

CHAPTER 1139

Riparian Setbacks

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1139.01 PURPOSE.

It is hereby determined that the system of headwaters, rivers, streams, wetlands, and other natural watercourses within the City of Painesville contributes to the health, safety and general welfare of its residents. The purpose of these regulations is to protect and enhance the functions of riparian areas by providing reasonable controls governing buildings, structures, uses, and related soil disturbing activities within a riparian setback or wetland setback. It is the further intent of this chapter to regulate uses and developments within riparian and/or wetland setbacks that would impair the ability of those areas to:

- (a) Reduce flood impacts by absorbing peak flows, slowing the velocity of floodwaters, and regulating base flow.
- (b) Assist in stabilizing the banks of watercourses, reduce stream bank erosion, and the downstream transport of sediments eroded from such watercourse banks.
- (c) Reduce pollutants in watercourses during periods of high flows by filtering, settling, and transforming pollutants already present in watercourses.
- (d) Reduce pollutants in watercourses by filtering, settling, transforming, and absorbing pollutants in runoff before they enter watercourses.
- (e) Provide watercourse habitats, including many of Ohio's endangered and/or threatened species, with shade and food by maintaining diverse and connected wetland and riparian vegetation.
- (f) Benefit the City by minimizing encroachment on wetlands and watercourses 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.
- (g) Benefit the City by contributing to preserving the scenic beauty of the environment in order to maintain the character of the City of Painesville, the quality of life of the residents, and the corresponding property values.

(Ord. 16-19. Passed 9-16-19.)

1139.02 APPLICABILITY.

- (a) The regulations as set forth herein shall apply to:
 - (1) All riparian areas meeting the criteria as set forth herein.
 - (2) All zoning districts.
 - (3) All buildings, structures, uses, and related soil disturbing activities on lands containing a designated watercourse and/or wetland, except as otherwise provided herein.
- (b) No certificate of compliance shall be issued for any building, structure, or use on a lot containing, wholly or partly, a designated watercourse except in conformity with this chapter.
- (c) Where this chapter imposes a greater restriction upon land than is imposed or required by any other provision of law, regulation, contract, or deed, the provisions of this chapter shall control.

(d) If any clause, section, or provision of this regulation is declared invalid or unconstitutional by a court of competent jurisdiction, validity of the remainder shall not be affected.

(Ord. 16-19. Passed 9-16-19.)

1139.03 DEFINITIONS.

In addition to the definitions set forth in Chapter 1107, for the purpose of this chapter, the following terms shall mean:

(a) Class III primary headwater habitat stream - The highest quality primary headwater habitat streams as described in the most current version of the *Ohio EPA Field Evaluation Manual for Ohio's Primary Headwater Habitat Streams*

(b) 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.

(c) Designated watercourse - A watercourse within the City that is in conformity with the criteria set forth in these regulations.

(d) Drainage ditch - A channel for carrying off excess water.

(e) Dumping - The grading, pushing, piling, throwing, unloading or placing soil or other material.

(f) Federal Emergency Management Agency (FEMA) - The agency with overall responsibility for administering the National Flood Insurance Program.

(g) Flood insurance rate maps (FIRM) - The official map of a community on which FEMA has delineated both the special hazard areas and the risk premium zones applicable to the community.

(h) Lake County Soil and Water Conservation District (Lake SWCD) - An entity organized under R.C. Chapter 1515 referring to either the Conservation District Board or its designated employee(s).

(i) Mitigated wetlands - Those actions taken to avoid, minimize, or deter the need to adversely affect existing wetlands and similar habitats.

(j) Noxious weed - Any plant species defined by the Ohio Department of Agriculture as a "noxious weed" and listed as such by the Department. For the purposes of this chapter, the most recent version of this list at the time of application of this regulation shall prevail.

(k) One hundred (100) year floodplain - Any land susceptible to being inundated by water from a base flood. The base flood is the flood that has a 1% or greater chance of being equaled or exceeded in any given year. The 100 year floodplain shall be identified by FEMA.

(l) Ordinary high water mark - The point of the bank or shore 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.

(m) Riparian area - Land that is naturally vegetated and adjacent to designated watercourses that, if appropriately sized, helps to stabilize stream banks, limit erosion, reduce flood size flows, and/or filter and settle out runoff pollutants, or performs other functions consistent with the purposes of this chapter.

(n) Riparian setback - The real property adjacent to a designated watercourse located in the area defined by the criteria set forth in this chapter.

(o) Riparian setback map - A map identifying designated watercourses and their riparian setbacks including any additions, amendments, or deletions to the map, as created and updated from time to time by the appropriate governmental agencies.

(p) 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.

(q) Watercourse - Any brook, channel, creek, river, or stream having banks, a defined bed, and a definite direction of flow, either continuously or intermittently flowing.

(r) Watershed - The region drained by a watercourse.

(s) 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).

(1) Category 1: Wetlands with minimal wetland function and/or integrity. Ohio Administrative Code (O.A.C.) Rule 3745-1-53(c) of the Ohio EPA.

(2) Category 2: Wetlands with moderate wetland function and/or integrity. Ohio Administrative Code (O.A.C.) Rule 3745-1-53(c) of the Ohio EPA.

(3) Category 3: Wetlands with superior wetland function and/or integrity. Ohio Administrative Code (O.A.C.) Rule 3745-1-53(c) of the Ohio EPA.

(t) Wetland setback - The real property adjacent to a wetland located in the area defined by the criteria set forth in this regulation.

(Ord. 16-19. Passed 9-16-19.)

1139.04 ESTABLISHMENT OF DESIGNATED WATERCOURSES.

(a) Designated watercourses, shall be only those watercourses meeting any one of the following criteria:

(1) Watercourses draining an area equal to or greater than one square mile; or

(2) Watercourses draining an area less than one square mile and having a defined bed, bank, and definite direction of flow, either continuously or intermittently flowing, including through culverts, bridges and other conveyance structures; or,

(3) Any watercourse newly constructed, altered, restored, or proposed in a development or as part of an overall development plan. Such projects shall show compliance with all applicable local, state, and Federal requirements.

(b) Riparian setbacks do not apply to drainage ditches, constructed exclusively for road side drainage and that are generally parallel to road; provided however, that the City Engineer may establish the minimum setback necessary to prevent an obstruction that could compromise the integrity of the ditch slope.

(c) In determining if watercourses meet the criteria in subsection (a) above, the City may consult with a representative of the Lake SWCD or any other technical expert(s) as necessary.

(d) Final determination shall be made by the City Manager in accordance with the rules herein.

(Ord. 16-19. Passed 9-16-19.)

1139.05 RIPARIAN SETBACKS.

(a) Riparian setbacks shall be required on all land adjacent to designated watercourses. The setback distance, established as follows, will be determined by the size of the watershed that the watercourse drains.

(1) A minimum of 120 feet on each side of all designated watercourses draining an area equal to or greater than 50 square miles.

(2) A minimum of 100 feet on each side of all designated watercourses draining an area equal to or greater than 20 square miles and up to 50 square miles.

(3) A minimum of 75 feet on each side of all designated watercourses draining an area equal to or greater than ten square miles and up to 20 square miles.

(4) A minimum of 50 feet on each side of all designated watercourses draining an area equal to or greater than five square miles and up to ten square miles.

(5) A minimum of 40 feet on each side of all designated watercourses draining an area equal to or greater than two and one-half square miles and up to five square miles.

(6) A minimum of 25 feet on each side of all designated watercourses draining an area less than one square mile and up to two and one-half square miles.

<i>Watershed Size (In Square Miles)</i>	<i>Setback Distance (Minimum)</i>
50 or greater	120 Feet
20 up to 50	100 Feet
10 up to 20	75 Feet
5 up to 10	50 Feet
2.5 up to 5	40 Feet
<1 up to 2.5	25 Feet

(b) The City shall provide a riparian setback map to be utilized as a guide or reference document in determining when the riparian setback applies.

(1) Such map shall be made part of this chapter and shall be on file and available for public inspection at the City of Painesville Community Development Department.

(2) If any discrepancy is found between the riparian setback map and the on-site conditions, the criteria set forth in these regulations shall prevail.

(3) Nothing herein shall prevent the City from amending the riparian setback map from time to time as may be

necessary.

(4) In reviewing and interpreting the riparian setback map, the City may consult with a representative of the Lake SWCD or any other technical expert(s) as necessary.

(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. See Figure 1 below.

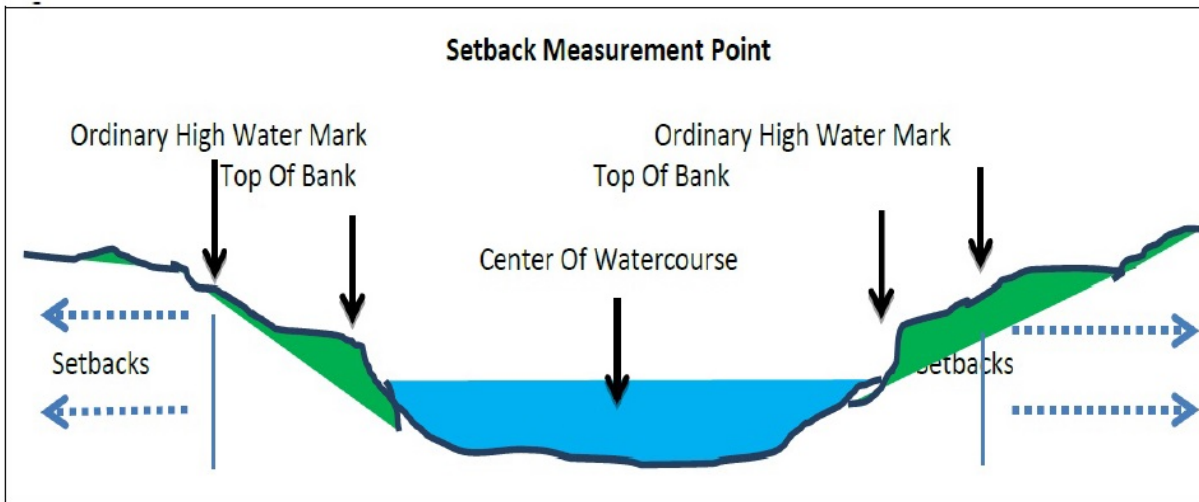


Figure 1

(2) Except as otherwise provided in this chapter, riparian setbacks shall be preserved in their natural state.

(3) Where the 100-year floodplain 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 100-year floodplain as delineated on the Flood Insurance Rate Maps (FIRM) of Lake County, Ohio administered by FEMA.

(Ord. 16-19. Passed 9-16-19.)

1139.06 WETLAND SETBACKS.

The following regulations shall apply to wetland setbacks:

(a) Where proposed projects indicate impacts to wetlands, the wetlands shall be delineated using protocols accepted by the U.S. Army Corp of Engineers. Such delineation is a requirement of the U.S. Army Corp of Engineers and the Ohio Environmental Protection Agency.

(b) All wetlands identified by the State of Ohio and/or the Corps of Engineers shall have the following setbacks as measured from the jurisdictional boundary:

- (1) Category 3 Wetland: Fifty feet extending beyond the outermost boundary.
- (2) Category 2 Wetland: Thirty feet extending beyond the outermost boundary.
- (3) Category 1 Wetland: Ten feet extending beyond the outermost boundary.

Wetland Category	Setback Distance (Minimum)
Category 3	Fifty (50) feet
Category 2	Thirty (30) feet
Category 1	Ten (10) feet

(c) The City may consult with any departments, agencies or technical experts to determine wetlands within a riparian setback, or at the City's discretion, wetlands shall be delineated through a site survey prepared by a qualified wetlands professional retained by the landowner using delineation protocols accepted by the U.S. Army Corp of Engineers at the time an application is made under this regulation.

(d) Any costs to the City that are associated with the review or obtaining of the necessary wetlands delineation, review, or plan shall be assessed to the applicant.

(e) Setbacks for wetlands should be on all non-mitigated wetlands. All wetlands shall be shown on wetland delineation regardless if the wetland is going to be mitigated or not. If a wetland is lawfully filled as authorized by the U.S. Army Corps of

Engineers, no wetland setback is required.

(f) No approvals or permits shall be issued by the City prior to delineation of wetland setbacks in conformance with this chapter. Final determination shall be made by the City Manager.

(Ord. 16-19. Passed 9-16-19.)

1139.07 APPLICATIONS AND SITE PLANS.

(a) When making an application for a certificate of compliance for a building, structure or use regulated by this chapter that impacts a designated water course or wetlands, the owner or applicant shall be responsible for identifying riparian setbacks, proposed stream crossings and stream bank stabilization as required by these regulations. The owner or applicant shall indicate such setback distance in accordance with this chapter on all site plans submitted to the City Engineer.

(b) In determining if the site plan meets the criteria of this section, the City may consult with a representative of the Lake SWCD or any other technical expert(s) as necessary.

(c) If land development or soil disturbing activities will occur within 50 feet of the outer boundary of the applicable riparian setback as specified in this chapter, the riparian setback shall, subject to the discretion of the City Engineer, 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 commencement of any soil disturbing activities and shall be maintained on the lot until the completion of such development or soil disturbing activities.

(Ord. 16-19. Passed 9-16-19.)

1139.08 PERMITTED USES WITHIN RIPARIAN AND WETLAND SETBACKS.

(a) The following buildings, structures, uses, and related soil disturbing activities may be permitted within a riparian and/or wetland setback without a certificate of compliance.

(1) Recreational activities. Hiking, fishing, hunting, picnicking, picnic tables, trails, walkways, and paths constructed of pervious materials to accommodate pedestrians and non-motorized vehicles.

(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, uses, roads, driveways, bridges, culverts, trails, walkways, paths, and utilities.

(5) Maintenance and cultivation of lawns and landscaping. The maintenance of existing, and the 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) The following buildings, structures, and uses may be permitted within a riparian and/or wetland setback in accordance with the following regulations and such other applicable regulations contained in this Code.

(1) Signs.

(2) Fences and walls.

(3) 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.

A. Crossings shall only be undertaken upon approval and consultation with the Lake SWCD.

B. Work occurring below the ordinary high water mark of designated watercourses will require submission to the City Engineer of proof of compliance with the applicable conditions of a of U.S. 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). Proof of compliance shall be:

1. A site plan showing that any proposed crossing conforms to the general and special conditions of the applicable Nationwide Permit, or

2. A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under the applicable Nationwide Permit, or

3. A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under an Individual Permit.

C. Any cost associated with the review of the crossing plan shall be assessed to the applicant.

(4) Stream bank stabilization projects along designated watercourses may be permitted subject to other regulations

contained in this chapter and the regulations enforced by the Lake SWCD.

A. Stream bank stabilization projects shall only be undertaken upon approval and consultation with the Lake SWCD.

B. Work occurring below the ordinary high water mark of designated watercourses will require submission to the City Engineer of proof of compliance with the applicable conditions of a U.S. 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). Proof of compliance shall be:

1. A site plan showing that any proposed crossing conforms to the general and special conditions of the applicable Nationwide Permit, or

2. A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under the applicable Nationwide Permit, or

3. A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under an Individual Permit.

C. Any cost associated with the review of the stream stabilization project shall be assessed to the applicant.

(Ord. 16-19. Passed 9-16-19.)

1139.09 PROHIBITED USES WITHIN RIPARIAN AND WETLAND SETBACKS.

Any building, structure, use, or related soil disturbing activity not permitted under this chapter shall be prohibited within a riparian or wetland setback. The following buildings, structures, and uses are specifically prohibited; however, prohibited uses are not limited to those examples listed here.

(a) Construction. There shall be no structures of any kind, except as otherwise permitted under this chapter.

(b) Dredging or Dumping. There shall be no drilling, filling, dredging, or dumping of soil, spoils, liquid, or solid materials, except for non-commercial composting of uncontaminated natural materials, and except as otherwise permitted under this chapter.

(c) Roads or Driveways. There shall be no roads or driveways permitted in riparian and/or wetland setback area, except as otherwise permitted under this chapter. There shall be no roads or driveways or roads permitted in wetlands or watercourses without a permit issued by the U.S. Army Corps of Engineers and/or the Ohio EPA.

(d) Motorized Vehicles. There shall be no use of motorized vehicles, except as otherwise permitted under this chapter.

(e) Disturbance of Natural Vegetation. There shall be no disturbance, including mowing, of the natural vegetation, except for such conservation measures that the landowner deems necessary to control noxious weeds or to remove damaged or diseased trees; for such plantings as are consistent with this chapter; for such disturbances as are approved under Section 1139.06; and for the passive enjoyment, access, and maintenance of landscaping or lawns existing at the time of passage of this regulation. Nothing in this regulation shall be construed as requiring a landowner to plant or undertake any other activities in riparian and wetland setbacks.

(f) Parking Lots. There shall be no parking lots or other human-made impervious cover, except as otherwise permitted under this chapter.

(g) New Surface and/or Subsurface Sewage Disposal or Treatment Areas. Riparian and wetland setbacks shall not be used for the disposal or treatment of sewage except in accordance with Lake County Board of Health regulations in effect at the time of application of this chapter.

(Ord. 16-19. Passed 9-16-19.)

1139.10 NOTICE AND INSPECTION.

(a) The owner shall notify the City Engineer at least ten working days prior to the initiation of any construction, land development or soil disturbing activities on a lot with an approved site plan.

(b) The City Engineer shall be permitted to make an on-site inspection of the delineation of riparian setbacks, prior to the initiation of any construction, land development, or soil disturbing activities, on an affected lot.

(c) The City Engineer, 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.

(Ord. 16-19. Passed 9-16-19.)

1139.11 VARIANCES.

(a) The Board of Zoning Appeals may grant a variance to these regulations as provided in Section 1111.12.

(b) In making a determination to grant, grant with conditions, or deny a variance, the BZA may consider the criteria set forth in Section 1111.12(c) and 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 chapter 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 the City.

(6) Variances should not be granted for asphalt or concrete paving in the riparian setback, but may be granted for gravel driveways when a practical difficulty exists.

(7) Whether a property, otherwise buildable under the codified ordinances of the City will be made unbuildable because of these regulations.

(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 Code 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, rear, or side yard setbacks.

(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 City Engineer or other agencies including Lake SWCD.

(Ord. 16-19. Passed 9-16-19.)

1139.12 PENALTY.

(a) In accordance with Section 1105.07, Penalties, the owner or applicant may be subject to penalties for failing to comply with the terms and requirements of this chapter.

(b) When failure to comply with the terms and requirements of this chapter results in a damage or destruction to a riparian setback or wetland, the owner or applicant shall be required to restore such riparian setback or wetland through a restoration plan approved by the City in consultation with the Lake SWCD.

(Ord. 16-19. Passed 9-16-19.)