



Legislation Text

File #: O-38-16, Version: 1

Forest Conservation Reforestation - For the purpose of prohibiting certain development projects from cutting or clearing certain forests within the City of Annapolis unless the applicant offsets that loss with newly planted acreage; and providing for an appeal process.

**CITY COUNCIL OF THE
City of Annapolis**

Ordinance 38-16

**Introduced by: Alderman Littmann, Alderman Arnett, Alderman Paone,
Alderman Pindell Charles and Mayor Pantelides**

Referred to:

Economic Matters Committee

Environmental Matters Committee

Rules and City Government Committee

Planning Commission

Environmental Commission

AN ORDINANCE concerning

Forest Conservation Reforestation

FOR the purpose of prohibiting certain development projects from cutting or clearing certain forests within the City of Annapolis unless the applicant offsets that loss with newly planted acreage; and providing for an appeal process.

BY repealing and re-enacting with amendments the following portions of the Code of the City of Annapolis, 2015 Edition:

21.71.070

21.71.080

21.71.090

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:

Chapter 21.71 - FOREST CONSERVATION

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 (60) 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 17.09.025B 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.
24. 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.
35. 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.
46. 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.

57. 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.

68. An approved forest conservation plan is valid for five years.

B. Preliminary forest conservation plan.

1. A preliminary forest conservation plan shall be prepared by a licensed forester, a licensed landscape architect, or a qualified professional who meets the requirements stated in Comar 08.19.06.01a.
2. The preliminary forest conservation plan shall:
 - i. Be submitted with the proposed development plan;
 - ii. Include the approved forest stand delineation for the site;
 - iii. Include a table that lists the proposed values of the following, in square feet:
 - a. Net tract area,
 - b. Area of forest conservation required, and
 - c. Area of forest conservation that the applicant proposes to provide, including both onsite and offsite area;
 - iv. Include a clear graphic indication of the forest conservation provided on the site drawn to the same scale as the project plan scale, showing areas where retention of existing forest or afforestation or reforestation is proposed;
 - v. Include an explanation of how the provisions of subsection (a) of this section have been met;

- vi. In the case of afforestation or reforestation, include a proposed afforestation or reforestation plan;
 - vii. Include a proposed construction timetable showing the sequence of forest conservation procedures;
 - viii. Show the proposed limits of disturbance;
 - ix. Show proposed stockpile areas;
 - x. Incorporate a proposed five year maintenance agreement that shows how areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment; and
 - xi. Other information the department determines is necessary to implement this chapter.
3. The review of the preliminary forest conservation plan shall be concurrent with the review of the preliminary site plan.
4. The department shall post the preliminary forest conservation plan on their website 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 preliminary forest conservation plan.
5. The department shall hold a public meeting at which the department shall describe the approval process and the applicant shall make a presentation indicating the contents of the proposed preliminary forest conservation plan and the proposed site design plan. The general public may participate in the discussion of the application. The meeting shall be recorded and the recording shall be retained until such time as the appellate period tolls and made publicly available. In the event there are significant modifications to the preliminary forest conservation plan, the department may require an additional public meeting if it determines such a meeting would serve the public interest.
6. During different stages of the review process, the preliminary forest conservation plan may be modified, provided the department approves of the changes. All significant modifications must be posted for public review and comment.
7. All correspondence material to an application shall be posted on the department website. Comments received shall be made part of the application record.

C. Final forest conservation plan.

1. A final forest conservation plan shall be prepared by a licensed forester, a licensed landscape architect, or a qualified professional who meets the requirements stated in Comar 08.19.06.01a.
2. A final forest conservation plan shall:
- i. Be submitted by the applicant consistent with requirements established by the department and the law with the following:

- a. A final subdivision plan,
 - b. A final project plan,
 - c. An application for a grading permit, or
 - d. An application for a sediment control permit;
 - ii. Show proposed locations and types of protective devices to be used during construction activities to protect trees and forests designated for conservation;
 - iii. In the case of afforestation or reforestation, include an afforestation or reforestation plan, with a timetable and description of needed site and soil preparation, species, size, and spacing to be used;
 - iv. Incorporate justification for any proposed disturbance of priority retention areas, including reasons why such priority retention areas cannot be retained and how the applicant shall replace proposed disturbed priority retention areas through afforestation and reforestation, in compliance with the requirements of this chapter.
 - v. Incorporate a binding five year maintenance agreement specified in Comar 08.19.05.01 that details how the areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment, including:
 - a. Watering, and
 - b. A reinforcement planting provision if survival rates fall below required standards, as provided in the forest conservation technical manual;
 - vi. Incorporate a long-term binding protective agreement as specified in Comar 08.19.05.02 that:
 - a. Provides protection for areas of forest conservation, including areas of afforestation, reforestation, and retention; and
 - b. Limits uses in areas of forest conservation to those uses that are designated and consistent with forest conservation, including recreational activities and forest management practices that are used to preserve forest;
 - vii. Include a statement of how the project will impact the city's tree canopy goals;
 - viii. Include the substantive elements required under subsection (b)(2)(ii)-(v), (vii)-(ix), and (xi) of this section, as finalized elements of the forest conservation plan; and
 - ix. Include other information the department determines is necessary to implement this chapter.
3. Time for notification.
- i. Within forty-five calendar days after incorporation of the prospective final forest conservation plan into a complete plan or permit application associated with a regulated activity, the decision making authority for such plans shall notify the applicant in writing whether the forest conservation

plan is complete and acceptable.

- ii. If the decision making authority fails to notify the applicant within forty-five calendar days, the plan shall be treated as complete and approved.
 - iii. The decision making authority may require further information or extend the deadline for an additional fifteen calendar days under extenuating circumstances in its own discretion.
 - iv. At the request of the applicant, the decision making authority may extend the deadline under extenuating circumstances.
 - v. The Department shall post the notifications described in this section and the final forest conservation plan on their website.
4. The department's review of a final forest conservation plan shall be concurrent with the review of the final subdivision or project plan, grading permit application, or sediment control application associated with the project.
5. The department may revoke an approved forest conservation plan if it finds that:
- i. A provision of the plan has been violated;
 - ii. Approval of the plan was obtained through fraud, misrepresentation, a false or misleading statement, omission of a relevant or material factor;
 - iii. Changes in the development or in the condition of the site necessitate preparation of a new or amended plan; or
 - iv. The project plan approval is terminated due to the applicant's inaction as specified in Title 17 of the City Code.
6. The department may issue a stop work order against a person who violates a provision of this chapter or a regulation, order, approved forest conservation plan, or maintenance agreement.
7. Before revoking approval of a forest conservation plan, the department shall notify the violator in writing and provide an opportunity for a hearing before the department director or designee.

Upon approval of the final forest conservation plan the department shall post the plan on the department's website within three business days.

21.71.080 - Afforestation and retention.

- A. Afforestation Requirement. A person submitting an application after the effective date of this chapter for subdivision or project plan approval, a grading permit, or a sediment control permit for an area of land of forty thousand square feet or greater, shall:
1. Conduct afforestation on the lot or parcel in accordance with the following:
 - i. A tract having less than twenty percent of the net tract area in forest cover shall be afforested up

to at least twenty percent of the net tract area for the following land use categories:

- a. Agriculture and resource areas, and
 - b. Medium density residential areas;
- ii. A tract with less than ~~fifteen~~TWENTY percent of its net tract area in forest cover shall be afforested up to at least ~~fifteen~~TWENTY percent of the net tract area for the following land use categories:
- a. Institutional development areas,
 - b. High density residential areas,
 - c. Mixed use and planned unit development areas, and
 - d. Commercial and industrial use areas;

2. Comply with the following when cutting into forest cover that is currently below the afforestation percentages described in Subsection A.1. of this section:
- i. The required afforestation level shall be determined by the amount of forest existing before cutting or clearing begins; and
 - ii. Forest cut or cleared below the required afforestation level shall be reforested or afforested at a two to one ratio and added to the amount of afforestation necessary to reach the minimum required afforestation level, as determined by the amount of forest existing before cutting or clearing began.

B. Retention.

1. The following trees, shrubs, plants, and specific areas are considered priority for retention and protection and shall be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the Department, that reasonable efforts have been made to protect them and the plan cannot reasonably be altered:
 - i. Trees, shrubs, and plants located in sensitive areas including the 100-year floodplain, intermittent and perennial streams and their buffers, coastal bays and their buffers, steep slopes and their buffers, nontidal wetlands, and critical habitats.
 - ii. Contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site.
2. The following trees, shrubs, plants, and specific areas are considered priority for retention and protection and shall be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the Department, that the applicant qualifies for a variance in accordance with Section 21.71.170 of this chapter:
 - i. Trees, shrubs, or plants determined to be rare, threatened, or endangered under:
 - a. The Federal Endangered Species Act of 1973 in 16 U.S.C. §§ 1531-1544 and in 50 C.F.R. 17,
 - b. The Maryland Nongame and Endangered Species Conservation Act, Natural Resources Article, §§ 10-2a-01-10-2a-09, Annotated Code of Maryland, and
 - c. COMAR 08.03.08;
 - ii. Trees that:
 - a. Are part of a site designated as historic by the Maryland Historic Trust, the National Park Service, or the City of Annapolis,
 - b. Are associated with a structure designated as historic by the Maryland Historic Trust, the National Park Service, or the City of Annapolis, or
 - c. Have been designated by the State, County, or the Department as a National, State, County or Municipality champion tree; and
 - iii. Any tree:

- a. Having a DBH of thirty inches or more, or
- b. Which has been designated as a significant tree pursuant to this chapter.

Section 21.71.090 - Reforestation.

A. Forest Conservation Threshold.

1. There is a forest conservation threshold established for all land use categories, as provided in subsection (a)(2) of this section. The forest conservation threshold means the percentage of the net tract area at which the reforestation requirement changes from a ratio of $\frac{1}{4}$ 1 acre planted for each acre removed above the threshold to a ratio of two acres planted for each acre removed below the threshold.
2. After reasonable efforts to minimize the cutting or clearing of trees and other woody plants have been exhausted in the development of a subdivision or project plan, grading and sediment control activities, and implementation of the forest conservation plan, the forest conservation plan shall provide for reforestation, purchase of credits from a forest mitigation bank, or payment into the forest conservation fund, according to the formula set forth below and in subsection (a)(3) of this section ~~SUBSECTION (A)(1) OF THIS SECTION~~ and consistent with section 21.71.070(a) of this chapter, and the following forest conservation thresholds for the applicable land use category:

CATEGORY OF USE	THRESHOLD PERCENTAGE
(1) agricultural and resource areas	50 percent
(2) medium density residential areas	25 percent
(3) institutional development areas	20 percent
(4) high density residential areas	20 percent
(5) mixed use and planned unit development areas	15 20 percent
(6) commercial and industrial use areas	15 20 percent

3. Calculations.

- i. For all existing forest cover measured to the nearest $\frac{1}{10}$ th acre cleared on the net tract area above the applicable forest conservation threshold, the area of the forest removed shall be reforested at a ratio of $\frac{1}{4}$ 1 acre planted for each acre removed.
- ii. Each acre of forest retained on the net tract area above the applicable forest conservation threshold shall be credited against the total number of acres required to be reforested under (3)(i) of this subsection. The calculation of the credit shall be according to the criteria provided in the forest conservation technical manual.
- iii. For all existing forest cover measured to the nearest $\frac{1}{10}$ th acre cleared on the net tract area below the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of two acres planted for each acre removed below the threshold.

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.
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.
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

CAPITAL LETTERS indicate matter added to existing law.

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

Underlining indicates amendments.