

Cranbury Township Ordinance # 09-11-17

AN ORDINANCE DESIGNATING RIPARIAN ZONES OF CRANBURY TOWNSHIP and supplementing the Cranbury Township Ordinance with NEW Chapter 122.

WHEREAS, the New Jersey Department of Environmental Protection (“NJDEP”) has adopted regulations to establish the NJDEP evaluation criteria for wastewater management plans, and amendments generally set forth within Chapter 15 (Water Quality Management Planning) of Title 7 of the New Jersey Administrative Code, and specifically Subchapter 5 at N.J.A.C.7:15-5.25 et. seq., and

WHEREAS, the NJDEP regulations establish the environmental analyses or assessments, and standards which are required to be included within an application for approval of a wastewater management plan or update at N.J.A.C.7:15-5.25 (b) through (g); and

WHEREAS, subsection (g) of N.J.A.C. 7:15-5.25 requires that “an assessment of nonpoint source pollution impacts of planned future development shall be conducted and it shall be demonstrated that the environmental standards for storm water, riparian zones, and steep slopes established in this section, as well as measures identified in adopted TMDLs [total maximum daily load] or watershed restoration plans, shall be met.” Subsection (g) (2) specifically establishes the riparian zones which are required to be protected by virtue of the aforementioned NJDEP regulations; and

WHEREAS, the NJDEP regulations further require that compliance with the riparian zone standard set forth in the NJDEP regulations shall be demonstrated by the submission to the NJDEP of a copy of the municipal ordinance which prevents new disturbance for projects or activities (except as exempted by the NJDEP regulations); and

WHEREAS, the Township of Cranbury has a wastewater management plan, and therefore is subject to the requirements of the NJDEP regulations which require the protection of riparian areas as required at N.J.A.C. 7:15-5.25, and “riparian zone” is defined at proposed Ordinance Section II ; and

WHEREAS, the Township of Cranbury desires to adopt an Ordinance to demonstrate compliance with the NJDEP riparian zone standards in accordance with N.J.A.C. 7:15-5.25.

NOW THEREFORE BE IT ORDAINED on this 12th day of September, 2011 by the Township Committee of the Township of Cranbury in the County of Middlesex, State of New Jersey, that :

The Code of the Township of Cranbury shall be supplemented to add a new CHAPTER 122 as follows:

Riparian Zone

I. PURPOSE AND AUTHORITY

The purpose of this Ordinance is to designate riparian zones, and to provide for land use Regulations therein in order to protect the streams, lakes, and other surface water bodies of Cranbury Township and to comply with N.J.A.C. 7:15-5.25(g) 3, which requires municipalities to adopt an ordinance that prevents new disturbance for projects or activities in riparian zones as described herein. 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. Property owners remain subject to

compliance with all other municipal ordinances, inclusive of stream and floodway requirements, including but not limited to Ordinance Section 150-56 (c) 13, and as may be amended.

II. DEFINITIONS

The definitions of the words and/or terms utilized in this Article shall be as defined or described in the Water Quality Management Planning rules, N.J.A.C. 7:15, the Storm water Management Rules, N.J.A.C. 7:8-5.5(h) and/or Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, as they exist as of the effective date of this Ordinance and as they may be amended over time.

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 local Soil Conservation District offices.

Applicant means a person, corporation, government body or other legal entity applying to the Planning Board, Board of Adjustment, Zoning Officer or the Construction Office proposing to engage in an activity that is regulated by the provisions of the NJDEP, 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 the purposes of implementing the antidegradation policies set forth in those standards, for protection from measurable changes in water quality characteristic because of their clarity, color, scenic setting and other characteristic of aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance or exceptional fisheries resources.

Disturbance means the placement of impervious surface, the exposure or movement of soil or bedrock, or the clearing, cutting, or removing of vegetation.

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 as determined by site analysis or in the case of a Special Water Resource Protection Area (SWRPA) pursuant to the Storm water 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 coverage or, in the case of a Special Water Resource Protection Area (SWRPA) pursuant to the Storm water 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 and listed in N.J.A.C. 7:9B-1.15 ; 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 storm water retention/detention basins and ponds for treatment of wastewater.

Perennial stream means a surface water body that flows continuously throughout the year in most year and shown on the New Jersey Department of Environmental Protection Geographic Information System (GIS) hydrograph coverages or as determined by site analysis or, in the case of a Special Water Resource Protection Area (SWRPA) pursuant to the Storm water 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 and listed in N.J.A.C. 7:9B-1.15.

Riparian Zone means the land and vegetation within an directly adjacent to all surface water bodies including but not limited to lakes, pond, reservoirs, perennial and intermittent streams, up

to and including the point of origin, such as seeps and spring, as shown on the New Jersey Department of Environmental Protection's GIS hydrography coverages or as determined by site analysis or in the case of a Special Water Resource Protection Area (SWRPA) pursuant to the Storm water Management rules at N.J.A.C. 7:8-5.5(h), C-1 waters as shown on the USGS quadrangle map or in the county Soil Surveys and listed in N.J.A.C. 7:9B-1.15.

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 Storm water 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 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 non-game Species Conservation Act, N.J.S.A. 23:2A-1 et. seq. or the Endangered Species Act of 1973, 16 U.S.C. Section 1531, or the Endangered Plant Species List, N.J.A.C. 7:5C-5.1 and any subsequent amendments thereto.

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

Trout production Waters, or "TP" waters means waters designated as TP waters in the New Jersey Department of Environmental Protections Surface Water Quality Standards, N.J.A.C. 7:9B.

III. ESTABLISHMENT AND PROTECTION OF RIPARIAN ZONES

A. Except as provided in Sections IV. and V. below, 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 both sides of the following waters not designated as C1 waters:
 - a. Any trout production water and all upstream waters (including tributaries);
 - b. Any trout maintenance water 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 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; and
 - d. 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. 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; and
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 of the riparian zone on any plan submitted to the Township of Cranbury in conjunction with an application for a construction permit, zoning 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 Township Engineer or the Township's appointed representative, and, where required by State regulation, the New Jersey Department of Environmental Protection.

D. All encroachments proposed into Riparian Zones in C1 waters shall comply with the requirements of the Storm water Management rules at N.J.A.C. 7:8-5.5(h) and 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.

1. All new major and minor subdivisions and site plans shall be designed to provide sufficient areas outside of the Riparian Zone to accommodate primary structures, any normal accessory uses appurtenant thereto, as well as all planned lawn areas.

IV. EXCEPTIONS

To the extent allowed under the Storm water Management Rules (N.J.A.C. 7:8) and the Flood Hazard Area Control Act Rules (N.J.A.C. 7:13) and subject to review and **approval** by the New Jersey Department of Environmental Protection to the extent required by those rules, the following disturbances for projects or activities in the riparian zone established by this Ordinance are allowed:

- A. Redevelopment within the limits of existing impervious surfaces;
- B. Linear development with no feasible alternative route;
- C. Disturbance that is in accordance with a stream corridor restoration or stream bank stabilization plan or project approved by the New Jersey Department of Environmental Protection;

D. Disturbance 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 the Coastal Zone Management rules, N.J.A.C. 7:7E; or

E. Disturbance with no feasible alternative 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.

V. SEVERABILITY

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.

VI. ENFORCEMENT

A prompt investigation shall be made by the Township Engineer 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, the remedies found in Article IX Sections 150-103 Violations and 150-104 Penalties of the Township Code shall be used by the Township to rectify the violations and bring site into compliance with this ordinance.

VII. EFFECTIVE DATE

This Ordinance shall take effect upon final adoption and publication in accordance with the law.

CERTIFICATION

This ordinance was introduced and passed upon first reading at a meeting of the governing body of the Township of Cranbury, in the County of Middlesex, State of New Jersey, on September 12, 2011. It will be further considered for final passage, after public hearing thereon, at a meeting of the governing body to be held at the Town Hall Meeting Room on Monday, September 26, 2011 at 7:00 p.m. During the week prior to and up to and including the date of such meeting, copies of the full ordinance will be available at no cost during regular business hours at the Clerk's Office for the members of the general public who shall request the same or by accessing the Township's web site at www.cranburytownship.org.

Kathleen R. Cunningham, RMC
Municipal Clerk