

O-16-26**Forest Conservation****AMENDMENT 4 – Alderman Savidge**

Amendment Summary:

Amendment 4 changes the finalization and appeal process for forest conservation plans. Currently, appeals go through the Building Board of Appeals. Under the amendment:

1. Projects needing Planning Commission approval will be appealed directly to Circuit Court.
2. Projects requiring only a grading permit or site design approval will be appealed to the City's (zoning) Board of Appeals within 30 days.

In both cases, the forest conservation decision can be challenged separately, even if appealed with the overall project approval.

MOTION:

On page 6, strike lines 27 through 37; and on page 7, strike lines 1 through 12; and insert the following on page 6, line 27:

- “a. A forest conservation plan may be modified during the development review process. The plan becomes final and is appealable at the point the associated application receives its final approval, as follows:
1. Where the associated application is subject to Planning Commission approval, upon the Planning Commission's final approval of the application;
 2. Where the associated application is not subject to Planning Commission approval, upon the Department's final approval of the associated grading permit or plan; or
 3. Where the associated application is subject to neither Planning Commission approval nor a grading permit, upon the Department's final site design approval.

Explanation Note:

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Underlining & black means copyediting or reformatting of the existing section

Underlining & red means a Code change in the original legislation

Underlining & blue means an amendment to legislation

- b. The forest conservation plan determination is a separate and distinct determination, independently appealable, and is subject to review even where the appeal is taken together with an appeal of the associated approval.
- c. An appeal of a forest conservation plan finalized under subitem a(1) of this section shall be taken through the appeal procedure applicable to the Planning Commission's decision, by petition for judicial review in the Circuit Court for Anne Arundel County under § 21.24.130, not later than 30 days after the Planning Commission's final, written approval.
- d. An appeal of a forest conservation plan finalized under subitem a(2) or a(3) of this section shall be taken to the Board of Appeals under Chapter 21.30 not later than 30 days after the final approval, and thereafter by petition for judicial review in the Circuit Court for Anne Arundel County in accordance with the Maryland Rules. The forest conservation plan is a determination under this Chapter 21.71, and an appeal of the forest conservation plan is taken to the Board of Appeals under this subitem, even where the associated approval is a grading permit. Forest conservation plan determinations may not be raised in, or as part of, an appeal of a grading permit to the Board of Appeals under Chapter 17; that appeal is limited to the grading permit itself.
- e. In deciding an appeal under subitem d of this section, the Board of Appeals may receive additional evidence offered by any party, including evidence that information relied upon by the Department was incomplete or in error, and shall find the facts necessary to decide the appeal. The record compiled by the Department, together with any additional evidence received by the Board of Appeals, constitutes the record of the local authority for purposes of judicial review under Natural Resources Article § 5-1605(d) of the Annotated Code of Maryland.
- f. A forest conservation plan that is not appealed within the applicable 30-day period is final and not subject to further review. Judicial review under this section shall be conducted in accordance with the Maryland Rules and limited to the record."

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As the Change Would Look in the Legislation

This is solely for showing changes & is *not* part of the Amendment Motion.

Section 21.71.070 — Forest Conservation Plan.

A. General Provisions.

1. Appeals and Approvals.

- i. Preliminary Forest Conservation Plan. A preliminary forest conservation plan cannot be appealed.
- ii. Final Forest Conservation Plan.
 - ~~a. The Department's approval, approval with conditions, or disapproval of a final forest conservation plan under Subsection C is a final decision of the Department.~~
 - ~~b. A person aggrieved by the Department's decision on a final forest conservation plan shall be entitled to note an appeal to the Building Board of Appeals not later than 30 days after the Department issues its written decision.~~
 - ~~c. In deciding the appeal, the Building Board of Appeals shall consider the record compiled by the Department and may receive additional evidence offered by any party, including evidence that information relied upon by the Department was incomplete or in error. The record compiled by the Department, together with any additional evidence received by the Building Board of Appeals, constitutes the record of the Department for purposes of judicial review under Natural Resources Article, § 5-1605(d), Annotated Code of Maryland.~~
 - ~~d. A party to the proceeding before the Building Board of Appeals who is aggrieved by its decision shall be entitled to file a petition for judicial review in the Circuit Court for Anne Arundel County in accordance with the Maryland Rules, not later than 30 days after the Building Board of Appeals issues its decision. Judicial review shall be conducted in accordance with the Maryland Rules and limited to the record described in Section 21.71.070(A)(1)(ii)(c).~~
 - a. A forest conservation plan may be modified during the development review process. The plan becomes final and is appealable at the point the associated application receives its final approval, as follows:

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1. Where the associated application is subject to Planning Commission approval, upon the Planning Commission's final approval of the application;
 2. Where the associated application is not subject to Planning Commission approval, upon the Department's final approval of the associated grading permit or plan; or
 3. Where the associated application is subject to neither Planning Commission approval nor a grading permit, upon the Department's final site design approval.
- b. The forest conservation plan determination is a separate and distinct determination, independently appealable, and is subject to review even where the appeal is taken together with an appeal of the associated approval.
- c. An appeal of a forest conservation plan finalized under subitem a(1) of this section shall be taken through the appeal procedure applicable to the Planning Commission's decision, by petition for judicial review in the Circuit Court for Anne Arundel County under § 21.24.130, not later than 30 days after the Planning Commission's final, written approval.
- d. An appeal of a forest conservation plan finalized under subitem a(2) or a(3) of this section shall be taken to the Board of Appeals under Chapter 21.30 not later than 30 days after the final approval, and thereafter by petition for judicial review in the Circuit Court for Anne Arundel County in accordance with the Maryland Rules. The forest conservation plan is a determination under this Chapter 21.71, and an appeal of the forest conservation plan is taken to the Board of Appeals under this subitem, even where the associated approval is a grading permit. Forest conservation plan determinations may not be raised in, or as part of, an appeal of a grading permit to the Board of Appeals under Chapter 17; that appeal is limited to the grading permit itself.
- e. In deciding an appeal under subitem d of this section, the Board of Appeals may receive additional evidence offered by any party, including evidence that information relied upon by the Department was incomplete or in error, and shall find the facts necessary to decide the appeal. The record compiled by the Department, together with any additional evidence received by the Board of Appeals, constitutes the record of the local authority for purposes of judicial

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review under Natural Resources Article § 5-1605(d) of the Annotated Code of Maryland.

- f. A forest conservation plan that is not appealed within the applicable 30-day period is final and not subject to further review. Judicial review under this section shall be conducted in accordance with the Maryland Rules and limited to the record.

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