

Forest Conservation Law Amendments sponsored by Councilmember Elrich December 10, 2007

On Tuesday, December 11, 2007 amendments to Chapter 22A - Forest Conservation law (FCL) will be introduced. The Council President will introduce amendments to the FCL at the request of MNCPPC. Councilmember Elrich will propose amendments to the FCL and MNCPPC's amendments. The MNCPPC and the Elrich amendments will travel together through the legislative process.

The existing FCL is inadequate in many ways:

- It does not conserve an adequate amount of forest.
- It is poorly written and very difficult to understand.

The MNCPPC significantly improve the FCL. MNCPPC:

- Re-wrote substantial parts of the FCL to make it understandable.
- They removed obsolete language.
- Developed the model for the Level 1, 2, and 3 Review that helps citizens to determine if the FCL applies to them.
- Clarified the requirements for each level of Review.
- Generally raised conservation and afforestation thresholds 5%.
- Increased the maintenance period for reforestation from 2 to 5 years.
- Extended the Declaration of Intent not to do any more activity in the area which affects the forest to 7 years.

The Elrich office and Park and Planning collaborated on many of the changes to the FCL.

However, Councilmember Elrich felt the law needed to be strengthened further. Councilmember Elrich continued to amend the MNCPPC draft bill to maximize forest retention and get closer to the goal of no forest net loss. Below is a brief synopsis of some of the proposed amendments that will help reach this goal:

Forest conservation and afforestation thresholds are based on land use categories. Councilmember Elrich proposes raising the threshold percentages for most sites and changing the definition of the residential land use categories. Changing the definitions of medium and high density residential areas more accurately reflects the County's land use. As a result, some zoning codes shift into different land use categories. This allows for more possible forest retention or afforestation on-site on appropriate tracts of land.

1. Added a Low Density Residential Area land use type and changed the density ranges in the Medium Density Residential Area and High Density Residential Area categories to more accurately reflect the County's land use.

In the existing law:

There is no Low Density Residential category.

The Medium Density Residential category is currently defined as a density greater than 1 house per 5 acres and less than or equal to one house per 40,000 sq. ft (an acre = 43,560 sq. ft) Generally included zones: RE-1, RE-2, 5 and 25 acre lot zones if lots are clustered.

The High Density Residential category is currently defined as a density greater than one house per 40,000 sq. ft. Generally includes Montgomery County zones: R-200, RMH-200, R-150, R-90, R-60, R-40, R-20, R-10, RT zones and RMX. Generally lots less than 1 acre, townhouses and multifamily dwelling units.

Elrich amendments:

Elrich amendments add a Low Density Residential Area defined as an area zoned for a density greater than one dwelling unit per five acres and less than or equal to one dwelling unit per acre. Generally includes Montgomery County zones: RC, RE-2, RE-1. Generally 5, 2, and 1 acre lots.

Elrich Medium Density Residential - an area zoned for a density greater than one dwelling unit per acre and less than or equal to 10 dwelling units per acre. Includes Montgomery County zones: RT-10, RT-8, RT-6, R-30, R-40, R-60, R-90, R-150, R-200. Generally lots less than a half acre and some townhouse configurations.

Elrich High Density Residential - an area zoned for densities greater than 10 dwelling units per acre. Generally includes Montgomery County zones: RT-12.5, RT-15, RT-18, RT-20, RT-38, R-30, R-20, RH, RMX. Generally townhouses and multifamily dwelling units.

2. Eliminate the government and institution category which generally had the lowest conservation and afforestation threshold requirements. The Elrich amendments does make an exception for highway right-of-ways and MCPS school sites. Those facilities have a 1:1 replacement requirement.
3. Amend the forest conservation threshold for net tracts to have reforestation requirements of a ratio of $\frac{1}{2}$ acre planted for every one acre removed above the threshold and retain the ratio of 2 acres planted for every one acre removed below the conservation threshold. Currently only $\frac{1}{4}$ acre needs to be replanted for each acre removed above the conservation threshold.
4. If off-site forest conservation mitigation bank credits are purchased, increase the requirement from 2 acres to 4 acres for every acre of replanting.

5. As consistent with the state law definition of a forest, the Elrich amendments define a 10,000 sq/ft tract of land as subject to the FCL. Current law looks at tracts of land 40,000 sq. ft. or greater.
6. Change the level of forest disturbance necessary to trigger the FCL from 40,000 sq. ft. to 5,000 sq. ft.
7. Increase the maintenance period of reforestation from 2 to 5 years to improve tree survival success.
8. Provide a role of for a County Forest Conservation Coordinator, appointed by the Director of the Department of Environmental Protection and functions in DEP. The concurrence of CFCC and the Planning Director would be necessary for several requirements under the FCL. This provides checks and balances for certain types of decisions to be made under the FCL. Also, the CFCC would have functions related to resource management and protection of forest and trees in the County
8. Give citizens legal standing to appeal decisions based on false and misleading plans to the Circuit Court.
9. Require that neighbors be given advance notice of pending forest clearings covered by the FCL.

Councilmember Elrich believes that the end result of these amendments will be:

- Preserving a greater amount of forest in Montgomery County
- Increasing forest conservation on-site
- Keeping down-county forest in place by discouraging the use of up-county forest mitigation banks
- Conserving forests to improve water and air quality
- Maximizing Montgomery County's contribution to restore the Chesapeake Bay by retaining and expanding forests in the Chesapeake Bay watershed.
- More successful reforestations
- The County will lead the forest preservation effort by example by eliminating minimal requirements for institutions
- Providing more protection of our forests by vesting every citizen with legal standing
- Requiring advance notice of pending forest clearings