

**TOWNSHIP OF CRANBURY
COUNTY OF MIDDLESEX, STATE OF NEW JERSEY**

ORDINANCE # 05-15-09

AN ORDINANCE OF THE TOWNSHIP OF CRANBURY IN MIDDLESEX COUNTY, NEW JERSEY REVISING THE STANDARDS APPLICABLE TO RIPARIAN ZONES IN THE TOWNSHIP, INCORPORATING THOSE STANDARDS INTO THE TOWNSHIP'S LAND DEVELOPMENT REGULATIONS, AND MAKING CERTAIN OTHER AMENDMENTS TO THE "CODE OF THE TOWNSHIP OF CRANBURY" IN CONNECTION THEREWITH.

WHEREAS, regulations promulgated by the New Jersey Department of Environmental Protection (NJDEP), specifically, N.J.A.C. 7:15-5.25(g)3, require municipalities to adopt ordinances preventing new disturbance for projects or activities in riparian zones; and

WHEREAS, to assist municipalities in this endeavor, the NJDEP has provided municipalities with a model ordinance on which to base their own ordinances; and

WHEREAS, said model ordinance contains an optional section that authorizes local land use boards to grant variances from the requirements of the local riparian zone ordinance; and

WHEREAS, said model ordinance also contains minimum riparian zone standards, but allows municipalities to adopt more stringent or inclusive standards; and

WHEREAS, on September 26, 2011, the Cranbury Township Committee (Township Committee) adopted Ordinance No. 09-11-17 establishing a new Chapter 122, Riparian Zones, in the Code of the Township of Cranbury (Code), which contained standards for development within riparian zones that followed those set forth in the NJDEP model ordinance, but that did not contain any variance provisions; and

WHEREAS, based on experience applying the provisions of Chapter 122 since its adoption, the Cranbury Township Environmental Commission (EC) and the Cranbury Township Land Development Ordinance (LDO) Subcommittee have recommended that the provisions of Chapter 122 be revised and be made a part of the Township's land development regulations; and

WHEREAS, more specifically, the NJDEP model ordinance and the Township's current regulations require 50-foot buffers along both sides of any surface water body except Category One (C1) waters, for which the minimum buffer is 300 feet, and any trout production or trout maintenance water, any segment of water containing documented habitat for threatened or endangered species dependent on the surface water body for survival, and any segment of water flowing through acid-producing soils, for which the minimum buffer is 150 feet; and

WHEREAS, the EC and LDO Subcommittee believe that strong riparian buffers serve many important goals and should therefore be established alongside all surface water bodies, not

just C1 waters, trout production or maintenance waters, or waters flowing through acid-producing soils or through habitat for threatened or endangered species; and

WHEREAS, to that end, the EC and LDO Subcommittee recommend that except along Category 1 (C-1) water bodies (for which the model ordinance requires a buffer of 300 feet on either side of the water body), the Township replace the graduated standard set forth in the NJDEP model ordinance and currently contained in Chapter 122 with a uniform riparian buffer of 150 feet along both sides of all surface water bodies; and

WHEREAS, in recognition that individual circumstances may warrant a relaxation of these buffers under certain conditions, the EC and LDO Subcommittee also recommend that the Township Planning Board and/or Zoning Board of Adjustment, as appropriate, be authorized to grant variances from the applicable riparian zone requirements, as provided for in the NJDEP model ordinance; and

WHEREAS, the EC and LDO Subcommittee also recommend that activities that qualify for a permit-by-rule pursuant to subchapter 7 of the NJDEP's Flood Hazard Area Control Act regulations be excepted from the riparian zone requirements; and

WHEREAS, lastly, the LDO Subcommittee recommends that the landscaping design standards contained in the Township's site plan and subdivision regulations be revised to eliminate an inconsistency between one of those design standards and the Township's riparian corridor standards; and

WHEREAS, the Township Committee agrees with and adopts the recommendations of the EC and LDO Subcommittee;

NOW THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Cranbury, Middlesex County, New Jersey, as follows:

Section 1. Preamble Incorporated. The preamble to this ordinance is hereby incorporated as if fully restated herein.

Section 2. Chapter 122 repealed and replaced. Chapter 122 of the Code of the Township of Cranbury (Code) entitled "Riparian Zones" is hereby repealed in its entirety and replaced with a new section 150-39.1, "Riparian Zones," to be added to Article IV, "Supplementary Zoning Regulations" of Chapter 150, "Land Development" of the Code, which new section shall read as follows:

§ 150-39.1. RIPARIAN ZONES.

A. PURPOSE AND AUTHORITY

The purpose of this Section 150-39.1 is to designate riparian zones, and to provide for land use regulation therein in order to protect the streams, lakes, and other surface water bodies of the Township of Cranbury 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 Section does not constitute compliance with the riparian zone or buffer requirements imposed under any other federal, State or local statute, regulation or ordinance.

B. 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 local Soil Conservation District offices.

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 Section, 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.

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, 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.

NJDEP or DEPARTMENT means the New Jersey Department of Environmental Protection.

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.

PERMIT-BY-RULE shall have the meaning ascribed to this term by the NJDEP's Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-1.2.

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 or 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 NJDEP's Surface Water Quality Standards at N.J.A.C. 7:9B.

C. ESTABLISHMENT AND PROTECTION OF RIPARIAN ZONES

- (1) In addition to the goals identified by the NJDEP in its model riparian zone ordinance, strong riparian zones also serve the following goals of importance to the Township and the Cranbury community:
 - (a) Slow flood waters and reduce stream water volume during periods of heavy rain;
 - (b) Stabilize stream banks and reduce channel erosion;
 - (c) Improve water quality by reducing the amount of sediment, pesticides and other pollutants entering surface water;
 - (d) Remove phosphorus, nitrogen and other nutrients that can lead to eutrophication of aquatic ecosystems;
 - (e) Provide shade, shelter and food for fish and other aquatic species;
 - (f) Provide habitat and travel corridors for a multitude of plants and animals, not just the species identified in the NJDEP model ordinance;
 - (g) Improve the aesthetics of stream corridors, which can lead to increased property values; and
 - (h) Provide recreational (swimming, boating, hiking) and educational opportunities for the community.
- (2) In order to advance the goals identified above, and except as provided in subsections 150-39.1D and 150-39.1E below, riparian zones adjacent to all surface water bodies shall be protected from avoidable disturbance and shall be delineated as follows:
 - (a) 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.

- (b) For all other surface water bodies, the riparian zone shall be 150 feet wide along both sides of the surface water body.
- (3) If a discernible bank is not present along a surface water body, the portion of the riparian zone outside the surface water body shall be measured landward as follows:
 - (a) Along a linear fluvial or tidal water, such as a stream, the riparian zone shall be measured landward of the feature's centerline;
 - (b) Along a non-linear fluvial water, such as a lake or pond, the riparian zone shall be measured landward of the normal water surface limit; and
 - (c) Along an amorphously-shaped feature such as a wetland complex, through which water flows but which lacks a discernible channel, the riparian zone shall be measured landward of the feature's centerline.
- (4) The applicant or applicant's 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 in conjunction with an application for a construction permit, subdivision or other land development approval, or other improvement that requires plan submissions or permits. This initial determination shall be subject to review and approval by the Township Engineer and/or Zoning/Planning Board Engineer, as appropriate, and, where required by State regulation, the NJDEP.

D. VARIANCES

To the extent allowed by the Stormwater Management Rules (N.J.A.C. 7:8) and the Flood Hazard Area Control Act Rules (N.J.A.C. 7:13), new disturbances for projects or activities in the riparian zone established herein may be allowed through the review and approval by the appropriate land use board of a variance pursuant to N.J.S.A. 40:55D-70c.

E. EXCEPTIONS

To the extent allowed under the Stormwater 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 NJDEP to the extent required by those rules, the following disturbances for projects or activities in the riparian zone(s) established herein are allowed:

- (1) Redevelopment within the limits of existing impervious surfaces;
- (2) Linear development with no feasible alternative route;
- (3) Disturbance that is in accordance with a stream corridor restoration or stream bank stabilization plan or project approved by the NJDEP;
- (4) 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) or the Flood Hazard Area Control Act rules (N.J.A.C. 7:13);
- (5) Disturbance with no feasible alternative required for the remediation of hazardous substances performed with NJDEP 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.*); or
- (6) Disturbance resulting from an activity for which the NJDEP has established a permit-by-rule in accordance with subchapter 7 of the Flood Hazard Area Control Act Rules (N.J.A.C. 7:13-7.1 *et seq.*), as same may from time to time be amended or supplemented. Wherever said Rules require written notification to the NJDEP, a copy of such notification shall be provided simultaneously therewith to the Township Engineer and Township Clerk.

F. APPEALS

- (1) Any party aggrieved by the location of the riparian zone boundary determination under this Section may appeal to the Township Engineer under the provisions set forth herein. The party contesting the location of the riparian zone boundary shall have the burden of proof in case of any such appeal.
- (2) Any party aggrieved by any determination or decision of the Township Engineer under this Section may appeal to the Zoning Board of Adjustment pursuant to the provisions of the Municipal Land Use Law, N.J.S.A. 40:55D-1 *et seq.* The party contesting the determination or decision shall have the burden of proof in case of any such appeal.

G. ENFORCEMENT

- (1) A prompt investigation shall be made by Zoning Officer with advice as needed from 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 Section 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.

- (2) Nothing herein shall be construed to preclude the right of the Zoning Officer and/or Township, pursuant to N.J.S.A 26:3A2-25, to initiate legal proceedings hereunder in municipal court.
- (3) The violation of any provision of this Section 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 Section. Each day a violation continues shall be considered a separate offense.

H. CONFLICTS, INTERPRETATION, AND SEVERABILITY

- (1) All provisions of the Cranbury Township Code and/or other local requirements that are inconsistent or in conflict with the provisions of this section are hereby superseded to the extent of such inconsistency or conflict, and the provisions of this section shall apply.
- (2) The provisions of this section shall be construed so as not to conflict with any provision of New Jersey or Federal law.
- (3) If any provision of this section is held to be invalid or unconstitutional by a court of competent jurisdiction, all remaining provisions shall continue to be of full force and effect.
- (4) The provisions of this section shall be cumulative with, and not in substitution for, all other applicable zoning, planning and land use regulations.

Section 3. Landscaping design standards amended by deleting section 150-56C(13). Section 150-56, “Landscaping” of Article V, “Subdivision and Site Plan Standards” of Chapter 150, “Land Development” of the Code is hereby amended by deleting therefrom subsection 150-56C(13).

Section 4. Severability. If any section or subsection of this ordinance is adjudged invalid by a court of competent jurisdiction, such adjudication shall apply only to the specific section(s) or subsection(s) so adjudged and the remainder of the ordinance shall be deemed valid.

Section 5. Referral to Planning Board. A copy of this ordinance shall be referred to the Cranbury Township Planning Board for review and comment following its introduction on first reading and prior to the public hearing thereon, in accordance with the requirements of N.J.S.A. 40:55D-64 and N.J.S.A. 40:55D-26a.

Section 6. Effective date. This ordinance will take effect upon its passage and publication and upon the filing of a copy of said ordinance with the Middlesex County Planning Board, as required by law.

PLEASE TAKE NOTICE that the following ordinance was introduced and passed upon first reading at a meeting of the Township Committee of the Township of Cranbury, in the County of Middlesex, State of New Jersey, held on May 11, 2015: Cranbury Township Ordinance #05-15-09 entitled “AN ORDINANCE OF THE TOWNSHIP OF CRANBURY IN MIDDLESEX COUNTY, NEW JERSEY REVISING THE STANDARDS APPLICABLE TO RIPARIAN ZONES IN THE TOWNSHIP, INCORPORATING THOSE STANDARDS INTO THE TOWNSHIP’S LAND DEVELOPMENT REGULATIONS, AND MAKING CERTAIN OTHER AMENDMENTS TO THE “CODE OF THE TOWNSHIP OF CRANBURY” IN CONNECTION THEREWITH.” The ordinance will be further considered for final passage, after public hearing thereon, at a meeting of the Township Committee to be held in the main meeting room of Town Hall, 23A North Main Street, in the Township of Cranbury on May 26, 2015 at 7 p.m., and during the week prior and up to and including the date of such meeting, copies of said ordinance will be made available free of charge at the Clerk’s Office to the members of the general public who shall request the same.

PURPOSE AND SUMMARY OF THE ORDINANCE

The purpose of Cranbury Township Ordinance #05-15-09 is to revise Cranbury Township’s existing riparian corridor buffer regulations, as follows:

- The ordinance would move the regulations from Chapter 122 to the Township’s Land Development Ordinance (Chapter 150), specifically, the LDO’s Supplementary Zoning Regulations
- It would establish a uniform buffer of 150 feet along both sides of any surface water body other than Category-1 (C-1) waters. For C-1 waters, the buffer would be 300 feet.
- It would add a section authorizing the Planning Board or Zoning Board, as appropriate, to grant a variance from the ordinance’s requirements pursuant to the standards applicable to “c” bulk variances. This variance provision is included in the NJDEP’s model ordinance as an option for municipalities, but does not exist in the Township’s current regulations.
- It would replace the current exception adopted in 2014 by the Township Committee for “disturbance that has been permitted by the [NJDEP], provided that the disturbance has been approved by the Township Committee for good cause shown” with an exception for any activity that is allowed under the NJDEP’s “permit by rule” process, without the added

requirement of showing good cause or obtaining Township Committee approval.

- It would eliminate an existing inconsistency between one of the LDO's landscaping design standards and the existing (and proposed) riparian corridor regulations by deleting section 150-56C(13) from the LDO.

The ordinance summarized above was originally introduced and passed upon first reading at a meeting of the Township Committee of the Township of Cranbury, in the County of Middlesex, State of New Jersey, held on May 11, 2015. The ordinance will be further considered for final passage, after public hearing thereon, at a meeting of the Township Committee to be held in the main meeting room of Town Hall, 23A North Main Street, in the Township of Cranbury on May 26, 2015 at 7 p.m., and during the week prior and up to and including the date of such meeting, copies of said ordinance will be made available free of charge at the Clerk's Office to the members of the general public who shall request the same.

Kathleen R. Cunningham, RMC, Clerk