

SECTION XVII – RIPARIAN SETBACKS

(All Sections 7/15/2016)

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17.01 PURPOSE AND INTENT.

- A. It is hereby determined that the system of headwaters, rivers, streams, and other natural watercourses within Concord Township contributes to the health, safety, and general welfare of the residents of Concord. The specific purpose and intent of these regulations is to regulate uses and developments within riparian setbacks that would impair the ability of riparian and wetland areas to:
1. Benefit the community by minimizing encroachment on designated watercourses thereby minimizing the need for costly engineering solutions or other invasive measures that may be necessary to protect persons, buildings, structures, and uses as well as to reduce the damage to real property and threats to overall public health and safety within the affected watershed.
 2. Reduce flood impacts by absorbing peak flows, slowing the velocity of flood waters, and regulating base flow.
 3. 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 watercourse banks.
 4. Reduce pollutants in designated watercourses during periods of high flows by filtering, settling, and transforming pollutants already present in watercourses.
 5. Reduce pollutants in designated watercourses by filtering, settling, and transforming pollutants in runoff before they enter watercourses.
 6. Preserve the scenic beauty of the environment in order to maintain the character of Concord Township, the quality of life of the residents, and the corresponding property values.
- B. The following regulations have been enacted to protect and enhance these functions of riparian areas by providing reasonable controls governing buildings, structures, uses and related soil disturbing activities within a riparian setback along designated watercourses in Concord Township.

17.02 DEFINITIONS.

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

- A. CLASS III PRIMARY HEADWATER HABITAT STREAM: The highest quality primary headwater stream classification, as described in the most current version of the *Ohio EPA, Field Evaluation Manual for Ohio's Primary Headwater Habitat Streams*.
- B. COMMUNITY: Concord Township, Lake County, Ohio.
- C. DAMAGED OR DISEASED TREES: 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 onto a structure.
- D. DESIGNATED WATERCOURSE: A watercourse within Concord Township that is in conformity with the criteria set forth in these regulations.
- E. FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA): The agency with overall responsibility for administering the National Flood Insurance Program.
- F. IMPERVIOUS COVER: Any paved, hardened, or structural surface regardless of its composition including but not limited to buildings, roads, driveways, parking lots, loading/unloading areas, decks, patios, and swimming pools.
- G. LAND DEVELOPMENT ACTIVITY: Any changes 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.
- H. ONE HUNDRED YEAR FLOODPLAIN: 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 identified by the Federal Emergency Management Agency maps of the township.
- I. OHIO ENVIRONMENTAL PROTECTION AGENCY: Referred throughout these regulations as the "Ohio EPA."
- J. ORDINARY HIGH WATER MARK: The point of the bank to which the presence and action of surface water is so continuous as to leave a district 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 and bank of a watercourse.
- K. RIPARIAN AREA: Naturally vegetated and 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.
- L. RIPARIAN SETBACK: The real property adjacent to a designated watercourse located in the area defined by the criteria set forth in these regulations.

- M. SOIL AND WATER CONSERVATION DISTRICT: An entity organized under Chapter 1515 of the Ohio Revised Code referring to either the Soil and Water Conservation District Board or its designated employee(s), hereinafter referred to as Lake County SWCD.
- N. SOIL DISTURBING ACTIVITY: 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.
- O. WATERCOURSE: Any brook, channel, creek, river, or stream having banks, a defined bed and bank, and a definite direction of flow, either continuously or intermittently flowing.
- P. WETLAND: 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 CFR 232, as amended).
- Q. WETLANDS, CATEGORY 1: A low quality wetlands classification as defined in Ohio Administrative Code (O.A.C.) Rule 3745-1-54(C) of the Ohio EPA.
- R. WETLANDS, CATEGORY 2: A medium quality wetlands classification as defined in Ohio Administrative Code (O.A.C.) Rule 3745-1-54(C) of the Ohio EPA.
- S. WETLANDS, CATEGORY 3: A high quality wetlands classification as defined in Ohio Administrative Code (O.A.C.) Rule 3745-1-54(C) of the Ohio EPA.

17.03 APPLICABILITY.

- A. These regulations shall only apply when soil disturbing activities regulated by this resolution are those proposed in, or within 50 feet of, a riparian setback as set forth in these regulations.
- B. These regulations shall apply to all zoning districts within Concord Township.
- C. These regulations shall apply to all buildings, structures, uses, and related soil disturbing activities on lands containing a designated watercourse as defined in this regulation, except as otherwise provided herein.
- D. No zoning permit or conditional zoning permit shall be issued by Concord Township without full compliance with the terms of these regulations.
- E. The use of any building, structure, use or lot lawfully existing prior to the effective date of these regulations may be continued, subject to the provisions of Section VII, Nonconforming Uses.
- F. 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 Section VII, Nonconforming Uses.

17.04 ESTABLISHMENT OF DESIGNATED WATERCOURSES AND RIPARIAN SETBACKS.

- A. Designated watercourses shall include those watercourses meeting any one (1) of the following criteria:
1. All watercourses draining an area equal to or greater than one (1.0) square mile, OR
 2. All watercourses draining an area less than one (1.0) square mile and having a defined bed and bank. In determining if a watercourse is a designated watercourse, Concord Township may consult with a representative of the Lake County SWCD or other technical experts as necessary.
- B. Riparian setbacks on designated watercourses shall be established as follows:
1. A minimum of one hundred twenty (120) feet on each side of all designated watercourses draining an area equal to and greater than twenty (20) square miles.
 2. A minimum of seventy-five (75) feet on each side of all designated watercourses draining an area equal to or greater than one (1.0) square mile and up to twenty (20) square miles.
 3. A minimum of fifty (50) feet on each side of all watercourses determined to be a Class III Primary Headwater Habitat Stream.
 4. A minimum of twenty-five (25) feet on each side of all watercourses draining an area less than one (1.0) square mile and having a defined bed and bank as determined by Concord Township in Section 17.03 of this regulation.
- C. Riparian Setback Guide Map. Concord Township shall create a guide map identifying designated watercourses and their riparian setbacks. Said guide map is made part of this regulation and the most current copy shall be maintained for public inspection in the Zoning Department. The following shall apply to the Riparian Setback Guide Map:
1. It shall be used as a reference document and the information contained therein shall be believed to be accurate.
 2. It shall be a guide only.
 3. Nothing herein shall prevent Concord Township from amending the Riparian Setback Guide Map from time to time as may be necessary.
 4. If any discrepancy is found between the Riparian Setback Guide Map and this regulation, the criteria set forth in Section 17.04 (A) and (B) shall prevail.
- D. The following regulations shall apply in riparian setbacks:
1. Riparian setbacks shall be measured in a horizontal direction outward from the ordinary high water mark of each designated watercourse.
 2. Except as otherwise provided in this regulation, riparian setbacks shall be preserved in their natural state.
 3. Where the 100-year floodplain is wider than a minimum riparian setback on either or both sides of a designated watercourse, the minimum riparian setback shall be

- extended to the outer edge of the 100-year floodplain as delineated on the flood hazard boundary map(s) by FEMA.
4. Where a wetland is identified within a minimum riparian setback, the minimum riparian setback width shall be extended to the outermost boundary of the wetland, plus the following additional setbacks based upon the particular wetland category:
 - a. An additional minimum setback of fifty (50) feet extending beyond the outermost boundary of a category 3 wetlands.
 - b. An additional minimum setback of thirty (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.
 5. Upon receipt of any applications for a Zoning Permit, the Township may consult with any governmental agency or other professionals to determine if wetlands exist within a riparian setback. Any costs associated with the Township's review may be assessed to the applicant.
 6. If wetlands are identified with the riparian setback as a result of the Zoning Inspector's review, conducted pursuant to 17.04(D)(5), the applicant may, at their own expense, present a professionally prepared site plan that includes a wetlands delineation for consideration by the Township. Said delineation shall use delineation protocols accepted by the U.S. Army Corps of Engineers at the time an application is made under this regulation.

17.05 APPLICATIONS AND SITE PLANS.

- A. When making an application for a zoning permit or a conditional use permit for a building, structure, or use regulated by this resolution and proposing soil disturbing activities regulated herein, or within ten (10) feet of, a riparian setback, the applicant shall be responsible for identifying riparian setbacks as required by these regulations and shall indicate such setbacks on all site plans submitted to the zoning inspector.
- B. The zoning inspector may, in reviewing the site plan, consult with the Lake County SWCD or other such experts.
- C. If land development or soil disturbing activities will occur within ten (10) feet of the outer boundary of the applicable riparian setback as specified in this regulation, the riparian setback shall be required to be clearly identified by the applicant on site with construction fencing as shown on the site plan. Such identification shall be completed prior to the initiation of any soil disturbing activities and shall be maintained on the lot until the completion of such development or soil disturbing activities.

17.06 USES PERMITTED IN RIPARIAN SETBACKS.

- A. **Permitted Building, Structures and Uses Within a Riparian Setback Without a Zoning Permit.** The following buildings, structures, uses and related soil disturbing activities may be permitted within a riparian setback without a zoning permit.
1. Recreational Activity. Hiking, fishing, hunting, picnicking, picnic tables, trails, walkways, and paths for non-motorized vehicles constructed of pervious materials.
 2. Removal of Damaged or Diseased Trees. Damaged or diseased trees and other associated debris may be removed in accordance with any and all other Federal, State, or local laws or regulations.
 3. Revegetation and/or Reforestation. Riparian setbacks may be revegetated and/or reforested with native, noninvasive plant species in accordance with any and all other Federal, State, or local laws or regulations.
 4. Maintenance and Repairs. Maintenance and repair on lawfully existing buildings, structures, and uses; 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.
 5. Maintenance and Cultivation of Lawns and Landscaping. The maintenance of existing, and cultivation of new, lawns, landscaping, shrubbery, and trees.
 6. Open Space. Passive open space to preserve the riparian setback area in its natural state.
- B. **Permitted Building, Structures and Uses Within a Riparian Setback With a Zoning Permit.** The following buildings, structures, uses and related soil disturbing activities may be permitted within a riparian setback, subject to the approval of an application for a zoning permit by the zoning inspector and in accordance with the following regulations and such other applicable regulations contained in this zoning resolution.
1. Signs.
 2. Fences and walls.
 3. Crossings. Crossings of designated watercourses through riparian setbacks with roads, driveways, easements, bridges, culverts, utility service lines, or other means may be permitted provided such crossings minimize disturbance in riparian setbacks and mitigate any necessary disturbances. Such crossings shall only be undertaken upon approval and consultation with the Lake County SWCD. Any costs associated with the review of the Crossing plan may be assessed to the Applicant.

If work will occur below the ordinary high water mark of the designated watercourse, proof of compliance with the applicable conditions of a US Army Corps of Engineers Section 404 Permit (either a Nationwide Permit, 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:

- a. A site plan showing that any proposed crossing conforms to the general and special conditions of the applicable Nationwide Permit, or
 - b. A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under the applicable Nationwide Permit, or
 - c. A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under an Individual Permit.
4. Streambank Stabilization Projects. Streambank stabilization projects along designated watercourses may be allowed, subject to other regulations contained in this resolution and the regulations enforced by the Lake SWCD. If streambank stabilization work is proposed below the ordinary high water mark of the designated watercourse, proof of compliance with the applicable conditions of a US Army Corps of Engineers Section 404 Permit (either a Nationwide Permit, 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:
- a. A site plan showing that any proposed crossing conforms to the general and special conditions of the applicable Nationwide Permit, or
 - b. A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under the applicable Nationwide Permit, or,
 - c. A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under an Individual Permit.

17.07 USES PROHIBITED IN RIPARIAN SETBACKS.

Any building, structure, use or related soil disturbing activity not authorized under these regulations shall be prohibited in riparian setbacks. By way of example, the following uses are specifically prohibited, however, prohibited uses are not limited to those examples listed here:

- A. Construction. There shall be no buildings or structures of any kind, except as otherwise permitted under this Resolution.
- B. Roads or Driveways. There shall be no roads or driveways, except as permitted under this Resolution.
- C. Parking Spaces or Lots and Loading/Unloading Spaces for Vehicles. There shall be no parking spaces, parking lots, or loading/unloading spaces for vehicles of any kind.
- D. New Surface and/or Subsurface Sewage Disposal or Treatment Areas. Riparian setbacks shall not be used for the disposal or treatment of sewage, except as necessary to repair or replace an existing home sewage disposal system and in accordance with recommendations of the Lake County General Health District.

- E. Dredging or Dumping. There shall be no drilling, filling, dredging, or dumping of soils, spoils, trash, debris, liquid or solid materials, except for noncommercial composting or uncontaminated natural materials and except as permitted under this Resolution.

17.08 VARIANCES WITHIN RIPARIAN SETBACKS.

- A. The Board of Zoning Appeals may grant a variance to these regulations as provided herein. In granting a variance, the following conditions shall apply:
 - 1. In determining whether there is unnecessary hardship with respect to the use of a property or practical difficulty with respect to maintaining the riparian setback as established in this regulation, such as to justify the granting of a variance, the BZA shall consider the potential harm or reduction in riparian functions that may be caused by a proposed structure or use.
 - 2. Variances shall be void if not implemented within one (1) year of the date of issuance.
- B. In making a determination under Section 17.08 (A) of this regulation, the BZA may consider the following:
 - 1. The natural vegetation of the property as well as the percentage of the parcel that is in the 100-year floodplain.
 - 2. The extent to which the requested variance impairs the flood control, erosion control, water quality protection, or other functions of the riparian setback. This determination shall be based on sufficient technical and scientific data.
 - 3. The degree of hardship, with respect to the use of a property or the degree of practical difficulty with respect to maintaining the riparian setback as established in this regulation, placed on the landowner by this regulation and the availability of alternatives to the proposed structure or use.
 - 4. Soil-disturbing activities permitted in the riparian setback through variances should be implemented to minimize clearing to the extent possible and to include Best Management Practices necessary to minimize erosion and control sediment.
 - 5. The presence of significant impervious cover in the riparian setback compromises its benefits to Concord Township.
 - 6. Variances should not be granted for asphalt or concrete paving in the riparian setback, but may be granted for gravel driveways when necessary.
 - 7. Whether a property, otherwise buildable under the regulations of Concord Township will be made unbuildable because of this regulation.
- C. In order to maintain the riparian setback to the maximum extent practicable, the Board of Zoning Appeals may consider granting variances to other area or setback requirements imposed on a property by this Resolution provided the Applicant makes the necessary application. These may include, but are not limited to, parking requirements, requirements for the shape, size, or design of buildings, or front building setbacks, rear yard clearances, or side yard clearances.

- D. In granting a variance under these regulations, the Board of Zoning Appeals, for good cause, may impose such conditions that it deems appropriate to maintain the purposes of these regulations and to mitigate any necessary impacts in the riparian setbacks permitted by variance. In determining appropriate mitigation, the BZA may consult with the Lake County Engineer or other agencies including Lake County SWCD.

17.09 INSPECTION OF RIPARIAN SETBACKS.

The identification of riparian setbacks shall be inspected by the zoning inspector.

- A. The owner shall notify the zoning inspector at least five (5) working days prior to the initiation of any construction, land development or soil disturbing activities on a lot.
- B. The zoning inspector and/or its agents, with prior notice and the authorization of the owner, may enter the affected property from time to time with any necessary representatives or affiliates to conduct on-site inspections to ensure compliance with these regulations.