

TOWNSHIP OF UPPER DEERFIELD

ORDINANCE 651

RIPARIAN ZONE ORDINANCE

I. PURPOSE AND STATUTORY AUTHORITY

The governing body of Upper Deerfield Township finds that riparian lands adjacent to streams, lakes, or other surface water bodies that are adequately vegetated provide an important environmental protection and water resource management benefit. It is necessary to protect and maintain the beneficial character of riparian areas by implementing specifications for the establishment, protection, and maintenance of vegetation along the surface water bodies within the jurisdiction of Upper Deerfield Township, consistent with the interest of landowners in making reasonable economic use of parcels of land that include such designated areas.

The purpose of this Ordinance is to designate Riparian Buffer Conservation Zones (riparian zone), and to provide for land use regulation that prevents new disturbance for projects or activities therein in order to protect the streams, lakes, and other surface water bodies of Upper Deerfield Township; to protect the water quality of watercourses, lakes, and other significant water resources within Upper Deerfield Township; to protect the riparian and aquatic ecosystems of Upper Deerfield Township; to provide for the environmentally sound use of the land resources of Upper Deerfield Township; and, to complement existing state, regional, county, and municipal stream corridor protection and management regulations and initiatives.

The specific purposes and intent of this Ordinance are to:

- A. Restore and maintain the chemical, physical, and biological integrity of the water resources of Upper Deerfield Township;
- B. Prevent excessive nutrients, sediment, and organic matter, as well as biocides and other pollutants, from reaching surface waters by optimizing opportunities for filtration, deposition, absorption, adsorption, plant uptake, biodegradation, and denitrification, which occur when stormwater runoff is conveyed through vegetated buffers as stable, distributed sheet flow prior to reaching receiving waters;
- C. Provide for shading of the aquatic environment so as to moderate temperatures, retain more dissolved oxygen, and support a healthy assemblage of aquatic flora and fauna
- D. Provide for the availability of natural organic matter (fallen leaves and twigs) and large woody debris (fallen trees and limbs) that provide food and habitat for small bottom dwelling organisms (insects, amphibians, crustaceans, and small fish), which are essential to maintain the food chain;
- E. Increase stream bank stability and maintain natural fluvial geomorphology of the stream system, thereby reducing stream bank erosion and sedimentation and protecting habitat for aquatic organisms;
- F. Maintain base flows in streams and moisture in wetlands;
- G. Control downstream flooding; to protect public health safety and welfare as well as to protect property from erosion and flood-related damage; and
- H. Conserve the natural features important to land and water resources, e.g., headwater areas, groundwater recharge zones, floodways, floodplains, springs, streams, wetlands, woodlands, and prime wildlife habitats.

Authority is provided or limited as follows:

A. Compliance with the riparian zone requirements of this Ordinance does not constitute compliance with the riparian zone or buffer requirements imposed under any other Federal, State or local statute, regulation or ordinance.

B. Use powers given under the provisions of the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., which authorizes each municipality to plan and regulate land use in order to protect public health, safety, and welfare through the protection and maintenance of native vegetation in riparian areas. Upper Deerfield Township is also empowered to adopt and implement this ordinance under provisions provided by the following legislative authorities of the State of New Jersey:

1. Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.
2. Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.
3. Spill Compensation and Control Act, N.J.S.A. 58:10-23 et seq.
4. Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq.
5. Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq.

II. DEFINITIONS

Acid producing soils means soils that contain geologic deposits of iron sulfide minerals (pyrite and marcasite) which, when exposed to oxygen from the air or from surface waters, oxidize to produce sulfuric acid. Acid producing soils, upon excavation, generally have a pH of 4.0 or lower. After exposure to oxygen, these soils generally have a pH of 3.0 or lower. (Information regarding the location of acid producing soils in New Jersey can be obtained from the Cumberland-Salem Soil Conservation District office.)

Applicant means a person, corporation, government body or other legal entity applying to the Planning Board, Board of Adjustment or the Construction Office proposing to engage in an activity that is regulated by the provisions of this ordinance, and that would be located in whole or in part within a regulated Riparian Zone.

Category One waters or C1 waters shall have the meaning ascribed to this term by the Surface Water Quality Standards, N.J.A.C. 7:9B, for purposes of implementing the antidegradation policies set forth in those standards, for protection from measurable changes in water quality characteristics because of their clarity, color, scenic setting, and other characteristics of aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resources.

Intermittent Stream means a surface water body with definite bed and banks in which there is not a permanent flow of water and shown on the New Jersey Department of Environmental Protection Geographic Information System (GIS) hydrography coverages or, in the case of a Special Water Resource Protection Area (SWRPA) pursuant to the Stormwater Management rules at N.J.A.C. 7:8-5.5(h), C1 waters as shown on the USGS quadrangle map or in the County Soil Surveys.

Lake, pond, or reservoir means any surface water body shown on the New Jersey Department of Environmental Protection Geographic Information System (GIS) hydrography coverages or, in the case of a Special Water Resource Protection Area (SWRPA) pursuant to the Stormwater Management rules at N.J.A.C. 7:8-5.5(h), C1 waters as shown on the USGS quadrangle map or in the County Soil Surveys; that is an impoundment, whether naturally occurring or created in whole or in part by the building of structures for the retention of surface water. This excludes sedimentation control and stormwater retention/detention basins and ponds designed for treatment of wastewater.

Perennial stream means a surface water body that flows continuously throughout the year in most years and shown on the New Jersey Department of Environmental Protection Geographic Information System (GIS) hydrography coverages or, in the case of a Special Water Resource Protection Area (SWRPA) pursuant to the Stormwater Management rules at N.J.A.C. 7:8-5.5(h), C1 waters as shown on the USGS quadrangle map or in the County Soil Surveys.

Riparian zone means the land and vegetation within and directly adjacent to all surface water bodies including, but not limited to lakes, ponds, reservoirs, perennial and intermittent streams, up to and including their point of origin, such as seeps and springs, as shown on the New Jersey Department of Environmental Protection's GIS hydrography coverages or, in the case of a Special Water Resource Protection Area (SWRPA) pursuant to the Stormwater Management rules at N.J.A.C. 7:8-5.5(h), C1 waters as shown on the USGS quadrangle map or in the County Soil Surveys. There is no riparian zone along the Atlantic Ocean nor along any manmade lagoon or oceanfront barrier island, spit or peninsula.

Special Water Resource Protection Area or SWRPA means a 300 foot area provided on each side of a surface water body designated as a C1 water or tributary to a C1 water that is a perennial stream, intermittent stream, lake, pond, or reservoir, as defined herein and shown on the USGS quadrangle map or in the County Soil Surveys within the associated HUC 14 drainage, pursuant to the Stormwater Management rules at N.J.A.C. 7:8-5.5(h).

Surface water body(ies) means any perennial stream, intermittent stream, lake, pond, or reservoir, as defined herein. In addition, any regulated water under the Flood Hazard Area Control Act rules at N.J.A.C. 7:13-2.2, or State open waters identified in a Letter of Interpretation issued under the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-3 by the New Jersey Department of Environmental Protection Division of Land Use Regulation shall also be considered surface water bodies.

Threatened or endangered species means a species identified pursuant to the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., the Endangered Species Act of 1973, 16 U.S.C. §§1531 et seq. or the Endangered Plant Species List, N.J.A.C. 7:5C-5.1, and any subsequent amendments thereto.

Trout maintenance water means a section of water designated as trout maintenance in the New Jersey Department of Environmental Protection's Surface Water Quality Standards at N.J.A.C. 7:9B.

Trout production water means a section of water identified as trout production in the New Jersey Department of Environmental Protection's Surface Water Quality Standards at N.J.A.C. 7:9B.

III. ESTABLISHMENT OF RIPARIAN ZONES

- A. Riparian zones adjacent to all surface water bodies shall be protected from avoidable disturbance and shall be delineated as follows:
1. The riparian zone shall be 300 feet wide along both sides of any Category One water (C1 water), and all upstream tributaries situated within the same HUC 14 watershed.
 2. The riparian zone shall be 150 feet wide along the entire length of the Cohansey River within the boundaries of the township;
 - a. The riparian zone shall be 150 feet wide along both sides of the following waters not designated as C1 waters:
 - b. Any segment of a water flowing through an area that contains documented habitat for a threatened or endangered species of plant or animal, which is critically dependent on the surface water body for survival, and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water;
 - c. Any segment of a water flowing through an area that contains acid producing soils.
 3. For all other surface water bodies, a riparian zone of 50 feet wide shall be maintained along both sides of the water.
- B. The portion of the riparian zone that lies outside of a surface water body is measured landward from the top of bank. If a discernible bank is not present along a surface water body, the portion of the riparian zone outside the surface water body is measured landward as follows:

1. Along a linear fluvial or tidal water, such as a stream, the riparian zone is measured landward of the feature's centerline;
 2. Along a non-linear fluvial water, such as a lake or pond, the riparian zone is measured landward of the normal water surface limit;
 3. Along a non-linear tidal water, such as a bay or inlet, the riparian zone is measured landward of the mean high water line;
 4. Along an amorphously-shaped feature such as a wetland complex, through which water flows but which lacks a discernible channel, the riparian zone is measured landward of the feature's centerline.
- C. The applicant or designated representative shall be responsible for the initial determination of the presence of a riparian zone on a site, and for identifying the area on any plan submitted to the Upper Deerfield Township in conjunction with an application for a construction permit, subdivision, land development, or other improvement that requires plan submissions or permits. This initial determination shall be subject to review and approval by the municipal engineer, governing body, or its appointed representative, and, where required, by the New Jersey Department of Environmental Protection.
- D. A map of the riparian zones of the entire municipality of Upper Deerfield Township including all land and water areas within its boundaries, which illustrates and defines the water surface water bodies to be regulated, is included as part of this Ordinance, and is appended as Figure [#].

IV. EXCEPTIONS

- A. The following new disturbances for projects or activities in riparian zones are exempted from the requirements of this ordinance:
1. Redevelopment within the limits of existing impervious surfaces; or
 2. New disturbance in the riparian zone necessary to protect public health, safety or welfare; to provide an environmental benefit; to prevent extraordinary hardship on the property owner peculiar to the property; or to prevent extraordinary hardship, provided the hardship was not created by the property owner, that would not permit a minimum economically viable use of the property based upon reasonable investment.
 3. An Exception to any of the disturbances listed in IV.A.1 above shall be granted by the Town Engineer upon proof by virtue of submission of appropriate maps and drawings, that the proposed redevelopment is within the limits of impervious surfaces that existed at the time of passage of this ordinance and shall be in conformance with the Stormwater Management Rules, N.J.A.C. 7:8, and the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13.
 4. For all riparian zones an Exception to any of the disturbances listed in IV.A.2 above shall be granted by the Zoning Board of Adjustment upon proof by virtue of submission of appropriate maps, drawings, reports and testimony, that the disturbance protects public health, safety or welfare; provides an environmental benefit; prevents extraordinary hardship on the property owner peculiar to the property; or prevents extraordinary hardship, provided the hardship was not created by the property owner, that would not permit a minimum economically viable use of the property based upon reasonable investment. Hardship variances may be granted by the Zoning Board of Adjustment in cases of a preexisting lot (existing at the time of adoption of this ordinance) when there is insufficient room outside the riparian zone for uses permitted by the underlying zoning and there is no other reasonable or prudent alternative to placement in the riparian zone, including obtaining variances from setback or other requirements that would allow conformance with the riparian zone requirements.

5. Appeals of a determination by the Township Engineer made in accordance with IV.A.3 above may be made to the Planning Board. The party contesting the determination or decision shall have the burden of proof in case of any such appeal.

V. ADJUSTMENTS

A. Adjustments to the riparian zones established by this Ordinance are allowed to the extent they comply with the Stormwater Management Rules (N.J.A.C. 7:8), the Flood Hazard Area Control Act Rules (N.J.A.C. 7:13), and shall be subject to review and approval by the New Jersey Department of Environmental Protection, unless exempt. The following adjustments to riparian zones are allowed:

1. The proposed disturbance in a riparian zone is for a linear development with no feasible alternative route. If the riparian zone is associated with Category One waters, the linear development must also meet the requirements for Special Water Resource Protection Areas under the Stormwater Management rules at N.J.A.C. 7:8-5.5(h);

2. The proposed disturbance in a riparian zone is in accordance with a stream corridor restoration or stream bank stabilization plan or project approved by the New Jersey Department of Environmental Protection;

3. The proposed disturbance of a riparian zone is necessary to provide for public pedestrian access or water dependent recreation that meets the requirements of the Freshwater Wetlands Protection Act rules, N.J.A.C. 7:7A, the Flood Hazard Area Control Act rules, N.J.A.C. 7:13, or

4. The proposed disturbance of a riparian zone is required for the remediation of hazardous substances performed with New Jersey Department of Environmental Protection or Federal oversight pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq. or the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§9601 et seq.

VI. APPEALS, PROCEDURES, CONFLICTS, AND SEVERABILITY

A. Any party aggrieved by the location of the riparian zone boundary determination under this Ordinance may appeal to the planning board under the provisions of this ordinance. The party contesting the location of the riparian zone boundary shall have the burden of proof in case of any such appeal.

B. Any party aggrieved by any determination or decision of the planning board under this Ordinance may appeal in accordance with the rules for appealing planning decisions. The party contesting the determination or decision shall have the burden of proof in case of any such appeal.

C. Conflicts: All other ordinances, parts of ordinances, or other local requirements that are inconsistent or in conflict with this ordinance are hereby superseded to the extent of any inconsistency or conflict, and the provisions of this ordinance apply.

D. Severability:

1. Interpretation: This Ordinance shall be so construed as not to conflict with any provision of New Jersey or Federal law.

2. Notwithstanding that any provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, all remaining provisions of the Ordinance shall continue to be of full force and effect.

3. The provisions of this Ordinance shall be cumulative with, and not in substitution for, all other applicable zoning, planning and land use regulations.

VII. ENFORCEMENT

A prompt investigation shall be made by the appropriate Township personnel of any person or entity believed to be in violation hereof. If, upon inspection, a condition which is in violation of this

Ordinance is discovered, a civil action in the Special Part of the Superior Court, or in the Superior Court, if the primary relief sought is injunctive or if penalties may exceed the jurisdictional limit of the Special Civil Part, by the filing and serving of appropriate process.

Nothing in this Ordinance shall be construed to preclude the right of the Township, pursuant to N.J.S.A 26:3A2-25, to initiate legal proceedings hereunder in Municipal Court. The violation of any section or subsection of this Ordinance shall constitute a separate and distinct offense independent of the violation of any other section or subsection, or of any order issued pursuant to this Ordinance. Each day a violation continues shall be considered a separate offense. In addition to such penalties or proceedings as may be instituted pursuant to N.J.S.A. 26:3A2-25, any citizen or official of the Township of Upper Deerfield shall be entitled to file and prosecute a complaint in the Municipal Court of the Township of Upper Deerfield resulting from a violation of this ordinance. The violator shall be subject to a penalty of \$1,000 per occurrence and each day that a violation shall continue or occur may subject the violator to a penalty of \$1,000 per day for such continuing violation.

VIII. EFFECTIVE DATE

James Crilley, Chairman

Finally adopted:
January 21, 2010

Attested:

Roy J. Spoltore, Township Clerk

NOTE: This version has been prepared by and was approved by the Upper Deerfield Township Planning Board on 12-14-09.