

123 - RIPARIAN SETBACKS

The purpose and intent of this section is to identify, protect the primary headwater streams of Madison Township. These streams provide important economic and ecological functions through the retention of sediment, water, and organic matter: nutrient reduction; and by providing corridors for wildlife dispersal. These regulations have been enacted to protect and enhance the functions of riparian areas by providing reasonable controls governing buildings, structures, uses, and related soil disturbing activities within setback along designated watercourses in the township. These setbacks will aid to:

- A. Preserve and conserve the quality and the free flowing condition of the designated watercourses, protect groundwater recharge and ground (well) water quality in the interest of promoting and protecting public health and safety.
- B. Reduce flood impacts by absorbing peak flows, slowing the velocity of floodwaters, and regulating base flow.
- C. Assist in stabilizing the banks of the designated watercourses, reduce stream bank erosion, and the downstream transport of sediments eroded from such watercourse banks.
- D. Reduce pollutants in designated watercourses during periods of high flows by filtering, settling, and transforming pollutants already present in such watercourses.
- E. Reduce pollutants in designated watercourses by filtering, settling, and transforming pollutants in runoff before they enter such watercourses.
- F. Provide designated watercourse habitats with shade and food.
- G. Reduce the presence of aquatic nuisance species to maintain a diverse aquatic system.
- H. Provide riparian habitat with a wide array of wildlife by maintaining diverse and connected riparian vegetation.
- I. 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 the safety within the affected watershed.

123.1 Due to the importance of the properly functioning riparian areas, minimum riparian setbacks may be given preference over minimum front, side, or rear yard setbacks as specified in this resolution in the consideration of an appeal for a variance by the Board of Zoning Appeals.

123.2 Definitions. For the purpose of this regulation the following terms shall have the following meanings:

123.2.1 “Madison “ means Madison Township, its designed representatives, Trustees, Boards, or Commissions.

123.2.2 “Damaged or Diseased Trees” means trees that have split trunks, broken tops, heart rot, insect or fungus problems that will lead to imminent death, under cut root systems that put 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 on to a structure.

123.2.3 “Designated Watercourse” means that is contained within, flows through or borders of Madison Township and meets criteria set forth in this section.

123.2.4 “Federal Emergency Management Agency (FEMA)” means the agency with overall responsibility for administering the National Insurance Program.

123.2.5 “100-year Floodplain” means 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. The 100-year floodplain shall be defined by the Federal Emergency Management Agency (FEMA).

123.2.6 “Ohio Environmental Protection Agency” means the organization referred throughout this regulation as the “Ohio EPA”

123.2.7 “Ordinary High Water Mark” means the point of the bank to which the presence and action of the surface water is so continuous as to leave an area, marked by erosion, destruction, or prevention of woody terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristics. The ordinary high water mark defines the bed of the watercourse.

123.2.8 “Riparian Area” means naturally vegetated land adjacent to watercourses that, if appropriately sized, helps to stabilize the stream banks, limits erosion, reduces flood size flows, and/or filter and settle out runoff pollutants, or performs other functions consistent with the purpose of this regulation.

123.2.9 “Riparian Setback” means those lands in Madison that fall within the area defined by the criteria set forth in section 123 of this regulation.

123.2.10 “Soil & Water Conservation District” means an entity organized under chapter 1515 of the Ohio Revised Code referring to either the Soil and Water Conservation District Board or its designed employees.

123.2.11 “Soil Disturbing Activity” means clearing, grading, excavating, filling, dumping, drilling, striping, or other alteration of the earth’s surface where natural or human made ground cover is destroyed, which may result in or contribute to, erosion and sediment pollution.

123.2.12 “Watercourse” means any brook, channel, creek, river, or stream having banks, a defined bed, and a definite direction of flow, either continuously or intermittently.

123.2.13 “Wetland” means those areas that are inundated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in a saturated soil conditions, including swamps, marshes, bogs and similar such areas.

123.3 APPLICABILITY: These Regulations shall only apply when the following conditions are met:

123.3.1 A riparian setback, is set forth in these regulations.

123.3.2 A zoning certificate or conditional use permit is required or necessary.

123.3.3 This regulation shall apply to all zoning districts in Madison Township as defined by the most recent version of the Madison Township Zoning Resolution.

123.3.4 This regulation shall apply to all lands that are within the borders and jurisdiction of Madison Township and that borders designed watercourses as defined in this regulation.

123.3.5 The regulation set forth herein shall apply to all buildings, structures, uses, and related soil disturbing activities on a lot containing a designated watercourse, except as otherwise provided herein.

123.3.6 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 Section 137- Nonconforming Uses of Land and Buildings.

123.3.7 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 Section 137, Nonconforming Uses of Lands and Buildings.

123.3.8 No zoning certificate or conditional zoning permit shall be issued for any building, structure or use on a lot containing, wholly or partly, a designated watercourse except in conformity with the regulation set forth herein.

123.4 RIPARIAN SETBACK GUIDANCE MAP:

123.4.1 The Township shall provide a map identifying known and potential designated watercourses and their riparian setbacks. Said map is attached hereto and is identified as Exhibit “A”. The riparian setback map may be utilized as a guide or reference document by the zoning inspector and the board zoning appeals in determining when the riparian setbacks applies.

123.4.2 Nothing herein shall prevent the Township from amending the map from time to time as may be necessary.

123.4.3 Due to the scale and the information available, all the designated watercourses and setbacks may not be accurately identified on the riparian setback guidance map. If any discrepancy is found between the riparian setback map and these regulations, or if any discrepancy is found between existing site conditions and these regulations, the criteria set forth in Section 123 shall prevail.

123.5 ESTABLISHMENT OF DESIGNATED WATERCOURSES AND RIPARIAN SETBACK DISTANCES:

123.5.1 Designated watercourses shall include those watercourses meeting any one of the following criteria.

123.5.1.1 All watercourses within the territorial boundaries of Madison Township designated as having banks, a defined bed, and a definite flow, either continuously or intermittently flowing. In determining if a watercourse shall be designated watercourse by the Township, so as to require a riparian setback, the Madison Township Zoning Inspector may consult with representatives of the Lake Soil and Water Conservation District and/ or State or Federal governmental officials or technical experts. Final determination shall be made by the Zoning Inspector in accordance with the rules herein.

123.5.1.2 Any watercourse newly constructed, altered, restored or proposed in a development or as part of an overall development plan. Such projects must show compliance with all applicable local, state and federal requirements.

123.5.2 Riparian setbacks on designated watercourses are established as follows:

123.5.2.1 A minimum of 120 feet on each side of all watercourses draining an area greater than or equal to 20 square miles.

123.5.2.2 A minimum of 75 feet on each side of all watercourses draining an area greater than or equal to one square mile and up to 20 square miles.

123.5.2.3 A minimum of 25 feet on each side of all watercourses draining an area less than one square mile and having a defined bed and bank as determined in section 123 of this regulation.

123.5.2.4 A minimum of 75 feet on each side of all watercourses designated as Class III Primary Headwater Habitat streams.

123.5.3 The Following shall apply in Riparian Setbacks:

123.5.3.1 Riparian setbacks shall be measured in horizontal direction outward from the ordinary high water mark of each designated watercourse.

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

123.5.3.3 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 on the Flood Insurance Rate Maps (FIRM) of Lake County, Ohio administered by FEMA.

123.5.3.4 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 qualified wetlands professional using delineation protocols accepted by the U.S. Army Corps of Engineers and Ohio Environmental Protection Agency.

123.5.3.5 Where proposed projects indicate impacts to wetlands, the wetlands shall be delineated using protocols accepted by The U.S. Army Corps of Engineers. Such delineation is a requirement of the U.S. Army Corps of Engineers and the Ohio Environmental Protection Agency.

123.6 APPLICATIONS AND SITE PLAN:

123.6.1 Where applicable, 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 in accordance with Section 126, Site Development Review and Section 140, Zoning Certificates.

123.6.2 If soil disturbing activities, or construction related activities such as mineral storage, will occur within 50 feet of the outer boundary of a riparian setback, the 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 50 feet beyond the limits of soil disturbing or construction related activities and shall be maintained throughout soil disturbing or construction related activities.

123.6.3 The Zoning Inspector shall not issue approvals unless said project is in conformance with this regulation.

123.6.4 The Zoning Inspector may consult with the Lake County SWCD, or other experts retained by the Township in reviewing any submittals associated with implementation of this regulation.

123.7 PERMITTED STRUCTURES AND USES WITHOUT A 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 land.

123.7.1 Damaged or diseased may be removed.

123.7.2 Maintenance of existing, and the cultivation of new lawns, landscaping, shrubbery or trees.

123.7.3 Water supply wells for the purpose of serving permitted structures or uses on lots of record shall be allowed.

123.7.4 Recreation activities such as fishing, hunting, picnicking, trails, picnic tables, walkways and paths for non-motorized vehicles constructed of pervious materials.

123.7.5 Water supply wells subject to the regulations enforced by the Lake County General Health District or the Ohio EPA.

123.7.6 Passive open space to preserve the riparian setback in its natural state.

123.7.7 On-site sewage/ treatment systems subject to the applicable regulations enforced by the Lake County General Health District or the Ohio EPA.

123.8 PERMITTED STRUCTURES AND USES WITH A ZONING CERTIFICATE:

The following structures and uses shall 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 other applicable regulations contained in this resolution.

123.8.1 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 Madison Township Zoning Resolution, the Lake County SWCD, the Lake County Engineer. If the 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 the Zoning Inspector. Proof OF Compliance shall be the following:

123.8.1.1 A site plan showing that any proposed crossing conforms to the general and specific conditions of the applicable Nationwide Permit, or

123.8.1.2 A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under the applicable Nationwide Permit, or

123.8.1.3 A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under an Individual Permit.

123.8.2 Stream-bank Stabilization Projects: Stream-bank Stabilization Projects along designated watercourses shall be allowed, subject to other requirements of the Madison Township Zoning Resolution and the Lake County SWCD. If stream-bank stabilization work is proposed below the ordinary high water mark of the designated watercourse, proof of compliance with applicable conditions of the U.S. Army Corps Of Engineers section 404 permit (Either a Nationwide Permit 13, including the state Of Ohio 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:

123.8.2.1 A site plan showing any stream-bank projects conforms to the general and specific conditions of Nationwide Permit 13 or

123.8.2.2 A copy of the authorization letter from the U.S. Army Corps Of Engineers approving activities under Nationwide Permit 13 or

123.8.2.3 A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under an Individual Permit.

123.8.3 Storm Water Retention And Detention Facilities may be constructed in riparian setbacks provided;

123.8.3.1 Storm Water quality treatment is consistent with Ohio EPA and Lake County SWCD regulations.

123.8.3.2 Storm water retention and detention facilities are located at least 50 feet from the ordinary high water mark of the watercourse.

123.9 CONDITIONAL STRUCTURES AND USES IN RIPARIAN SETBACKS: The following conditional structures and uses may be allowed in riparian setbacks, subject to the approval of the application for a conditional use permit by the Board of Zoning Appeals in accordance with the conditions herein and such other applicable regulations set forth in this zoning resolution.

123.9.1 Waste Water Plants and Appurtenances may be constructed in riparian setbacks. Proof of compliance with the applicable regulations of the Ohio EPA and the Lake County SWCD and the Lake County Engineers Office shall be provided.

123.9.2 Signs in accordance with this zoning resolution may be erected in the riparian setback.

123.10 STRUCTURES USES, AND OBSTRUCTIONS PROHIBITED IN REPARIAN SETBACKS: Any structure or use not permitted under this regulation shall be prohibited in riparian setbacks. The following structures or uses are specifically prohibited:

123.10.1 Construction. There shall be no structures, as defined in the Madison Township Zoning Resolution, except as permitted in this regulation.

123.10.2 Dredging or Dumping. There shall be no drilling, filling, dredging or dumping of soil, spoils, liquids, yard waste or solid materials, except for noncommercial composting of uncontaminated natural materials and except as permitted under this regulation.

123.10.3 Fences and walls. There shall be no fences or walls constructed in the riparian setbacks except as permitted under this regulation.

123.10.4 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.

123.10.5 Roads and Driveways. There shall be no roads or driveways, except as permitted under these regulations.

123.11 INSPECTION AND ENFORCEMENT OF RIPARIAN SETBACKS: The delineation of riparian setbacks shall be inspected and enforced by the Zoning Inspector.

123.11.1 The owner shall notify the zoning inspector at least 10 working days prior to the initiation of any construction, land development or soil disturbing activities on a lot.

123.11.2 The zoning inspector and/ or its agents, with prior notice and authorization of the owner, may enter the affected lot from time to time to conduct on-site inspections to ensure compliance with these regulations.