

CHAPTER 570

ESTABLISHMENT OF RIPARIAN AND WETLAND SETBACKS

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The following resources were used to establish the regulations for riparian and wetland setbacks:

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Ohio Department of Natural Resources, Division of Water. *Evaluating Ground Water Pollution Potential in Ohio, Fact Sheet 92-9*. January 31, 2006.; Ohio Department of Natural Resources, Division of Water. *Ground Water for Planning in Northwest Ohio, A Study of the Carbonate Rock Aquifers*. 1970.; Ohio Department of Natural Resources, Division of Water. *Ground Water Pollution Potential of Medina County, Ohio*. May 1994.; Ohio Department of Natural Resources, Division of Water. *Ground Water Quality, Fact Sheet 97-47*. October 14, 1997.; Ohio Department of Natural Resources, Division of Water. *Ground Water Resource Mapping in Ohio, Fact Sheet 92-10*. February 26, 2004.; Ohio Department of Natural Resources, Division of Water. *Individual Practices to Protect Ground Water Quality, Fact Sheet 97-45*. October 14, 1997.; Ohio Department of Natural Resources, Division of Water. *Surface Water and Ground Water Interaction, Fact Sheet 97-43*. October 14, 1997.; Ohio Department of Natural Resources, Division of Water. *What's Ground Water?, Fact Sheet 93-24*. July 8, 2002.; Ohio Department of Natural Resources, Division of Water. *What is Nonpoint Source Pollution?, Fact Sheet 97-44*. October 14, 1997.; Piatak, A. and Vujevich, J, Montville Township Zoning Commission. *Wetland and Riparian Setbacks*. July 2009.; Seabrook Conservation Commission. *Effects of Filling Wetlands*. <http://www.seabrooknh.org/Con%20Comm/Effects%20of%20Filling%20Wetlands.pdf>.

Sec. 570.1 PURPOSE AND INTENT.

- A. The specific purpose and intent of these regulations is to regulate the location of buildings, structures, uses, and related soil disturbing activities within riparian and wetland setback areas that would impair the ability of these areas to:
 - 1. Preserve and conserve the quality and free flowing condition of designated water courses in the interest of promoting and protecting public health and safety.
 - 2. Reduce flood impacts by absorbing peak flows, slowing the velocity of flood waters, and regulating base flow.
 - 3. Assist in stabilizing the banks of designated watercourses to reduce woody debris from fallen or damaged trees, streambank erosion, and the downstream transport of sediments eroded from such watercourse banks.
 - 4. Reduce pollutants in designated watercourses during periods of high flows by filtering, settling, and transforming pollutants already present in such watercourses.

5. Reduce pollutants in designated watercourses by filtering, settling, transforming and absorbing pollutants in runoff before they enter such watercourses.
 6. Reduce the need for costly maintenance and repairs to roads, embankments, sewage systems, ditches, water resources, wetlands, and storm water management practices that are the result of inadequate storm water control due to the loss of riparian areas and wetlands.
 7. Minimize encroachment on designated watercourses and limit 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.
 8. Minimize streambank erosion by reducing runoff volume and velocity
 9. Protect groundwater quality by filtering pollutants from storm water runoff
 10. Assist in recharging groundwater reserves.
 11. Protect surface water quality by minimizing sediment pollution from streambank erosion, and filtering, settling, and transforming sediments, chemicals, salts and other pollutants from flood waters and storm water runoff.
- B. These regulations have been enacted to protect and enhance the functions of riparian and wetland areas by providing reasonable controls governing buildings, structures, uses, and related soil disturbing activities with a riparian and/or wetland setbacks along designated watercourses in Montville Township. Due to the importance of properly functioning riparian and wetland areas, minimum riparian and wetland 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.
- C. These regulations have been enacted under the authority of Chapter 519 of the Revised Code of the State of Ohio that provides Montville Township the authority to regulate the location, size, height, and use of buildings and structures, the area and dimensions of lots and yards, and the use of lands necessary to protect the public health, safety, morals, comfort, and general welfare of the Township and its residents.

- D. It is the policy of Montville Township to encourage the establishment of naturally vegetated riparian areas along watercourses. Property owners who own land along watercourses are encouraged to preserve the natural functionality of the riparian system within Montville Township to control flooding, erosion, and water quality problems on their property, as well as downstream. Riparian and wetland setback zoning, as established through these regulations, represents the minimal standards necessary to limit flooding, erosion, and water quality problems and the impacts there from. Guidance regarding characteristics of riparian areas in Montville Township can be found in the Montville Township Comprehensive Plan.

Sec. 570.2 APPLICABILITY AND COMPLIANCE.

- A. These regulations shall apply to:
 - 1. All lands that are within the jurisdiction of Montville Township and that border designated watercourses and wetlands as defined in these regulations.
 - 2. All development plan approvals, major and minor subdivisions that are not exempt from township zoning by the Ohio Revised Code.
 - 3. All soil disturbing activities regulated by Township Zoning Regulations that are proposed in, or within 50 feet of, a riparian setback or wetland as shown on the Montville Township National Wetlands Inventory Map and on the Montville Township Riparian Setback Guide Map. (See Section 570.4)

- B. These regulations shall apply to all zoning districts.

The regulations set forth herein shall apply to all buildings, structures, uses, and related soil disturbing activities on a lot containing a designated watercourse and/or wetland as shown on the Montville Township National Wetlands Inventory Map and on the Montville Township Riparian Setback Guide Map, except as otherwise provided herein.

- C. Soil disturbing activities within the area of hydric soils as shown on the Montville Township National Wetlands Inventory Map.
- 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 590, Nonconforming Uses, Buildings, Lots and Structures.

- E. The repair, maintenance, 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 590, Nonconforming Uses, Buildings, Lots and Structures.
- 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 and/or wetland except in conformity with the regulations set forth herein.

Sec. 570.3 ESTABLISHMENT OF DESIGNATED WATERCOURSES, RIPARIAN SETBACKS AND WETLAND SETBACKS.

- A. A designated watercourse shall include one or more of the following criteria.
 - 1. All watercourses draining an area equal to or greater than one-half (0.5) square mile, or
 - 2. All watercourses draining an area less than one-half (0.5) square mile and having a defined bed and bank. In determining if watercourses have a defined bed and bank, the Zoning Inspector/or designee may consult with representatives of the Medina County SWCD or other technical experts.
- B. Riparian setbacks on designated watercourses shall be established as follows.
 - 1. A minimum of 120 feet on each side of all designated watercourses draining an area equal to or greater than 20 square miles.
 - 2. A minimum of 75 feet on each side of all designated watercourses draining an area equal to or greater than one-half (0.5) square mile and up to 20 square miles.
 - 3. A minimum of 25 feet on each side of all designated watercourses draining an area less than one-half (0.5) square mile and having a defined bed and bank as determined in these regulations.
- C. Wetland setbacks are established as follows:
 - 1. A minimum of one hundred twenty (120) feet surrounding and including all Ohio EPA Category 3 Wetlands, or current equivalent Ohio EPA classification.

2. A minimum of seventy-five (75) feet surrounding and including all Ohio EPA Category 2 Wetlands, or current equivalent Ohio EPA classification.
 3. A minimum of twenty-five (25) feet surrounding all Ohio EPA Category 1 Wetlands, or current equivalent Ohio EPA classification.
- D. The following regulations shall apply to riparian and wetland setbacks.
1. Riparian and/or wetland setbacks shall be measured in a perpendicular and horizontal direction outward from the ordinary high water mark of a designated watercourse or defined wetland boundary, except for existing in-line ponds as addressed in D. 5.
 2. Except as otherwise provided in this regulation, riparian and/or wetland setbacks shall be preserved in an undisturbed state.
 3. Where the one hundred (100) year floodplain is wider than the minimum riparian setbacks on either or both sides of a designated watercourse, the minimum riparian setbacks shall be extended to include the outermost boundary of the one hundred (100) year floodplain as delineated on the flood hazard boundary maps for the affected area provided by FEMA.
 4. Wetlands shall be delineated through a site survey prepared by a qualified wetlands professional retained by the developer using delineation protocols accepted by the U.S. Army Corps of Engineers at the time an application is made under these regulations. Such delineation is a requirement of the U.S. Army Corps of Engineers and the Ohio EPA.
 5. The minimum riparian setbacks on an in-line pond existing at the time an application for a zoning certificate or a conditional zoning certificate is made under these regulations shall be measured from the ordinary high water mark of the designated watercourse as it enters said pond and through the impoundment along the centerline of the designated watercourse as it flows through the in-line pond. Riparian setbacks on in-line ponds existing at the time an application is made under these regulations shall be expanded to include floodplains as detailed in D 3. The creation of new in-line impoundments shall not be permitted under these regulations.
 6. Upon completion of an approved development plan or plat, riparian and wetland setbacks shall be permanently recorded on the plat records of the township as recorded with the Medina County Recorder's Office.

7. Where wetlands are identified within a riparian setback, the minimum riparian setback width shall be extended to the outer boundary of the wetland. In addition, wetlands shall be protected to the extent detailed in this chapter.
8. On lots existing at the time of the adoption of these regulations, building setbacks may be reduced as needed, up to a maximum of 25 percent, to maintain the riparian and wetland setbacks.

Sec. 570.4 MONTVILLE TOWNSHIP RIPARIAN SETBACK GUIDE MAP AND MONTVILLE TOWNSHIP NATIONAL WETLANDS INVENTORY MAP.

- A. The Township shall create a guide map identifying potential watercourses and wetlands for which setbacks are required. The maps are attached hereto and made a part of these regulations. The maps may be used as a guide or reference document by the Township in determining when the setbacks apply.
- B. Nothing shall prevent the Township from amending the maps from time to time as may be necessary.
- C. If any discrepancy is found between the riparian setback guide map and these regulations, or if any discrepancy is found between existing site conditions and the riparian setback guide map, the criteria set forth in Section 570.3 A. 1. and 2. shall prevail.
- D. If it appears a wetland setback applies after reviewing the hydric soil areas of the National Wetlands Inventory Map, the Zoning Inspector, or designee, shall conduct a physical walk-through inspection of the property. If the walk-through inspection reveals potential wetland areas, a wetland screening shall be required. In the event the wetland screening indicates that wetlands are located on the parcel, a wetland delineation shall be required.

If a wetland screening and/or delineation is required, all expenses shall be borne by the applicant/owner, and the results shall be forwarded to the Zoning Office.

Sec. 570.5 GENERAL APPLICATIONS AND DEVELOPMENT PLANS.

- A. When making an application for a zoning certificate or a conditional zoning certificate for a building, structure, or use regulated by Montville Township, the owner shall be responsible for identifying riparian and wetland setbacks as required by these regulations and shall indicate such setbacks on all development plans submitted to the Zoning Inspector/or designee.

- B. The Zoning Inspector/or designee, may, in reviewing the development plan, consult with the Medina County SWCD or such other expert(s) retained by the Board of Township Trustees.
- C. If land development or soil disturbing activities will occur within fifty (50) feet of the outer boundary of the applicable riparian and wetland setbacks as specified in these regulations, then prior to the initiation of any land development or soil disturbing activities, the riparian and wetland setbacks shall be clearly delineated on the affected lot by the owner with construction fencing as shown on the development plan and shall be maintained on the lot until the completion of such development or disturbance activities.

Sec. 570.6 USES PERMITTED WITHIN A RIPARIAN AND WETLAND SETBACK WITHOUT A ZONING CERTIFICATE.

Open space uses that are passive in character shall be permitted in riparian and wetland setbacks, including, but not limited to, those listed in these regulations. No use permitted under these regulations shall be construed as allowing public trespass on privately held lands.

- A. Recreational Activity: Passive recreational uses, as permitted by federal, state, and local laws, such as hiking, fishing, hunting, picnicking, and similar uses.
- B. Removal of Damaged or Diseased Trees: Damaged or diseased trees may be removed.
- C. Revegetation and/or Reforestation: Riparian and wetland setbacks may be revegetated with non-invasive plant species.
- D. Maintenance of lawns, gardens and landscaping: Lawns, gardens and landscaping, that existed at the time this ordinance was passed, may be maintained as long as additional intrusion into or filling of wetlands is not increased.
- E. Maintenance and Repairs: Maintenance and repair on existing 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 systems.
- F. Water Supply Wells: Water supply wells subject to the regulations enforced by the Medina County Health Department or the Ohio EPA.

Sec. 570.7 PERMITTED BUILDINGS, STRUCTURES, AND USES WITHIN RIPARIAN AND WETLAND SETBACKS WITH A ZONING CERTIFICATE.

The following buildings, structures, and uses may be permitted within riparian and wetland setbacks, subject to the approval of an application for a zoning certificate by the Zoning Inspector/or designee and in accordance with the following regulations and such other applicable regulations contained in this zoning resolution.

- A. Crossings: Crossings of designated watercourses through riparian and wetland setbacks with roads, driveways, easements, bridges, culverts, utility service lines (including sanitary sewer, water, septic system, storm sewer, electric, natural gas, telephone, and cable for television and other digital transmission), or other means may be permitted, subject to the other regulations contained in this resolution and regulations enforced by the Medina 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 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/or designee. Proof of compliance shall be the following:
 - 1. A development plan showing that any proposed crossing conforms to the general and special conditions of the applicable Nationwide Permit, or
 - 2. A copy of the authorization letter from the U.S. Army Corps of Engineers approving the activities under the applicable Nationwide Permit, or
 - 3. A copy of the authorization letter from the U.S. Army Corps of Engineers approving the activities under an individual permit.

- B. Streambank Stabilization Projects: Streambank stabilization projects along designated watercourses, subject to other regulations contained in this resolution and the regulations enforced by the Medina County SWCD, Ohio EPA, and U.S. Army Corps of Engineers. If streambank stabilization work is proposed below the ordinary high water mark of a designated watercourse, proof of compliance with the applicable conditions of U.S. Army Corps of Engineers Section 404 Permit (either Nationwide Permit, 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/or designee. Proof of compliance shall be the following:

1. A development plan showing that any proposed stabilization project conforms to the general and special 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.
- C. Structures such as docks and piers that promote recreational activities.

Sec. 570.8 BUILDINGS, STRUCTURES, AND USES PROHIBITED WITHIN RIPARIAN AND WETLAND SETBACKS.

The following buildings, structures, and uses are specifically prohibited within riparian setbacks.

- A. Construction: There shall be no buildings, structures, uses, or related soil disturbing activities of any kind except as permitted under these regulations.
- B. Parking and Loading/Unloading Spaces for Vehicles: There shall be no parking spaces, parking lots, loading/unloading spaces, or related soil disturbing activities.
- C. Roads and Driveways: There shall be no roads or driveways except as permitted under these regulations.

Sec. 570.9 INSPECTIONS OF RIPARIAN AND WETLAND SETBACKS.

The Zoning Inspector/or designee shall inspect the delineation of riparian and wetland setbacks as follows:

- A. The owner shall notify the Zoning Inspector/or designee at least five (5) working days prior to the initiation of any soil disturbing activities that may be within riparian or wetland setbacks and are regulated by this resolution.
- B. The Zoning Inspector/or designee, after giving prior notice to the owner and receiving authorization from the owner, may enter the affected lot from time to time to conduct on-site inspections to ensure compliance with these regulations.