

ORDINANCE NO. O-22-10

AN ORDINANCE TO AMEND CHAPTER 22 OF THE CITY CODE,
ENTITLED, "TREES AND FOREST CONSERVATION,"
SO AS TO PROVIDE ADDITIONAL SPECIFICATIONS AND STANDARDS
AND MAKE CORRECTIONS

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, in public meeting assembled, that Chapter 22 of the City Code, entitled, "Trees and Forest Conservation," is hereby amended to read as follows:

Chapter 22

TREES AND FOREST CONSERVATION

Article I. In General

Sec. 22-1. Purpose.

The purpose of this chapter is to preserve, protect and improve the health and general welfare of the public by promoting the environmental and public benefits of saving, maintaining and planting trees and forested areas. These benefits include: the preservation of important natural resources; the filtration of groundwater; reduction in surface run-off; alleviate floods; supply necessary wildlife habitat; cleanse the air of harmful pollutants; offset the urban heat island effects; provide recreational areas and aesthetic appeal.

Sec. 22-2. Definitions.

In this chapter, the following terms have the meanings indicated:

Afforestation. The establishment of forest or tree cover in accordance with this chapter on an area from which such forest or tree cover has always been absent or very long been absent, or the planting of open areas which are not presently in forest cover.

Agricultural activity. Farming activities including plowing, tillage, cropping, installation of best management practices, seeding, cultivating, and harvesting for production of food and fiber products (except commercial logging and timber harvesting operations), the grazing and raising of livestock, aquaculture, sod production, and the cultivation of orchard, nursery, and other products as part of a recognized commercial enterprise.

Annexation petition. A petition from a property owner requesting the city annex the property into the city's jurisdiction and assign it a city zoning category.

Applicant. A person who is applying for subdivision or site plan approval, or for a grading or sediment control permit, or who has received approval of a forest stand delineation or forest conservation plan.

Boldface

Underlining

~~Single strikethrough~~

Double underlining

~~~~**Double boldface strikethrough**~~~~

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*Heading or defined term.*

*Added to existing law by original bill.*

*Deleted from existing law by original bill.*

*Added by Amendment.*

*Deleted from existing law or the bill by amendment.*

*Existing law unaffected by bill.*

*Champion tree.* The largest tree of its species within the United States, the state, county or the city.

*Commercial and industrial uses.* Manufacturing operations, warehousing, office complexes, shopping centers, wholesale and retail facilities for goods, products and services and other similar uses and their associated storage areas, yards, and parking areas.

*Concept plan.* The first site development plan submitted for planning commission review, as a part of the overall site development review process. The plan that provides a conceptual design and meets the minimum informational requirements of the planning department's checklist.

*Contiguous forest-* A forest which connects the largest undeveloped or most vegetated tracts of land within and adjacent to a site.

*Critical habitat area.* A critical habitat for an endangered species and its surrounding protection area. A critical habitat area shall:

- (1) Be likely to contribute to the long-term survival of the species;
- (2) Be likely to be occupied by the species for the foreseeable future; and
- (3) Constitute habitat of the species which is considered critical under Natural Resources Article, sections 4-2A-04 and 10-2A-06, Annotated Code of Maryland.

*Declaration of intent.* A signed and notarized statement by a landowner that the cutting of trees on the landowner's property:

- (1) Is for purposes exempted under this chapter;
- (2) Will not circumvent the requirements of this chapter; and
- (3) Meets the requirements of COMAR 08.19.01.05.

*Development project completion.* For the purposes of compliance with this chapter, the date or event identified as such in the forest conservation plan agreement, but no later than the date on which the final building inspection or sediment control inspection (for activities not involving a building) is conducted by the department of code enforcement. A staged development may have more than one completion date.

*Director.* The director of the City's Planning and Code Administration or the director's designee

*Floodplain (100-year).* An area along or adjacent to a stream or body of water, except tidal waters, that is capable of storing or conveying floodwaters during a 100-year frequency storm event, or a 100-year flood, with the exception of floodplains containing a body of water with a watershed of less than four hundred (400) acres.

*Forest.* A biological community dominated by trees and other woody plants (including plant communities, the understory, and forest floor), but excluding orchards or nursery stock, covering a land area of ten thousand (10,000) square feet or greater. Forest

includes:

- (1) Areas that have at least one hundred (100) live trees per acre with at least fifty (50) percent of those trees having a two-inch or greater diameter at four and one-half (4.5) feet above the ground; and
- (2) Forest areas that have been cut but not cleared.

*Forest conservation.* The retention of existing forest or the creation of new forest at the levels set by the planning commission or planning director.

*Forest conservation easements.* These protect existing or future forest on private land by limiting certain activities.

Category 1 Easements- prohibit clearing of any tree, bush, or vegetation. They prohibit construction, paving or grading of the ground. They also prohibit the dumping of unsightly materials (trash, ash, non-biodegradable materials, etc). Diseased or hazardous trees or tree limbs may be removed to prevent possible property damage or personal injury, but only after a reasonable notice is given to the city. Category I easements do not prohibit entry into the easement; homeowners are allowed access in and out of the easement, but they are not allowed to alter the natural landscape.

Category 2 Easements- (or Trees Save areas) are typically placed over an area that is not forest, but features large specimen trees that are desired to remain. In a Category II easement area, activities such as mowing and clearing of understory are allowed, provided they do not damage or kill the large trees covered by the easement. Similar to Category I easements, activities such as construction, paving and grading of land are prohibited. These easements are extremely important in protecting large trees that may not be inside forest area.

*Forest conservation fund.* A special fund maintained by the city to be used for purposes and in the manner specified by resolution of the city council and referenced in section 22-9(f).

*Forest conservation plan.* A plan approved pursuant to sections 22-7 and 22-8 of this chapter.

*Forest conservation threshold.* The percentage of the net tract area at which the reforestation requirement changes from a ratio of one-quarter ( 1/4) acre planted for every one acre removed to a ratio of two (2) acres planted for every one removed.

*Forest cover.* The area of a site meeting the definition of forest.

*Forest stand delineation.* The evaluation of a site's existing forest and other vegetation in relation to the natural resources on a site proposed for development or subject to land-disturbing activities, as provided in the state or city forest conservation technical manual.

*Growing season.* The period of consecutive frost-free days as stated in the current Soil Survey for Montgomery County, published by the National Cooperative Soil Survey Program, 16 U.S.C. Sec. 596(a)--(f).

*High-density residential.* For the purposes of this chapter, an area zoned for densities

greater than one dwelling unit per forty thousand (40,000) square feet, including both existing and planned development and their associated infrastructure, such as roads, utilities, water and sewer service.

*Institutional development.* Land occupied by uses such as schools, colleges and universities, places of worship or religious institutions, military installations, transportation facilities, utility and sewer projects, government offices and facilities, golf courses, recreation areas, parks, and cemeteries.

*Land-disturbing activities.* To cause disturbance of the earth including, but not limited to, any excavating, filling, stockpiling of earth materials, grubbing, root mat or topsoil disturbance, or any combination of them.

*Landscaping plan.* A plan providing for reforestation or afforestation of an area at least thirty-five (35) feet wide and two thousand five hundred (2,500) square feet using native or indigenous plants when appropriate and is part of an approved forest conservation plan.

*Lot.* A unit of land, the boundaries of which have been established as a result of a deed or previous subdivision of a larger parcel and which will not be the subject of further subdivision, as defined under section 5-1601 of the Natural Resources Article of the Maryland Code, without an approved forest stand delineation and forest conservation plan.

*Mixed-use development.* A single, relatively high-density development project, which includes two (2) or more types of land uses.

*Net tract area.* The total area of a tract, including both forested and unforested areas, to the nearest one-tenth ( 1/10) acre, reduced by the area found to be within the boundaries of the 100-year floodplain; except that in agriculture and resource areas, net tract area is the portion of the total tract for which land use will be changed or will no longer be used for primarily agricultural activities, reduced by the area found to be within the boundaries of the 100-year floodplain.

*Nontidal wetland.* An area regulated as a nontidal wetland under Natural Resources Article, sections 8-1201--1211, Annotated Code of Maryland, and COMAR 08.05.04.

*Obligee.* A person obligated under a financial security instrument to meet certain regulatory requirements under Article II of this chapter.

*Off-site.* Outside the limits of the area encompassed by the tract.

*On-site.* Within the limits of the area encompassed by the tract, including an area classified as a 100-year floodplain.

*Optional method map amendment.* An amendment to the city zoning map using the method defined in section 24-198 of Chapter 24 of the City Code.

*Person.* The federal government, the state, any county, municipal corporation, or other political subdivision of the state, or any of their units, including the city department of public works, or an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, common ownership community or other homeowners' association, public or private corporation or any of their affiliates or subsidiaries, or any other entity.

*Planning commission.* The city planning commission of the City of Gaithersburg.

~~*Planning director.* The director of the city planning department or the director's designee.~~

*Preliminary site plan.* The second site development plan submitted for planning commission review, as part of the overall site development review process. The plan that is prepared by a civil engineer and meets the minimum informational requirements of the planning department's checklist.

*Preliminary subdivision plan.* A plan for a proposed subdivision or resubdivision prepared and submitted for approval by the planning commission pursuant to Chapter 20 of the City Code prior to preparation of a final subdivision plat.

*Public utility.* Includes the following:

- (1) The transmission lines and the electric generating stations licensed under Article 78, section 54A and 54B or 54-I of the Maryland Code; and
- (2) Water, sewer, electric, gas, telephone, and cable facilities and lines.

*Reforestation or reforested.* The creation of a biological community dominated by trees and other woody plants (including plant communities, the understory, and forest floors) containing at least one hundred (100) live trees per acre with at least fifty (50) percent of those trees having the potential of attaining a two-inch or greater diameter measured at four and one-half (4.5) feet above the ground, within seven (7) years. Reforestation includes the landscaping of areas under an approved landscaping plan that establishes a forest at least thirty-five (35) feet wide and covering at least two thousand five hundred (2,500) square feet of land area.

*Redevelopment.* Any construction, alteration, or improvement performed on sites where existing land use is commercial, industrial, institutional, or multifamily residential and existing site impervious area exceeds 40 percent.

*Retention.* The deliberate holding and protecting of existing trees and other plants on the site per the methods outlined in the technical manual.

*Schematic development plan.* For sites zoned MXD, the plan defined in Chapter 24, section 24-160D.9(b) of the City Code. For optional method map amendments, the plan defined in Chapter 24, section 24-198(a) of the City Code.

*Sediment control permit.* A permit required to be obtained for certain land-disturbing activities:

- (1) Pursuant to Chapter 8 of the City Code;
- (2) From the Washington Suburban Sanitary Commission for major utility construction as defined under regulations of the commission.

*Selective clearing.* As defined in the state or city technical manual, whichever is in effect at the time.

*Site plan.* A plan or an amendment to a plan approved under Article V, Chapter 24 of the City Code.

*Sketch plan.* For sites zoned MXD, the plan defined in Chapter 24, section 24-160D.9(a) of the City Code.

*Special exception.* A use identified as a special exception in any zoning district and required to be approved under Article VII, Chapter 24 of the City Code.

*Specimen tree.* Trees that are part of a historic site; or have been designated as a champion tree by the state, county or city; or have a diameter at four and one-half (4.5) feet above the ground of twenty-four (24) inches or more; or have exceptional canopy shape and beauty; or are rare, threatened, endangered species, or are individually identified on an approved forest conservation plan, or seventy-five (75) percent or more of the DBH of the current state champion of that species.

*Steep slopes.* Those slopes referred to in the state or city technical manual, whichever is in effect at the time.

*Streams.* Intermittent streams are those in which surface water is absent during part of the year; and perennial streams are those containing surface water through the rainfall year. All streams are those shown on the most recent 7.5-minute topographic quadrangle published by the U.S. Geologic Survey, as confirmed by field verification.

*Stream buffer.* All lands lying within ~~fifty (50) feet~~ one hundred (100) feet, up to one hundred fifty (150) feet, measured from the top of each stream normal bank, of a perennial or intermittent stream defined by the Environmental Standards for Development Regulation..

*Technical manual.* A detailed guidance document used for administration of this chapter that is adopted by the mayor and council pursuant to section 22-13.

*Tract.* The property subject to subdivision, a development application or a sediment control permit.

*Tree.* A large, woody plant having one or several self-supporting stems or trunks and numerous branches that reach a height of at least twenty (20) feet at maturity.

*Tree cover.* The combined area, in square feet, of the canopy of all trees on a tract. For replanting purposes, tree cover is the typical canopy area for a specific tree at maturity as listed in the city technical manual.

*Variance.* Relief from this chapter, pursuant to section 22-12 of this chapter. It does not mean a subdivision or zoning variance.

*Watershed.* All lands lying within an area described as subbasin in water quality regulations adopted by the state department of environment under COMAR 26.08.02.08.

### **Sec. 22-3. Applicability.**

Except as otherwise provided in this chapter, this chapter applies to:

- (a) A person required by law to obtain schematic development plan approval, preliminary subdivision approval, or site plan approval for new development or redevelopment or properties applying for annexation;
- (b) A person required by law to obtain special exception approval or a sediment control permit for a proposed activity on an area of land ~~[[forty thousand (40,000)]]~~ twenty thousand (20,000) square feet or larger and who is not otherwise required to obtain an approval under subsection 22-3(a) of this chapter; and
- (c) A person using state funds to conduct a nonexempt activity shall comply with COMAR 08.19.04.01 D--G.

#### **Sec. 22-4. Exemptions.**

The following are exempt from the requirements of this chapter:

- (a) An activity conducted on an existing single lot zoned residential, a linear project or dwelling house of any size that:
  - (1) Is the subject of a recorded plat;
  - (2) Does not result in the cumulative cutting, clearing or grading of more than ten thousand (10,000) square feet of forest;
  - (3) Will not result in the cutting, clearing or grading of any trees or forest that are subject to the requirements of a previously approved forest conservation plan or site plan; and
  - (4) Is subject to a declaration of intent filed with the planning director stating that the lot will not be the subject of additional development, resubdivision or other regulated activities pursuant to this chapter within five (5) years of the cutting, clearing or grading of forest;
- (b) An agricultural activity that is exempt from both platting requirements under Chapter 20 of the City Code and requirements to obtain a sediment control permit under Chapter 8 of the City Code, and does not result in the cutting or clearing of more than ~~[[forty thousand (40,000)]]~~ twenty thousand (20,000) square feet of forest. Agricultural support buildings and related activities are exempt only if built using best management practices;
- (c) A tree nursery;

\* \* \* \*

~~[(j) A preliminary subdivision or preliminary site plan approved prior to July 1, 1991.]~~

~~[(k) A schematic development plan for sites zoned MXD approved prior to January 1, 1992.]~~

- (j) An amendment to any application or plan approved prior to the effective date of this chapter that does not result in the cutting or clearing of any trees or forest shown to be retained on an approved site plan, landscape plan, tree conservation plan or forest conservation plan.
- (k) A linear project which disturbs less than 20,000 square feet of forest is exempt with the same exemption conditions as a single family residential lot.

#### **Sec. 22-5. Exemptions; special transition provisions.**

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#### **Sec. 22-6. Utility lines.**

- (a) *General.*

\* \* \* \*

- (b) *Calculation rules; single lot exemption.*

- (1) To determine the applicability of this chapter under section 22-3(b) to proposed activities within a public right-of-way or public utility easement, the calculation of land area must be based on the limits of disturbance as shown on the sediment control permit.
- (2) A public right-of-way, public utility easement, or privately owned utility right-of-way is considered to be a single lot for purposes of an exemption under section 22-4(a) if the proposed activity and any future stages of the work on the utility line will not result in the cumulative cutting, clearing or grading of more ~~[[than forty thousand (40,000)]]~~ twenty thousand (20,000) square feet of forest or the cutting, clearing or grading of any trees or forest that are subject to a previously approved forest conservation or tree save plan. A declaration of intent is not required under section 22-4(a)(4); however, any subsequent stages of the work must be identified at the time of the initial sediment control permit application.
- (3) If the single lot exemption is not applicable, afforestation or reforestation requirements must be calculated using the net tract area applicable to the entire proposed utility line without regard to project segments subject to a specific sediment control permit. The property boundaries of the privately owned utility right-of-way, public utility easement or public right-of-way (to the extent of the utility work) must be used in calculating the area of the tract. The net tract area should reflect any reduction in land area that will continue to be used for agricultural activities.



## ARTICLE II. FOREST STAND DELINEATIONS AND FOREST CONSERVATION PLANS

### Sec. 22-7. General.

- (a) *Approval required.* A person who is subject to this article must submit a forest stand delineation and forest conservation plan for regulatory approval.
- (b) *Forest stand delineation/Natural resource inventory.*
  - (1) A forest stand delineation / natural resource inventory is to be used during the conceptual review process to determine the most suitable and practical areas for tree and forest conservation. A forest stand delineation must contain topographic, hydrographic (including streams), soils and geologic, and qualitative and quantitative information on trees and forest cover, and other information or requirements specified in the technical manual or as may be required by the city planning commission or planning staff.
  - (2) The ~~planning~~ director may waive any requirement for information that is deemed to be unnecessary for a specific site.
  - (3) A forest stand delineation / natural resource inventory is not valid after three (3) years unless:
    - (i) A forest conservation plan has been accepted as complete; or
    - (ii) The delineation has been recertified by the preparer.
- (c) *Forest conservation plan.*

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### Sec. 22-8. Application, review and approval procedures.

- (a) *Coordinated with project review.* Submittal and review of the forest stand delineation and forest conservation plan must be done in conjunction with the various review processes listed in this article. The ~~planning director~~ Department of Planning and Code must coordinate the review of the forest conservation plan with other city departments, the Washington Suburban Sanitary Commission and other relevant regulatory agencies, and entities that will provide public utilities to the tract to promote consistency between the objectives of this chapter and other development requirements. To the extent practicable, entities providing public utilities should design facilities that will serve a tract in a manner that avoids identified conservation areas and minimizes tree loss.
- (b) *Modification to an approved plan.* The ~~planning~~ director may approve field modifications to an approved forest conservation plan that are consistent with this chapter.
- (c) *Forest stand delineation/natural resource inventory.* The applicant must submit to the Department of Planning and Code ~~planning director~~ a forest stand delineation / natural resource inventory with an application for site development, including: concept plan review, preliminary subdivision or preliminary site plan review, special exception and

conditional use applications, schematic development plan application; final site plan application, and; with other applications including: optional method local map amendment application, local map amendment and sketch plan approval for the MXD Zone, and annexation petition. Within thirty (30) days of receipt, the ~~planning director~~ must notify the applicant whether the forest stand delineation is complete and correct. If the ~~planning~~ director fails to notify the applicant within thirty (30) days, the delineation will be treated as complete and correct. The ~~planning~~ director may require further information ~~or~~ and provide for ~~one extension~~s of this deadline for ~~an additional fifteen (15) days for extenuating circumstances.~~

(d) *Forest conservation plan.*

- (1) *Application.* Upon notification that the forest stand delineation / natural resource inventory is complete and correct, the applicant must submit a forest conservation plan to the ~~planning director~~ Department of Planning and Code excluding local map amendment applications that do not include a development plan of any type. If the development proposal will require more than one of the approvals subject to this subsection, the applicant must submit a preliminary forest conservation plan to the ~~planning director~~ Department of Planning and Code in conjunction with the first approval and a final forest conservation plan in conjunction with the last approval. If only one approval subject to this subsection is required, the applicant must submit a final forest conservation plan only. The preliminary and final forest conservation plans must meet the submittal requirements of the technical manual.
- ~~(2)~~ *Review.* ~~Within forty-five (45) days from receipt of a final forest conservation plan, including a plan that is not reviewed in two (2) stages, the planning director must notify the applicant whether the forest conservation plan is complete and approved for submission to the planning commission as part of the development application. If the applicant is not notified within forty-five (45) days, the plan will be treated as complete and approved for submission. The planning director may require further information or provide for one extension of this deadline for an additional fifteen (15) days for extenuating circumstances. In addition, at the request of the applicant, the director may extend this deadline for extenuating circumstances.~~
- ~~(3)~~ (2) *Condition of approval.* The forest conservation plan will be reviewed by the planning commission concurrently with and as a part of the concept plan, preliminary subdivision or preliminary site plan, schematic development plan, final or amendment to site plans, or special exception application as appropriate. The forest conservation plan, as may be amended by the commission, must be made a condition of any approval of the development application. For a schematic development plan approved by the city council, or a special exception approved by the board of appeals, the commission may recommend specific amendments to the forest conservation plan.
- (4) *Revocation.]* The planning commission may revoke an approved forest conservation plan if it finds that a provision of the plan has been violated, approval of the plan was obtained through fraud, misrepresentation, a false or misleading statement, or omission of a relevant or material fact. Before revoking approval, the planning commission shall notify the violator in writing and provide an opportunity for a hearing.

(e) *Issuance of sediment control permit.* A sediment control permit must not be issued to a person who must comply with this article until:

- (1) A final forest conservation plan, if required, is approved;
- (2) Any financial security instrument required under this chapter is provided; and
- (3) Protective devices for retained areas, required by the forest conservation plan, have been installed and approved by inspection of by the city ~~planning~~ department.

#### **Sec. 22-9. Retention, afforestation and reforestation requirements.**

(a) *Table.*

Forest Conservation Threshold  
as a Percentage of Net Tract Area

TABLE INSET:

| <i>Land Use Category</i>            | <i>Forest Conservation Threshold</i> |
|-------------------------------------|--------------------------------------|
| Institutional development areas     | 20%                                  |
| High-density residential areas      | 20%                                  |
| Mixed-use development areas         | 15--20%*                             |
| Commercial and industrial use areas | 15%                                  |

~~\* The residential and institutional portions of the tract must meet the twenty (20) percent requirement.~~

(b) *Retention.* The primary objective of the forest conservation plan is to retain existing forest cover and avoid reforestation in accordance with this chapter by retaining forest up to the level of the "break even point" as defined in the technical manual. The forest conservation plan must retain certain vegetation and specific areas and they shall be left in an undisturbed condition unless the applicant can demonstrate, to the satisfaction of the planning commission, that reasonable efforts have been made to protect them and the development proposal cannot be reasonably altered. ~~In general, these areas include certain floodplains, stream buffers, steep slopes and areas of highly erodible soils, and critical habitats; contiguous forests; rare, threatened and endangered species; trees connected to an historic site and exceptionally large trees, specimen trees and champion trees.~~

The following trees, shrubs, plants, and specific areas shall be considered priority for retention and protection;

- (1) trees, shrubs, and plants located in sensitive areas including 100-year floodplains, intermittent and perennial streams and their buffers, coastal bays and their buffers, steep slopes, and critical habitats; and
- (2) contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site.to the site.

(c) *Reforestation.* The forest conservation plan must provide for reforestation as follows:

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(d) *Afforestation.*

\* \* \* \*

(e) *Standards for reforestation and afforestation.*

(1) *Preferred sequence.* Except as provided in the technical manual or otherwise in paragraph (1) of this subsection, the preferred sequence for afforestation and reforestation is, in general, selective clearing, on-site afforestation or reforestation, landscaping with an approved plan, off-site retention, afforestation or reforestation, and natural regeneration on-site and natural regeneration off-site.

(2) *Governmental considerations.* The sequence provided in subsection (1) of this subsection may be modified for a specific project if the applicant demonstrates to the satisfaction of the planning commission that a different sequence is necessary:

(i) To achieve the objectives of a master plan or other city land use policies or to take advantage of opportunities to consolidate forest conservation efforts; or

(ii) For public sites acquired or required to be dedicated before July 1, 1991, to ensure that the site can be used for its intended purpose without major design changes; or

(iii) For educational, recreational and public safety facilities, to ensure that public safety is not compromised.

(3) *Public utility considerations.* The sequence provided in subsection (1) of this subsection for public utility projects may be modified to reflect applicable electrical or other safety codes or right-of-way constraints.

(4) *Priority areas and plantings.* Afforestation and reforestation should be directed to ~~[stream buffer areas,]~~ floodplains, including 100-year floodplains, intermittent and perennial streams and their buffers, connections between and additions to forested areas, contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site, critical habitat areas, steep slopes, and land use and road buffers, and they shall be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the City of Gaithersburg, that reasonable efforts have been made to protect them and the plan cannot reasonably be altered.

The use of native plant materials, when appropriate, is preferred and should be taken from the list of recommended species contained in the technical manual. Unless otherwise provided by the planning commission or planning director, the required use of natural regeneration under this chapter supersedes any prohibition under Chapter 17AA of the City Code.

(5) *Location requirements.* Required reforestation or afforestation must occur within both the city limits and watershed in which the project is located, except that if it cannot be reasonably accomplished within both the city limits and watershed in which the project is located, then the reforestation or afforestation may occur anywhere in the city or anywhere in the watershed in which the project is located.

(6) *Deadline for plant installation.* The afforestation and reforestation requirements under this section must be accomplished within two (2) growing seasons after development project completion.

(f) *In-lieu fee.* If a person satisfactorily demonstrates that the requirements for reforestation or afforestation on-site or off-site cannot be reasonably accomplished, the person must pay a fee to the forest conservation fund established by resolution of the city council at a rate specified by the city council by law or resolution, but not less than the rate required under section 5-1610 of the Natural Resources Article of the Maryland Code. Payment of the prescribed fee must occur within ninety (90) days after development project completion. In-lieu fees shall be deposited into the Forest Conservation Trust Fund.

(1) Fund Established: The Director of Finance shall establish an account to be known as the forest conservation trust fund. No monies deposited in this account may revert to the general fund.

(2) Source of Moneys in Forest Conservation Trust Fund: Fees paid in- lieu-of reforestation or afforestation shall be deposited in the forest conservation fund. Interest earned by money in the forest conservation trust fund shall remain in the fund.

(3) Use of Forest Conservation Trust Fund: The minimum in-lieu fees established by the state may be expended by the city for afforestation or reforestation within the City of Gaithersburg, including site identification, acquisition, and preparation and for acquisition of forest retention easements, and the maintenance of existing forests and the achievement of canopy goals

(4) In- lieu-of fees above the state minimums and noncompliance penalties may be used by the city for any purposes related to and to further the implementation of the city's urban forestry goals.

(g) *Agreements.*

\* \* \* \*

(i) *Exception; special provision for smaller tracts.* This section does not apply to governmental entities.

- (1) For tracts under ~~[[forty thousand (40,000)]]~~ twenty thousand (20,000) square feet, the planning commission may approve a modified forest conservation plan without the need for an applicant to obtain a variance under this chapter.
- (2) The city manager or designee may waive or modify requirements under this chapter for financial security, a short-term maintenance agreement and long-term protective measures.
- (3) Retention, afforestation and reforestation should be required in accordance with this section. However, the afforestation and reforestation requirements for a tract subject to this section may be calculated in terms of tree cover instead of forest cover. The planning commission may grant a waiver of afforestation or reforestation requirements upon a showing of hardship or other appropriate justification.

### **ARTICLE III. ENFORCEMENT, APPEALS, VARIANCES AND ANNUAL REPORT AND BIENNIAL REVIEW**

#### **Sec. 22-10. Inspections and notification.**

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#### **Sec. 22-11. Penalties and other remedies.**

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#### **Sec. 22-12. Variance provisions.**

(a) The following trees, shrubs, plants, and specific areas shall be considered priority for retention and protection, and they shall be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the City of Gaithersburg that the applicant qualifies for a variance under 22-12(d) of this chapter:

- (1) Trees, shrubs, or plants identified on the list of rare, threatened, and endangered species of the U.S. Fish and Wildlife Service or the State of Maryland;
- (2) Trees that are part of a historic site, historic resource, or associated with a historic district or designated by the State of Maryland or City of Gaithersburg as a national, State, or local Champion Tree; and
  - (i) Trees that are part of a historic site, historic resource, or associated with a historic district shall be subject to the Historic Preservation Ordinance under Chapter 24, Article XII of the City Code.
- (3) Trees having a diameter measured at 4.5 feet above the ground of:
  - (i) 1. 30 inches; or

- (ii) 2. 75% of the diameter, measured at 4.5 feet above the ground, of the current State Champion Tree of that species as designated by the Department.

(a) ~~(b)~~ *Written request.* A person may request from the planning commission, or the city council on a development plan, in writing a variance from this chapter or any regulation adopted under it if the person demonstrates that enforcement would result in unnecessary hardship or practical difficulty to the person. ~~A request for a variance waives the time requirements in section 22-8.~~

~~(b)~~ (c) *Application requirements.* An applicant for a variance must:

- (1) Describe the special conditions peculiar to the property which would cause the hardship;
- (2) Describe how enforcement of these rules will deprive the landowner of rights commonly enjoyed by others in similar areas;
- (3) Verify that state water quality standards will not be violated or that a measurable degradation in water quality will not occur as a result of the granting of the variance; and
- (4) Provide any other information appropriate to support the request.

~~(c) *Referral to other agencies.* Before considering a variance, the planning commission must refer a copy of each request to the planning department and other appropriate officials or agencies for a written recommendation before acting on the request. Recommendations must be submitted to the planning commission within thirty (30) days from the receipt by the official or agency of the request or the recommendation should be presumed to be favorable.~~

(d) *Minimum criteria.* A variance must not be granted if granting the request:

- (1) Will confer on the applicant a special privilege that would be denied to other applicants;
- ~~(2) Is based on conditions or circumstances which are the result of the actions by the applicant;~~
- ~~(3)~~ (2) Arises from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; or
- ~~(4)~~ (3) Will violate state water quality standards or cause measurable degradation in water quality.

(e) *Approval procedures; conditions.* The planning commission, or the city council on a development plan, must make findings that the applicant has met all requirements of this section before granting a variance. Appropriate conditions may be imposed to promote the objectives of this chapter and protect the public interest.

~~(f) *Notice to state department of natural resources; right to initiate or intervene in proceedings.*~~

- ~~(1) Notice of a pending variance request must be given to the department of natural resources within fifteen (15) days of receipt of a request for a variance.~~
- ~~(2) The department of natural resources may initiate or intervene in an administrative, judicial or other original proceeding or appeal in the state concerning an approval of a variance.~~

**Sec. 22-13. Annual report and biennial review.**

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**ARTICLE IV. FOREST CONSERVATION TECHNICAL MANUAL**

**Sec. 22-14. State and city technical manuals.**

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ADOPTED, this 7th day of September, 2010, by the City Council of Gaithersburg, Maryland.

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SIDNEY A. KATZ, MAYOR and  
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this 7th day of September, 2010. Approved by the Mayor of the City of Gaithersburg this 7th day of September, 2010.

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SIDNEY A. KATZ, MAYOR

THIS IS TO CERTIFY that the foregoing ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the 7th day of September, 2010, and that the same was approved by the Mayor of the City of Gaithersburg on the 7th day of September, 2010. This Ordinance will become effective on the 27<sup>th</sup> day of September, 2010.

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Angel L. Jones, City Manager