

## **Sec 602      R C – O RIPARIAN CORRIDOR OVERLAY DISTRICT**

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### **Sec. 602-A      PURPOSE**

- (1) It is hereby determined that the system of rivers, streams, and other natural watercourses contributes to the health, safety, and general welfare of the residents of Bath Township and the protection of such resources are aligned with the purposes of this zoning resolution and the vision established in the Bath Township Comprehensive Plan. The specific purpose and intent of the Riparian Corridor Overlay District (RC-0) is to implement the provisions of the Bath Township Comprehensive Plan and is based on subsequent analysis of point and non-point pollution and ecological studies of riparian systems in Bath Township as contained in the Bath Township Natural Resources Protection Study. In accordance with these documents and this resolution, the specific purpose of the RC-0 is to regulate land use and construction within riparian areas to:
- (A) Reduce flood impacts by absorbing peak flows, slowing the velocity of floodwaters, and regulating base flow;
  - (B) Stabilize the banks of watercourses to reduce bank erosion and downstream transport of sediments eroded from watercourse banks;
  - (C) Reduce pollutants in watercourses during periods of high flows by filtering, settling, and transforming pollutants in runoff before they enter watercourses;
  - (D) Provide habitat to a wide array of wildlife by maintaining diverse and connected riparian vegetation; and
  - (E) Minimize encroachment on watercourse channels and the need for costly engineering solutions such as dams, retention basins, and rip rap to protect structures, reduce property damage and threats to the safety of watershed residents, and preserve the character and property values of the township.
- (2) It is the policy of Bath Township to encourage the establishment of naturally vegetated riparian setbacks along watercourses. Property owners who own land beside watercourses are encouraged to assume responsibility for helping to maintain water quality and the environmental health of riparian systems within Bath Township. Riparian setback requirements defined herein represent only minimal protection to water quality and property owners are encouraged to do more to protect the ecological health of waterways. Guidance regarding characteristics of riparian setbacks can be found in the Bath Township Design Guidelines.

### **Sec. 602-B      ESTABLISHMENT OF A RIPARIAN SETBACK**

- (1) For the purposes of this district, streams are those which meet the definition of "stream" and as indicated on at least one of the following maps: USGS topographical map, Summit County Riparian Setback map, or soils maps located in the published Soil Survey for Summit County Ohio, USDA, ODNR, OARDC, Issued November 1974.
- (2) Widths of buffers are measured as horizontal map distance outward from the ordinary high-water mark on each side of a stream, and are established as follows:
- (A) A minimum of 100 feet on each side of all streams draining an area greater than 20 square miles and up to 300 square miles;

- (B) A minimum of 75 feet on each side of all streams draining an area greater than 0.5 square mile (320 acres) and up to 20 square miles;
  - (C) A minimum of 50 feet on each side of all streams draining an area greater than 0.05 square mile (32 acres) and up to 0.5 square mile (320 acres); or
  - (D) A minimum of 30 feet on each side of all streams draining an area less than 0.05 square mile (32 acres).
- (3) The following are exempt from the terms and protection of these regulations: 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.
- (4) The following shall apply to the riparian setback:
- (A) Where the 100-year floodplain is wider than the riparian setback on either or both sides of the stream, the riparian setback shall be extended to the outer edge of the 100-year floodplain. The 100-year floodplain shall be as established by the Federal Emergency Management Administration (FEMA)
  - (B) 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:

| <b>Average Percent Slope</b> | <b>Width of Setback</b> |
|------------------------------|-------------------------|
| 15% through 20%              | Add 25 feet             |
| Greater than 20% through 25% | Add 50 feet             |
| Greater than 25%             | Add 100 feet            |

Average percent slope of the streambank is to be calculated for the area within the Riparian Setback and is to be measured as a line perpendicular to the stream channel at the location where structures or uses are proposed in the plan. All the following measurements are to be performed using County of Summit Geographical Information system data. Calculate slope as follows: *Change in elevation from the edge of stream channel to edge of Riparian Setback divided by Horizontal map distance from the edge of stream channel to the edge of the Riparian Setback.*

- (C) Where wetlands protected under federal or state law are identified within the Riparian Setback, the Riparian Setback shall consist of the full extent of the wetlands plus the following additional setback widths:
  - i. A 50-foot setback extending beyond the outer boundary of Category 3 wetlands.
  - ii. A 30-foot setback extending beyond the outer boundary of a Category 2 wetlands.
  - iii. No additional setback will be required adjacent to Category 1 wetlands.
- (D) Wetlands shall be delineated by a qualified professional under guidelines established by the U.S. Army Corps of Engineers and Ohio Environmental Protection Agency and the delineation approved by the appropriate agencies. All wetland delineations shall also include the latest version of the Ohio Rapid Assessment.
- (E) The applicant shall be responsible for delineating the Riparian Setback, including any expansions or modifications as required by subsections (b) through (d) hereof, and identifying this setback on all subdivisions, land development plans, and/or building permit

applications. This delineation shall be done at the time of application of the preliminary plans, or all plans that are required, or at the time of submission of any permit applications. This delineation shall be subject to review and approval by the Summit SWCD. As the result of this review, the Summit SWCD may require further studies from the applicant.

- (F) 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.
- (G) No approvals or permits shall be issued by the Township prior to delineation of the Riparian Setback in conformance with these regulations.
- (H) Upon completion of an approved subdivision, the Riparian Setback shall be permanently recorded on the plat records for the County of Summit.

#### **Sec. 602-C PERMITTED USES AND ACTIVITIES**

All areas located within the riparian setback are subject to the following standards and regulations. Alteration of the riparian area is strictly limited and with the exception of activities specifically allowed in this section, the riparian setback shall be preserved in its natural state.

##### **(1) Permitted Uses and Activities**

- (A) Construction of passive use recreational trails is permitted provided such trails are set back at least 20 feet from the ordinary high-water mark of the watercourse and provided they are not constructed of impervious materials. Installation of passive use trails must meet applicable federal, state, and local regulations. Passive use includes hiking, bicycling, fishing, hunting, picnicking, and similar uses, and associated structures including boardwalks, pathways constructed of pervious material, picnic tables, and wildlife viewing areas.
- (B) The removal of damaged or diseased individual trees are permitted if they are in danger of falling and causing damage to structures or causing blockage to the stream flow.
- (C) Revegetation and/or reforestation of the riparian setback shall be allowed. Information pertaining to species of shrubs and vines recommended for stabilizing flood prone areas and areas along streams may be obtained from the Summit SWCD. Use of invasive species is prohibited.
- (D) The County of Summit Engineer maintains the right of access to all streams within the County of Summit 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.

##### **(2) Permitted Uses and Activities with prior approval of the design**

- (A) Stream bank stabilization/erosion control: Best Management Practices (BMP's) for stream bank stabilization or 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. Such stream bank stabilization/erosion control practices shall only be undertaken upon approval of a Stormwater Pollution Prevention Plan (SWPPP or SWP3) by the Summit SWCD.

- (B) Crossings: Crossing of designated streams through the Riparian Setback by vehicles, storm sewers, sewer and/or water lines, and public utility lines will be subject to the approval of the local, county, state, and federal governing agencies. All crossings shall minimize disturbance to the riparian setback and shall mitigate and remediate any necessary disturbances.
- i. One driveway crossing per stream per tax parcel will be allowed for individual landowners. The angle of crossing shall be perpendicular to the stream and structures should be designed to allow fish passage.
  - ii. Stream crossings for subdivisions, open space subdivisions, or any other non-single family residential use shall be designed and constructed per the Summit County Engineer's design standards and as approved by the Summit County Planning Commission and Bath Township. One roadway crossing per 1,000 linear feet is permitted. The angle of crossing shall be perpendicular to the stream and structures should be designed to allow fish passage. If two or more crossings per 1,000 linear feet of the stream centerline are required for these areas, the applicant must apply for a variance. All roadway crossings shall minimize disturbance to the riparian setback and shall mitigate and remediate any necessary disturbances.
- (C) Placement of stormwater management practices may be considered within the Riparian Setback if:
- i. Stormwater quality treatment that is consistent with current state standards is incorporated into the stormwater management practice.
  - ii. The stormwater management practice, including all components of the practice, is located at least 50 feet from the ordinary high-water mark of the stream.
  - iii. The stormwater management practice is not constructed in a wetland or 100-year floodplain.
  - iiii. Consideration for placement of stormwater management practices within the riparian setback will be reviewed by the Summit SWCD.

### **(3) Prohibited Uses and Activities**

- (A) Construction: There shall be no structures of any kind constructed within the riparian setback, except as permitted under these regulations.
- (B) Dredging or dumping: There shall be no drilling for petroleum or mineral products, mining activity, filling or dredging of soils, spoils, or any material – natural or manmade – within the riparian setback, except as permitted under these regulations.
- (C) Roads or driveways: There shall be no roads or driveways, except as permitted under these regulations.
- (D) Modification of natural vegetation: Modification or removal of natural vegetation is strictly prohibited. Modification of riparian vegetation shall be limited to conservation maintenance deemed necessary to control noxious weeds. Access and maintenance of landscaping or lawns existing at the time of passage of these regulations is permitted. 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.
- (E) Parking lots: There shall be no parking lots or other human made impervious cover, except as permitted under these regulations.

(F) Surface and/or subsurface sewage disposal or treatment area: Riparian setbacks shall not be used for the disposal or treatment of sewage except for:

- j. Undeveloped parcels that received site evaluation approval and/or permit approval prior to the enactment of this chapter.
- ii. Dwellings currently 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 Summit County Health Department and/or the Ohio Environmental Protection Agency.
- iii. Existing failing systems which are located within the Riparian Setback can be upgraded with approval of the Summit County Health Department and/or the Ohio Environmental Protection Agency. Prior to replacing an existing system, the applicant must first make reasonable attempt to relocate the system outside of the riparian setback. If alternative location is not feasible, the system may be replaced in its current location.

**Sec. 602-D NON-CONFORMING STRUCTURES OR USES IN THE RIPARIAN SETBACK**

- (1) 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 section.
- (2) If damaged or destroyed, these structures or uses may be repaired or restored within two years from the date of damage/destruction at the property owner's own risk.
- (3) A residential structure or use within the Riparian Setback existing at the time of passage of these regulations may be expanded subject to the provisions of subsection (3)(A) through (C) hereof.
  - (A) The expansion conforms to existing zoning regulations.
  - (B) The expansion must not impact the stream channel or the 100-year flood plain.
  - (C) The expansion must not exceed an area of 15% of the footprint of the existing structure, at the time of the passage of these regulations, or use that lies within the Riparian Setback. Expansions exceeding 15% of the footprint within the Riparian Setback must be obtained through the variance process.
- (4) Non-residential structure or use expansions will be permitted only through the variance process.

**Sec. 602-E BOUNDARY INTERPRETATION AND APPEALS PROCEDURE**

- (1) 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 Summit SWCD that describes the boundary, presents the applicant's proposed boundary, and presents all justification for the proposed boundary change.
- (2) The Summit SWCD shall evaluate all materials submitted and shall make a written recommendation to the Township Board of Zoning Appeals or the Summit County Planning Commission within a reasonable period not to exceed sixty days. A copy of this recommendation shall be submitted to the applicant. If during this evaluation the Summit SWCD requires further

information to complete this evaluation, the applicant may be required to provide additional information.

- (3) The 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 the Zoning Inspector shall have the burden of proof in case of any such appeal.

**Sec. 602-F      VARIANCES WITHIN RIPARIAN SETBACK**

- (1) In accordance with Sec. 309: Variance or Conditional Use, the BZA may authorize a variance from the above development standards. Such a variance may include a reduction in the width of the riparian setback, or a modification of the requirements listed above.
- (2) As a condition for requesting a variance from these regulations, evidence shall be provided that the site and any construction to be done thereon have been reviewed by the Summit SWCD. The applicant shall be required to submit site plans to the Summit SWCD for their review.
- (3) A variance may be appropriate when it can be shown that strict application of these standards will result in the loss of a reasonable use of a property.
- (4) Conditions on such variances may include other reasonable and necessary measures to adequately protect the riparian environment, such as erosion control measures, new plantings of native vegetation, and stormwater management.
- (5) Expansions of residential structures or uses exceeding 15% of the footprint area, and expansions of non-residential structures or uses, are subject to subsections (5)(A) through (D) hereof.
  - (A) The expansion conforms to the existing zoning regulations.
  - (B) The expansion must not impact the stream channel or the 100-year flood plain.
  - (C) The expansion of a non-residential structure or use must not affect upstream or downstream hydrologic conditions, which could cause damage from flooding or streambank erosion to landowners in those areas. A hydrologic study must be completed by non-residential applicants only as a process of the variance application.
  - (D) The expansion of a non-residential structure or use will not exceed 25% of the footprint area. The 25% expansion limit is per the portion of the structure or use that lies within the Riparian Setback.
- (6) Requests for variances for subdivisions will be considered for the following:
  - (A) An additional stream crossing or crossings for a subdivision or open space development which is necessary for the health, welfare, and safety of the residents of the subdivision.
  - (B) A reduction of the setback width, not to exceed 10% of the prescribed Riparian Setback width.
- (7) No variances shall be granted for the following structures or uses:
  - (A) Impact to the stream channel resulting in the complete removal, fill, or dredge of stream.

- (B) 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.
  - (C) 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.
- (8) In reviewing whether to grant variances, the Township Board of Zoning Appeals shall consider the following:
- (A) 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.
  - (B) The soil type and natural vegetation of the parcel as well as the percentage of the parcel that is in the 100-year floodplain.
  - (C) The degree of hardship these regulations place on the applicant and the availability of alternatives to the proposed activity.
  - (D) Whether a front, side or rear yard setback zoning variance or similar variance should be considered to maintain the required Riparian Setback area.

**Sec. 602-G      INSPECTION OF RIPARIAN SETBACK**

- (1) The Riparian Setback shall be inspected by the Summit SWCD:
  - (A) When a preliminary subdivision plat or other land development plan is submitted to the Township.
  - (B) When a building or zoning permit is requested.
  - (C) Prior to any soil disturbing activity to inspect the delineation of the Riparian Setback as required under these regulations.
- (2) The Riparian Setback shall also be inspected annually or as time permits by the Summit SWCD or approved monitoring entity for compliance with any approvals under these regulations or at any time evidence is brought to the attention of the Summit SWCD that uses or structures are occurring that may reasonably be expected to violate the provisions of these regulations.

**Sec. 602-H      APPLICABILITY, COMPLIANCE, AND VIOLATIONS**

- (1) The provisions of this regulation shall apply to all lands within Bath Township.
- (2) No preliminary plan, building, or zoning approvals shall be issued by the Township without full compliance with the terms of these regulations where applicable.
- (3) In addition to the Township's enforcement of the provisions of this Zoning Resolution, these requirements may be enforced through civil or criminal proceedings brought by the County of Summit Prosecutor on behalf of the County of Summit.

**Sec. 602-I      CONFLICTS WITH OTHER REGULATIONS AND SEVERABILITY**

- (1) 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.
- (2) These regulations shall not limit or restrict the application of other provisions of law, regulation, contract, or deed, or the legal remedies available thereunder, except as provided in subsection (1) hereof.
- (3) If any clause, section, or provision of these regulations is declared invalid or unconstitutional by a court of competent jurisdiction, validity of the remainder shall not be affected thereby.