

**CHAPTER 1051
Establishment of Riparian Zones**

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1051.01 PUBLIC PURPOSE

- (a) The specific purpose and intent of this regulation is to regulate building and land use within riparian zones that would impair the ability of these areas to:
 - (1) Reduce flood impacts by absorbing peak flows, slowing the velocity of floodwaters and regulating base flow.
 - (2) Assist in stabilizing the banks of watercourses to reduce woody debris from fallen or damaged trees, stream bank erosion, and the downstream transport of sediments eroded from watercourse banks.
 - (3) Reduce pollutants in watercourses during periods of high flows by filtering, settling, and transforming pollutants already present in watercourses.
 - (4) Reduce pollutants in watercourses by filtering, settling and transforming pollutants in runoff before they enter watercourses.
 - (5) Provide watercourse habitats with shade and food.
 - (6) Reduce the presence of aquatic nuisance species to maintain a diverse aquatic system.
 - (7) Provide riparian habitat to a wide array of wildlife by maintaining diverse and connected riparian vegetation.
- (b) This regulation has been enacted to protect these services of riparian areas by providing reasonable controls governing building and land use within a riparian zone along designated watercourses in Avon.

1051.02 APPLICABILITY.

- (a) This regulation shall apply to all zoning districts in Avon as defined in the most recent version of the Avon Zoning Resolution.
- (b) This regulation shall apply to all lands that are within the jurisdiction of Avon and that border designated watercourses as defined in this regulation.

1051.03 DEFINITION

For the purpose of this regulation, the following terms shall have the meaning herein indicated.

- (a) “Avon” means City of Avon, its designated representatives, boards, or commissions.
- (b) “City Engineer” shall mean the City’s Engineer, its Consulting Engineer or Engineering Firm, any Engineer or Engineering Firm hired by the City to perform work for the City on any given project or any designee of one of the above, e.g., a City Building Inspector designated to perform stormwater inspections
- (c) “Damaged or Diseased Trees” means trees that have split trunks; 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 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 watercourse or on to a structure.
- (d) “Designated Watercourse” means a watercourse that is contained within, flows through, or borders Avon and meets the criteria set forth in Sections 1051.04 and 1051.10 of this regulation.
- (e) "Ditch." A stream of water in a definite channel, having a bed and sides or banks and discharging itself into some stream or body of water, whether natural or man-made, and whether stream flows continually or not. The two types of ditches (major and minor) are defined by a map on file at City Hall.
- (f) “Federal Emergency Management Agency (FEMA)” means the agency with overall responsibility for administering the National Flood Insurance Program.
- (g) “100-Year Floodplain” means any land susceptible to being inundated by water from a base flood. The base flood is the flood that has a one percent or greater chance of being equaled or exceeded in any given year. The 100-Year Floodplain shall be defined by the Federal Emergency Management Agency maps for the City of Avon.
- (h) “Ohio Environmental Protection Agency” means the organization referred through this regulation as the “Ohio EPA”.
- (i) “Ordinary High Water Mark” means the point of the stream bank to which the presence and action of surface water is so continuous as to leave an area 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 bed of a watercourse.

- (j) “Riparian Area” means naturally vegetated land adjacent watercourses that, if appropriately sized, helps to stabilize stream banks, limit erosion, reduce flood size flows, and/or filter and settle out runoff pollutants, or performs other functions consistent with the purposes of this regulation.
- (k) “Riparian Zone” means those lands in Avon that fall within the area defined by the criteria set forth in Section 1051.04 and 1051.10 of this regulation.
- (l) “Soil and Water Conservation District” means 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.
- (m) “Soil Disturbing Activity” means clearing, grading, excavating, filling, dumping, grubbing, stripping, 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.
- (n) “Top of Bank” means the location of the upper edge of the active ditch above which the water spreads into the overbank areas on either side of the ditch.
- (o) “Waste Water Treatment Plant (WWTP)” means a facility at the end of the sanitary collection system which processes the influent waste, and discharges water to a receiving system, treated to the standards of the Ohio Environmental Protection Agency (EPA).
- (p) “Watercourse” means any brook, channel, creek, river, stream, or ditch having banks, a defined bed, and definite direction of flow, either continuously or intermittently flowing.
- (q) “Watershed” means the total drainage area contributing storm water runoff to a single point.
- (r) “Wetland” means 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. (40 CFR 232, as amended)

1051.04 ESTABLISHMENT OF DESIGNATED WATERCOURSES AND RIPARIAN ZONES WITHIN THE FRENCH CREEK WATERSHED.

Sections 1051.04 through 1051.08 shall be applied exclusively to areas within the French Creek Watershed (See Exhibit A – French Creek Watershed Map). See Section 1051.10 for riparian zone protection requirements that apply to all other areas within the City.

- (a) Riparian Zones shall apply to all watercourses. .

- (b) Riparian zones on designated watercourses are established as follows:
 - (1) A minimum of fifty (50) feet on each side of French Creek, Mills Creek and Schwartz Creek.
 - (2) A minimum of 25 feet on each side of all other watercourses.

- (c) The following shall apply in riparian zones:
 - (1) Riparian zones shall be measured in a horizontal direction, perpendicular to the stream and outward from the ordinary high water mark of each designated watercourse.
 - (2) Except as otherwise provided in this regulation, riparian zones shall be preserved in their natural state.
 - (3) Where the 100-year floodplain is wider than a riparian zone on either or both sides of a designated watercourse, the riparian zone shall be extended to the outer edge of the 100-year floodplain. The 100-year floodplain shall be defined by FEMA.
 - (4) Where wetlands are identified within a riparian zone the minimum riparian zone width shall be extended to the outer boundary of the wetland. Wetlands shall be delineated by a site survey prepared by a qualified wetland professional using delineation protocols accepted by the U.S. Army Corps of Engineers at the time of application. The wetlands delineation shall also have been submitted to the U.S. Army Corps of Engineers for its review and acceptance. Proof of such U.S. Army Corps of Engineers acceptance must be submitted with the Final Site Plan.

- (d) The site owner shall be responsible for delineating riparian zones as required by these regulations and shall identify these setbacks on all site plans submitted to the City Engineer. The site plan shall be drawn to scale and shall be based upon a survey of the affected lot performed and stamped by a Professional Surveyor registered to practice in the State of Ohio. Two (2) copies of the site plan shall be submitted with the Discussion Site Plan application as required by the resolution. In addition, the site plan shall be submitted in an electronic format, either in Arc View GIS or AutoCAD.

- (e) If soil disturbing activities, or construction related activities such as materials storage, will occur within 100 feet of the outer boundary of a riparian zone, the riparian zone shall be clearly delineated by the site owner on-site with construction fencing prior to any soil disturbing or construction related activities. Such delineation shall extend 50 feet beyond the limits of soil disturbing or construction related activities and shall be maintained throughout soil disturbing or construction related activities.

- (f) The City Engineer shall not issue approvals or permits prior to delineation of riparian zones by the applicant and in conformance with this regulation as detailed in Section 1051.04 (e).
- (g) The City Engineer may consult with the Lorain SWCD, U.S. Army Corps of Engineers, Ohio EPA or other technical experts retained by city council in reviewing any submittals associated with implementation of this regulation.

1051.05 PERMITTED STRUCTURES AND USES WITHIN A DESIGNATED RIPARIAN ZONE.

The following structures and uses are permitted in the riparian zone provided all other necessary approvals and permits have been obtained from the City of Avon, U.S. Army Corps of Engineers, Ohio EPA or any other governmental agency having jurisdiction. No structure of use permitted under this regulation shall allow trespass on, or public access to, privately held lands.

- (a) Recreational Activity. Passive recreational uses.
- (b) Removal of Damaged or Diseased Trees. Damaged or diseased trees may be removed.
- (c) Maintenance and Repairs. Maintenance and repair on roads, driveways, bridges, culverts, trails, walkways, paths, sanitary sewer facilities and appurtenances, water distribution systems and appurtenances, storm sewers, and on-site sewage disposal systems, all existing at the time of passage of this resolution.
- (d) Maintenance and Cultivation of Lawns and Landscaping. The maintenance of lawns, landscaping, shrubbery, or trees, all existing at the time of passage of this resolution.
- (e) Crossings. Crossings of designated watercourses through riparian zones with roads, driveways, easements, bridges, culverts, utility service lines, or other means shall be allowed, subject to requirements established by the Avon City Engineer, U.S. Army Corps of Engineers, Ohio EPA or other governmental agency having jurisdiction. If work will occur below the ordinary high water mark of the designated watercourse, proof of compliance with the applicable conditions of a U.S. Army Corps of Engineers Section 404 Permit (either a Nationwide Permit, including the Ohio State Certification Special Conditions and Limitations, or an Individual Permit, including Ohio 401 water quality certification), shall also be provided to the City Engineer. Proof of compliance shall be the following:
 - (1) A site plan showing that any proposed crossing conforms to the general and specific conditions of the applicable Nationwide Permit, or
 - (2) A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under the applicable Nationwide Permit, or

- (3) A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under an Individual Permit.

- (f) Streambank Stabilization Projects. Streambank stabilization projects along designated watercourses shall be allowed, subject to other requirements of the Avon Codified Ordinances. If streambank stabilization work is proposed below the ordinary high water mark of the designated watercourse, proof of compliance with the applicable conditions of a U.S. Army Corps of Engineers Section 404 Permit (either a Nationwide Permit 13, including the Ohio State Certification Special Conditions and Limitations, or an Individual Permit, including Ohio 401 water quality certification) shall be provided to the City Engineer. Proof of compliance shall be the following:
 - (1) A site plan showing that any proposed crossing conforms to the general and specific conditions of Nationwide Permit 13, or
 - (2) A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under Nationwide Permit 13, or
 - (3) A copy of the authorization letter from the U. S. Army Corps of Engineers approving activities under an Individual Permit.

- (g) Limited Access. With prior approval of the city, limited access to riparian setback areas shall be permitted in order to complete work, provided that the original elevation in any disturbed areas shall be reestablished and repaired to its original condition.

- (h) Stormwater conveyances. The placement of a conveyance (i.e., storm sewer, open channel, or otherwise) for the purpose of outletting a stormwater management facility or storm sewer shall be allowed with approval from the City Engineer.

1051.06 STRUCTURES AND USES PROHIBITED IN RIPARIAN ZONES.

Any structure or use not permitted under the Codified Ordinances of the City of Avon shall be prohibited in riparian zones. The following structures or uses are prohibited:

- (a) Construction. There shall be no construction of structures, utilities or sewers, land clearing, grading, filling, stockpiling, placement of project related trailers, parking of equipment or tree cutting of any kind except as permitted under this regulation.

- (b) Dredging or Dumping. There shall be no drilling, filling, dredging, or dumping of soil, spoils, liquids, yard wastes, or solid materials, except for noncommercial composting of uncontaminated natural materials and except as permitted under this regulation.

- (c) Fences and Walls. There shall be no fences or walls constructed in the riparian zone except as permitted under this regulation.
- (d) Parking Spaces or Lots and Loading/Unloading Spaces for Vehicles. There shall be no parking spaces, lots, or loading/unloading spaces, except as permitted under this regulation.
- (e) Roads or Driveways. There shall be no roads or driveways, except as permitted under this regulation.
- (f) Storm Water Retention and Detention Facilities. Storm water retention and detention facilities, including water quality features, may not be constructed in the riparian zone.

1051.07 INSPECTION OF RIPARIAN ZONES.

The City Engineer shall inspect the field delineation of riparian zones.

- (a) Field delineations of riparian zones required by this ordinance shall be made prior to soil disturbing activities authorized by the City Engineer under a subdivision or land development plan. The applicant shall provide the City Engineer with at least two (2) working days notice prior to starting such soil disturbing activities. Construction fences, as prescribed by this ordinance and which serve to delineate riparian zone areas, must be installed prior to the issuance of two (2) working days notice to the City Engineer.
- (b) Prior to activities authorized by the City Engineer under Section 1051.05 of this regulation. The applicant shall provide the City Engineer with at least two (2) working days notice prior to starting such activities.

1051.08 MODIFICATIONS WITHIN RIPARIAN SETBACKS

- (a) The Planning Commission may grant a modification to this regulation as provided herein. In granting a modification, the following conditions shall apply:
 - (1) In determining whether there is unnecessary hardship with respect to the use of a property or practical difficulty with respect to maintaining the riparian setback as established in this regulation, such as to justify the granting of a modification, the Planning Commission shall consider the potential harm or reduction in riparian functions that may be caused by a proposed structure or use.
 - (2) The Planning Commission may not authorize any structure or use in a Zoning District other than those authorized in the Zoning Code.
 - (3) Modifications shall be void if not implemented within one (1) year of the date of issuance.

- (4) For the purpose of mitigating impacts to the riparian setback, the applicant shall be required to implement structural and/or non-structural low impact development (LID) practices and controls in addition to applicable stormwater management controls required as part of Chapter 1050 – Comprehensive Stormwater Management. The determination of ensuring proposed LID principles sufficiently mitigate these impacts shall be made by the Planning Commission with input from the City Engineer and the Planning Coordinator. An emphasis shall be placed on LID principles that mimic the function of riparian areas, which include but are not limited to preservation of natural areas, vegetative filter strips, establishment of native vegetation, bioretention areas, stormwater infiltration practices, etc.
- (b) In making a determination under Section 1051.08 of this regulation, the Planning Commission may consider the following:
- (1) The natural vegetation of the property as well as the percentage of the parcel that is in the 100-year floodplain.
 - (2) The extent to which the requested modification impairs the flood control, erosion control, water quality protection, or other functions of the riparian setback. This determination shall be made by the City Engineer upon reviewing any necessary scientific data and calculations to be provided by the applicant.
 - (3) The degree of hardship, with respect to the use of a property or the degree of practical difficulty with respect to maintaining the riparian setback as established in this regulation, placed on the landowner by this regulation and the availability of alternatives to the proposed structure or use.
 - (4) Soil-disturbing activities permitted in the riparian setback through modifications should be implemented to minimize clearing to the extent possible and to include applicable Best Management Practices necessary to minimize erosion and control sediment, as required under Chapter 1052.
 - (5) Minimizing the presence of significant impervious cover, or smooth vegetation such as maintained lawns, in the riparian setback.
 - (6) Whether a property, otherwise buildable under the ordinances of the City, will be made unbuildable because of this regulation.
- (c) In order to maintain the riparian setback to the maximum extent practicable, the Planning Commission may consider granting variations to other areas or setback requirements imposed on a property by the Zoning Code.

1051.09 PROCEDURES FOR VARIANCES & APPEALS

- (1) Any applicant seeking a variance to the conditions imposed under these regulations or an appeal from an administrative decision made under these regulations shall follow the procedures set forth in Chapter 1232 of the Avon Codified Ordinances.

- (2) Applications for appeals or variances made under this regulation shall contain the information set forth in Chapter 1232, e.g.,:
 - A. The name, address, and telephone number of the applicant;
 - B. Proof of ownership or authorization to represent the property owner.
 - C. The location of the property, including street address and permanent parcel number.
 - D. The current zoning of the property.
 - E. A description of the project for which the appeal or variance is sought, including any proposed Low Impact Development principles that are being considered to offset impacts to the riparian setback area as specified within Section 1051.08(a)(4).
 - F. A description of the administrative decision being appealed or the conditions of the regulation from which a variance is sought.

- (3) Applications for variances or appeals of administrative decisions shall not be resubmitted to the Board of Zoning within one (1) year of the date of a final decision by the Board of Zoning on the original application, unless the applicant shows the Board of Zoning either of the following:
 - A. Newly discovered evidence that could not have been presented with the original submission, or
 - B. Evidence of a substantial change in circumstances since the time of the original submission.

- (d) A decision by the Board of Zoning in response to an application for a variance request or an appeal of an administrative decision filed pursuant to this regulation shall be final.

1051.10 ESTABLISHMENT OF DESIGNATED WATERCOURSES AND RIPARIAN ZONES WITHIN ALL OTHER AREAS.

- (a) Ditches (as shown on the Master River and Ditch Location Map kept on file at City Hall).

- (1) Major ditch: The land within the first ten feet from top of bank or as designated by the City Engineer, where the zones are as follows:
 - A. Zone 1: This is the area defined as the first five feet from top of bank where there is no construction and no disturbance is authorized.
 - B. Zone 2: This is the area defined as the area starting at five feet from top of bank and ending ten feet from top of bank where no permanent structures may be built and only light grading is permitted with approval from the City Engineer. It lies adjacent to Zone 1.
- (2) Minor ditch: Only minor ditches that directly flow into a major ditch, creek, or stream of the State are subjected to this Section 1050.08(b)(2); otherwise there is no riparian setback for a minor ditch. The land within the first ten feet from top of bank or as designated by the City Engineer, where the zones are as follows:
 - A. Zone 1: This is the area defined as the first five feet from top of bank where there is no construction and no disturbance authorized.
 - B. Zone 2: This is the area defined as the area starting at five feet from top of bank and ending ten feet from top of bank where no permanent structures may be built and only light grading is permitted with approval from the City Engineer. It lies adjacent to Zone 1.
- (b) Ponds and Other BMPs (Best Management Practices). The land within the first ten feet from the top of bank or as designated by the City Engineer, where the zones are as follows:
 - (1) Zone 1: This is the area defined as the first five feet from top of bank where there is no construction and no disturbance is authorized.
 - (2) Zone 2: This is the area defined as the area starting at five feet from top of bank and ending ten feet from top of bank where no permanent structures may be built and only light grading is permitted with approval from the City Engineer. It lies adjacent to Zone 1.
- (c) Zone Maintenance.
 - (1) Zone 1. It would be optimal for Zone 1 to be completely natural, but in areas adjacent to residential properties, the minimum height of the grass shall be four inches.
 - (2) Zone 2. Can be maintained per other City Code.
- (d) Exceptions.
 - (1) The requirements of this section may be relaxed at the discretion of the City Engineer if the property owner/developer can demonstrate that the fundamental nature of this section is met by other means or methods.
- (e) Appeals.

- (1) Appeals from adverse administrative decision may be made pursuant to the procedures outlined in Section 1051.08 to the Avon Planning Commission. Otherwise, appeals may be made to the Avon Board of Zoning and Building Appeals pursuant to Section 1051.09.

1051.11 VIOLATIONS

No person shall violate or cause or knowingly permit to be violated any of the provisions of this regulation, or fail to comply with any of such provisions or with any lawful requirements of any public authority made pursuant to this regulation, or knowingly use or cause or permit the use of any lands in violation of this regulation or in violation of any permit granted under this regulation.

1051.99 PENALTY

- (a) Any person, firm, entity or corporation; including but not limited to, the owner of the property, his agents and assigns, occupant, property manager, and any contractor or subcontractor who violates or fails to comply with any provision of this regulation is guilty of a misdemeanor of the third degree and shall be fined no more than five hundred dollars (\$500.00) or imprisoned for no more than sixty (60) days, or both, for each offense. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.
- (b) The imposition of any other penalties provided herein shall not preclude the City of Avon 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 regulation or other applicable laws, ordinances, rules, or regulations, or the orders of the City of Avon.