

NOTICE

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Office of Planning & Zoning

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Preserving Priority Forest Retention Areas

Anne Arundel County Bill 68-19 became law on January 9, 2020. The bill includes expanded protections for priority forests. The purpose of this notice is to provide the general public, reviewing agencies, and the development community with:

- 1) a description of priority forest retention areas that shall be left undisturbed unless a modification is granted;
- 2) criteria the applicant must satisfy in writing for a modification; and
- 3) minimum conditions that the Planning and Zoning Officer shall consider if a modification is granted.

Any questions regarding this notice should be forwarded to Lori Allen, Planning Administrator, at pzalle00@aacounty.org and 410-222-7458.

Steve Kaii-Ziegler,
AICP

Planning & Zoning
Officer





M A R Y L A N D

Office of Planning and Zoning

Steve Kail-Ziegler AICP, Planning and Zoning Officer

MEMORANDUM

TO: MBIA, Review Agencies and the General Public

FROM: Steve Kail-Ziegler AICP, Planning and Zoning Officer

SUBJECT: Preserving Priority Forest Retention Areas through the Modification Process

DATE: January 10, 2020

Anne Arundel County Bill 68-19 becomes law on January 9, 2020. This bill provides both an amended list of priority forest retention areas that shall be left undisturbed unless the Planning and Zoning Officer approves a modification to this requirement, and an amended list of criteria the applicant must satisfy to receive a modification. Additionally, County Executive Steuart Pittman's May 14, 2019, memo to the Planning and Zoning Officer titled, *Minimizing Environmental Impacts through the Modification Review Process* states that modifications "that would result in adverse environmental impacts will not be approved – even if accompanied by appropriate documentation – unless: 1) there is a clear and definitive showing that the alternate proposal will mitigate and minimize environmental impacts through the use of site design alternatives; or 2) the requestor agrees to the conditions set forth by the Planning and Zoning Officer to secure mitigation of adverse environmental impacts."

The purpose of this policy is to provide:

- 1) a description of priority forest retention areas that shall be left undisturbed unless a modification is granted;
- 2) criteria the applicant must satisfy in writing for a modification; and
- 3) minimum conditions that the Planning and Zoning Officer shall consider if a modification is granted.

The following areas are considered priority retention and shall be left undisturbed unless the Planning and Zoning Officer approves a modification:

- 1) Sensitive Natural Features and Potential Forest Interior Dwelling Species Habitat - trees, shrubs, and plants located in sensitive areas, including the 100-year floodplain, intermittent and perennial streams and their 100-ft buffers, slopes of greater than 25 percent, non-tidal wetlands and their 25-ft buffers, and critical habitats as defined in § 5-1601 of the Natural Resources Article of the State Code; or habitats with a minimum of 75 acres of contiguous forest with 10 or more acres of contiguous forest located more than 300 feet from the nearest forest edge, or riparian habitats with a minimum of 75 acres of contiguous forest along a perennial stream with an average width of at least 300 feet;
- 2) Rare, Threatened or Endangered Plants - trees, shrubs, or plants determined to be rare, threatened, or endangered under the Federal Endangered Species Act of 1973 set forth in 16 U.S.C. §§ 1531 - 1544 and in 50 CFR Part 17; the Maryland Nongame and Endangered Species Conservation Act set forth in the Natural Resources Article, §§ 10-2A-01 et seq., of the State Code; and COMAR, Title 08;

- 3) Specimen Trees - trees that are champion trees, part of a historic site, or associated with a historic structure; or a tree that has a diameter measured at 4.5 feet above the ground of 30 inches or more or that is 75% or more of the diameter of the current State champion tree of that species;
- 4) Connecting Forests - contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site; and
- 5) Forests in General - forested areas at least 35 feet wide with a total area of 10,000 square feet.

An applicant proposing to clear vegetation in any of the priority retention areas listed above must submit, in writing to the Office of Planning and Zoning, justification that the modification and additional actions (conditions) that will mitigate adverse environmental impacts satisfies each of the following criteria:

- 1) unwarranted hardship will result due to special features of the site or other circumstances;
- 2) the purposes of Article 17 of the Anne Arundel County Code, including minimization and mitigation of environmental impacts through the use of clustering or other available design alternatives to preserve the character of the impacted area, will be served by an alternative proposal;
- 3) granting the modification would not adversely affect water quality;
- 4) the modification does not have the effect of nullifying the intent and purpose of Article 17 of the Anne Arundel County Code, the Anne Arundel County General Development Plan, or Article 18 of the Anne Arundel County Code; and
- 5) the applicant has submitted written verification to the Office of Planning and Zoning that:
 - a) the requested modification was disclosed and discussed at a community meeting; or
 - b) all owners of property located within 300 feet of the affected property were mailed a notice explaining the reason for the modification, along with a copy of the request for modification.

If it is determined the modification request satisfies all criteria listed above, the Planning and Zoning Officer shall consider the following, minimum conditions for any modification to priority retention areas in addition to any other afforestation or reforestation requirements on the site:

- 1) For Sensitive Natural Features and Potential Forest Interior Dwelling Species Habitat -
 - a) onsite replanting of native trees equal to two times the cumulative square footage of trees removed from these areas; or
 - b) offsite replanting of native trees equal to four times the cumulative square footage of trees removed from these areas;
- 2) For Rare, Threatened or Endangered Plants -
 - a) there shall be no disturbance of rare, threatened or endangered plants authorized by the County; and
 - b) the locations of any documented rare, threatened or endangered plants shall be submitted to the Maryland Department of Natural Resources Wildlife and Heritage Services;
- 3) For Specimen Trees -
 - a) onsite replanting of native trees equal to 217.8 square feet for each inch of diameter at breast height (DBH) removed as described in Example 1 below;
 - i) *Example 1. Onsite Minimum Replanting Requirement for 1 30-Inch DBH Tree Removed (30 Inches of Total Specimen Tree DBH Removed) X (217.8 Square Feet/DBH Removed) = 6,534 Square Feet Replanting Required; or*
 - b) offsite replanting of native trees equal to 435.6 square feet for for each inch of diameter at breast height (DBH) removed as described in Example 2 below;
 - i) *Example 2. Offsite Minimum Replanting Requirement for 1 30-Inch DBH Tree Removed (30 Inches of Specimen Trees Removed) X (2) X (217.8 Square Feet/Inch DBH Removed) = 13,068 Square Feet Replanting Required*
- 4) For Connecting Forests -
 - a) any afforestation or reforestation requirements shall first be met onsite using contiguous plantings of native trees to reconnect the largest, undeveloped, or most vegetated tracts of land within and adjacent to the site; or

5) For Forests in General -

- a) no additional conditions will apply, however applicant shall be encouraged to exhaust all potential onsite opportunities to fulfill any afforestation or reforestation requirements.

For any replanting requirements specified in a conditional approval, the Planning and Zoning Officer shall use discretion as to which replanting methods found in Anne Arundel County Code §§ 17-6-303(d) and 17-6-304 will adequately mitigate environmental impacts to the site, and all replanting activities shall be subject to all State and local requirements.

This policy is not to be interpreted as implying that modifications will be automatically approved if the minimum conditions described herein are satisfied. Additionally, applicants may propose alternative conditions and provide justification for why the alternative conditions are equally beneficial to the environment. Finally, flexibility in this policy may be exercised in instances where the need for disturbance of priority retention areas is triggered by institutional projects, private or public stormwater projects, water quality improvement projects, utility infrastructure, or transportation infrastructure.



Office of County Executive
STEUART PITTMAN

MEMORANDUM

TO: Phil Hager, Director of Planning and Zoning

FROM: Steuart Pittman, County Executive *SP*

SUBJECT: Minimizing Environmental Impacts through the Modification Review Process

DATE: May 14, 2019

Protection of the environment is vital to the quality of life, health and economic vitality of Anne Arundel County residents, and is a foundational tenant of this Administration. Article 17 of the Anne Arundel County Code includes significant provisions to protect environmental resources through the development review process. However, the same article also provides relief from strict adherence to the County Code through the mechanism of a "modification."

In some past instances, the practice of granting modifications has resulted in adverse environmental impacts and has run counter to the goals of effective planning. This Administration will not facilitate such outcomes enabled through the modification process.

Accordingly, all modification requests related to environmental resources will be carefully and deliberately scrutinized by the Office of Planning and Zoning Development Review staff to identify potential, adverse environmental impacts. All such modification requests, whether major or minor, must be accompanied by detailed and defensible justification in accordance with Article 17.¹ Absent such justification, a modification request will be denied and returned. Further, modification requests that would result in adverse environmental impacts will not be approved – even if accompanied by appropriate documentation – unless:

- 1) there is a clear and definitive showing that the alternate proposal will mitigate and minimize environmental impacts through the use of design alternatives; or
- 2) the requestor agrees to the conditions set forth by the Planning and Zoning Officer to secure mitigation of adverse environmental impacts.

Flexibility may be exercised in instances where the need for a modification is triggered by private or public stormwater projects, water quality improvement projects, utility infrastructure, or transportation infrastructure.

Thank you for your continued efforts making Anne Arundel County "The Best Place."

¹ At the time of signing, §17-02-208(a) specifically described five criteria that must be satisfied.