

## CHAPTER 160

### ESTABLISHMENT OF RIPARIAN SETBACKS

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#### 160.01 PUBLIC PURPOSE.

- (a) The specific purpose and intent of this regulation is to regulate building and land use within riparian setback areas that would impair the ability of these areas to:
- (1) Reduce flood impacts by absorbing peak flows, slowing the velocity of flood waters, and regulating base flow.
  - (2) Assist in 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 riparian habitat to a wide array of wildlife by maintaining diverse and connected riparian vegetation.

- (8) Preserve and conserve the quality and free flowing condition of designated watercourses in the interest of promoting and protecting public health and safety.
  - (9) 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.
- (b) This regulation has been enacted to protect these services of riparian areas by providing reasonable controls governing building, structures, land use and related soil disturbing activities within a riparian setback along designated watercourses in Bainbridge. Due to the importance of properly functioning riparian areas, minimum riparian setbacks may be given preference over minimum front, side, and rear setbacks as specified in this zoning resolution in consideration of an appeal for an area variance by the board of zoning appeals.
  - (c) This regulation has been enacted in compliance as a co-permittee under Geauga County Small Municipal Separate Storm Sewer System permit 3GQ00088\*CG and all subsequent updates.

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| <b>160.02 APPLICABILITY.</b> |
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- (a) This regulation shall apply to all zoning districts in Bainbridge as defined in the most recent version of the Bainbridge Township Zoning Resolution.
- (b) This regulation shall apply to all lands that are within the jurisdiction of Bainbridge and that border designated watercourses as defined in this regulation.
- (c) This regulation shall apply only when the following conditions are met:
  - (1) Soil disturbing activities regulated by this resolution are those proposed in a riparian setback as set forth in these regulations.
  - (2) A zoning certificate or conditional zoning certificate is required.
- (d) 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 Chapter 165.
- (e) 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 Chapter 165.

- (f) 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.

**160.03 NO LONGER USED. (Z-2016-1 – Effective 1/11/2017)**

See definitions in Chapter 105.

**160.04 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 or equal to one-half (1/2) square mile, OR
  - (2) All watercourses draining an area less than one-half (1/2) 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 Geauga SWCD or other technical experts.
- (b) Riparian setbacks on designated watercourses are established as follows:
- (1) A minimum of one hundred and twenty (120) feet on each side of all watercourses draining an area greater than or equal to twenty (20) square miles.
  - (2) A minimum of seventy-five (75) feet on each side of all watercourses draining an area greater than or equal to one-half (1/2) square mile and up to twenty (20) square miles.
  - (3) A minimum of twenty-five (25) feet on each side of all watercourses draining an area less than one-half (1/2) square mile and having a defined bed and bank as determined in Section 160.04(a) (2) of this regulation.
- (c) Riparian Setback Guide Map. The Township shall create a map identifying designated watercourses and their riparian setbacks. This map is attached with this regulation as Exhibit A. The Riparian Setback Guide Map may be utilized as a reference document by the zoning inspector and the board of zoning appeals in determining when a riparian setback applies. The following shall apply to the Riparian Setback Guide Map:
- (1) Nothing herein shall prevent the Township from making additions, amendments, revisions, or deletions from the Riparian Setback Guide Map.

- (2) If any discrepancy is found at the time of application of this regulation between the Riparian Setback Guide Map and the criteria for designated watercourses or riparian setbacks as set forth in 160.04 (a) and (b) of this regulation, 160.04 (a) and (b) shall prevail.
- (d) The following 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, except for in-line ponds. The minimum riparian setback on an in-line pond shall be measured from the ordinary high water mark of the designated watercourse at it enters the pond and through the impoundment along the centerline of the designated watercourse as it flows through the in-line pond. Riparian setbacks on existing in-line ponds shall be expanded to include wetlands and floodplains as set forth herein. The creation of new in-line impoundments shall not be permitted under this zoning resolution.
  - (2) Except as otherwise provided in this regulation, riparian setbacks shall be preserved in their natural state.
  - (3) Where the 100-year floodplain is wider than a riparian setback on either or both sides of a designated watercourse, the riparian setback shall be extended to the outer edge of the 100-year floodplain. The 100-year floodplain shall be defined by FEMA.
  - (4) Where wetlands are identified within a riparian setback, the minimum riparian setback width shall be extended to the outer boundary of the wetland. Wetlands shall be delineated by a site survey prepared by a qualified wetlands professional using delineation protocols accepted by the U.S. Army Corps of Engineers at the time of application of this regulation.
- (e) The site owner shall be responsible for delineating riparian setbacks as required by these regulations and shall identify these setbacks on all site plans submitted to the Zoning Inspector. The site plan shall be drawn to scale and shall be based upon a survey of the affected lot. Copies of the site plan shall be submitted with the application for a zoning certificate as required by the resolution.
- (f) If soil disturbing activities, or construction related activities such as materials storage, will occur within fifty (50) feet of the outer boundary of a riparian setback, the riparian setback shall be clearly delineated by the site owner on-site with construction fencing prior to any soil disturbing or construction related activities. Such delineation shall extend fifty (50) feet beyond the limits of soil disturbing or construction related activities and shall be maintained throughout soil disturbing or construction related activities.
- (g) The Zoning Inspector shall not issue approvals or zoning certificates prior to delineation of riparian setbacks by the applicant and in conformance with this regulation as detailed in Section 160.04 (f).

- (h) The Zoning Inspector may consult with the Geauga SWCD, the Chagrin River Watershed Partners, Inc., or other such experts retained by the board of township trustees in reviewing any submittals associated with implementation of this regulation.

**160.05 PERMITTED STRUCTURES AND USES WITHOUT ZONING CERTIFICATE.**

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

- (a) Recreational Activity. Passive recreational uses, as permitted by Chapter 142 Passive Public Park District.
- (b) Removal of Damaged or Diseased Trees. Damaged or diseased trees may be removed.
- (c) Maintenance and Repairs. Maintenance and repair on 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 disposal systems, all existing at the time of passage of this resolution.
- (d) Maintenance and Cultivation of Lawns and Landscaping. The maintenance of existing, and the cultivation of new, lawns, landscaping, shrubbery, or trees.
- (e) Water Supply Wells. Water supply wells for the purpose of serving permitted structures or uses on lots of record shall be allowed.
- (f) Open Space. Open space restricted to preserve the designated watercourse.
- (g) Crossings. Crossings of designated watercourses through riparian setbacks with roads, driveways, easements, bridges, culverts, utility service lines, or other means shall be allowed, subject to other requirements of the Bainbridge Township Zoning Resolution, the Geauga SWCD, and the Geauga 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 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 the Zoning Inspector. Proof of compliance shall be the following:
  - (1) A site plan showing that any proposed crossing conforms to the general and specific conditions of the applicable Nationwide Permit, or

- (2) A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under the applicable Nationwide Permit, or
  - (3) A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under an Individual Permit.
- (h) Streambank Stabilization Projects. Streambank stabilization projects along designated watercourses shall be allowed, subject to other requirements of the Bainbridge Township Zoning Resolution and the Geauga SWCD. 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 the Zoning Inspector. Proof of compliance shall be the following:
- (1) A site plan showing that any proposed crossing conforms to the general and specific conditions of Nationwide Permit 13, or
  - (2) A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under Nationwide Permit 13, or,
  - (3) A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under an Individual Permit.

**160.06 PERMITTED STRUCTURES 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 resolution.

- (a) Storm Water Retention and Detention Facilities. Storm water retention and detention facilities may be constructed in the riparian setback, provided:
- (1) Storm water quality treatment consistent with current Ohio EPA and Geauga County SWCD regulations is incorporated into the basin.
  - (2) Storm water retention and detention facilities are located at least fifty (50) feet from the ordinary high water mark of the designated watercourse.

#### **160.07 CONDITIONAL STRUCTURES AND USES IN RIPARIAN SETBACKS.**

The following conditional structures and uses may be allowed in riparian setbacks, subject to the approval of an application for a conditional zoning certificate by the board of zoning appeals in accordance with the conditions herein and such other applicable regulations set forth in this zoning resolution.

- (a) Waste Water Treatment Plants and Appurtenances. Privately owned waste water treatment plants and appurtenances may be constructed in the riparian setback. Proof of compliance with the applicable regulations of the Ohio EPA and the Geauga County Water Resources Department shall be provided.
- (b) Signs. Signs in accordance with this zoning resolution may be erected in the riparian setback.

#### **160.08 STRUCTURES, USES, AND OBSTRUCTIONS PROHIBITED IN RIPARIAN SETBACKS.**

Any structure or use not permitted under this regulation shall be prohibited in riparian setbacks. The following structures or uses are specifically prohibited:

- (a) Construction. There shall be no structures, as defined in Chapter 105 of the Bainbridge Township Zoning Resolution, of any kind except as permitted under this regulation.
- (b) Dredging or Dumping. There shall be no drilling, filling, dredging, or dumping of soil, spoils, liquids, yard wastes, or solid materials, except for noncommercial composting of uncontaminated natural materials and except as permitted under this regulation.
- (c) Fences and Walls. There shall be no fences or walls constructed in the riparian setback except as permitted under this regulation.
- (d) Parking Spaces or Lots and Loading/Unloading Spaces for Vehicles. There shall be no parking spaces, lots, or loading/unloading spaces, except as permitted under this regulation.
- (e) Roads or Driveways. There shall be no roads or driveways, except as permitted under this regulation.
- (f) All obstructions as delineated in Section 161.11 except 161.11 (12). **[Z-2006-2 – Effective 6/29/2006]**