

Article 8: Riparian Corridor Setbacks

8.01 PURPOSE AND SCOPE

It is hereby determined that the system of rivers, streams, and other natural watercourses within Boardman Township contributes to the health, safety, and general welfare of the residents of the township. The specific purpose and intent of this regulation is to regulate uses and developments within riparian setbacks that would impair the ability of riparian areas to:

- (A) Reduce flood impacts by absorbing peak flows, slowing the velocity of flood waters, and regulating base flow;
- (B) Assist stabilizing the banks of watercourses to reduce woody debris from fallen or damaged trees, stream bank erosion, and the downstream transport of sediments eroded from 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, and transforming pollutants in runoff before they enter watercourses;
- (E) Provide watercourse habitats with shade and food;
- (F) Reduce the presence of aquatic nuisance species to maintain a diverse aquatic system;
- (G) Provide habitat to a wide array of wildlife by maintaining diverse and connected riparian vegetation;
- (H) Benefit Boardman Township by minimizing encroachment on watercourse channels and the need for costly engineering solutions such as gabion baskets and rip rap to protect structures and reduce property damage and threats to the safety of watershed residents; and
- (I) Contributing to the scenic beauty and environment of Boardman Township, and thereby preserving the character of Boardman Township, the quality of life of the residents of Boardman Township, and corresponding property values.

For these reasons, the regulations of this chapter have been established to protect and enhance these functions of riparian areas by providing reasonable controls governing structures and uses within a riparian setback along designated watercourses in Boardman Township.

8.02 APPLICABILITY

- (A) This regulation shall apply to all zoning districts within Boardman Township.
- (B) This regulation shall apply to all structures and uses on lands containing a designated watercourse as defined in this article, except as otherwise stated.
- (C) No approvals, permits, or certificates shall be issued by Boardman Township without full compliance with the terms of this article.
- (D) Any violation of this article shall be considered a violation of this resolution, subject to the enforcement and penalty provisions in [Article 14: Enforcement and Penalties](#).

8.03 ESTABLISHMENT OF DESIGNATED WATERCOURSES AND RIPARIAN SETBACKS

- (A) Designated watercourses shall include those watercourses meeting any one of the following criteria:
 - (1) All watercourses draining an area greater than one-half ($\frac{1}{2}$) square mile;
 - (2) All watercourses draining an area less than one-half ($\frac{1}{2}$) square mile and having a defined bed and bank. In determining if watercourses have a defined bed and bank, Boardman Township may consult with a representative of the Mahoning County SWCD or other technical experts as necessary. Any costs associated with such consultations may be assessed to the applicant; or
 - (3) All previously natural watercourses that are channelized, enclosed by pipe, or captured.
- (B) Riparian setbacks on designated watercourses are established as follows:
 - (1) A minimum of 120 feet on either side of all watercourses draining an area greater than 20 square miles and up to 300 square miles.

- (2) A minimum of 75 feet on either side of all watercourses draining an area greater than one-half (½) square mile and up to 20 square miles.
 - (3) A minimum of 25 feet on either side of all watercourses draining an area of one-half (½) square mile or less, and having a defined bed and bank as determined by Boardman Township in Section 8.03(A) of this article.
- (C) The following conditions 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) Riparian setbacks shall be measured in a horizontal direction outward from the outside diameter of the outermost pipe.
 - (3) Riparian setback shall be measured in a horizontal direction outward from the center of the captured stream.
 - (4) Except as otherwise provided in this regulation, riparian setbacks shall be preserved in their natural state.
 - (5) 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. The 100-year floodplain shall be defined by FEMA. If a FEMA defined floodplain does not exist for a designated watercourse, Boardman Township may require a site-specific floodplain delineation in conformance with standard engineering practices and approved by Mahoning County Engineer's Office. Any costs associated with reviewing this site-specific floodplain delineation may be assessed to the applicant.
 - (6) 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. 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 Corps of Engineers at the time an application is made under this regulation. Any costs associated with reviewing these delineations may be assessed by Boardman Township to the applicant.

8.04 APPLICATIONS

- (A) The applicant shall be responsible for delineating riparian setbacks as required by this article and shall identify such setbacks on any applications for zoning certificates, site plan review, conditional uses, or planned unit developments. The plans or maps illustrating the riparian corridors and setbacks shall be prepared by a professional engineer or surveyor, as determined by Boardman Township, and shall be based on a survey of the affected land.
- (B) Boardman Township may, in reviewing the applications, consult with the Mahoning County SWCD or other such experts. Any costs associated with this review may be assessed to the applicant. The applications with riparian setback information shall not take the place of a soil erosion and sedimentation control plan and/or a storm water pollution prevention plan.
- (C) If soil disturbing activities will occur within 50 feet of the outer boundary of the applicable riparian setback as specified in this regulation, the riparian setback shall be clearly identified by the applicant on site with construction fencing as shown on the application plans and maps. Such identification shall be completed prior to the initiation of any soil disturbing activities and shall be maintained throughout soil disturbing activities.
- (D) No approvals or permits shall be issued by Boardman Township prior to identification of riparian setbacks on the affected land in conformance with this article.

8.05 PERMITTED STRUCTURES AND USES WITHOUT ZONING CERTIFICATE

The following structures and uses are permitted in the riparian setback without a zoning certificate. No structures or uses permitted under this regulation shall allow trespass on, or public access to, privately held lands.

- (A) Hiking, fishing, hunting, picnicking, and similar passive recreational uses, as permitted by federal, state, and local laws.

- (B) Damaged or diseased trees may be removed.
- (C) Riparian setbacks may be revegetated and/or reforested with native, noninvasive plant species.
- (D) Water supply wells for the purpose of serving permitted structures or uses on lots of record shall be allowed.

8.06 PERMITTED STRUCTURE AND USES WITH ZONING CERTIFICATE

The following structures and uses may be permitted in a riparian setback, subject to the approval of an application for a zoning certificate. When reviewing and making a decision on zoning certificates for the following uses, the zoning inspector may, for good cause, attach such conditions as it deems appropriate.

(A) Crossings

- (1) 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 be designed by a professional engineer and only be undertaken upon approval of a crossing plan by the Zoning inspector. Any costs associated with review of crossing plans may be assessed to the applicant.
- (2) 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 Boardman Township. 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;
 - (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.

(B) Streambank Stabilization Projects.

- (1) Streambank stabilization projects along designated watercourses may be allowed, provided that such measures use natural stream channel design principles. Such streambank stabilization measures shall only be undertaken upon approval of a Streambank Stabilization Plan by the zoning inspector. Any costs associated with review of Streambank Stabilization Plans may be assessed to the applicant.
- (2) 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 13, including the Ohio State Certification Special Conditions and Limitations, or an Individual Permit, including Ohio 401 water quality certification) shall be provided to Boardman Township. 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;
 - (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.

8.07 USES PROHIBITED IN RIPARIAN SETBACKS

Any use not authorized under this article 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) There shall be no buildings or structures of any kind related to construction.
- (B) There shall be no filling, dredging, or dumping of soil, spoils, liquid, or solid materials.

- (C) There shall be no fences or walls, except as specifically permitted under this article.
- (D) There shall be no roads or driveways, except as specifically permitted under this article.
- (E) There shall be no parking spaces, parking lots, stacking spaces, or loading/unloading spaces.
- (F) There shall be no use, parking, or storage of motorized vehicles, except as specifically permitted under this article.
- (G) There shall be no disturbance of natural vegetation within riparian setbacks except for the following:
 - (1) Maintenance of lawns, landscaping, shrubbery, or trees existing at the time of passage of this regulation;
 - (2) Cultivation of lawns, landscaping, shrubbery, or trees in accordance with an approved Landscaping Plan submitted in conformance with this regulation; and
 - (3) Conservation measures designed to remove damaged or diseased trees or to control noxious weeds or invasive species.
- (H) 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 in accordance with local health district regulations.
- (I) Riparian setbacks shall not be used for storm water retention and detention facilities.

8.08 VARIANCES WITHIN RIPARIAN SETBACKS

- (A) The BZA may grant a variance to the regulations of this article as provided in this resolution. 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.
- (B) In making a determination under Section 8.08(A) above, 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, or smooth vegetation such as maintained lawns, in the riparian setback compromises its benefits to Boardman Township. Variances should not be granted for asphalt or concrete paving in the riparian setback; and/or
 - (6) Whether a property, otherwise buildable under Boardman Township resolutions, will be made unbuildable because of this regulation.
- (C) In order to maintain the riparian setback to the maximum extent practicable, the BZA may consider granting variances to other area or setback requirements imposed on a property by this resolution.
- (D) In granting a variance under this regulation, the BZA, for good cause, may impose such conditions that it deems appropriate to maintain the purposes of the provisions of this article.

8.09 INSPECTION OF RIPARIAN SETBACKS

- (A) The identification of riparian setbacks shall be inspected by Boardman Township.
- (B) Prior to soil disturbing activities authorized under this regulation, the applicant shall provide Boardman Township with at least 15 working days written notice prior to starting such soil disturbing activities.

- (C) The Zoning Inspector shall have the authority to inspect activities in a riparian setback any time evidence is brought to the attention of Boardman Township that uses or structures may be in violation of the provisions of this article.

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