plans or permits specified in Section 21.71.045 AND SHALL NOT BE IMPACTED BY CHANGE IN OWNERSHIP OF THE PROPERTY.
 2. The delineation shall be prepared by a licensed Forester, licensed Landscape Architect, or a qualified professional who meets the requirements stated in COMAR 08.19.06.01A.
 3. The delineation shall be used during the preliminary review process to determine the most suitable and practical areas for forest conservation and shall contain the following components:
 - i. A topographic map delineating intermittent and perennial streams, and steep slopes;
 - ii. A natural resources inventory;
 - iii. A soils map delineating soils with structural limitations, hydric soils, or soils with a soil k value greater than 0.35 on slopes of fifteen percent or more;
 - iv. Forest stand maps indicating species, location, and size of trees and showing dominant and co-dominant forest types;
 - v. Location of 100-year floodplains;
 - vi. The location and delineation of all tidal and non-tidal wetlands and their buffers;

- vii. Information required by the Forest Conservation Technical Manual; and
 - viii. Other information the Department determines is necessary to implement this chapter, including a nontidal wetlands plan upon request.
4. The Department shall post the forest stand delineation on its website within three business days of receipt for at least fifteen calendar days and provide directions as to how the public may send or deliver written comments, testimony, or documentation pertaining to the forest stand delineation. The website posting requirement shall apply to any amendments or revisions to the forest stand delineation. The Department shall promptly post all correspondence between the department, and the applicant. All documents shall be retained by the Department as part of the record of the application.
 5. If approved by the Department, a simplified forest stand delineation, a concept plan or plat, preliminary plat or plan, sediment control plan, or other appropriate document, verified by a site visit, if appropriate, may substitute for the forest stand delineation if:
 - i. No forest cover is disturbed during a construction activity; and
 - ii. Designated to be under a long term protective agreement.
 6. The Department shall consider a simplified forest stand delineation, or other substitute plan described in Subsection A.5. of this section, complete if it includes:
 - i. All requirements under Subsection A.3.i., ii., iii., v., and viii. of this section;
 - ii. A map showing existing forest cover as verified by field inspection; and
 - iii. Other information required by this chapter.
 7. An approved forest stand delineation is valid for five years except that the Department may require submission of a revised forest stand delineation if site conditions change during the five-year period.
 - i. WHEN A NEW FOREST STAND DELINEATION IS REQUIRED TO BE COMPLETED, IT SHALL 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.
 8. Time for submittal.
 - i. Within thirty calendar days after receipt of the fsd, the Department shall notify the applicant in writing (by email or postal letter) whether the forest stand delineation is complete and correct. In the event a forest stand delineation is not complete and correct, the Department shall transmit to the applicant a detailed and specific listing of deficiencies.
 - ii. If the Department fails to notify the applicant in writing within thirty days, the delineation shall be treated as complete and correct.
 - iii. The Department may require in writing further information or provide for an additional fifteen calendar days under extenuating circumstances as determined by the Department.
 9. If the applicant submits two forest stand delineations which are not found to be complete and correct by the Department, the Department shall, at the applicant's expense, engage a licensed Forester, licensed Landscape Architect, or a qualified professional who meets the requirements stated in COMAR 08.19.06.01A to complete and submit a forest stand delineation on the applicant's behalf.

Section 21.71.070 - Forest conservation plan.

A. General Provisions.

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 days thereafter.
2. With regard to (1) a plan of subdivision or a grading or sediment control plan that was administratively approved, or (2) a planned development that has obtained final planned development approval, prior to

September 26, 2016, the disposition of which remain governed by former Section 17.09.025.B. of the city Code, any person aggrieved by a decision of the director to approve or disapprove the Forest Conservation Plan associated with such applications shall be entitled to note an appeal to the building board of appeals. Any party to the proceeding before the Building Board of Appeals aggrieved of the decision of the Building Board of Appeals shall be entitled to file a petition for judicial review of the decision of the Building Board of Appeals in the Circuit Court for Anne Arundel County.

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

Section 21.71.100 - Priorities and time requirements for afforestation and reforestation.

A. Sequence for Afforestation and Reforestation.

1. After techniques for retaining existing forest on the site have been exhausted, the preferred sequence for afforestation and reforestation, as determined by the Department, is as follows:
 - i. Forest creation in accordance with a forest conservation plan using one or more of the following:
 - a. Transplanted or nursery stock,
 - 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~~ ESTABLISHES A FOREST OF THE EQUIVALENT AREA OF THE REMOVED FOREST REQUIRING MITIGATION, BUT AT LEAST THIRTY-FIVE FEET WIDE AND COVERING AT LEAST TWO THOUSAND FIVE HUNDRED SQUARE FEET OF AREA.
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 prevent activity causing a detrimental effect to the waterway as determined by the director;
 - ii. Establish or increase existing forested corridors to connect existing forests within or adjacent to the site and, where practical, forested corridors should be a minimum of three hundred feet in width to facilitate wildlife movement;
 - iii. Establish or enhance forest buffers adjacent to critical habitats where appropriate;
 - iv. Establish or enhance forested areas in the 100-year floodplains;
 - v. Establish plantings to stabilize slopes of twenty-five percent or greater and slopes of fifteen percent or greater with a soil K value greater than 0.35 including the slopes of ravines or other natural depressions;
 - vi. Establish buffers adjacent to areas of differing land use when appropriate, or adjacent to highways or utility rights-of-way;
 - vii. Establish forest areas adjacent to existing forests to increase the overall area of contiguous forest cover, when appropriate; and
 - viii. Use native plant materials for afforestation or reforestation, when appropriate.
7. A person required to conduct afforestation or reforestation under this chapter shall accomplish it within one year or two growing seasons, whichever is a greater time period, following development project completion.

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

Explanation:

UPPERCASE indicates matter added to existing law.

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

Underlining indicates amendments.