

Casey Anderson
Chair, Montgomery County Planning Board
Maryland-National Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Proposed changes to Chapter 22A. Forest Conservation- Trees Regulations of the Montgomery County Code

Dear Chair Anderson and Planning Commissioners,

On behalf of the Maryland Building Industry Association (MBIA), this letter is in response to proposed changes to Chapter 22A. Forest Conservation- Trees Regulations of the Montgomery County Code. On May 7, 2020, we received an email from the Planning Department containing a document with modifications to numerous sections of the Trees regulations. The Planning Department will present these changes to the Planning Board on June 25, 2020. After the presentation, MBIA understands that there will be a public comment period. After the public comment period, the planning department plans to present final proposed changes to Chapter 22A Forest Conservation- Trees Regulations to obtain a recommendation that the proposed revisions be transmitted to the County Council.

The MBIA appreciates the opportunity to comment on the proposed changes and acknowledges that some of the proposed changes are necessary in order to comply with recent changes to the States enabling legislation and to update language to be compatible with other County regulations. On June 3, 2020, MBIA representatives met with Planning Department staff to walk through the proposed changes. Based on that meeting, the MBIA offers the following comments on the proposed changes:

1- 22A.00.01.03- Definitions

- a. Proposed definition 17) “Environmental Buffer” means perennial, intermittent, or ephemeral streams/channels and their associated buffers; wetlands and their associated buffers; and, hydraulically connected steep slopes according to the latest version of *Guidelines for the Environmental Management of Development in Montgomery County, Maryland* (MNCPPC), or an appropriate master plan; and floodplains.
 - i. This is a new definition that does not appear in any other regulation or approved policy document that we are aware of. Please confirm that the intent of this definition is to replace what has been referred to as an “Expanded Stream Buffer” and if there is any other reason for creating the new definition.
 - ii. Floodplain appears to be out of place in the sentence and should follow the other specific environmental features listed.

- iii. The definition is confusing in that it appears that an expanded stream buffer must include ephemeral channels because they are defined in the Environmental Guidelines. Ephemeral Channels are only regulated in the Ten Mile Creek Limited Master Plan Amendment. Please revise the definition to state “Environmental Buffer” means perennial or intermittent streams and their associated buffers; wetlands and their associated buffers; hydraulically steep slopes; and floodplains according to the latest version of Guidelines for the Environmental Management of Development in Montgomery County, Maryland (MNCPPC), or ephemeral streams/channels as applicable in an appropriate master plan.”
- b. Proposed definition 34) “Landscaping Credit” means areas shown on a forest conservation plan that are not forest but will receive credit toward a site’s reforestation or afforestation requirements. The forest conservation plan must show dimensions and details for tree planting and landscaping areas. Any planting for landscape credit to meet the forest conservation requirements must use native plants.
 - i. Please add “or cultivars of native plants” to be consistent with the revisions that were made to the forest conservation law in 2018.
- c. Proposed definition 46) “Priority planting area” means areas in which planting must occur unless those areas are not present.
 - i. Please clarify that planting in a priority planting area must occur only if required to meet the mitigation requirements of the forest law. This is consistent with the revisions that were made to the forest conservation law in 2018.
- d. Existing definition 52) (Renumbered) “Specimen Tree” means a tree that is particularly impressive or unusual example of a species due to its size, shape, age, or any other trait that epitomizes the character of the species as further described in the most recent version of the Trees Technical Manual.
 - i. This is a subjective definition and the revision to this regulation provides an opportunity to define a specimen tree using the objective criteria provided in section 22A.00.01.07 (5) of this code to define which trees will be regulated as a specimen trees. These objective criteria are also how the County has, in practice, determined which trees are specimens in the review and approval of NRI’s and Forest Conservation Plans and Exemptions. The objective criteria are as follows:
 - 1. an individual tree, and its critical root zone, with one or more of the following characteristics:
 - a. a tree that is part of a historic site or associated with a historic structure;
 - b. a tree designated as a national, state, or County champion tree;

- c. a tree having a diameter, measured at 4.5 feet above the ground, of 75 percent or more of the diameter of the designated state or County champion tree;
- d. trees which have a diameter, measured at 4.5 feet above the ground with a diameter of 30 inches or greater

2- 22A.00.01.05 Application

- a. Proposed revision to A. Except as provided in Sections 22A-5, 22A-6, 22A-7, 22A-8, 22A-9 and the Variance provisions in Section 22A-21 of the Forest Conservation Law, these regulations apply to the following plans for or regulated activities. The revision adds a number (7) which states, “clearing or grading conducted on two or more platted contiguous lots that collectively total 40,000 square feet or larger that are graded at the same time and where sediment control is required under Chapter 19 of the County Code.”
 - i. Please clarify the intent of this language and revise to make clear that this is when one sediment control plan is requested to cover more than one platted lot where sediment control/stormwater management measures will not be provided for each individual platted lot.
- b. Proposed revision to B. The general procedure for meeting the requirements of Chapter 22A for these plans is: The revision adds language to number (3) (a) which states, lot lines, building, and proposed infrastructure, located to maximize retention areas and avoid environmentally sensitive areas such as environmental buffers and protected habitats wherever practical;”
 - i. Please define “protected habitats” to clarify that these are known publically documented habitats for rare, threatened or endangered species or habitats identified during the preparation of an approved natural resources inventory.

3- 22A.00.01.06 Natural Resource Inventory and Forest Stand Delineation (NRI/FSD) Requirements

- a. Proposed revision to A. Natural Resource Inventory (NRI) application must be considered complete if it contains all the following information: The revision adds a number (5) which states, “ephemeral channels/streams and buffers for those locations where such buffers are required per the latest version of the *Guidelines for Environmental Management of Development in Montgomery County, Maryland* (MNCPPC) or appropriate master plan;”
 - i. This revision is confusing in that it appears that the Environmental Guidelines require ephemeral channels to have buffers. Ephemeral Channel buffers are only required in the Ten Mile Creek Limited Master Plan Amendment. Please revise the text to remove “Guidelines for Environmental Management for

Development in Montgomery County, Maryland (MNCPPC)” and only refer only to an applicable master plan.

- b. Proposed revision to A. Natural Resource Inventory (NRI) application must be considered complete if it contains all the following information: The revision adds a number (12) which states, “Trees that are specimens for their species;”
 - i. This is subjective and should be removed. In practice a specimen tree is defined using the objective criteria provided in section 22A.00.01.07 (5) of this code to define which trees will be regulated as a specimen trees. These objective criteria are how the County has, in practice, determined which trees are specimens in the review and approval of NRI’s and Forest Conservation Plans and Exemptions. The objective criteria are as follows:
 - 1. an individual tree, and its critical root zone, with one or more of the following characteristics:
 - a. a tree that is part of a historic site or associated with a historic structure;
 - b. a tree designated as a national, state, or County champion tree;
 - c. a tree having a diameter, measured at 4.5 feet above the ground, of 75 percent or more of the diameter of the designated state or County champion tree;
 - d. trees which have a diameter, measured at 4.5 feet above the ground with a diameter of 30 inches or greater

4- 22A.00.01.07 Priorities for Retention

- a. Proposed revision to A. The following areas trees, shrubs, plants, and specific areas are considered the highest priority for retention areas for and protection and must be left in an undisturbed condition unless the Planning Director or Planning Board find that the provisions of subsection 22A-12(b)(1) of the Forest Conservation Law, have been met and the development proposal cannot reasonably be altered: The revision adds a number (3) which states, “trees, shrubs, or plants identified on the list of rare, threatened, or endangered species;”
 - i. Please identify that this is the State of Maryland list of Rare, Threatened or Endangered Species.

5- 22A.00.01.08- General Forest Conservation Plan Provisions

- a. Proposed revisions to A. that reads “In developing a forest conservation plan, the applicant must give priority to techniques for maximizing retention of existing forest on the site. The forest conservation law specifies percentages of all forest sites which, at a minimum should be preserved. Applicants should strive to maximize forest retention whenever practical.”

- i. A Natural Resource Inventory requires that all forest stands delineated on a site be prioritized for retention. Please revise the paragraph to clarify that “Applicants should strive to maximize retention of high priority forest stands whenever practical.”
- b. Proposed revisions to E. (2) (b) that states, “establish or enhance forest in buffers adjacent to ephemeral streams, when such streams are required to have buffers as recommended in an applicable Master Plan or in the latest version of the *Guidelines for Environmental Management for Development in Montgomery County, Maryland* (MNCPPC).”
 - i. This revision is confusing in that it appears that the Environmental Guidelines require ephemeral channels have buffers. Ephemeral Channels are only regulated in Ten Mile Creek Limited Master Plan Amendment. Please revise the text to remove “Guidelines for Environmental Management for Development in Montgomery County, Maryland (MNCPPC)” and only refer only to an applicable master plan.
- c. Proposed revisions to E. (3) (c) after the chart, notes 4 and 5. Both notes require no deer browse for surviving planted tree stock.
 - i. Please revise to allow minimal deer browse as trees can survive with minimal deer browse.
- d. Proposed addition to F. Tree Save Plans (4) that states, “The tree save plans must identify methods to preserve and protect on-site or off-site trees along the limits of disturbance regardless of tree size.”
 - i. Please clarify the intent of this language. All trees with a diameter at breast height of 24” and greater within 100’ of the property are shown on a tree save plan. Is there a minimum tree size this intends to protect? Are there general notes or standards that could be placed on the plan that could achieve desired protections? As trees gets smaller, so do their critical root zones and it is not always possible to access adjacent properties due to lack of permission or physical barriers making accurately locating small trees difficult. Please clarify and consider what is required by law when tree limbs and critical root zones encroach onto an adjacent property.

6- 22A.00.01.09 Forest Conservation Plan Requirements

- a. Proposed addition to B. Final Forest Conservation Plans (2) (g) (vi) that states a tree protection plan must show, “an arborist report that shows the methods to be utilized to protect any tree, 24” dbh and greater, when the critical root zone is impacted;”
 - i. Please revise as discussed during the 2018 revision to be required only when saving trees with greater than 30% critical root zone impacts.

- b. Proposed addition to B. Final Forest Conservation Plans (2) (g) (vii) that states, “An arborist report may be required, on a case-by-case basis, for trees less than 24” dbh, when the critical root zone is impacted.”
 - i. Please clarify under what circumstances this would apply.
- c. Proposed addition C. Noticing Requirements for Final Forest Conservation Plans that states, “Applicants that require approval of a forest conservation plan must follow the noticing requirements in Chapter 50/9.00.01.04”
 - i. Please clarify that this does not apply to forest conservation exemptions or forest conservation plans associated with another development application that requires public noticing. This is for standalone forest conservation plans only.

We appreciate the opportunity to provide comments on the proposed changes and are available to answer any questions that you may have. If you have any further questions, please contact Griffin Benton, MBIA - Director of Government Affairs at gbenton@marylandbuilders.org or 202-815-4239.

Respectfully,



Matthew Wessel, PLA, ISA Certified Arborist
Chair, MBIA Environmental Committee