

ARTICLE XIV

ESTABLISHMENT OF RIPARIAN SETBACKS

SEC. 1401 PURPOSE AND INTENT

1. The specific purpose and intent of these regulations is to regulate the location of buildings, structures, uses, and related soil disturbing activities within riparian setback areas that would impair the ability of these areas to:
 - a. Preserve and conserve the quality and free flowing condition of designated watercourses in the interest of promoting and protecting public health and safety.
 - b. Reduce flood impacts by absorbing peak flows, slowing the velocity of floodwaters, and regulating base flow.
 - c. 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.
 - d. Reduce pollutants in designated watercourses during periods of high flows by filtering, settling, and transforming pollutants already present in such watercourses.
 - e. Reduce pollutants in designated watercourses by filtering, settling, and transforming pollutants in runoff before they enter such watercourses.
 - f. Provide designated watercourse habitats with shade and food.
 - g. Reduce the presence of aquatic nuisance species to maintain a diverse aquatic system.
 - h. Provide riparian habitat with a wide array of wildlife by maintaining diverse and connected riparian vegetation.
 - i. 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 health and safety within the affected watershed.
2. These regulations have been enacted 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 along designated watercourses in Wadsworth Township. Due to the importance of properly functioning riparian areas, minimum riparian setbacks may be given preference over minimum front, side, or rear yard setbacks as specified in this resolution in the consideration of an appeal for a variance by the Board of Zoning Appeals.

3. These regulations have been enacted in compliance with the Wadsworth Township Phase II Storm Water Management Program, adopted March 1, 2003, as required by the Code of Federal Regulations, 40 C.F.R. Parts 9, 122, 123, and 124.
4. These regulations have been enacted under the authority of Chapter 519 of the Revised Code of the State of Ohio that provides Wadsworth Township the authority to regulate the location, size, height, and use of buildings and structures, the area and dimensions of lots and yards, and the use of lands necessary to protect the public health, safety, morals, comfort, and general welfare of the Township and its residents.
5. It is the policy of Wadsworth Township to encourage the establishment of naturally vegetated riparian areas along watercourses. Property owners who own land along watercourses are encouraged to maintain the functionality of the riparian system within Wadsworth Township to control flooding, erosion, and water quality problems on their property as well as downstream. Riparian setback zoning, as established through these regulations, represent the minimal standards necessary to minimize flooding, erosion, and water quality problems and the impacts therefrom. Guidance regarding the functions and characteristics of riparian areas in Wadsworth can be found in the Wadsworth Township Zoning Resolution Book.

SEC. 1402 APPLICABILITY

1. These regulations shall only apply when the following two (2) conditions are met:
 - a. Soil disturbing activities regulated by Wadsworth Township Zoning Regulations are proposed in a riparian setback as set forth by these regulations.
 - b. A zoning certificate or conditional zoning certificate is required or

necessary.

2. These regulations shall only apply to all zoning districts except Agricultural land, agricultural land (as defined in ORC 519.01), which is exempt from these regulations.
3. These regulations set forth herein shall apply to all buildings, structures, uses, and related soil disturbing activities on a lot containing a designated watercourse, except as otherwise provided herein.
4. 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 VIII, Non-Conforming Uses.
5. 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 VIII, Non-conforming Uses.
6. 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.

SEC. 1403 ESTABLISHMENT OF DESIGNATED WATERCOURSES AND RIPARIAN SETBACKS

1. A designated watercourse shall include one or more of the following criteria.
 - a. All watercourses draining to an area equal to or greater than one-half (0.5) square mile, or
 - b. 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 Medina County SWCD or other technical experts.
2. Riparian setbacks on designated watercourses shall be established as follows.
 - a. A minimum of 120 feet on each side of all designated watercourses draining to an area equal to or greater than 20 square miles.
 - b. A minimum of 75 feet on each side of all designated watercourses

draining an area equal to or greater than one-half (0.5) square mile and up to 20 square miles.

- c. A minimum of 25 feet on each side 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.
3. The following regulations shall apply to riparian setbacks.
 - a. Riparian setbacks shall be measured in a horizontal direction outward from the ordinary high water mark of a designated watercourse.
 - b. Except as otherwise provided in this regulation, riparian setbacks shall be preserved in their natural state.
 - c. The minimum riparian setback on an in-line pond existing shall be measured from the ordinary high water mark of the designated watercourse as it enters said pond and through the impoundment along the centerline of the designated watercourse as it flows through the in-line pond.

SEC. 1404 RIPARIAN SETBACK GUIDE MAP

1. The township shall create a guide map identifying designated watercourses and their riparian setbacks. Said map is attached hereto and made a part of this regulation and is identified as Appendix A. The riparian setback guide map may be utilized as a guide or reference document by the Zoning Inspector and the Board of Zoning Appeals in determining when the riparian setback applies.
2. Nothing herein shall prevent the township from amending the riparian setback guide map from time to time as may be necessary.
3. If any discrepancy is found between the riparian setback map and these regulations, or if any discrepancy is found between existing site conditions and the riparian setback guide map, the criteria set for in Section 1403 shall prevail.

SEC. 1405 APPLICATIONS AND SITE PLAN

1. When making an application for a zoning certificate or a conditional zoning certificate for building, structure or use regulated by this resolution occurs on a parcel that contains a mapped riparian setback area, the owner 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.
2. The Zoning Inspector, may, in reviewing the site plan, consult with the Medina County SWCD or such other expert(s) retained by the Board of Township Trustees.
3. If land development or soil disturbing activities will occur within 50 feet of the outer boundary of the applicable riparian setback as specified in these regulations, then prior to the initiation of any land development or soil disturbing 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.

SEC. 1406 PERMITTED BUILDINGS, STRUCTURES AND USES WITHIN A RIPARIAN SETBACK WITHOUT A ZONING CERTIFICATE

The following buildings, structures, uses, and related soil disturbing activities may be permitted within a riparian setback without a zoning certificate. Other uses not requiring a zoning certificate or conditional zoning certificate under the Township Zoning Regulations are also permitted in the riparian setback.

1. Recreational Activities: Fishing, hunting, picnicking, picnic tables, trails, walkways, and paths for non-motorized vehicles constructed of pervious materials.
2. Removal of Trees: Damaged or diseased trees and other associated debris may be removed. Harvesting of trees must be done in accordance with the Department of Forestry accepted guidelines.
3. 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.

4. Maintenance and Cultivation of Lawns and Landscaping: The maintenance of existing, and the cultivation of new lawns, landscaping, shrubbery, and trees.
5. Water Supply Wells: Water supply wells subject to the regulations enforced by the Medina County General Health District or the Ohio EPA.
6. Open Space: Passive open space to preserve the riparian setback area in its natural state.
7. Composting: Composting of natural materials from the affected lot, not for commercial retail sale or use.
8. On-site Sewage Systems and Waste Water Treatment Plants: On-site sewage systems and waste water treatment plants and appurtenances subject to the applicable regulations enforced by the Medina County General Health District or the Ohio EPA. Proof of compliance with such regulations shall be required.

SEC. 1407 PERMITTED BUILDINGS, STRUCTURES, AND USES WITHIN A RIPARIAN SETBACK WITH A ZONING CERTIFICATE

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.

1. Crossings: Crossings of designated watercourses through riparian setbacks with roads, driveways, easements, bridges, culverts, utility service lines (including sanitary sewer, water, septic system, storm sewer, electric, natural gas, telephone, and cable for television and other digital transmission), or other means may be permitted, subject to the other regulations contained in this resolution and regulations enforced by the Medina 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, 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.
2. Stream Bank Stabilization Projects: Stream bank stabilization projects along designated watercourses, subject to other regulations contained in this resolution and the regulations enforced by the Medina County SWCD. If stream bank 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:
- a. A site plan showing that any proposed crossing conforms to the general and special conditions of Nationwide Permit 13, or
 - b. A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under Nationwide Permit 13, or
 - c. A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under an Individual Permit.

SEC. 1408 BUILDINGS, STRUCTURES, AND USES PROHIBITED WITHIN A RIPARIAN SETBACK

The following buildings, structures, and uses are specifically prohibited within riparian setbacks:

- 1. Construction: There shall be no buildings, structures, uses or related soil disturbing activities of any kind except as permitted under these regulations.
- 2. Parking Spaces or Lots and Loading/Unloading Spaces for Vehicles: There shall be no parking spaces, parking lots, loading/unloading spaces, or related soil disturbing activities.

3. Roads and Driveways: There shall be no roads or driveways except as permitted under these regulations.

SEC. 1409 INSPECTION OF RIPARIAN SETBACKS

The Zoning Inspector shall inspect the delineation of riparian setbacks.

1. The owner shall notify the Zoning Inspector at least five (5) working days prior to the initiation of any soil disturbing activities that may be within a riparian area and are regulated by this resolution.
2. The Zoning Inspector, after giving prior notice to the owner and receiving authorization from the owner, may enter the affected lot from time to time to conduct on-site inspections to ensure compliance with these regulations.

SEC. 1410 GUIDELINES FOR VARIANCES WITHIN RIPARIAN SETBACKS

1. Wadsworth Township Board of Zoning Appeals may grant a variance from this regulation as provided herein. In determining whether there is unnecessary hardship or practical difficulty such as to justify the granting of a variance, Wadsworth Township Board of Zoning Appeals may consider the potential harm or reduction in riparian area functions that may be caused by proposed building, structure, use or related soil disturbing activity.
2. In making a variance determination, Wadsworth Township Board of Zoning Appeals may consider the following:
 - a. Varying the front, rear, and side yard setback before the riparian setback is varied.
 - b. Variances should not be granted for asphalt or concrete paving in the riparian setback in any situation where gravel or porous pavement (i.e. porous pavers, and similar products) will be appropriate.
 - c. A parcel existing at the time of passage of this resolution is made unbuildable.
 - d. The soil type and natural vegetation of the parcel, as well as the percentage of the parcel that is in the 100-year floodplain. The criteria of Wadsworth Township's or Medina County's flood damage prevention regulations may be used as guidance when granting variances in the 100-year floodplain.

- e. The extent to which the requested variance impairs the flood control, soil erosion control, sediment control, water quality protection, or other functions of the riparian area. This determination shall be based on sufficient technical and scientific data.
- f. The degree of hardship this regulation places on the landowner, and the availability of alternatives to the proposed activity.
- g. Soil disturbing activities permitted in riparian setback through variances should be implemented in order to minimize clearing to the extent possible, and to minimize soil erosion and maximize sediment control.
- h. The presence of significant impervious cover, or smooth vegetation such as maintained lawns, in riparian setbacks compromises their benefits to Wadsworth Township.
- i. A reduction in storm water infiltration into the soil in riparian wetland areas will occur.
- j. A requested above ground fence does not increase the existing area of mowed grass or lawn
- k. Modifying parking requirements before varying the riparian setback.
- l. Modifying building shape, size or design to avoid or minimize intrusion into the riparian setback.
- m. In case of a lot made unbuildable by this regulation, consider the minimum variance needed to make it buildable for an appropriately sized and compatibly designed structure, while following the guidance provided in this section.
- n. Whether the variance will increase the likelihood for flood or erosion damage to either the applicant's property or to other properties.
- o. Culverting of watercourses should be avoided.
- p. Whether the variance will result in the need for artificial slope or bank stabilization measures that could interfere with the function of the riparian setback.

SEC. 1411 BOUNDARY INTERPRETATION AND APPEALS PROCEDURE

1. When an applicant or his or her designated representative disputes the boundary of a riparian setback or the ordinary high water mark of a designated watercourse, the applicant or his or her designated representative shall submit documentation to Wadsworth Township Zoning Inspector that describes the boundary, the applicant's proposed boundary, and justification for the proposed boundary change.
2. The Wadsworth Township Zoning Inspector shall evaluate this documentation and shall make a written determination within a reasonable period of time, not to exceed sixty (60) days, a copy of which shall be submitted to the applicant. If during this evaluation Wadsworth Township requires further information, it may be required of the applicant. In the event that Wadsworth Township Zoning Inspector requests such additional information, the sixty (60) day limit on Wadsworth Township's review shall be postponed until the applicant provides such information.