

Ordinance 25-2006

AMENDED 06/22/06

AMENDED 06/08/06

AMENDED 03/09/06

Presented by:

Director of Public Service David G. Kline

AMENDING AND SUPPLEMENTING THE TALLMADGE CODE OF ORDINANCES
TO ADD CHAPTER 1190 – RIPARIAN SETBACKS

WHEREAS, flooding is a threat to public health and safety and public and private property within the Cuyahoga River Watershed in the City of Tallmadge, Ohio. Vegetated riparian areas lessen the damage from such flooding by slowing runoff, enabling water to soak into the ground, and by absorbing excess flow during flood events; and

WHEREAS, stream bank erosion within the Cuyahoga River Watershed is a significant threat to public health and safety and public and private property, and vegetated riparian areas physically slow the rate of runoff and stabilize stream banks by anchoring the soil, thus reducing the erosive force of runoff and strengthening banks against high-velocity stream waters; and

WHEREAS, the presence of natural vegetation on stream banks provides protection against erosive forces both within streams and on adjacent lands, whether publicly or privately owned; 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, the establishment of protected riparian areas provides a right-of-way for natural movement and relocation of stream channels, which can encroach upon adjacent land; and

WHEREAS, vegetated riparian areas aid in filtering and trapping sediments, nutrients, chemicals, salts, septic discharge and other pollutants from runoff and floodwaters, thus helping to protect 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 stream water temperatures, thus protecting aquatic ecosystems and promoting a healthy environment that is diverse in the number of species of plants and animals, and helps to reduce the presence of aquatic nuisance species; and

WHEREAS, the management of riparian areas can result in a diverse and interconnected riparian corridor that provides habitat to a wide array of wildlife; and

WHEREAS, there is a watershed-wide effort to reduce the flooding and erosion within the Cuyahoga River Watershed and to protect and enhance the water resources of the Cuyahoga River and all tributaries, and the City of Tallmadge recognizes its obligation as a part of the watershed to reduce flooding and erosion by controlling runoff within its borders; and

WHEREAS, the water quality and quantity flowing through areas downstream is heavily dependent upon the protective measures and good stewardship adopted by upstream communities, regardless of the size of the upstream channel; and

WHEREAS, the Summit Soil and Water Conservation District (Summit SWCD), the Natural Resources Conservation Service of the United States Department of Agriculture (NRCS, USDA), the Ohio Environmental Protection Agency (OEPA), and the United States Environmental Protection Agency (USEPA) recommend riparian setbacks as a valuable tool in an overall natural resource management program for flood risk reduction, erosion control, water quality management, and aquatic life habitat protection; and

WHEREAS, studies undertaken by, and reviewed by the Ohio Environmental Protection Agency and other accredited independent scientific entities recommend the minimum widths for riparian setbacks; and

WHEREAS, the Council adopts the recommendations of the above government agencies, and the Council finds that in order to minimize encroachment on stream channels 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 the Cuyahoga River, the quality of life of the residents of the City of Tallmadge, and corresponding property values, it is necessary and appropriate to regulate the construction of structures and uses within a Riparian Setback along the banks of designated streams in the Cuyahoga River; and

WHEREAS, Article XVIII, Sections 3 and 7 of the Ohio Constitution grants the City of Tallmadge as a chartered municipality, the legal authority to adopt land use and control measures for promoting the public health, safety, and general welfare of its citizens; and

WHEREAS, 40 C.F.R. Parts 9, 122, 123, and 124 referred to as NPDES (National Pollutant Discharge Elimination System) Storm Water Phase II, require designated communities, including the City of Tallmadge to develop a Storm Water Management Program to address the quality of storm water runoff during and after soil disturbing activities; and

WHEREAS, this matter has been considered by the Planning and Zoning Commission; and

Ordinance 25-2006 (Continued)

WHEREAS, a public hearing was held by Council on March 23, 2006.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TALLMADGE, COUNTIES OF SUMMIT AND PORTAGE, STATE OF OHIO:

SECTION 1. That the Tallmadge Code of Ordinances is hereby amended and supplemented to add Chapter 1190 – Riparian Setbacks, as set forth on Exhibit “A” hereto and fully incorporated in this ordinance.

SECTION 2. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees on or after November 28, 1975 that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed:

Susan E. Wilson, Clerk of Council
PKT/kl/asi/kl
02/02/06
AMENDED 04/27/06
AMENDED 06/08/06
AMENDED 06/22/06
Filed with the Mayor _____

Jack L. Sarver, President of Council

Approved:

Christopher B. Grimm, Mayor

This _____ day of _____, 2006

Committee Assignment: _____

Readings: 1st _____ 2nd _____ 3rd _____

**CHAPTER 1190
RIPARIAN SETBACKS**

1190.01 PURPOSE.

- (a) The City of Tallmadge has determined that the system of streams within the City contributes to the health, safety, and general welfare of the residents of the City. The purpose of this chapter is to protect and preserve the water quality within streams of the City and to protect residents of the City from property loss and damage because of flooding and other impacts of the stream. The City will implement this chapter by controlling uses and developments within a riparian setback that would impair the ability of the riparian area to:
 - (1) Reduce flood impacts by absorbing peak flows, slowing the velocity of flood waters and regulating base flow.
 - (2) Stabilize the banks of streams to reduce bank erosion and the downstream transport of sediments eroded from stream banks.
 - (3) Reduce pollutants in streams during periods of high flows by filtering, settling, and transforming pollutants already present in streams or in runoff before they enter streams.
 - (4) Provide areas for natural meandering and lateral movement of stream channels.
 - (5) Reduce the presence of aquatic nuisance species to maintain diverse and connected riparian vegetation.
 - (6) Provide high quality stream habitats with shade and food to a wide array of wildlife by maintaining diverse and connected riparian vegetation.
 - (7) Benefit the City economically by minimizing encroachment on stream channels and reducing the need for costly engineering solutions such as dams and riprap, to protect structures and reduce property damage and threats to the safety of watershed residents, and by contributing to the scenic beauty and to the environment of the City, the quality of life of the residents of the City, and corresponding property values.
- (b) This chapter has been enacted to protect these services of riparian areas by providing reasonable controls governing structures and uses in riparian setbacks.

1190.02 COMPLIANCE AND VIOLATIONS.

- (a) No preliminary plan or zoning approvals shall be issued by the City without full compliance with the terms of these regulations where applicable.
- (b) Any person or organization who violates this Chapter shall be guilty of a minor misdemeanor and, upon conviction, shall be subject to punishment as provided in Chapter 1199 of the Codified Ordinances of the City, and shall be required to restore the riparian setback through a plan approved by the appropriate Soil and Water Conservation District (SWCD).
- (c) The imposition of any other penalties provided herein shall not preclude the City from instituting an appropriate action or proceeding in a Court of proper jurisdiction to prevent an unlawful development, or to restrain, correct, or abate a violation, or to require compliance with the provisions of this Chapter or other applicable laws, ordinances, rules, or regulations, or the orders of the City.

1190.03 CONFLICTS WITH OTHER REGULATIONS AND SEVERABILITY.

- (a) Where this chapter 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 chapter shall control.
- (b) These regulations shall not limit or restrict the application of other provisions of law, regulation, contract, or deed, or the legal remedies available thereunder, except as provided in division (a) of this section.
- (c) If any clause, section, or provision of these regulations is declared invalid or unconstitutional by a court of competent jurisdiction, validity of the remainder shall not be affected.

1190.04 DEFINITIONS.

For the purpose of this, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- (a) "Best management practices (BMPs)." Conservation practices or protection measures which reduce impacts from a particular land use. Best Management Practices for construction are outlined in "Rainwater

and Land Development, Ohio's Standard for Storm Water Management, Land Development, and Urban Stream Protection" prepared by the Ohio Department of Natural Resources.

- (b) "Damaged or diseased trees." Trees that have split trunk, broken tops, heart rot, insect or fungus problems that will lead to imminent death, undercut root systems that put the tree in imminent danger of 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 stream or onto a structure.
- (c) "Defined channel." A natural or man-made depression in the terrain which is maintained and altered by the water and sediment it carries.
- (d) "Federal Emergency Management Agency (FEMA)." The agency with overall responsibility for administering the National Flood Insurance Program.
- (e) "Final plat." A final tracing of all or a phase of a subdivision, a planned residential development, or other land development and its complete survey information.
- (f) "Impervious cover." Any surface that cannot effectively absorb or infiltrate water. This may include roads, streets, parking lots, rooftops, sidewalks and other areas not covered by vegetation.
- (g) "Natural succession." A gradual and continuous replacement of one kind of plant and animal group by a more complex group. The plants and animals present in the initial group modify the environment through their life activities, thereby making it unfavorable for themselves. They are gradually replaced by a different group of plants and animals better adapted to the new environment.
- (h) "Noxious weed." Any plant defined as "Prohibited Noxious Weeds" in Section 901:5-37-01 of the Ohio Administrative Code and any of the following: Goldenrod, Poison Hemlock, Poison Ivy, Poison Oak, Ragweed, Stinging Nettle, and other plants capable of causing skin reactions upon contact or producing severe allergic respiratory reactions.
- (i) "Ohio Rapid Assessment Method." A multi-parameter qualitative index established by the Ohio Environmental Protection Agency to evaluate wetland quality and function.
- (j) "100-year floodplain." Any land susceptible to being inundated by water from a base flood, which is the flood that has a 1% or greater chance of being equaled or exceeded in any given year. For the purposes of these regulations, the 100-year floodplain shall be defined by FEMA and subject to review and approval by the City Engineer.
- (k) "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 channel of a stream.
- (l) "Pollution." Any contamination or alteration of the physical, chemical, or biological properties of any waters that will render the waters harmful or detrimental to: public health, safety or welfare; domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; livestock, wildlife, including birds, fish or other aquatic life.
 - (1) "Point source pollution" is traceable to a discrete point or pipe.
 - (2) "Non-point source pollution" is generated by various land use activities rather than from an identifiable or discrete source, and is conveyed to waterways through natural processes, such as rainfall, storm runoff or ground water seepage rather than direct discharge.
- (m) "Preliminary plan." A drawing of a major subdivision, planned residential development, or other land development for the purpose of study and which, if approved, permits proceeding with the preparation of the final plat.
- (n) "Riparian area." A transitional area between flowing water and terrestrial ecosystems which provides a continuous exchange of nutrients and woody debris between land and water. This area is at least periodically influenced by flooding. Riparian areas, if appropriately sized and managed, help to stabilize banks, limit erosion, reduce flood size flows and/or filter and settle out runoff pollutants, or perform other functions consistent with the purposes of these regulations.
- (o) "Riparian setback." The area set back from each bank of a stream to protect the riparian area and stream from impacts of development, and streamside residents from impacts of flooding and land loss through erosion. "Riparian setbacks" are those lands within the city that fall within the area defined by the criteria set forth in these regulations.
- (p) "Soil and Water Conservation District (SWCD)." An entity organized under Ohio R.C. Chapter 1515 referring to either the Soil and Water Conservation District Board or its designated employees, hereinafter referred to as the SWCD.

- (q) “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.
- (r) “Stream.” A surface watercourse with a well-defined bed and bank, either natural or artificial, which confines and conducts continuous or periodic flowing water in such a way that terrestrial vegetation cannot establish roots within the channel.
- (s) “Storm Water Pollution Prevention Plan (SWPPP).” The plan which describes all the elements of the storm water strategy implemented during and after construction. The plan addresses erosion control and storm water quality.
- (t) “Storm water quality treatment.” The removal of pollutants from urban runoff and improvement of water quality, accomplished largely by deposition and utilizing the benefits of natural processes.
- (u) “Variance.” A modification of the enforcement of this chapter which will not be contrary to the public interest and where, due to conditions peculiar to this property and not the result of the action of the applicant, a literal enforcement of this chapter would result in undue hardship to the applicant.
- (v) “Watercourse.” A natural or artificial waterway, such as a stream or river, with a defined bed and channel and a definite direction of course that is contained within, flows through or borders the community.
- (w) “Watershed.” An area of land that drains into a particular watercourse, usually defined by topography.
- (x) “Wetlands.” 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.

1190.05 ESTABLISHMENT OF A RIPARIAN SETBACK

- (a) Riparian setbacks are established as provided in this chapter.
- (b) Streams addressed by this chapter are those which meet the definition of “stream” in Section 1190.04 and are indicated on at least one of the following maps:
 - (1) USGS topographical map.
 - (2) Applicable County Riparian Setback Map.
 - (3) Soils maps located in the Soil Survey for, as applicable, Summit or Portage County, Ohio, USDA, NRCS.
 - (4) City of Tallmadge Riparian Setback Map is on file in the Zoning Department.
- (c) Widths of setbacks are measured as horizontal map distance outward from the ordinary high water mark on each side of a stream, and are established as follows:
 - (1) A minimum of 300 feet on each side of all streams draining an area greater than 300 square miles.
 - (2) A minimum of 100 feet on each side of all streams draining an area greater than 20 square miles and up to 300 square miles.
 - (3) A minimum of 75 feet on each side of all streams draining an area greater than 0.5 square mile (320 acres) and up to 20 square miles.
 - (4) A minimum of 50 feet on each side of all streams draining an area greater than 0.05 square mile (32 acres) and up to 0.5 square mile (320 acres).
 - (5) A minimum of 30 feet on each side of all streams draining an area less than 0.05 square mile (32 acres).
- (d) The following are exempt from the terms and protection of this chapter: grassy swales, roadside ditches, drainage ditches created at the time of a subdivision to convey storm water to another system, tile drainage systems, and stream culverts.
- (e) The following shall apply to the riparian setback:
 - (1) Where the 100-year floodplain is wider than the riparian setback on either or both sides of the stream, the riparian setback shall be extended to the outer edge of the 100-year floodplain. The 100-year floodplain shall be defined by FEMA and subject to review and approval by the City Engineer.
 - (2) A. Because the gradient of the riparian corridor significantly influences impacts on the stream, the following adjustment for steep slopes will be integrated into the riparian setback formulae for width determination:

Average Percent Slope	Width of Setback
15% to 20%	Add 25 feet
21% to 25%	Add 50 feet
>25%	Add 100 feet

- B. Average stream bank slope is to be calculated using methodology outlined in “The Ohio Supplement to Urban Hydrology for Small Watersheds, Technical Release Number 55 (TR-55)” by USDA, NRCS.
- (3) Where wetlands protected under Federal or State law are identified within the riparian setback, the riparian setback shall consist of the full extent of the wetlands plus the following additional setback widths:
- A. A 50-foot setback extending beyond the outer boundary of a Category 3 wetlands.
 - B. A 30-foot setback extending beyond the outer boundary of a Category 2 wetlands.
 - C. No additional setback will be required adjacent to Category 1 wetlands
- (4) Wetlands shall be delineated by a qualified professional under guidelines established by the U.S. Army Corps of Engineers and Ohio Environmental Protection Agency and the delineation approved by the appropriate agencies. All wetland delineations shall also include the latest version of the Ohio Rapid Assessment Method for wetland evaluation approved at the time of application of these regulations.
- (5) The applicant shall be responsible for delineating the riparian setback, including any expansions or modifications as required by divisions (b) through (d) of this section, and identifying this setback on all subdivisions, land development plans, and/or building permit applications. This delineation shall be done at the time of application of the preliminary plans, or all plans that are required, or at the time of submission of any permit applications. This delineation shall be subject to review and approval by the applicable SWCD. As the result of this review, the SWCD may require further studies from the applicant.
- (6) Prior to any soil-disturbing activity, the riparian setback shall be clearly delineated with construction fencing or other suitable material by the applicant on site, and such delineation shall be maintained throughout soil- disturbing activities. The delineated area shall be maintained in an undisturbed state unless otherwise permitted by these regulations. All fencing shall be removed when a development project is completed.
- (7) No approvals or permits shall be issued by the City prior to delineation of the riparian setback in conformance with these regulations.
- (8) Upon completion of an approved subdivision, planned residential development, or other land development, the riparian setback shall be permanently recorded on the plat records for the City.

1190.06 USES PERMITTED.

- (a) The following uses are permitted by right within the riparian setbacks without prior approval:
- (1) Open space uses. Open space uses that are passive in character shall be permitted in the riparian setback, including but not limited to those listed in divisions (a)(2) through (4) of this section. No use permitted under these regulations shall be construed as allowing trespass on privately-held lands. Alteration of this natural area is strictly limited. Except as otherwise provided in these regulations, the riparian setback shall be preserved in its natural state.
 - (2) Recreational activity. Passive recreational uses, as permitted by Federal, State, and local laws, such as hiking, non-motorized bicycling, fishing, hunting, picnicking and similar uses and associated structures, including boardwalks, pathways constructed of pervious material, picnic tables, and wildlife viewing areas.
 - (3) Removal of damaged or diseased trees. Damaged or diseased trees may be removed. Because of the potential for felled logs and branches to damage downstream properties and/or block ditches or otherwise exacerbate flooding, logs and branches resulting from the removal of damaged or diseased trees that are greater than 6 inches in diameter shall be anchored to the shore or removed from the 100-year floodplain.
 - (4) Revegetation and/or reforestation. The revegetation and/or reforestation of the riparian setback shall be allowed without approval of the appropriate SWCD. Species of shrubs and vines recommended for stabilizing flood-prone areas along streams within the City are listed in the Appendix.

- (b) The following uses are permitted by right within the riparian setbacks with prior approval of the design.
- (1) Stream bank stabilization/erosion control measures. Best management practices (BMPs) for stream bank stabilization or erosion control may be allowed if such practices are within permitted uses by the local, State and Federal government regulations and are ecologically compatible and emphasize the use of natural materials and native plant species where practical and available. Such stream bank stabilization/erosion control practices shall only be undertaken upon approval of a Storm Water Pollution Prevention Plan (SWPPP or SW3P) by the SWCD.
 - (2) Crossings. In reviewing plans for stream crossings, the City may confer with the SWCD, the Ohio Department of Natural Resources, Division of Natural Areas; the Ohio Environmental Protection Agency, Division of Surface Water; the County Engineer; the Department of Environmental Services of the County; the County Health Department or other technical experts as necessary.
 - A. Limited crossings of designated streams through the riparian setback by vehicles, storm sewers, sewer and/or water lines and public utility lines will be per the approval of local, County, and State governing agencies and as a part of the regular zoning review process.
 - B. One driveway crossing per stream per tax parcel will be allowed for individual landowners.
 - C. Roadway crossings for major and minor subdivisions, open space subdivisions, or any other non-single family residential use shall be designed and constructed per the City's design standards and as approved by the City Planning and Zoning Commission. If more than two crossings per 1,000 linear feet of stream center are required for these areas, the applicant must apply for a variance.
 - D. All roadway crossings shall be perpendicular to the stream flow and shall minimize disturbance to the riparian setback and shall mitigate any necessary disturbances.
 - (3) Placement of storm water retention or detention facilities may be considered within the riparian setback if:
 - A. Storm water quality treatment that is consistent with current State standards is incorporated into the basin.
 - B. The storm water quality treatment basin is located at least 50 feet from the ordinary high water mark of the stream.
 - (4) Dredging may be permitted, provided the City or property owner obtains all necessary permits that may be required, and notification and presentation of the plan are provided to the City Engineer for review and approval.

1190.07 USES PROHIBITED.

The following uses are specifically prohibited within the riparian setback:

- (a) Construction. There shall be no structures of any kind, except as permitted under these regulations.
- (b) Dredging or Dumping. There shall be no drilling for petroleum or mineral products, mining activity, filling or dredging of soil, spoils, or any material (natural or man-made) except as permitted under these regulations.
- (c) Roads or Driveways. There shall be no roads or driveways, except as permitted under these regulations.
- (d) Motorized Vehicles. There shall be no use of motorized vehicles of any kind, except as permitted under these regulations.
- (e) Modification of Natural Vegetation. Modification of the natural vegetation shall be limited to conservation maintenance that the landowner deems necessary to control noxious weeds; for such plantings as are consistent with these regulations; for such disturbances as are approved under these regulations; and for the passive enjoyment, access and maintenance of landscaping or lawns existing at the time of passage of these regulations. Nothing in this section shall be construed as requiring a landowner to plant or undertake any other activities in the riparian setback, provided the landowner allows for natural succession.
- (f) Parking Lots. There shall be no parking lots or other human made impervious cover, except as permitted under these regulations.
- (g) New Surface and/or Subsurface Sewage Disposal or Treatment Area. Riparian setbacks shall not be used for the disposal or treatment of sewage except for:
 - (1) Undeveloped parcels that have received site evaluation approval and/or permit approval prior to the enactment of this chapter.

- (2) Dwellings served by disposal/treatment systems existing at the time of passage of these regulations when such systems are properly sited (approved site evaluation) and permitted or in accordance with the County Health Department and/or the Ohio Environmental Protection Agency. Existing failing systems which are located within the riparian setback can be upgraded with approval of the County Health Department and/or the Ohio Environmental Protection Agency.
- (3) Sanitary sewer systems, either public or private, that may need to be sited along riparian corridors to provide for flows and are commensurate with an approved sanitary system approved by the Ohio Environmental Protection Agency.

1190.08 NONCONFORMING STRUCTURES OR USES.

- (a) Structures and uses within the riparian setback, existing at the time of passage of these regulations, that are not permitted under these regulations may be continued but shall not be expanded except as set forth in this chapter.
- (b) If damaged or destroyed, these structures or uses may be repaired or restored in accordance with existing zoning regulations within two years from the date of damage/destruction or the adoption of these regulations, whichever is later, at the property owners' own risk.
- (c) A residential structure or use within the riparian setback existing at the time of passage of these regulations may be expanded subject to the following provisions:
 - (1) The expansion conforms to existing zoning regulations.
 - (2) The expansion must not impact the stream channel or the 100-year floodplain.
 - (3) The expansion must not exceed an area of 15% of the total footprint of existing structure or use that lies within the riparian setback. Expansions exceeding 15% of the total footprint within the riparian setback must be obtained through the variance process.
- (d) Nonresidential structure or use expansions will be permitted only through the variance process.

1190.09 BOUNDARY INTERPRETATION AND APPEALS PROCEDURE.

- (a) When an applicant disputes the boundary of the riparian setback or the ordinary high water mark of a stream, the applicant shall submit evidence to the Building and Zoning Department and applicable SWCD that describes the boundary, presents the applicant's proposed boundary, and presents all justification for the proposed boundary change.
- (b) The City Engineer and applicable SWCD shall evaluate all materials submitted and shall make a written recommendation to the Planning and Zoning Commission within a reasonable period of time, not to exceed 60 days. A copy of this recommendation shall be submitted to the applicant. If during this evaluation the City or SWCD requires further information to complete this evaluation, the applicant may be required to provide additional information.
- (c) The Planning and Zoning Commission shall decide such boundary disputes. The party contesting the location of the riparian setback or the ordinary high water mark of the streams as determined by these regulations shall have the burden of proof in case of any such appeal.

1190.10 VARIANCES WITHIN RIPARIAN SETBACK.

- (a) Applications for a hearing before the Planning and Zoning Commission for variances to the provisions of this chapter shall be submitted to the Building and Zoning Department.
- (b) The Planning and Zoning Commission may consult with representatives from the applicable SWCD; the Ohio Department of Natural Resources, Division of Natural Areas; the Ohio Environmental Protection Agency, Division of Surface Water; the County Engineer; the applicable Department of Environmental Services of the County; the County Health Department; or other technical experts as necessary to provide the necessary data for the Planning and Zoning Commission to consider variance requests.
- (c) Expansions of residential structures or uses exceeding 15% of the footprint area and expansions of all nonresidential structures or uses are subject to the following:
 - (1) The expansion conforms to the existing zoning regulations.
 - (2) The expansion must not impact the stream channel or the 100-year floodplain.
 - (3) The expansion of a nonresidential structure or use must not affect upstream or downstream hydrologic conditions which could cause damage from flooding or stream bank erosion to landowners in those areas. A hydrologic study must be completed by nonresidential applicants only as a process of the variance application.

- (4) The expansion of a nonresidential structure or use will not exceed 25% of the footprint area. The 25% expansion limit is per the portion of the structure or use that lies within the riparian setback.
- (d) Requests for variances for subdivisions or planned residential developments (PRD) will be considered for the following:
 - (1) An additional stream crossing or crossings for a subdivision, PRD, or open space development which is necessary for the health, welfare, and safety of the residents of the subdivision.
 - (2) A reduction of the setback width, not to exceed 10% of the prescribed riparian setback width.
- (e) No variances shall be granted for expansion of the following structures or uses:
 - (1) Facilities which use, store, distribute, or sell petroleum-based products or any hazardous materials. Such facilities include, but are not limited to asphalt plants, dry cleaners, gasoline service stations, and road maintenance facilities.
 - (2) Facilities which use, store, distribute, or sell products which may contribute higher than acceptable concentrations of dissolved or particulate matter to storm water runoff around the facility. Such facilities include, but are not limited to landfills or transfer stations, junk yards, recycling facilities, quarries and borrow pits, sand and gravel extraction operations and road salt storage barns.
- (f) In reviewing whether to grant variances, the Planning and Zoning Commission shall consider the following:
 - (1) The extent to which the requested variance impairs the functions of the riparian area. This determination shall be based on sufficient technical and scientific evidence as provided by the applicant and the agencies listed in divisions (a) through (e) of this section.
 - (2) The soil type and natural vegetation of the parcel as well as the percentage of the parcel that is in the 100-year floodplain.
 - (3) The degree of hardship these regulations place on the applicant and the availability of alternatives to the proposed activity.

1190.11 INSPECTION.

- (a) The riparian setback shall be inspected by the applicable SWCD:
 - (1) When a preliminary subdivision plat or other land development plan is submitted to the City.
 - (2) When a building or zoning permit is requested.
 - (3) Prior to any soil-disturbing activity to inspect the delineation of the riparian setback as required under these regulations.
- (b) The riparian setback shall also be inspected annually or as time permits by the SWCD or approved monitoring entity for compliance with any approvals under these regulations or at any time evidence is brought to the attention of the SWCD that uses or structures are occurring that may reasonably be expected to violate the provisions of these regulations.
- (c) Violations of these regulations will be handled as noted in Section 1190.02.

APPENDIX: WOODY PLANTS SUITABLE FOR RIPARIAN AREAS

<i>Flood Tolerance*</i>	Shade Tolerance **	Common Name
High Flood Tolerance*		
Aronia arbutifolia	3	Red chokeberry
Aronia melanocarpa	3	Black chokeberry
Cephalanthus occidentalis	5	Common buttonbush
Clethra alnifolia	2	Summersweet clethra ***
Cornus amomum	4	Silky dogwood
Cornus stolonifera (sericea)	5	Redosier dogwood
Hamamelis vernalis	3	Vernal witchhazel ***
Ilex decidua	3	Possumhaw ***

<i>Ilex glabra</i>	2	Inkberry ***
<i>Ilex verticillata</i>	3	Common winterberry
<i>Itea virginica</i>	1	Virginia sweetspire ***
<i>Magnolia virginiana</i>	2	Sweetbay magnolia ***
<i>Myrica pensylvanica</i>	4	Northern bayberry
<i>Physocarpus opulifolius</i>	4	Common ninebark
<i>Potentilla fruticosa</i>	4	Bush cinquefoil
<i>Sambucus canadensis</i>	1	American elderberry
<i>Salix x cotteti</i>	5	Bankers willow ***
<i>Salix exigua</i>	5	Sandbar willow
<i>Salix purpurea</i>	5	Streamco willow ***
<i>Viburnum cassinoides</i>	2	Witherod viburnum
<i>Parthenocissus quinquefolia</i>	1	Virginia creeper (vine)
Moderate Flood Tolerance*		
<i>Calycanthus floridus</i>	1	Common sweetshrub
<i>Hypericum kalmianurn</i>	5	Kalm St. John's wort
<i>Viburnum dentatum</i>	2	Arrowwood viburnum
<i>Xanthorhiza simplicissima</i>	1	Yellowroot ***
Intermediate Flood Tolerance*		
<i>Aesculus parviflora</i>	2	Bottlebush buckeye ***
<i>Aesculus pavia</i>	2	Red buckeye ***
<i>Cornus racemosa</i>	2	Gray dogwood
<i>Lindera benzoin</i>	1	Common spicebush
<i>Rosa setigera</i>	4	Prairie rose
<i>Campsis radicans</i>	3	Trumpetcreeper (vine)
<i>Lonicera dioica</i>	2	Limber honeysuckle (vine)
<i>Corylus americana</i>	2	American filbert
<i>Diervilla lonicera</i>	1	Dwarf bushhoneysuckle
<i>Fothergilla gardeni</i>	1	Dwarf fothergilla ***
<i>Fothergilla major</i>	1	Large fothergilla ***
<i>Hydrangea arborescens</i>	1	Smooth hydrangea
<i>Hydrangea quericifolia</i>	1	Oakleaf hydrangea ***
<i>Mahonia aquifolium</i>	1	Oregongrape holly ***
<i>Rosa carolina</i>	4	Carolina rose
<i>Rubus odoratus</i>	1	Fragrant thimbleberry
<i>Vaccinium stamineum</i>	2	Common deerberry
Low Flood Tolerance*		
<i>Arctostaphylos uva-ursi</i>	4	Bearberry
<i>Cornus rogersii</i>	1	Roundleaf dogwood
<i>Corylus americana</i>	2	American filbert
<i>Diervilla lonicera</i>	1	Dwarf bushhoneysuckle
<i>Fothergilla gardeni</i>	1	Dwarf fothergilla ***
<i>Fothergilla major</i>	1	Large fothergilla ***
<i>Hydrangea arborescens</i>	1	Smooth hydrangea
<i>Hydrangea quericifolia</i>	1	Oakleaf hydrangea ***

Mahonia aquifolium	1	Oregongrape holly ***
Rosa carolina	4	Carolina rose
Rubus odoratus	1	Fragrant thimbleberry
Symphoricarpos albus	1	Common snowberry
Vaccinium stamineum	2	Common deerberry
No Flood Tolerance*		
Amorpha canescens	5	Leadplant ***
Ceanothus americanus	3	New Jersey tea
Comptonia peregrina	2	Sweetfern
Dirca palustris	1	Leatherwood
Hypericum frondosum	5	Golden St. John's wort
Juniperus communis	5	Common juniper
Juniperus horizontalis	5	Creeping juniper ***
Rhus aromatica	5	Fragrant sumac
Sambucus pubens	1	Scarlet elder
Symphoricarpos albus	1	Common snowberry
*High Flood Tolerance:	Generally lowland wet species surviving when flooded or exposed to high water table more than 40% of the growing season.	
*Moderate Flood Tolerance:	Generally lowland wet species surviving when flooded or exposed to high water table more than 30% of the growing season but less than 40%.	
*Intermediate Flood Tolerance:	Generally lowland wet-mesic species surviving occasional inundation or elevated water table between 20% and 30% of the growing season.	
*Low Flood Tolerance:	Generally upland mesic and mesic-dry species rarely inundated or exposed to an elevated water table for periods of short duration, between 5% and 20% of the growing season.	
*No Flood Tolerance:	Generally upland dry species exhibiting immediate and rapid decline frequently culminating in death if inundated or exposed to elevated water table for more than 5% of the growing season.	
**Shade Tolerance:	Shade tolerance means able to grow in a state of health and vigor beneath dense shade. In this ranking, shrubs and vines are ranked on a scale of 1 to 5, with 1 being very shade tolerant, and 5 being very shade intolerant.	
<p>Notes:</p> <ol style="list-style-type: none"> 1. The majority of plants listed are available on the local commercial market and do not displace native species. 2. The cultivated varieties ("cultivars") of the species listed above may also be used. 3. Primary information taken from Hightshoe, Gary, 1987. Native Trees, Shrubs, and vines for Urban and Rural America. Van Nostrand. NY, NY. 4. For further assistance contact Roger Gettig, Landscape Consulting Program, The Holden Arboretum, or Steve Roloson, ODNR Scenic Rivers Program. 		