

## ARTICLE XV

### ESTABLISHMENT OF RIPARIAN SETBACKS

#### **Section 1500.0 Purpose and Intent**

- A. The specific purpose and intent of these regulations is to regulate buildings, structures, and uses within riparian setback areas that would impair the ability of these areas to:
1. Reduce flood impacts by absorbing peak flows, slowing the velocity of flood waters, and regulating base flow.
  2. Assist in stabilizing the banks of designated watercourses to reduce woody debris from fallen or damaged trees, stream bank erosion, and the downstream transport of sediments eroded from such watercourse banks.
  3. Reduce pollutants in designated watercourses during periods of high flows by filtering, settling, and transforming pollutants already present in such watercourses.
  4. Reduce pollutants in designated watercourses by filtering, settling, and transforming pollutants in runoff before they enter such watercourses.
  5. Provide designated watercourse habitats with shade and food.
  6. Reduce the presence of aquatic nuisance species to maintain a diverse aquatic system.
  7. Provide riparian habitat with a wide array of wildlife by maintaining diverse and connected riparian vegetation.
  8. Minimize encroachment on designated watercourses and limiting the potential need for invasive measures that may otherwise be necessary to protect buildings, structures, and uses as well as to reduce the damage to real property and threats to public and safety within the affected watershed.
  9. Preserve and conserve the quality and free flowing condition of designated watercourses in the interest of promoting and protecting public health and safety.
- B. These regulations have been enacted to protect and enhance the functions of riparian areas by providing reasonable controls governing buildings, structures, and uses within a riparian setback along designated watercourses in the township.
- C. These regulations have been enacted in compliance with the \_\_\_\_\_ Township Phase II Storm Water Management Program, adopted \_\_\_\_\_, 2003, as required by 40 C.F.R. Parts 9, 122, 123, and 124.

**Note: Paragraph "C" applies only to those townships within the EPA Phase II Storm Water Management Program.**

**Section 1501.0      *Applicability***

- A. These regulations shall apply to all zoning districts.
- B. The regulations set forth herein shall apply to all buildings, structures, and uses on a lot containing a designated watercourse, except as otherwise provided herein.
- C. The use of any building, structure or lot lawfully existing prior to the effective date of these regulations may be continued, subject to the provisions of Article [xxx], Nonconforming Buildings, Structures, and Uses.
- D. The repair, maintenance, extension, replacement, restoration, reconstruction or substitution of a building structure or use lawfully existing prior to the effective date of these regulations may be continued or completed, subject to the provisions of Article [xxx], Nonconforming Buildings, Structures, And Uses.
- E. No zoning certificate or conditional zoning certificate shall be issued for any building, structure or use on a lot containing, wholly or partly, a designated watercourse except in conformity with the regulations set forth herein.

**Section 1502.0      *Definitions***

For the purpose of these regulations, the following terms shall have the meanings as provided herein.

- A. ***“Damaged or Diseased Trees”*** means trees that have split trunks; broken tops; heart rot; insect or fungus problems that will lead to imminent death; undercut root systems that put the tree in imminent danger of falling; lean as a result of root failure that puts the tree in imminent danger of falling; or any other condition that puts the tree in imminent danger of being uprooted or falling into or along a watercourse or on to building or structure.
- B. ***“Designated Watercourse”*** means a river or stream within the township that is in conformity with the criteria set forth in these regulations and is shown on the “riparian setback map” identified as exhibit “\_\_\_\_\_” attached hereto and made a part hereof.
- C. ***“Federal Emergency Management Agency (FEMA)”*** means the agency with overall responsibility for administering the National Flood Insurance Program.
- D. ***“Impervious cover”*** means any paved, hardened or structural surface regardless of its composition including (but not limited to) buildings, roads, driveways, parking lots, loading/unloading spaces, decks, patios, and swimming pools.
- E. ***“Land Development Activity”*** means any change to the surface area of a lot including (but not limited to) clearing, grubbing, stripping, removal of vegetation, dredging, grading, excavating, cut and fill, construction of buildings or structures, paving, and any other installation of impervious cover.
- F. ***“Ohio Environmental Protection Agency”*** means the governmental agency referred to herein as the Ohio EPA.
- G. ***“One Hundred Year Floodplain”*** means any land susceptible to being inundated by water

from a base flood. The base flood is the flood that has a one percent or greater chance of being equaled or exceeded in any given year. The one hundred year floodplain shall be defined by the Federal Emergency Management Agency maps of the township.

- H. **“Ordinary High Water Mark”** means the point of the bank to which the presence and action of surface water is so continuous as to leave an area marked by erosion, destruction or prevention of woody terrestrial vegetation, predominance of aquatic vegetation or other easily recognized characteristic. The ordinary high water mark defines the bed of a watercourse.
- I. **“Riparian Area”** means naturally vegetated land adjacent to designated watercourses that, if appropriately sized, helps to stabilize streambanks, limit erosion, reduce flood size flows and/or filter and settle out runoff pollutants or performs other functions consistent with the purposes of these regulations.
- J. **“Riparian Setback”** means the real property adjacent to a designated watercourse located within the area defined by the criteria set forth in these regulations.
- K. **“Soil and Water Conservation District (SWCD)”** means the Lucas County, Ohio Soil and Water Conservation District, organized under Chapter 1515 of the Ohio Revised Code, including the Board of Supervisors and its designated employees.
- L. **“Soil Disturbing Activity”** means clearing, grading, excavating, filling or other alteration of the earth’s surface where natural or human made ground cover is destroyed and which may result in, or contribute to, erosion and sediment pollution.
- M. **“Waste Water Treatment Plant (WWTP)”** means a facility at the end of sanitary collection system, which processes the influent waste and discharges water to a receiving stream, treated to the standards of the Ohio EPA.
- N. **“Watercourse”** means any brook, channel, creek, river, or stream having banks, a defined bed, and definite direction of flow, either continuously or intermittently flowing.
- O. **“Wetland”** means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, and similar areas. (40 C.F.R. 232, as amended).
- P. **“Wetlands, Category 1”** means a low quality wetlands classification as defined in Ohio Administrative Code (OAC) Rule 3745-1-54(C) of the Ohio EPA.
- Q. **“Wetlands, Category 2”** means a medium quality wetlands classification as defined in Ohio Administrative Code (OAC) Rule 3745-1-54(C) of the Ohio EPA.
- R. **“Wetlands, Category 3”** means a high quality wetlands classification as defined in Ohio Administrative Code (OAC) Rule 3745-1-54(C) of the Ohio EPA.

**Section 1503.0      Establishment of Designated Watercourses and Riparian Setbacks**

- A. A designated watercourse shall include one or more of the following criteria.

1. All watercourses draining an area equal to or greater than one-half (0.5) square mile, or
  2. All watercourses draining an area less than one-half (0.5) square mile and having a defined bed and bank. In determining if watercourses have a defined bed and bank, the zoning inspector may consult with representatives of the Lucas SWCD or other technical experts.
- B. Riparian setbacks on designated watercourses shall be established as follows.
1. A minimum of 120 feet from each bank of all designated watercourses draining an area equal to or greater than to 20 square miles.
  2. A minimum of 75 feet from each bank of all designated watercourses draining an area equal to or greater than one-half (0.5) square mile and up to 20 square miles.
  3. A minimum of 25 feet from each bank of all designated watercourses draining an area less than one-half (0.5) square mile and having a defined bed and bank as determined in these regulations.
- C. The following regulations shall apply to riparian setbacks.
1. Riparian setbacks shall be measured in a horizontal direction outward from the ordinary high water mark of a designated watercourse.
  2. Except as otherwise provided in this regulation, riparian setbacks shall be preserved in their natural state.
  3. Where a wetland is wider than the minimum riparian setback on either or both sides of a designated watercourse, the minimum riparian setback shall be extended to include the outermost boundary of the wetland, plus the following additional setback widths based upon the particular wetland category. Wetlands shall be delineated through a site survey prepared by a qualified wetlands professional retained by the lot owner using delineation protocols accepted by the U.S. Army Corps of Engineers at the time of the application of these regulations.
    - a. An additional setback of 50 feet extending beyond the outermost boundary of a category 3 wetlands.
    - b. An additional setback of 30 feet extending beyond the outermost boundary of a category 2 wetlands.
    - c. No additional setback shall be required beyond the outermost boundary of a category 1 wetlands.

**Section 1504.0      *Riparian Setback Map***

- A. The Township shall create a map identifying designated watercourses and their riparian setbacks. Said map is attached hereto and made a part of this regulation and is identified as Exhibit "A." The riparian setback map may be utilized as a reference document by the zoning inspector and the board of zoning appeals.

- B. Nothing herein shall prevent the township from amending the riparian setback map from time to time as may be necessary.
- C. If any discrepancy is found between the riparian setback map and these regulations, the most restrictive shall prevail.

**Section 1505.0      *Applications and Site Plan***

- A. The owner shall be responsible for delineating riparian setbacks as required by these regulations and shall identify such setbacks on a site plan submitted to the zoning inspector. The site plan shall be prepared by a professional engineer, surveyor, soils scientist, landscape architect or such other qualified professional and shall be based upon a survey of the affected lot. Two (2) copies of the site plan shall be submitted. In addition to the requirements set forth in this resolution for a zoning certificate or a conditional zoning certificate, the owner shall provide the following information to the zoning inspector.
  - 1. A site plan depicting, at a minimum, the following.
    - a. The boundaries of the lot with dimensions.
    - b. The location of all designated watercourses.
    - c. The limits, with dimensions, of the minimum riparian setback.
    - d. The existing topography at intervals of two feet.
    - e. The location and dimensions of any existing and proposed buildings, structures and uses in relationship to all designated watercourses.
    - f. The description and location, with dimensions plus a calculation of the total area, of all land development activities, soil disturbance, and impervious cover.
    - g. The description and depiction of all erosion and sedimentation controls plus all storm water management controls, including all temporary and permanent best management practices.
    - h. A detailed landscaping plan including the identification of all tree and plant species and other vegetative cover to be affected and utilized.
    - i. If the lot included in the site plan is a part of a platted and recorded subdivision, the riparian setback shall be as shown on said plat.
    - j. North arrow, scale, date, and stamp bearing the name and registration number of the professional consultant who prepared the plan shall be provided.
  - 2. Such other supplementary information as may be necessary for the zoning inspector or the board of zoning appeals to ensure compliance with the provisions of these regulations.
- B. The zoning inspector, may, in reviewing the site plan, consult with the Lucas SWCD or such other expert(s) retained by the board of township trustees.
- C. If land development or soil disturbance activities will occur within 50 feet of the outer boundary of the applicable riparian setback as specified in these regulations, prior to the initiation of any land development or soil disturbance activities, the riparian setback shall be clearly delineated on the affected lot by the owner with construction fencing as shown on the site plan and shall be maintained on the lot until the completion of such development or disturbance activities. No zoning certificate or conditional zoning certificate shall be issued until the riparian setback delineation has been completed on the lot in accordance with the

approved site plan.

**Section 1506.0      *Permitted Buildings, Structures and Uses Within a Riparian Setback Without a Zoning Certificate***

Only the following buildings, structures, and uses may be permitted within a riparian setback without a zoning certificate.

**Note: The following provisions are optional and may be modified by the township.**

- A. Recreational Activities: Fishing, hunting, picnicking, picnic tables, picnic shelters, and wildlife observation areas; trails, walkways, and paths for nonmotorized vehicles constructed of pervious materials.
- B. Removal of Damaged or Diseased Trees: Damaged or diseased trees and other associated debris may be removed.
- C. Maintenance and Repairs: Maintenance and repair on roads, driveways, bridges, culverts, trails, walkways, paths, wastewater treatment plants and appurtenances, water wells, water treatment plants and appurtenances, storm sewers, and on-site sewage systems.
- D. Maintenance and Cultivation of Lawns and Landscaping: The maintenance of existing, and the cultivation of new, lawns, landscaping, shrubbery, and trees.
- E. Water Supply Wells: Water supply wells subject to the regulations enforced by the Toledo-Lucas County Health Department or the Ohio EPA.
- F. Open Space: Passive open space to preserve the riparian setback area in its natural state.
- G. Composting: Composting of natural materials from the affected lot, not for commercial retail sale or use.
- H. On-site Sewage Systems: On-site sewage systems subject to the regulations enforced by the Toledo-Lucas County Health Department or the Ohio EPA.

**Section 1507.0      *Permitted Buildings, Structures and Uses Within a Riparian Setback With a Zoning Certificate***

Only the following buildings, structures, and uses may be permitted within a riparian setback, subject to the approval of an application for a zoning certificate by the zoning inspector and in accordance with the following regulations and such other applicable regulations contained in this zoning resolution.

**Note: The following provisions are optional and may be modified by the township.**

- A. Crossings: Crossings of designated watercourses through riparian setbacks with roads, driveways, easements, bridges, culverts, utility service lines, or other means may be permitted, subject to the other regulations contained in this resolution and the regulations enforced by the Lucas SWCD and the Lucas County Engineer. If work will occur below the

ordinary high water mark of the designated watercourse, proof of compliance with the applicable conditions of a U.S. Army Corps of Engineers Section 404 Permit (either a Nationwide Permit 14, including the Ohio State Certification Special Conditions and Limitations, or an Individual Permit, including Ohio 401 water quality certification), shall also be provided to the Zoning Inspector. Proof of compliance shall be the following:

1. A site plan showing that any proposed crossing conforms to the general and specific conditions of Nationwide Permit 14, or
2. If available, a copy of the authorization letter from the U.S. Army Corps of Engineers approving the activities under Nationwide Permit 14, or
3. A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under an Individual Permit.

B. Streambank Stabilization Projects: If streambank stabilization work is proposed below the ordinary high water mark of a designated watercourse, proof of compliance with the applicable conditions of U.S. Army Corps of Engineers Section 404 Permit (either a Nationwide Permit 13, including the Ohio State Certification Special Conditions and Limitations, or an Individual Permit, including Ohio 401 water quality certification), shall be provided to the Zoning Inspector. Proof of compliance shall be the following:

1. A site plan showing that any proposed crossing conforms to the general and specific conditions of Nationwide Permit 13, or
2. If available, a copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under Nationwide Permit 13, or
3. A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under an Individual Permit.

C. Storm Water Retention and Detention Facilities: Storm water retention and detention facilities, provided:

1. Storm water quality treatment consistent with current Ohio EPA regulations is incorporated into the basin.
2. Storm water retention and detention facilities are located at least 50 feet from the ordinary high water mark of the designated watercourse.

D. Signs: Signs in accordance with this zoning resolution.

**Section 1508.0      *Conditional Buildings, Structures and Uses Within a Riparian Setback With a Conditional Zoning Certificate***

The following conditional buildings, structures and uses may be allowed within a riparian setback, subject to the approval of an application for a conditional zoning certificate by the board of zoning appeals in accordance with the conditions herein and such other applicable regulations set forth in this zoning resolution.

**Note: The following provisions are optional and may be modified by the township.**

- A. Waste Water Treatment Plants and Appurtenances: Waste water treatment plants and appurtenances. Proof of compliance with the applicable regulations of the Ohio EPA shall be provided.
- B. Boat Ramps, Decks, and Docks: Boat ramps, decks and docks. Proof of compliance with the applicable regulations of the U.S. Army Corps of Engineers and the Lucas SWCD shall be provided.

**Section 1509.0      *Buildings, Structures and Uses Prohibited Within a Riparian Setback***

Any building, structure or use not permitted under this regulation shall be prohibited within a riparian setback. The following buildings, structures, and uses are specifically prohibited.

**Note: The following provisions are optional and may be modified by the township.**

- A. Construction: There shall be no buildings, structures or uses as of any kind except as permitted under these regulations.
- B. Dredging or Dumping: There shall be no drilling, filling, dredging or dumping of soil, spoils, liquids, yard wastes, or solid materials, except for noncommercial composting of uncontaminated natural materials as permitted under these regulations.
- C. Fences and Walls: There shall be no fences or walls.
- D. Parking Spaces or Lots and Loading/Unloading Spaces for Vehicles: There shall be no parking spaces, parking lots, or loading/unloading spaces.

**Section 1510.0      *Inspection of Riparian Setbacks***

The zoning inspector shall inspect the delineation of riparian setbacks.

- A. The owner shall notify the zoning inspector at least \_\_\_\_\_ working days prior to the initiation of any construction, land development or soil disturbing activities on a lot.
- B. The zoning inspector, with prior notice and the authorization of the owner, may enter the affected lot from time to time to conduct on-site inspections to ensure compliance with these regulations.