



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item #2B
February 6, 2014

MEMORANDUM

TO: Montgomery County Planning Board

FROM: Mark Pfefferle *MP*
Chief, DARC

DATE: January 29, 2014

SUBJECT: Forest Conservation Law Amendment

INTRODUCTION

The purpose of this memorandum is to introduce amendments to the Montgomery County Forest Conservation law and provide an overview of the proposed changes.

BACKGROUND

On October 1, 2013 Maryland House Bill 706 became effective statewide. This Bill provides municipalities a means to be exempt from submitting a forest conservation plan for stream restoration projects and stormwater management retrofits. The proposed amendment is to make the Montgomery County Forest Conservation Law consistent with Bill 706 and to make other clarifying changes to the law. The proposed amendment will make County law consistent with staff practices and to also provide relief to new lot owners who unsuspecting assume responsibility to finalize and implement a forest conservation plan.

The proposed amendments introduced today are to provide consistency, clarity, and efficiency to the Montgomery County Forest Conservation law. The table below highlights the changes between the existing forest conservation law and the proposed amendment. The proposed language changes to the County's Forest Conservation law are attached.

TABLE 1. PROPOSED CHANGES TO CHAPTER 22A

Proposed Changes	Sections Impacted	Reason for Change
Add definition “developed property”.	Amend §22A-3. See lines 4-6	Definition is needed to clarify which properties and activities are eligible for an exemption from submitting a forest conservation plan as a modification to a developed property.
Add definition “development application”	Amend §22A-3. See lines 7-9	Definition is needed to clarify the timing for forest conservation plan submissions and approvals.
Add definition “stream restoration project”	Amend §22A-3. See lines 11-20	Makes County law consistent with State law and Maryland House Bill 706.
Clarify the applicability section.	Amend §22A-4. See lines 24-26.	Staff and some applicants are unclear if amendments to development applications approved prior to 1992 are subject to the law. The additional language will clarify that amendments are subject to the forest conservation law.
Defines properties and activities that eligible for an exemption as a modification to to an existing developed property.	Amend §22A-5. See lines 30-39.	The purpose is to limit this exemption to non-residential properties, clarify that the existing improvements must be retained, and limits the amount of “modification” to less than the existing improvements.
Add exemption for the maintenance or retrofitting of stormwater management structures	Amend §22A-5. See lines 38-44.	Makes County law consistent with State law and Maryland House Bill 706.
Add exemption for stream restoration projects.	Amend §22A-5. See lines 45-50.	Makes County law consistent with State law and Maryland House Bill 706.
Clarifies the time preliminary and final forest conservation plans must be submitted to the Planning Department for review.	Amend §22A-11(b)(2)(A). See lines 65-69.	Identifies that a preliminary forest conservation plan must be submitted with the first development application and final forest conservation plan with the last development application. If there is only one development application the final forest

TABLE 1. PROPOSED CHANGES TO CHAPTER 22A

Proposed Changes	Sections Impacted	Reason for Change
		conservation plan must be submitted no later than time of record plat.
Timelines as to when forest conservation plan must be approved.	Amend §22A-11(b)(2)(C). See lines 71-80.	The current forest conservation law does not identify when forest conservation plans are to be approved. This proposal indicates that the preliminary forest conservation plan must be reviewed and approved in conjunction of the first development application and the final forest conservation plan must approved in conjunction with the approval of the last development application. If there is only one development application the final forest conservation plan must be approved prior to Planning Board approval of the record plat. This change is necessary for some new lot owners are required to obtain approval of a final forest conservation plan after they have purchased a lot from the previous landowner. This change will benefit purchasers of new lots for the final forest conservation plan must be approved prior to record plat approval.
Removes the requirement that financial security needs to be to be submitted, to the Planning Department, prior to DPS issuance of a sediment control permit.	Amend §22A-12(d)(3). See lines 84-87.	Staff currently does not require submission of a financial security instrument prior to the release of sediment control permit, nor does DPS wait to see if the financial security is posted prior to the issuance of the sediment control permit. It has always been prior to land disturbance. This change is to codify the practice.
Clarifies that in-lieu fee money must be paid prior to any land disturbing activities.	Amend §22A-12(g)(1). See lines 96-99.	The current law allows developers to pay the in-lieu fee 90 days after the project completion. The

TABLE 1. PROPOSED CHANGES TO CHAPTER 22A

Proposed Changes	Sections Impacted	Reason for Change
		practice has been to require this payment before land disturbance occurs. This change is to codify the practice.
Removes the burden that the first lot purchaser post financial securities for the entire subdivision.	Amend §22A-12(i)(4). See line 107-111.	The current forest conservation law requires that financial security be posted prior to any land disturbing activities. Situations have arisen in that some developers have subdivided land and sold individual lots for custom homes. The developer has no requirement to post the financial surety so the first lot owner is responsible for the requirement for the entire subdivision. The amendment is to limit the exposure of the new lot owner to the security surety to address the forest conservation planting requirements appropriate to their lot and not the entire subdivision.
Clarifies when decisions by the Planning Director may be appealed to the Planning Board.	Amend §22A-20(c). See lines 117-118	The current law indicates that only Planning Director approvals can be appealed to the Planning Board. The amendment clarifies that not just approvals but any plan reviewed by the Planning Director can be appealed.

RECOMMENDATION

Staff recommends that the Planning Board vote to adopt the amendments to the Forest Conservation law for transmittal to the County Council for further action. Staff further recommends that the Planning Board request the proposal be introduced by the County Council as an expedited bill.

1 Sections 22A-2, 22A-5, 22A-11, 22A-12 and 22A-20 are amended as follows:

2 **Sec. 22A-3. Definitions.**

3 ***

4 Developed property means any property which has been altered from its natural state by the
5 construction of a building, recreational facility, public road or alley, rail line, athletic field,
6 stormwater management facility, parking lot, or public utility.

7 Development application means an application made to the Planning Board, Planning Director,
8 Board of Appeals, or Department of Permitting Services for plan approval or sediment control
9 permit.

10 ***

11 Stream Restoration Project means an activity that:

- 12 (1) is designed to stabilize stream banks or enhance stream function or habitat located
13 within an existing stream, waterway, or floodplain;
- 14 (2) avoids and minimizes impacts to forests and provides for replanting on-site an
15 equivalent number of trees to the number removed by the project.
- 16 (3) may be performed under a municipal separate storm sewer system permit, a
17 watershed implementation plan growth offset, or another plan administered by the
18 State or local government to achieve or maintain water quality standards; and
- 19 (4) is not performed to satisfy stormwater management, wetlands mitigation, or any other
20 regulatory requirements associated with a development application.

21 ***

22 **Sec. 22A-4. Applicability**

23 Except as otherwise expressly provided in this Chapter, this Chapter applies to:

- 24 (a) a person required by law to obtain an initial approval or amendment to a development
25 plan[approval], diagrammatic plan[approval], project plan[approval], preliminary plan
26 of subdivision[approval], or site plan [approval];

27 ***

28 **Sec. 22A-5. Exemptions.**

29 ***

30 (t) a modification to an existing non-residential developed property if:

- 31 (1) no more than 5000 square feet of forest is ever cleared in one event or cumulatively over
32 multiple events from the first exemption[will be cleared];
- 33 (2) the modification does not [affect] result in the cutting, clearing, or grading of any forest
34 in a stream buffer or located on property in a special protection area which must submit a water
35 quality plan; [and]

36 (3) the modification does not require approval of a [new] preliminary plan of subdivision
37 plan[.]; and

38 (4) the modification does not increase the developed area by more than 50 percent and the
39 existing development is retained.

40 (u) maintenance or retrofitting of an existing stormwater management structure if:

41 (1) the clearing of vegetation or removal and trimming of trees is for the maintenance or
42 retrofitting of the structure and within the original limits of disturbance for construction of the
43 existing facility; and

44 (2) the tract is not included in a previously approved forest conservation plan.

45 (v) stream restoration project for which the applicant for a sediment control permit has:

46 (1) executed a binding maintenance agreement of at least 5 years with the affected property
47 owner or owners;

48 (2) agreed to replace every tree removed and plant the new trees in the first planting season
49 after final stabilization; and

50 (3) the tract is not included in a previously approved forest conservation plan.

51 ***

52

53 **Sec. 22A-11. Application, review, and approval procedures.**

54 ***

55 (b) *Project requiring development plan, project plan, preliminary plan of subdivision, or site*
56 *plan approval.*

57 ***

58

59 (2) Forest conservation plan.

60 (A) Application. Upon notification that the forest stand delineation is complete and
61 correct, the applicant must submit a forest conservation plan to the Planning Director. If the
62 development proposal will require more than one of the approvals subject to this subsection, the
63 applicant must submit a preliminary forest conservation plan to the Planning Director in
64 conjunction with the first approval and a final forest conservation plan in conjunction with the
65 last approval. If only one approval subject to this subsection is required[,] an applicant[, with the
66 approval of the Planning Board,] must [may] submit a preliminary forest conservation plan at the
67 time of the development application [approval] and a final forest conservation plan before
68 issuance of a sediment control permit for the tract but no later than time of submission of a
69 record plat.

70

71 (C) [Condition of a]Approval. The forest conservation plan will be reviewed and acted
72 upon by the Planning Board concurrently with the development plan, project plan, preliminary
73 plan of subdivision or site plan, as appropriate. The preliminary forest conservation plan, as may
74 be amended by the Board, must be made a condition of any approval of the first development
75 application and the final forest conservation plan, as may be amended by the Board, must be a
76 condition of any approval of the last development application. For a development plan, a
77 Planning Board recommendation to the District Council on the preliminary forest conservation
78 plan must be made under Section 59-D-1.4. Final forest conservation plans must be approved by
79 the Planning Board, or Planning Director, whichever is appropriate, prior to Planning Board
80 approval of the record plat.

81

82 (d) *Project requiring a sediment control permit only.*

83

84 (3) Issuance of sediment control permit. A sediment control permit must not be issued to a
85 person who must comply with this Article until[:

86 (A)] a final forest conservation plan, if required, is approved[; and

87 (B) any financial security instrument required under this Chapter is provided].

88

89 **Sec. 22A-12. Retention, afforestation, and reforestation requirements.**

90

91 (g) *In lieu fee.*

92 (1) General. If a person satisfactorily demonstrates that the requirements for reforestation
93 or afforestation on-site or off-site cannot be reasonably accomplished, the person must contribute
94 money to the forest conservation fund at a rate specified by the County Council by law or
95 resolution, but not less than the rate required under Section 5-1610 of the Natural Resources
96 Article of the Maryland Code. Any in lieu fee payment must be made prior to any land disturbing
97 activity, as defined in Chapter 19, occurring on a section of the tract subject to the forest
98 conservation plan. [The requirement to contribute money must be met within 90 days after
99 development project completion.]

100

101 (i) *Financial Security.*

102

103 (4) Amount required.

104 (A) If the financial security is required under subparagraph (1)(A) of this subsection, the
105 security instrument must be in an amount equal to the estimated cost of afforestation,
106 reforestation, and maintenance applicable to the section of the tract subject to the land disturbing
107 activity. If the applicant sells individual lots prior to providing the required financial security, the
108 Planning Director may allow the new lot owner to provide a financial security that is applicable
109 to the requirements specific to the development of their lot. The instrument must include a
110 provision for adjusting the amount based on actual costs. Financial security must be submitted to
111 the Planning Director prior to any land disturbing activities occurring on the tract. The Planning
112 Director must notify the obligee of any proposed adjustment and provide the opportunity for an
113 informal conference.

114 ***

115 **Sec. 22A-20. Hearings and appeals.**

116 ***

117 (c) *Forest stand delineations, exemptions from submitting a forest conservation plan, and*
118 *forest conservation plans [approved] reviewed by the Planning Director.*

119

120