

RIPARIAN SETBACK ORDINANCE

Ordinance No. _____.

SECTION 1181.01: PUBLIC PURPOSE

A. It is hereby determined that the system of streams within the Village of Boston Heights contributes to the health, safety and general welfare of the residents and property owners of the Village of Boston Heights. The purpose of this Riparian Setback Ordinance is to protect and preserve the water quality within streams of the Village of Boston Heights and to protect residents of the Village of Boston Heights from property loss and damage because of flooding and other impacts of the streams. This ordinance shall be implemented 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 floodwaters 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.
4. Reduce pollutants during periods of high flows by filtering, settling and transforming pollutants in runoff before they enter streams.
5. Provide areas for natural meandering and lateral movement of stream channels.
6. Reduce the presence of aquatic nuisance species to maintain diverse and connected riparian vegetation.
7. Provide high quality habitats with shade and food to a wide array of wildlife by maintaining diverse and connected riparian vegetation.
8. Benefit the Village of Boston Heights 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 Village of Boston Heights, the quality of life of the residents of the Village of Boston Heights and corresponding property values.
9. Protect the health, safety and welfare of the citizens of the Village of Boston Heights.

- B. The following regulation has been enacted to protect these services of riparian areas by providing reasonable controls governing structures and uses in riparian setbacks.

SECTION 1181.02: APPLICABILITY, COMPLIANCE, AND VIOLATIONS

- A. The provisions of this chapter shall apply to all lands within incorporated areas that are within the jurisdiction of the Village of Boston Heights.
- B. No preliminary plan, timbering permit, building, or zoning approvals shall be issued without full compliance with the terms of these regulations where applicable.
- C. The provisions of this chapter may be enforced through civil or criminal proceedings.
- D. Any person or organization who violates section 1181.06 of Codified Ordinances shall be guilty of a minor misdemeanor, and upon conviction thereof, shall be subject to punishment for a minor misdemeanor as defined by the codified ordinances of the Village of Boston Heights and shall be required to restore the Riparian Setback through a plan approved by the Summit Soil and Water Conservation District (“SWCD”).

SECTION 1181.03: DEFINITIONS

- A. **APPLICANT.** Any person who executes the necessary forms to procure official approval of a project or a permit to carry out a project.
- B. **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 the current edition of “Rainwater and Land Development, Ohio’s Standard for Stormwater Management, Land Development, and Urban Stream Protection” prepared by the Ohio Department of Natural Resources.
- C. **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.
- D. **DEFINED CHANNEL:** A natural or man-made depression in the terrain which is maintained and altered by the water and sediment it carries.
- E. **FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA):** The agency with overall responsibility for administering the National Flood Insurance Program.
- F. **FINAL PLAT:** A final tracing of all or a phase of a subdivision and its complete survey information as defined by Chapter 1121.04 of the codified ordinances of the Village of Boston Heights.

- G. IMPERVIOUS COVER: Any surface that cannot effectively absorb or infiltrate water. This includes but is not limited to roads, streets, parking lots, rooftops, sidewalks and other areas not covered by vegetation.
- H. 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 adapted to the new environment.
- I. NOXIOUS WEED: Any plant species defined by the Ohio Department of Agriculture as a “noxious weed” and listed as such by the Department. For the purposes of these regulations, the most recent version of this list at the time of application of these regulations shall prevail. (Ohio Administrative Code 901:5-37-01)
- J. OHIO RAPID ASSESSMENT METHOD: A multi-parameter qualitative index established by the Ohio Environmental Protection Agency to evaluate wetland quality and function.
- K. 100-YEAR FLOODPLAIN: Any land susceptible to being inundated by water from a base flood, which is the flood that has a one percent 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 approved by County of Summit Department of Building Standards.
- L. 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 distinct mark from 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.
- M. 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.
- “POINT SOURCE” pollution is traceable to a discrete point or pipe.
 - “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.

- N. PERENNIAL STREAM: A natural watercourse that contains water throughout the year except possibly during periods of extreme drought.
- O. PRELIMINARY PLAN: A drawing for the purpose of study and which, if approved, permits proceeding with an improvement project.
- P. 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.
- Q. RIPARIAN SETBACK: The area set back from each bank of 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 Village of Boston Heights that fall within the area defined by the criteria set forth in these regulations.
- R. SOIL AND WATER CONSERVATION DISTRICT (SWCD): An entity organized under Chapter 1515 of the Ohio Revised Code referring to either the Soil and Water Conservation District Board or its designated employees, hereinafter referred to as the Summit SWCD.
- S. 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.
- T. STREAM: A surface watercourse with a well-defined bed and bank, either natural or artificial, which confines and conducts continuous or periodical flowing water in such a way that terrestrial vegetation cannot establish roots within the channel.
- U. STORMWATER POLLUTION PREVENTION PLAN (SWPPP): The plan which describes all the elements of the stormwater strategy implemented during and after construction. The plan addresses erosion control and stormwater quality.
- V. STORMWATER 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.
- W. VARIANCE: A modification of the enforcement of the Riparian Setback Ordinance 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 the ordinance would result in undue hardship to the applicant.

- X. **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.
- Y. **WATERSHED:** An area of land that drains into a particular watercourse, usually divided by topography.
- Z. **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, marches, bogs, and similar areas.

SECTION 1181.04: ESTABLISHMENT OF A RIPARIAN SETBACK

- A. Riparian Setbacks are established as provided in this section.
- B. Streams addressed by this ordinance are those which meet the definition of “perennial stream” in Section 1181.03 of these regulations and appear on at least one of the following maps:
 - 1. USGS topographical map
 - 2. Soils maps located in the Soil Survey for Summit County, Ohio, USDA, NRCS
- 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 miles (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 miles (32 acres) and up to 0.5 square miles (320 acres).
 - 5. A minimum of 30 feet on each side of all streams draining an area less than 0.05 square miles (32 acres)
- D. The following are exempt from the terms and protection of this ordinance: grassy swales, roadside ditches, drainage ditches created at the time of subdivision to convey stormwater 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 or a site specific floodplain delineation in conformance with standard engineering practices and approved by the County of Summit Department of Building Standards.
2. 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% through 20%	Add 25 feet
Greater than 20% through 25%	Add 50 feet
Greater than 25%	Add 100 feet

Average percent slope of the streambank is to be calculated for the area within the Riparian setback and is to be measured as a line perpendicular to the stream channel at the location where structures or uses are proposed in the plan. All of the following measurements are to be performed using County of Summit Geographical Information system data (1994, 2000). Calculate slope as follows:

The change in elevation from the edge of stream channel to the edge of the Riparian Setback *divided by* the horizontal map distance from the edge of stream channel to the edge of the Riparian Setback.

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 US 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 the regulations.
5. The applicant shall be responsible for delineating the Riparian Setback, including any expansions or modifications as required by subsections B through E 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 Summit SWCD. As the result of this review, the Summit 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 Village of Boston Heights prior to delineation of the Riparian Setback in conformance with these regulations.
8. Upon completion of an approved subdivision, the Riparian Setback shall be permanently recorded on the plat records for the County of Summit.

SECTION 1181.05: USES PERMITTED IN THE RIPARIAN SETBACK

- A. The following uses are permitted by right within the Riparian Setbacks without prior approval.

Open space uses that are passive in character shall be permitted in the Riparian Setback including, but not limited to, those listed in 1 through 3 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.

1. **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.
2. **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.
3. **Revegetation and/or Reforestation.** The revegetation and/or reforestation of the Riparian Setback shall be allowed without approval of the Village of Boston

Heights. Species of shrubs and vines recommended for stabilizing flood prone areas along streams within the Village of Boston Heights are listed in the Appendix.

- B. The following uses are permitted by right within the Riparian Setbacks with prior approval of the design by Summit Soil and Water Conservation District.
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 Stormwater Pollution Prevention Plan (SWPPP or SW3P) by the Summit SWCD.
 2. 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 stormwater retention or detention facilities may be considered within the Riparian Setback if:
 - a. Stormwater quality treatment that is consistent with current state standards is incorporated into the basin.
 - b. The stormwater quality treatment basin is located at least 50 feet from the ordinary high water mark of the stream.

SECTION 1181.06: USES PROHIBITED IN THE RIPARIAN SETBACK

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. There shall be no storage of any kind.
- B. Dredging or Dumping. There shall be no drilling for petroleum or mineral products, mining activity, filling or dredging of soils, 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 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 from Summit County Board of Health prior to enactment of this ordinance.
 - 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 Summit 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 Summit County Health Department and/or the Ohio Environmental Protection Agency.

SECTION 1181.07: NON-CONFORMING STRUCTURES OR USES IN THE RIPARIAN SETBACK

- 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 section.
- B. If damaged or destroyed, these structures or uses may be repaired or restored within one year 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 provisions of 1 through 3 below:
 - 1. The expansion conforms to existing zoning regulations.
 - 2. The expansion must not impact the stream channel or the 100-year flood plain.

3. The expansion must not exceed an area of 15% of the footprint of existing structure or use that lies within the Riparian Setback. Expansions exceeding 15% of the footprint within the Riparian Setback must be obtained through the variance process.
- D. Non-residential structure or use expansions will be permitted only through the variance process.

SECTION 1181.08: 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 Summit SWCD that describes the boundary, presents the applicant's proposed boundary and presents all justification for the proposed boundary change.
- B. The Summit SWCD shall evaluate all materials submitted and shall make a written recommendation to the Board of Zoning Appeals within a reasonable period of time not to exceed sixty (60) days. A copy of this recommendation shall be submitted to the applicant. If during this evaluation the Summit SWCD requires further information to complete this evaluation, the applicant may be required to provide additional information.
- C. The Board of Zoning Appeals 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.
- D. All fees and expenses are the responsibility of the applicant.

SECTION 1181.09: VARIANCES WITHIN RIPARIAN SETBACK

- A. Expansions of residential structures or uses exceeding 15% of the footprint area and expansions of all non-residential structures or uses are subject to provisions 1 through 4 below:
 1. The expansion otherwise 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 non-residential structure or use must not affect upstream or downstream hydrologic conditions which could cause damage from flooding or streambank erosion to landowners in those areas. A hydrologic study must be completed by the applicant only as a process of the variance application.
 4. The expansion of a non-residential structure or use will not exceed 15% of the footprint area. The 15% expansion limit is per the portion of the structure or use that lies within the Riparian Setback.

- B. Requests for variances within subdivisions will be considered for the following:
1. An additional stream crossing or crossings for a subdivision 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.
- C. 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 stormwater 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.
- D. All variances must be approved by the Board of Zoning Appeals of the Village of Boston Heights.

SECTION 1181.10: INSPECTION OF RIPARIAN SETBACK

- A. The Riparian Setback shall be inspected by the Summit SWCD:
1. When a preliminary subdivision plat or other land development plan is submitted to the Village of Boston Heights.
 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 Summit 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 Summit SWCD that uses or structures are occurring that may reasonably be expected to violate the provisions of these regulations.