

ARTICLE XX—RIPARIAN SETBACKS

(Adpated from the Chagrin River Watershed Partners' Riparian Setback Model Ordinance)

WHEREAS, flooding is a significant threat to property and public health and safety, and vegetated riparian areas lessen the damage from flooding by slowing the water velocity, enabling water to soak into the ground, and by providing temporary storage of over bank flood flow; and,

WHEREAS, streambank erosion is a significant threat to property and public health and safety, and vegetated riparian areas stabilize streambanks and provide resistance to erosive forces both within streams and on adjacent lands; and,

WHEREAS, the protection of riparian areas results in the presence of plants best suited to each individual environment along a stream, with proven capability for survival and regeneration at no cost; and,

WHEREAS, vegetated riparian areas filter and trap sentiments, chemicals, salts septic discharge, and other pollutants from runoff and flood waters, thus protecting surface and ground water quality; and,

WHEREAS, vegetated riparian areas can provide a dense tree canopy that helps to maintain and improve the stability of watercourse temperature, thus protecting aquatic ecosystems, and helps to reduce the presence of aquatic nuisance species; and,

WHEREAS, the protection of riparian areas can result in a diverse and interconnected riparian corridor that provides habitat to a wide array of wild-life; and,

WHEREAS, the woody debris from fallen, damaged, and cut trees increases flood levels and damage to bridges in Austintown Township and neighboring communities; and,

WHEREAS, sedimentation of eroded soil adversely affect aquatic communities and incurs removal costs to downstream communities; and,

WHEREAS, there are watershed-wide efforts to minimize flooding and stream bank erosion in the Mill Creek, Meander Creek, and the Mahoning River watersheds to protect and enhance the water resources of the major watercourses to which Austintown Township drains and their tributaries; and,

WHEREAS, the Alliance for Watershed Action and Riparian Easements (AWARE); the Eastgate Regional Council of Governments; the Mahoning County Soil and Water Conservation District; the Mahoning County Engineer; the Ohio Environmental Protection Agency; and the U.S. Environmental Protection Agency recommend riparian setbacks as a valuable tool in an overall management program for flood risk reduction, erosion control, water quality control, and aquatic habitat protection; and,

WHEREAS, studies undertaken by, and reviewed by, the Ohio Environmental Agency and other independent scientific bodies recommend the minimum width for riparian setbacks; and

WHEREAS, the Zoning Commission and Board of Trustees of Austintown Township has reviewed and adopted the recommendations of the above government agencies, and the Zoning Commission and Board of Trustees of Austintown Township finds that in order to minimize encroachment on watercourses and the need for costly engineering solutions to protect structures and reduce property damage and threats to the safety of watershed residents; to protect and enhance the scenic beauty of Austintown Township; and to preserve the character of Austintown Township, the quality of life of the residents of Austintown Township, and corresponding property values, it is necessary and appropriate to regulate structures and uses within a riparian setback along the banks of designated water-courses in Austintown Township; and,

WHEREAS, Section 519.02 of the Ohio Revised Code grants Townships the legal authority to adopt land use measures for promoting the public health and safety of it citizens.

WHEREAS, 40 C.F.R., Parts 9, 1221, 123, and 124, referred to as NPDES Storm Water Phase II, required designated communities, including Austintown Township, to develop a Storm Water Management Program to address the quality of storm water runoff during and after soil

disturbing activities. The Mahoning County Storm Water Management Program was adopted on March 6, 2003.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees Austintown Township, County of Mahoning, State of Ohio, that:

Resolution-Article XX-Riparian Setbacks, is hereby adopted to read in total as follows:

ARTICLE XX—RIPARIAN SETBACKS

A. PURPOSE AND SCOPE

It is hereby determined that the system of rivers, streams, and other natural watercourses within Austintown Township contributes to the health, safety, and general welfare of the residents of Austintown 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:

1. Reduce flood impacts by absorbing peak flows, slowing the velocity of flood waters, and regulating base flow.
2. 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.
3. Reduce pollutants in watercourses during periods of high flows by filtering, settling, and transforming pollutants already present in watercourses.
4. Reduce pollutants in watercourses by filtering, settling, and transforming pollutants in runoff before they enter watercourses.
5. Provide watercourse habitats with shade and food.
6. Reduce the presence of aquatic nuisance species to maintain a diverse aquatic system.
7. Provide habitat to a wide array of wildlife by maintaining diverse and connected riparian vegetation.
8. Benefit Austintown Township by minimizing encroachment on water-course 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 by contributing to the scenic beauty and environment of Austintown Township; and thereby preserving the character of Austintown Township, the quality of life of the residents of Austintown Township, and corresponding property values. The following regulation has been enacted 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 Austintown Township.

B. APPLICABILITY, COMPLIANCE AND VIOLATIONS

1. This regulation shall apply to all zoning district.
2. This regulation shall apply to all structures and uses on lands containing a designated watercourse as defined in this regulations, except as provided herein.
3. No approvals or permits shall be issued by Austintown Township with out full compliance with the terms of this regulation.

C. CONFLICTS WITH OTHER REGULATIONS AND SEVERABILITY

1. Where this regulation 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 regulation shall control.
2. This regulation shall not limit or restrict the application of other provisions of law, regulation, contract, deed, or the legal remedies available thereunder, except as provided in Section C (1) of this regulation.
3. 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 thereby.

D. DEFINITIONS

For the purpose of this regulation, the following terms shall have the meaning herein indicated:

CAPTURED OR CHANNELIZED STREAMS: Streams that are considered captured or channelized are those that are constructed in waters of the U.S. or connect two waters of the U.S., and they possess a defined ordinary high water mark (OWH), and they possess a defined channel and evidence of stream flow.

COMMUNITY: Throughout this regulation, this shall refer to Austintown Township or its designated representatives, boards, or commissions.

DAMAGED OR DISEASED TREES: Trees that have split trunks; broken tops; heart tops; heart rot; insect or fungus problems that will lead to imminent death; undercut root systems that put the tree in imminent danger or 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.

DESIGNATED WATERCOURSE: A watercourse within Austintown Township that is in conformity with the criteria set forth in this regulation.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA): The agency with overall responsibility for administering the National Flood Insurance Program. **IMPERVIOUS COVER:** Any paved, hardened, or structural surface regardless of its composition, including but not limited to buildings, roads, driveways, parking lots, loading/unloading areas, decks, patios, and swimming pools.

NATURAL STREAM CHANNEL DESIGN: Practices undertaken to stabilize stream systems by restoring natural function and morphology. Natural channel design stream restoration and/or streambank stabilization projects should comply with principles laid out in the following publications: Stream Corridor Restoration: Principles, Processes, and Practices The Federal Interagency Stream Restoration Working Group, October, 1998. Applied River Morphology, Second Edition, Dr. Dave Rodgen, October, 2002. NRCS Field Office Technical Guide, Natural Resource Conservation Service.

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 regulation, the most recent version of this list at the time of application of this regulation shall prevail.

100-YEAR FLOODPLAIN: Any land susceptible to being inundated by water from a base flood. The base flood is the flood that has a one percent or greater chance of being equaled or exceeded in any given year.

OHIO ENVIRONMENTAL PROTECTION AGENCY: Referred throughout this regulation as the "Ohio EPA"

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 of a watercourse.

RIPARIAN AREA: Naturally vegetated land adjacent to watercourses, if appropriately sized, helps to stabilize streambanks, limit erosion, reduce flood size flows, and/or filter and settle out runoff pollutants, or performs other functions consistent with the purposes of this regulation.

RIPARIAN SETBACK: The real property adjacent to a designated watercourse located in the area defined by the criteria set forth in this regulation.

SOIL AND WATER CONSERVATION DISTRICT: An entity under Chapter 1515 of the Ohio Revised Code referring to either the Soil and Water Conservation District Board or its designated employee(s), hereinafter referred to as Mahoning County SWCD.

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.

SUBSTANTIAL DAMAGE: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would be equal to, or would exceed, 50% of the market value of the structure before the damage occurred.

WATERCOURSE: Any brook, channel, creek, river, or stream having banks, a defined bed, and a definite direction of flow, either continuously or intermittently flowing.

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).

E. ESTABLISHMENT OF DESIGNATED WATERCOURSES AND RIPARIAN SETBACKS

1. Designated water courses shall include those watercourses meeting any ONE of the following criteria:

(a) All watercourses draining an area greater than ½ square mile, OR

(b) All watercourses draining an area less than ½ square mile and having a defined bed and bank. In determining if watercourses have a defined bed and bank, Austintown Township may consult with a representative of the Mahoning County SWCD or other technical experts necessary, OR

(c) All previously natural watercourses that are channelized, enclosed by pipe, or captured.

2. Riparian setbacks or designed watercourses are established as follows:

(a) 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.

(b) A minimum of 75 feet on either side of all watercourses draining an area greater than ½ square mile and up to 20 square miles.

(c) A minimum of 25 feet on either side of all watercourses draining an area less than ½ square mile and having a defined bed and bank as determined by Austintown Township in Section C of this regulation.

3. Riparian Setback Map. The Mahoning County Engineer's Office shall create a map identifying designated watercourses and their riparian setbacks.

Said map is attached hereto and made part of this regulation and is identified as Exhibit A. The following shall apply to the Riparian Setback Map:

(a) It shall be used as a reference document and the information contained therein shall be believed to be accurate.

(b) It shall be a guide only.

(c) Nothing herein shall prevent the Austintown Township from making additions, amendments, revisions, or deletions from the Riparian Setback Map from time to time as may be necessary.

(d) If any discrepancy is found between the Riparian Setback Map and this regulation, the criteria set forth in Section E (1) and (2) shall prevail.

4. The following conditions shall apply in riparian setbacks:

(a) Riparian setbacks shall be measured in a horizontal direction outward from the ordinary high water mark of each designated water course.

(b) Riparian setbacks shall be measured in a horizontal direction outward from the outside diameter of the outermost pipe.

(c) Riparian setbacks shall be measured in a horizontal direction outward from the center of the captured stream.

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

(e) 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, Austintown Township may require a site-specific floodplain delineation in conformance with standard engineering practices and approved by the Mahoning County Engineers Office. Any costs associated with reviewing this site-specific flood plain delineation may be assessed by the applicant.

(f) Where a wetland is identified within a minimum riparian setback, the minimum riparian setback width shall be extended to the outer-most 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.

F. APPLICATIONS AND SITE PLANS

1. The applicant shall be responsible for delineating riparian setbacks as required by this regulation and shall identify such setbacks on a site plan included with all subdivisions plans, land development plans, and/or zoning permit application submitted to Austintown Township. The site plan shall be prepared by a professional engineer, as determined by Austintown Township and shall be based on a survey of the affected area. Two (2) copies of the site plan shall be submitted.

The site plan shall include the following information:

- (a) The boundaries of the lot with dimensions.
- (b) The locations of all designated watercourses.
- (c) The limits, with dimensions, of the riparian setbacks.
- (d) The existing topography at intervals of two (2) feet.
- (e) The location and dimensions of any proposed structures or uses, including proposed soil disturbance, in relationship to all designated watercourses.
- (f) North arrow, scale, date, and stamp bearing the name and registration number of the qualified professional who prepared the site plan.
- (g) Other such information as may be necessary for Austintown Township to ensure compliance with this regulation.

2. Austintown Township may, in reviewing the site plan, consult with the Mahoning County SWCD or other such experts. The site plan shall not take the place of a soil erosion and sedimentation control plan and/or a storm water pollution prevention plan.

3. 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 site plan. Such identification shall be completed prior to the initiation of any soil disturbing activities and shall be maintained throughout soil disturbing activities.

3. No approvals or permits shall be issued by Austintown Township prior to identification of riparian setbacks on the affected land in conformance with this regulation.

G. PERMITTED STRUCTURES AND USES WITHOUT ZONING CERTIFICATE

The following structures and uses are permitted in the riparian setback without a zoning certificate. Open space uses that are passive in character shall be included in the Riparian Setback including, but not limited to, those listed 1 through 4 of this section. No structures or uses permitted under this regulation shall allow trespass on, or public access to, privately held lands.

1. Recreational Activity. Hiking, fishing, hunting, picnicking, and similar passive recreational uses, as permitted by federal, state and local laws.
2. Removal of Damaged or Diseased Trees. Damaged or diseased tree may be removed.
3. Revegetation and/or Reforestation. Riparian setbacks may be revegetated and/or reforested with native, noninvasive plant species.
4. Water Supply Wells. Water supply wells for the purpose of serving permitted structures or uses on lots of record shall be allowed.

H. 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 by the Zoning Inspector and in accordance with the following regulations and such other applicable regulations contained in this zoning ordinance. When granting Zoning Certificates for the following

uses, the Zoning Inspector may, for good cause, attach such conditions as it deems appropriate.

Certificates issued under this regulation are issued to the applicant only, shall not be transferred, and shall be void if not implemented within one (1) year of issuance.

1. Crossings. 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 Austintown Zoning Inspector. 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 Austintown 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, or (b) A copy of the authorization letter from the U.S. Army Corp 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. Streambank Stabilization Projects. 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.

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 Austintown 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, or (b) A copy of the authorization letter from the US Army Corps of Engineers approving under Nationwide Permit 13, or (c) A copy of the authorization letter from the US Army Corps of Engineers approving activities under an Individual Permit.

I. USES PROHIBITED IN RIPARIAN SETBACKS

Any use not authorized under this regulation 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:

1. Construction. There shall be no buildings or structures of any kind.

2. Dredging or Dumping. There shall be no filling, dredging, or dumping of soil, spoils, liquid, or solid materials.

3. Fences and Walls. There shall be no fences or walls, except as permitted under this regulation.

4. Roads or Driveways. There shall be no roads or driveways, except as permitted under this regulation.

5. Motorized Vehicles. There shall be no use, parking, or storage of motorize vehicles, except as permitted under this regulation.

6. Disturbance of Natural Vegetation. There shall be no disturbance of natural vegetation within riparian setbacks, except for the following:

(a) Maintenance of lawns, landscaping, shrubbery, or trees existing at the time of passage of this regulation.

(b) Cultivation of lawns, landscaping, shrubbery, or trees in accordance with an approved Landscaping Plan submitted in conformance with this regulation.

(c) Conservation measures designed to remove damaged or diseased trees or to control noxious weeds or invasive species.

7. Parking Spaces or Lots and Loading/Unloading Spaces for Vehicles. There shall be no parking spaces, parking lots, or loading/unloading spaces.

8. New Surface and/or Subsurface Sewage Disposal or Treatment Areas. 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.

9. Storm Water Retention and Detention Facilities. Riparian setbacks shall not be used for storm water retention and detention facilities.

J. NON-CONFORMING STRUCTURE OR USES IN RIPARIAN SETBACKS

Non-Conforming structures and uses will be governed by Article III-Non-Conformities, Section 301-Continuance of Non-Conforming Uses.

K. VARIANCES WITHIN RIPARIAN SETBACKS

1. The Board of Zoning Appeals may grant a variance to this regulation as provided herein. In granting a variance, the following conditions shall apply:

(a) 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 Board of Zoning Appeals shall consider the potential harm or reduction in riparian functions that may be caused by a proposed structure or use.

(b) The Board of Zoning Appeals may not authorize any structure or use in a zoning district other than those authorized in the Zoning Ordinance.

2. In making a determination under Section K (1) of this regulation, the Board of Zoning Appeals may consider the following:

(a) The natural vegetation of the property as well as the percentage of the parcel that is in the 100-year floodplain.

(b) 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.

(c) 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.

(d) 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.

(e) The presence of significant impervious cover, or smooth vegetation such as maintained lawns, in the riparian setback compromises its benefits to Austintown Township. Variances should not be granted for asphalt or concrete paving in the riparian setback. Variances may be granted for gravel driveways when necessary.

(f) Whether a property, otherwise buildable under the Ordinance of Austintown Township, will be made unbuildable because of the regulation.

3. In order to maintain the riparian setback to the maximum extent practicable, the Board of Zoning Appeals may consider granting variations to other area or setback requirements imposed on a property by the Zoning Ordinance.

4. In granted a variance under this regulation, the Board of Zoning Appeals, for good cause, may impose such conditions that it deems appropriate to maintain the purposes of this regulation.

L. PROCEDURES FOR VARIANCES AND APPEALS

Any applicant seeking a variance to the conditions imposed under this regulation or an appeal to an administrative decision made under this regulation, follow procedures set forth in Article IV, Section 401, 407, 408, 410 and 412 of the Zoning Ordinance.

M. INSPECTIONS OF RIPARIAN SETBACKS

1. The identification of riparian setbacks shall be inspected by Austintown Township.
2. Prior to soil disturbing activities authorized under this regulation, the applicant shall provide Austintown Township with at least fifteen (15) days written notice prior to starting such soil disturbing activities.
3. Any time evidence is brought to the attention of Austintown Township that uses or structures are occurring that may reasonably be expected to violate the provisions of this regulation.

N. PENALTY

1. Any person who shall violate any section of this regulation shall be guilty of a minor misdemeanor and upon conviction thereof, shall be subject to punishment as provided in Section 519.23 and 519.99 of the Ohio Revised Code, and shall be required to restore the riparian setback through a restoration plan approved by the Board of Zoning Appeals.
2. TheThe imposition of any other penalties provided herein shall not preclude Austintown Township from instituting an appropriate action or proceeding in a Court or proper jurisdiction, pursuant to Section 519.24 of the Ohio Revised Code, to prevent an unlawful development, or to retrain, correct, or abate a violation, or to require compliance with the provisions of this regulation or other applicable laws, ordinances, rules, or the orders of the Austintown Township Zoning Inspector.