

# **SECTION 31**

## **NATURAL RESOURCE PROTECTION**

(Effective 01/15/2009)

### **31.1- Riparian Setbacks**

#### **Section 31.1.1-Purpose and Intent**

- A. It is hereby determined that the system of headwaters, rivers, streams, wetlands and other watercourses within Leroy Township contributes to the health, safety and general welfare of the residents of Leroy Township. 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 a riparian setback along designated watercourses and wetlands in the Township.
- B. The specific purpose and intent of this regulation is to regulate uses and developments within riparian setbacks that would impair the ability of riparian setback areas to:
1. Benefit the community by minimizing encroachment on designated watercourses and wetlands thereby minimizing the need for costly engineering solutions or other invasive measures that may be necessary to protect persons, buildings, structures, and uses as well as to reduce the damage to real property and threats to overall public health and safety within the affected watershed.
  2. Preserve and conserve the quality and free flowing condition of designated watercourses, protect groundwater recharge and ground (well) water quality in the interest of promoting and protecting public health and safety.
  3. Reduce flood impacts by absorbing peak flows, slowing the velocity of floodwaters, and regulating base flow.
  4. Assist in stabilizing the banks of designated watercourses, reduce stream bank erosion, and the downstream transport of sediments eroded from such watercourse banks.
  5. Reduce pollutants in designated watercourses during periods of high flows by filtering, settling, and transforming pollutants already present in such watercourses.
  6. Reduce pollutants in designated watercourses by filtering, settling, and transforming pollutants in runoff before they enter such watercourses.
  7. Preserve the scenic beauty of the environment in order to maintain the character of Leroy Township, the quality of life of the residents, and the corresponding property values.

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### **Section 31.1.2-Applicability**

- A. The Regulations as set forth herein shall apply to all zoning districts.
- B. The Regulations set forth herein shall apply to all buildings, structures, uses, and related soil disturbing activities on a lot containing a designated watercourse or wetland, when a riparian setback, as set forth in these Regulations, is proposed to be impacted.
- C. The use of any building, structure, or lot lawfully existing prior to the effective date of these regulations may be continued, pursuant to the provisions of Section 8, Nonconforming Uses.
- D. 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, expanded or completed, subject to the provisions of Section 8, Nonconforming Uses.
- E. No Zoning Certificate in accordance with Section 13 of these Regulations or Conditional Use Permit in accordance with Section 14 of these Regulations shall be issued for any building, structure, or use on a lot containing, wholly or partly, a designated watercourse or wetland except in conformity with the Section 31.1 of these Regulations as set forth herein.
- F. Due to the importance of 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 a Conditional Use Permit or an Appeal for a Variance by the Board of Zoning Appeals.

### **Section 31.1.3-Establishment of Riparian Setbacks**

- A. A designated watercourse, as defined in Section 2 herein, shall include:
  - 1. All watercourses within the territorial boundaries of Leroy Township designated as having banks, a defined bed, and definite direction of flow, either continuously or intermittently flowing. In determining if a watercourse shall be a designated watercourse by the Township, so as to require a riparian setback, the Leroy Township Zoning Inspector may consult with representatives of the Lake County 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.
  - 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.

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- B. A riparian setback of land shall be required on all land adjacent to designated watercourses. The setback distance will be determined by the size of the watershed that the watercourse drains. 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 1 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 1 square mile and having a defined bed and bank as determined in these regulations.
  4. A minimum of 50 feet on each side of all designated watercourses determined to be a Class III primary headwater habitat stream.
- C. The following regulations shall apply to riparian setbacks.
1. Riparian setbacks shall be measured in a horizontal direction outward from the ordinary high water mark of a designated watercourse.
  2. Except as otherwise provided in this Regulation, riparian setbacks shall be preserved in their natural state.
  3. Where the one hundred year flood plain is wider than the minimum riparian setback on either or both sides of a designated watercourse, the minimum riparian setback shall be extended to include the outermost boundary of the one hundred year flood plain as delineated on the flood hazard boundary map(s) for the affected area provided by FEMA.
- D. 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 (OEPA).
1. All wetlands as identified by the State of Ohio and/or US Army Corps of Engineers shall have the following setback as measured from the jurisdictional boundary:
    - a. 50 feet extending beyond the outermost boundary of a category 3 wetland.
    - b. 30 feet extending beyond the outermost boundary of a category 2 wetland.
    - c. 10 feet extending beyond the outermost boundary of a category 1 wetland.

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### **Section 31.1.4-Applications and Site Plan**

- A. When making an application for a Zoning Certificate or a Conditional Use Permit for a building, structure or use regulated by this resolution that impacts a designated water course or wetlands, the owner or applicant shall be responsible for identifying riparian setbacks, proposed stream crossings and stream bank stabilization as required by these Regulations. The owner or applicant shall indicate such setback distance in accordance with the Section 31.1.3 on all site plans submitted to the Zoning Inspector.
- B. The Township shall adopt a riparian setback map including any additions, amendments, or deletions to the map, as created and updated from time to time by the Lake County Soil and Water Conservation District. The riparian setback map identifies known and potential designated watercourses, and their riparian setbacks. Said map is on file at Leroy Township Hall. Due to the potential for natural and artificial changes, inaccuracies of scale and limitations on information available, all designated watercourses and setbacks may not be accurately identified on the riparian setback map.
- C. If any discrepancy is found between the riparian setback map and the on site conditions, the on site conditions shall prevail when applying the Regulations herein.
- D. The riparian setback map shall be utilized as a guide or reference document by the owner, applicant, Zoning Inspector and the Board of Zoning Appeals in determining when the riparian setback applies.
- E. The Zoning Inspector, may, in reviewing the site plan, consult with the Lake County Soil and Water Conservation District, federal or state experts or such other such expert(s) retained by the Board of Township Trustees to make infield determinations and/or classification of the required setback distance on a designated watercourse or wetland.

### **Section 31.1.5-Permitted Buildings, Structures, and Uses Within a Riparian Setback Without a Zoning Certificate**

- A. Only the following buildings, structures, uses, and related soil disturbing activities shall be permitted within a riparian setback without a Zoning Certificate.
  - 1. Recreational Activities: Fishing, hunting, picnicking, picnic tables, trails, walkways, and paths for non-motorized vehicles constructed of pervious materials.
  - 2. Removal of Damaged or Diseased Trees: Damaged or diseased trees and other associated debris may be removed.

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3. **Maintenance and Repairs:** Maintenance and repair on lawfully existing buildings, structures, and uses; 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.
4. **Maintenance and Cultivation of Lawns and Landscaping:** The maintenance of existing, and the cultivation of new, lawns, landscaping, shrubbery, and trees.
5. **Open Space:** Passive open space to preserve the riparian setback area in its natural state.

#### **Section 31.1.6-Permitted Buildings, Structures, and Uses Within a Riparian Setback in Accordance with Zoning Certificate.**

- A. Only the following buildings, structures, and uses may be permitted within a riparian setback in accordance with the following Regulations and such other applicable Regulations contained in this Zoning Resolution.
  1. **Crossings:** Crossings of designated watercourses through riparian setbacks are permitted in consultation with Lake County Soil & Water.
  2. **Stream bank Stabilization Projects:** Stream bank stabilization projects along designated watercourses are permitted in consultation with Lake County Soil & Water.
  3. **Signs:** Signs in accordance with Section 23 of this Zoning Resolution.
  4. **Fences and walls:** Fences and walls in accordance with Section 21 of this Zoning Resolution.
  5. **Water Supply Wells:** Water supply wells subject to the regulations enforced by the Lake County General Health District and/or the Ohio EPA.
  6. **On-site Sewage Systems and Waste Water Treatment Plants:** On-site sewage systems and wastewater treatment plants and appurtenances subject to the applicable regulations enforced by the Lake County General Health District and/or the Ohio EPA. Proof of compliance with such regulations shall be required

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### **Section 31.1.7-Buildings, Structures and Uses Prohibited Within a Riparian Setback**

- A. Any building, structure, use, or related soil disturbing activity not permitted under this Regulation shall be prohibited within a riparian setback. The following buildings, structures, and uses are specifically prohibited.
  - 1. Construction: There shall be no buildings, structures, uses, or related soil disturbing activities of any kind except as permitted under these Regulations.
  - 2. Parking Spaces or Lots and Loading/Unloading Spaces for Vehicles: There shall be no parking spaces, parking lots, loading/unloading spaces, or related soil disturbing activities.
  - 3. Structural Storm water Management Practices: There shall be no structural storm water management practices or related soil disturbing activities.

### **Section 31.1.8-Notice and Inspections of Riparian Setbacks**

- A. 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 containing an approved site plan submitted by the owner or applicant in accordance with Section 31.1.4 herein.
- B. The Zoning Inspector and/or its agents, with prior notice and the authorization of the owner, may enter the affected lot from time to time to conduct on-site inspections to ensure compliance with these Regulations.
- C. The Zoning Inspector shall be permitted to make an on-site inspection of the delineation of riparian setbacks, prior to the initiation of any construction, land development, or soil disturbing activities, on an affected lot.

### **Section 31.1.9-Variance**

- A. In accordance with Section 11 herein, the owner or applicant may apply for a variance to the Board of Zoning Appeals.

### **Section 31.1.10-Penalty**

- A. In accordance with Section 5, Enforcement, herein, the owner or applicant may be subject to penalties for failing to comply with the terms and requirements of this Zoning Resolution.