

ARTICLE XII

RIPARIAN SETBACK DEVELOPMENT REGULATIONS

SECTIONS 1200-1209

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1200 PURPOSE

- A) The purpose of the Riparian Setback Development regulations is to protect and preserve the water quality of streams and to protect residents of Sandy Township from property loss and damage because of flooding and other impacts of streams. By controlling uses and developments within a Riparian Setback, these regulations shall accomplish the following:
- 1) Reduce flood impacts by absorbing peak flows, slowing the velocity of floodwaters and regulating base flow.
 - 2) Stabilize stream banks and reduce bank erosion and sedimentation.
 - 3) Reduce pollutants in streams during periods of high flows by filtering, settling and transforming pollutants already present in streams.
 - 4) Reduce and filter pollutants entering streams.
 - 5) Provide areas for natural meandering and lateral movement of stream channels.
 - 6) Reduce the presence of aquatic nuisance species to maintain diverse and connected riparian vegetation.
 - 7) Provide high quality stream habitats with shade and food to a wide array of wildlife.
 - 8) Minimize encroachment on stream channels, reducing the need for costly engineering solutions such as dams and riprap, to protect structures and reduce property damage and threats to the safety of watershed residents.
 - 9) Enhance the scenic beauty, environment, quality of life, and property values for Sandy Township residents.
- B) These regulations have been adopted to protect the services of riparian areas by providing reasonable controls governing structures and uses in Riparian Setbacks.
- C) Agricultural land uses and/or structures are exempt from the Riparian Setback Development Regulations. Any land used for agricultural purposes or the construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located are exempt from the Riparian Setback Development Regulations.

1201 COMPLIANCE AND VIOLATIONS

- A) No zoning approvals shall be issued by Sandy Township without full compliance with the terms of these provisions.
- B) In addition to the enforcement powers of the Township to enforce the provisions of this Zoning Resolution, these requirements may be enforced through civil or criminal proceedings brought by the County of Tuscarawas Prosecutor on behalf of Sandy Township.

1202 DEFINITIONS

BEST MANAGEMENT PRACTICES (BMPs): Conservation practices or protection measures which reduce impacts from a particular land use. BMPs for construction are outlined in “Rainwater and Land Development, Ohio’s Standard for Stormwater Management, Land Development, and Urban Stream Protection” prepared by the Ohio Department of Natural Resources.

DAMAGED OR DISEASED TREES: Trees that have split trunk, 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, leans 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 stream or onto a structure.

DEFINED CHANNEL: A natural or man-made depression in the terrain which is maintained and altered by the water and sediment it carried.

IMPERVIOUS COVER: Any surface that cannot effectively absorb or infiltrate water. This may include roads, streets, parking lots, rooftops, sidewalks and other areas not covered by vegetation.

NATURAL SUCCESSION: A gradual and continuous replacement of one kind of plant and animal group by a more complex group. The plants and animals present in the initial group modify the environment through their life activities thereby making it unfavorable for themselves. They are gradually replaced by a different group of plants and animals better adapted to the new environment.

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 channel of a stream.

POLLUTION: Any contamination or alteration of the physical, chemical, or biological properties of any waters that will render the waters harmful or detrimental to: public health, safety or welfare; domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; livestock, wildlife, including birds, fish or other aquatic life.

RIPARIAN AREA: A transitional area between flowing water and terrestrial ecosystems, which provided a continuous exchange of nutrients and woody debris between land and water. This area is at least periodically influenced by flooding. Riparian areas, if appropriately sized and managed, help to stabilize banks, limit erosion, reduce flood size flows and/or filter and settle out runoff pollutants, or perform other functions consistent with the purposes of these regulations.

RIPARIAN SETBACK: The area set back from each bank of a stream to protect the riparian area and stream from impacts of development, and streamside residents from impacts of

flooding and land loss through erosion. Riparian Setbacks are those lands within Sandy Township that fall within the area defined by the criteria set forth in these regulations.

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.

STREAM: A surface watercourse with a well-defined bed and bank, either natural or artificial, which confined and conducts continuous or periodical flowing water (ORC 6105.01) in such a way that terrestrial vegetation cannot establish roots within the channel.

STORMWATER QUALITY TREATMENT: The removal of pollutants from urban runoff and improvement of water quality, accomplished largely by deposition and utilizing the benefits of natural processes.

U.S. ARMY CORPS OF ENGINEERS: The agency that defines and has jurisdiction over the Flood Easement.

VARIANCE: A modification of the enforcement of the Riparian Setback Ordinance which will not be contrary to the public interest and where, due to conditions peculiar to this property and not the result of the action of the applicant, a literal enforcement of the Ordinance would result in undue hardship to the applicant.

WATERCOURSE: A natural or artificial waterway, such as a stream or river, with a defined bed and channel and a definite direction of course that is contained within, flows through, or borders the community.

WATERSHED: An area of land that drains into a particular watercourse, usually divided by topography.

1203 ESTABLISHMENT OF A RIPARIAN SETBACK:

A) Riparian Setbacks are established as provided in these regulations.

B) Streams addressed by these regulations are those which meet the definition of "stream" in Section 1202 of Article XII of this Resolution and appear on at least one of the following maps:

- 1) U.S. Geological Survey Topographical Map. Digital stream information is available at <http://water.usgs.gov/osw/streamstats/ohio.html>.
- 2) Soils maps located in the Soil Survey for Tuscarawas County, Ohio, U.S. Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS). Spatial and tabular data from the Tuscarawas County Soil Survey may be downloaded from <http://soildatamart.nrcs.usda.gov/Enter.aspx?Page=Download&Survey=OH157&State=OH&Limit=InFrameOnly>.

C) Widths of setbacks are measured as horizontal map distance outward from the ordinary high

water mark on each side of a stream, and are established as follows:

- 1) A minimum of 75 feet on each side of all streams draining an area greater than 0.5 square miles (320 acres) and up to 20 square miles.
 - 2) A minimum of 25 feet on each side of all streams draining an area less than 0.5 square mile (320 acres).
- D) The following are exempt from the terms and protection of this Ordinance: grassy swales, roadside ditches, drainage ditches created at the time of a subdivision to convey stormwater to another system, tile drainage systems and stream culverts.
- E) The following shall apply to the Riparian Setback:
- 1) Where the Flood Easement and Riparian Setback coincide, the regulations governing the Flood Easement shall prevail. The U.S. Army Corps of Engineers defines and regulates the Flood Easement.
 - 2) Because the gradient of the riparian corridor significantly influences impacts on the stream, the following adjustment for steep slopes will be integrated into the Riparian Setback formula for width determination:

Average Percent Slope	Width of Setback
15% - 20%	add 25 feet
21% - 25%	add 50 feet
> 25%	add 100 feet

Average streambank slope is to be calculated using methodology outlined in the "Ohio Supplement to Urban Hydrology for Small Watersheds, Technical Release Number 55 (TR-55) by USDA, NRCS.

- 3) The applicant shall be responsible for delineating the Riparian Setback, including any expansions or modifications as required by B through D of this Section, and identifying this setback on all zoning permit applications. This delineation shall be done at the time of submission of any permit applications. This delineation shall be subject to review and approval by the Sandy Township Zoning Inspector. As the result of this review, the Zoning Inspector may require further studies from the applicant.
- 4) Prior to any soil disturbing activity, the Riparian Setback shall be clearly delineated with construction fencing or other suitable material by the applicant on site, and such delineation shall be maintained throughout soil-disturbing activities. The delineated area shall be maintained in an undisturbed state unless otherwise permitted by these regulations. All fencing shall be removed when a development project is completed.
- 5) No approvals or permits shall be issued by Sandy Township prior to delineation of the Riparian Setback in conformance with these regulations.

1204 USES PERMITTED IN THE RIPARIAN SETBACK

- A) The following uses are permitted by right within the Riparian Setbacks without prior approval. Open space uses that are passive in character shall be permitted in the Riparian

Setback including, but not limited to, those listed in 1 through 4 of this Section. No use permitted under these regulations shall be construed as allowing trespass on privately held lands. Alteration of this natural area is strictly limited. Except as otherwise provided in these regulations, the Riparian Setback shall be preserved in its natural state.

- 1) **AGRICULTURAL USES, STRUCTURES/BUILDINGS:** Agriculture uses include farming; ranching; aquaculture; apiculture; horticulture; viticulture; animal husbandry, including, but not limited to, the care and raising of livestock, equine, and fur-bearing animals; poultry husbandry and the production of poultry and poultry products; dairy production; the production of field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, sod, or mushrooms; timber; pasturage; any combination of the foregoing; the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with, but are secondary to, such husbandry or production. The construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located are also permitted.
 - 2) **RECREATIONAL ACTIVITY:** Passive recreational uses, as permitted by federal, state and local laws, such as hiking, non-motorized bicycling, fishing, hunting, picnicking and similar uses and associated structures including boardwalks, pathways constructed of pervious material, picnic tables, and wildlife viewing areas.
 - 3) **REMOVAL OF DAMAGED OR DISEASED TREES:** Damaged or diseased trees may be removed. Because of the potential for felled logs and branches to damage downstream properties and/or block ditches or otherwise exacerbate flooding, logs and branches resulting from the removal of damaged or diseased trees that are greater than 6 inches in diameter, shall be anchored to the shore or removed from the Flood Easement.
 - 4) **REVEGETATION AND/OR REFORESTATION:** The revegetation and/or reforestation of the Riparian Setback shall be allowed without approval of the Zoning Inspector. A list of species of shrubs and vines recommended for stabilizing flood prone areas along streams can be obtained from the Sandy Township Zoning Inspector.
 - 5) The County of Tuscarawas Engineer maintains the right of access to all streams within the County of Tuscarawas for the purposes outlines in the Ohio Revised Code, Sections 6131.01 to 6131.64, 6133.01 to 6122.15, 6135.01 to 6135.27 and 6137.05.1.
- B) The following uses are permitted by right within the Riparian Setbacks with prior approval of the design.
- 1) **STREAM BANK STABILIZATION/EROSION CONTROL MEASURES:** Best management practices for stream bank stabilization on erosion control may be allowed if such practices are within permitted uses by the local, state, and federal government regulations and are ecologically compatible and emphasize the use of natural materials and native plant species where practical and available.
 - 2) **CROSSING:** In reviewing plans for stream crossings, the Zoning Inspector may confer with the Ohio Department of Natural Resources, Division of Natural Areas; the Ohio Environmental Protection Agency, Division of Surface Water; the County of

Tuscarawas Engineer; Tuscarawas County Water and Sewer Department; the Tuscarawas County Health Department; or other technical experts as necessary .

- a) Limited crossing of designated streams through the Riparian Setback by vehicles, storm sewers, sewer and/or water lines, and public utility lines will be per the approval of Sandy Township.
 - b) One driveway crossing per stream per tax parcel will be allowed for individual landowners.
 - c) All roadway crossings shall be perpendicular to the stream flow and shall minimize disturbance to the Riparian Setback and shall mitigate any necessary disturbances.
- 3) Placement of stormwater retention or detention facilities may be considered within the Riparian Setback if:
- a) Stormwater quality treatment that is consistent with current state standards is incorporated into the basin.
 - b) The stormwater quality treatment basin is located at least 50 feet from the ordinary high water mark of the stream.

1205 USES PROHIBITED IN THE RIPARIAN SETBACK

The following uses are specifically prohibited within the Riparian Setback:

- 1) **CONSTRUCTION:** There shall be no structures of any kind, except as permitted in these regulations. (The construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located are permitted.)
- 2) **DREDGING OR DUMPING:** There shall be no drilling for petroleum or mineral products, mining activity, filling or dredging of soil, spoils, or any material – natural or manmade – except as permitted under these regulations.
- 3) **ROADS OR DRIVEWAYS:** There shall be no roads or driveways, except as permitted under these regulations.
- 4) **MOTORIZED VEHICLES:** There shall be no use of motorized vehicles of any kind, except as permitted under these regulations.
- 5) **MODIFICATION OF NATURAL VEGETATION:** Modification of the natural vegetation shall be limited to conservation maintenance that the landowner deems necessary to control noxious weeds; for such plantings as are consistent with these regulations; for such disturbances as are approved under these regulations; and for the passive enjoyment, access and maintenance of landscaping or lawns existing at the time of passage of these regulations. Nothing in this Section shall be construed as requiring a landowner to plant or undertake any other activities in the Riparian Setback provided the landowner allows for natural succession.
- 6) **PARKING LOTS:** There shall be no parking lots or other human made impervious cover, except as permitted under these regulations.

7) NEW SURFACE AND/OR SUBSURFACE SEWAGE DISPOSAL OR TREATMENT AREA: Riparian Setbacks shall not be used for the disposal or treatment of sewage except for:

- a) Undeveloped parcels that have received site evaluation approval and/or permit approval prior to the enactment of these regulations.
- b) Dwellings served by disposal/treatment systems existing at the time of passage of these regulations when such systems are properly sited (approved site evaluation) and permitted or in accordance with the Tuscarawas County Health Department and/or the Ohio Environmental Protection Agency. Existing failing systems which are located within the Riparian Setback can be upgraded with approval of the Tuscarawas County Health Department and/or the Ohio Environmental Protection Agency.

1206 NON-CONFORMING STRUCTURES OR USES IN THE RIPARIAN SETBACK

- A) Structures and uses within the Riparian Setback, existing at the time of passage of these regulations that are not permitted under these regulations may be continued but shall not be expanded except as set forth in this title.
- B) If damaged or destroyed, these structures or uses may be repaired or restored within two years from the date of damage/destruction or the adoption of these regulations, whichever is later, at the property owners own risk.
- C) A residential structure or use within the Riparian Setback existing at the time of passage of these regulations may be expanded subject to the following provisions:
 - 1) The expansion conforms to existing zoning regulations.
 - 2) The expansion must not impact the stream channel or the Flood Easement.
 - 3) The expansion must not exceed as area of 15% of the footprint of existing structure or use that lies within the Riparian Setback. Expansions exceeding 15% of the total footprint within the Riparian Setback must be obtained through the variance process.
- D) Non-residential structure or use expansions will be permitted only through the variance process.

1207 BOUNDARY INTERPRETATION AND APPEALS PROCEDURE

- A) When an applicant disputes the boundary of the Riparian Setback or the ordinary high water mark of a stream, the applicant shall submit evidence to the Sandy Township Zoning Inspector that describes the boundary, presents the applicant's proposed boundary and presents all justification for the proposed boundary change.
- B) The Zoning Inspector shall evaluate all materials submitted and shall make a written recommendation to the Sandy Township Board of Zoning Appeals within a reasonable period of time not to exceed sixty days. A copy of this recommendation shall be

submitted to the applicant. If during this evaluation the Zoning Inspector requires further information to complete this evaluation, the applicant may be required to provide additional information.

- C) The Sandy Township Board of Zoning Appeals shall decide such boundary disputes. The party contesting the location of the Riparian Setback or the ordinary high water mark of the streams as determined by these regulations shall have the burden of proof in case of any such appeal.

1208 VARIANCES WITHIN RIPARIAN SETBACK

- A) Application for variances to the provisions of this Chapter shall be submitted to the Sandy Township Board of Zoning Appeals.
- B) The Sandy Township Board of Zoning Appeals shall consult the Zoning Inspector; the Tuscarawas Soil and Water Conservation District; the Ohio Department of Natural Resources, Division of Natural Areas; the Ohio Environmental Protection Agency, Division of Surface Water; the County of Tuscarawas Engineer; Tuscarawas County Water and Sewer Department; the Tuscarawas County Health Department; or other technical experts as necessary to consider variance requests.
- C) Expansions of residential structures or uses exceeding 15% of the footprint area and expansions of all non-residential structures or uses are subject to the following provisions:
 - 1) The expansion conforms to the existing zoning regulations.
 - 2) The expansion must not impact the stream channel or the Flood Easement.
 - 3) The expansion of a non-residential structure or use must not affect upstream or downstream hydrologic conditions which could cause damage from flooding or stream bank erosion to landowners in those areas. A hydrologic study must be completed by non-residential applicants only as a process of the variance application.
 - 4) The expansion of a non-residential structure or use will not exceed 25% of the footprint area. The 25% expansion limit is per se the portion of the structure or use that lies within the Riparian Setback.
- C) No variances shall be granted for expansion of the following structures or uses:
 - 1) Facilities which use, store, distribute, or sell petroleum-based products or any hazardous materials. Such facilities include, but are not limited to; asphalt plants, dry cleaners, gasoline service stations, and road maintenance facilities.
 - 2) Facilities which use, store, distribute, or sell products which may contribute higher than acceptable concentrations of dissolved or particulate matter to stormwater runoff around the facility. Such facilities include, but are not limited to: landfills or transfer stations, junk yards, recycling facilities, quarries and borrow pits, sand and gravel extraction operations, and road salt storage barns.

E) In reviewing whether to grant variances, the Sandy Township Board of Zoning Appeals shall consider the following:

- 1) The extent to which the requested variance impairs the functions of the riparian area. This determination shall be based on sufficient technical and scientific evidence as provided by the applicant and the agencies listed in 1501-9 A. through E. above.
- 2) The soil type and natural vegetation of the parcel as well as the percentage of the parcel that is in the Flood Easement.
- 3) The degree of hardship these regulations place on the applicant and the availability of alternatives to the proposed activity.
- 4) Whether a front, side or rear yard setback zoning variance or similar variance should be considered to maintain the required Riparian Setback area.

1209 INSPECTION OF RIPARIAN SETBACK

A) The Riparian Setback shall be inspected by the Zoning Inspector:

- 1) When a building or zoning permit is requested.
- 2) Prior to any soil disturbing activity to inspect the delineation of the Riparian Setback as required under these regulations.

B) The Riparian Setback shall also be inspected annually or as time permits by the Zoning Inspector or approved monitoring entity for compliance with any approvals under these regulations or at any time evidence is brought to the attention of the Zoning Inspector that uses or structures are occurring that may reasonably be expected to violate the provisions of these regulations.