

ORDINANCE NO.: 2012-23
SPONSOR: MAYOR NORTON
INTRODUCED: OCTOBER 9, 2012 **ASSIGNED TO:** PLANNING

AN ORDINANCE AMENDING SECTION 1229.13(2)(C) OF GREEN'S CODIFIED ORDINANCES, AND DECLARING AN EMERGENCY.

WHEREAS, Green City Council Previously enacted Ordinance 2009-21 on October 27, 2009 to establish rules and regulations regarding Riparian Setbacks; and

WHEREAS, Ordinance 2009-21 was codified as Section 1229.13 of Green's Codified Ordinances; and

WHEREAS, the City, pursuant to the request from the Environmental Protection Agency, desires to amend Section 1229.13(2)(C) to add an additional requirement for any "alternative plan" proposed for a property; and

WHEREAS, the Planning and Zoning Commission reviewed the proposed amendment at their meeting on September 19, 2012, and gave a favorable recommendation to City Council by a vote of 5-0; and

WHEREAS, pursuant to Green Codified Ordinances 1224.04(4)(E), Council is required to set a time for a public hearing on the proposed amendment.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GREEN, COUNTY OF SUMMIT, STATE OF OHIO, THAT:

SECTION ONE:

1229.13 Riparian Setbacks

(1) Purpose

(A) The City has determined that the system of streams within the City contributes to the health, safety and general welfare of the residents of the community. The purpose of this Subsection is to protect and preserve the water quality within streams of the City and to protect residents of the City from property loss and damage because of flooding and other impacts of the stream. The City will implement this section 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 flood waters 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 or in runoff before they enter streams.
 - 4.) Provide areas for natural meandering and lateral movement of stream channels.
 - 5.) Reduce the presence of aquatic nuisance species to maintain diverse and connected riparian vegetation.
 - 6.) Provide high quality stream habitats with shade and food to a wide array of wildlife by maintaining diverse and connected riparian vegetation.
 - 7.) Benefit the City 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 City, the quality of life of the residents of the City, and corresponding property values.
- (B) This section has been enacted to protect these services of riparian areas by providing reasonable controls governing structures and uses in riparian setbacks.
- (2) **Establishment and Applicability of a Riparian Setback**
- (A) Riparian setbacks are established as provided in this section.
 - (B) Streams addressed by this section are those which meet the definition of "stream" and are indicated on at least one of the following maps:
 - 1.) USGS topographical map.
 - 2.) City of Green riparian setback map.
 - 3.) Soils maps located in the Soil Survey for Summit County, Ohio, USDA, NRCS.

- (C) Alternative Plans: Proposed developments that have riparian setbacks located within the property's boundaries may develop an alternative plan for the enhancement of the riparian corridor. This plan shall be developed by a licensed landscape architect designed with the intent to improve the Riparian Corridor using vegetation more conducive than natural succession, (i.e., invasive species) that allows the free flow of water, that allow man and nature to enjoy the corridor. **Protection of existing native plants to the maximum extent practicable shall be a part of the plan.** Plans for riparian corridor improvements shall be approved by the PZC as part of the site or subdivision plan. Absent said plan, the following shall apply:
- (D) 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 mile (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 mile (32 acres) and up to 0.5 square mile (320 acres).
 - 5.) A minimum of 30 feet on each side of all streams draining an area less than 0.05 square mile (32 acres).
- (E) The following are exempt from the terms and protection of this section: grassy swales, roadside ditches, drainage ditches created at the time of a subdivision to convey storm water to another system, tile drainage systems, and stream culverts.
- (F) 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 and subject to review and approval per City Ordinance 2002-02.

- 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:

Table 1229-6: Width of Riparian Setback	
Average Percent Slope	Width of Setback
15% to 20%	Add 25 feet
21% to 25%	Add 50 feet
>25%	Add 100 feet

- 3.) Average stream bank slope is to be calculated using methodology outlined in "The Ohio Supplement to Urban Hydrology for Small Watersheds, Technical Release Number 55 (TR-55)" by USDA, NRCS.
- 4.) 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
- 5.) Wetlands shall be delineated by a qualified professional under guidelines established by the U.S. 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 these regulations.

- 6.) The applicant shall be responsible for delineating the riparian setback, including any expansions or modifications as required by divisions 1229.15 (2)(B) through (D) 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 County SWCD. As the result of this review, the Summit County SWCD may require further studies from the applicant.
- 7.) Prior to any land disturbance 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.
- 8.) No approvals or permits shall be issued by the City prior to delineation of the riparian setback in conformance with these regulations.
- 9.) Upon completion of an approved subdivision, the riparian setback shall be permanently recorded on the plat records for the City.

(3) Compliance and Violations

- (A) No preliminary plan for a subdivision, zoning permit, or certificate of use and occupancy shall be issued by the City without full compliance with the terms of these regulations, where applicable.
- (B) Any person or organization who violates Subsection 1229.15 (5)(B) shall be guilty of a minor misdemeanor and, upon conviction, shall be subject to punishment as provided in Section 698.02 of the Codified Ordinances of the City, and shall be required to restore the riparian setback through a plan approved by Summit County SWCD.
- (C) The provisions of this section may be enforced through civil or criminal proceedings brought by the City or County Prosecutor on behalf of the City.

(4) **Conflicts with Other Regulations**

Where this section imposes a greater restriction upon land than is imposed or required by any other provision of law, regulation, contract or deed, the provisions of this section shall control.

(5) **Uses in a Riparian Setback**

(A) **Permitted Uses**

1.) The following uses are permitted by right within the riparian setbacks without prior approval:

a.) **Open Space Uses**

Open space uses that are passive in character shall be permitted in the riparian setback, including but not limited to those listed in divisions (A)(2) through (A)(5) 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.

b.) **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.

c.) **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 six inches in diameter shall be anchored to the shore or removed from the 100-year floodplain.

d.) **Revegetation and/or Reforestation**

The revegetation and/or reforestation of the riparian setback shall be allowed without approval of the Summit County SWCD. Species of shrubs and vines recommended for stabilizing flood-prone areas along streams within the City are listed in Appendix A.

- 2.) The following uses are permitted by right within the riparian setbacks with prior approval of the design.
 - a.) **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 Storm Water Pollution Prevention Plan (SWPPP or SWP3) by the Summit County SWCD.
 - b.) **Crossings**

In reviewing plans for stream crossings, the City may confer with the Summit County SWCD, the Ohio Department of Natural Resources, Division of Natural Areas; the Ohio Environmental Protection Agency, Division of Surface Water; the County of Summit Engineer; the agencies having jurisdiction over sanitary sewer or water, or other technical experts as necessary.

 - i.) Limited crossings of designated streams through the riparian setback by vehicles, storm sewers, sewer and/or water lines and public utility lines will be per the approval of local, County, and State governing agencies and as a part of the regular subdivision review process.
 - ii.) One driveway crossing per stream per tax parcel will be allowed for individual landowners.
 - iii.) Roadway crossings for major and minor subdivisions, open space subdivisions, or any other non-single family residential use shall be designed and constructed per the City's design standards and as approved by the PZC. If more than two crossings per 1,000 linear feet of stream center are required for these areas, the applicant must apply for a variance.
 - iv.) All roadway crossings shall be perpendicular to the stream flow and shall minimize disturbance to the

Riparian setback and shall mitigate any necessary disturbances.

- c.) Placement of storm water retention or detention facilities may be considered within the riparian setback if:
 - i.) Storm water quality treatment that is consistent with current State standards is incorporated into the basin.
 - ii.) The storm water quality treatment basin is located at least 50 feet from the ordinary high water mark of the stream.
- d.) Dredging may be permitted, provided the City or property owner obtains all necessary permits that may be required, and notification and presentation of the plan are provided to the City Engineer for review and approval.

(B) **Prohibited Uses**

The following uses shall be allowed only upon approval by the PZC:

- 1.) **Structures/Buildings**
Structures/Buildings are not recommended in a riparian setback area.
- 2.) **Mineral Extraction**
There shall be no drilling for petroleum or mineral products, mining activity, except as permitted under these regulations.
- 3.) **Roads or Driveways**
Roads and driveways are not recommended to run parallel within a riparian setback area. Perpendicular crossings are permitted upon approval.
- 4.) **Modification of 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.

5.) Parking Areas

Parking areas are not recommended within a riparian setback unless approved by the PZC.

6.) New Surface and/or Subsurface Sewage Disposal or Treatment Area

Riparian setbacks shall not be used for the disposal or treatment of sewage except for:

- a.) Undeveloped parcels that have received site evaluation approval and/or permit approval prior to the enactment of this chapter.
- b.) 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.
- c.) Sanitary sewer systems, either public or private, that may need to be sited along riparian corridors to provide for flows and are commensurate with an approved sanitary system approved by the Ohio Environmental Protection Agency.

(C) Nonconforming Structures or Uses

- 1.) Structures and uses within the riparian setback, existing at the time of passage of these regulations may be continued but shall be expanded only upon approval by the PZC.
- 2.) If damaged or destroyed, these structures or uses may be repaired or restored within two years from the date of damage/destruction or the adoption of these regulations, whichever is later, at the property owners' own risk.
- 3.) A residential structure or use within the riparian setback existing at the time of passage of these regulations may be expanded subject to the following provisions:
 - a.) The expansion conforms to existing zoning regulations.
 - b.) The expansion must not affect the stream channel or the 100-year floodplain.

c.) The expansion must not exceed an area of 15% of the total footprint of existing structure or use that lies within the riparian setback. Expansions exceeding 15% of the total footprint within the riparian setback must be obtained through the variance process.

4.) Nonresidential structure or use expansions will be permitted only through the review process.

(6) 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 Planning Department that describes the boundary, presents the applicant's proposed boundary, and presents all justification for the proposed boundary change.

(B) The Planning Department shall evaluate all materials submitted and shall make a written recommendation to the PZC within a reasonable period of time, not to exceed 60 days. A copy of this recommendation shall be submitted to the applicant. If during this evaluation the City requires further information to complete this evaluation, the applicant may be required to provide additional information.

(C) The PZC 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.

(7) Variance of Riparian Setback Requirements

(A) Applications for a hearing before the PZC for variances to the provisions of this section shall be submitted to the Planning Department.

(B) The PZC may consult with representatives from the Summit County SWCD; the Ohio Department of Natural Resources, Division of Natural Areas; the Ohio Environmental Protection Agency, Division of Surface Water; the County of Summit Engineer; the agencies having jurisdiction over sanitary sewer or water; or other technical experts as necessary to provide the necessary data for the PZC to consider variance requests.

- (C) Expansions of residential structures or uses exceeding 15% of the footprint area and expansions of all nonresidential structures or uses are subject to the following:
 - 1.) The expansion 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 nonresidential structure or use must not affect upstream or downstream hydrologic conditions which could cause damage from flooding or stream bank erosion to landowners in those areas. A hydrologic study must be completed by nonresidential applicants only as a process of the variance application.
 - 4.) The expansion of a nonresidential structure or use will not exceed 25% of the footprint area. The 25% expansion limit is per the portion of the structure or use that lies within the riparian setback.
- (D) Requests for variances for 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 ten percent of the prescribed riparian setback width.
- (E) 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 storm water 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.
- (F) In reviewing whether to grant variances, the PZC shall consider the following:

- 1.) The extent to which the requested variance impairs the functions of the riparian area. This determination shall be based on sufficient technical and scientific evidence as provided by the applicant and the agencies listed in divisions (A) through (E) above.
- 2.) The soil type and natural vegetation of the parcel as well as the percentage of the parcel that is in the 100-year floodplain.
- 3.) The degree of hardship these regulations place on the applicant and the availability of alternatives to the proposed activity.

(8) Inspection

- (A) The riparian setback shall be inspected by the City of Green:
 - 1.) When a preliminary subdivision plat or other land development plan is submitted to the City;
 - 2.) When a building or zoning permit is requested; and
 - 3.) Prior to any request for a land disturbance permit, to allow the City 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 City of Green or approved monitoring entity for compliance with any approvals under these regulations or at any time evidence is brought to the attention of the City of Green that uses or structures are occurring that may reasonably be expected to violate the provisions of these regulations.
- (C) Violations of these regulations will be handled as noted in Chapter 1230: Violations and Penalties.

SECTION TWO:

The City of Green finds and determines that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in open meetings of this Council and any deliberations of this Council and any of its committees which resulted in those formal actions were in meetings open to the public in compliance with all legal requirements.

SECTION THREE:

City Council declares this Ordinance to be an emergency immediately necessary for the preservation of the public peace, health, safety, and welfare of the citizens of Green and for the further reason that the Development Agreement must be immediately effective in order that the

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employment opportunities may be available to the residents of this City at the earliest possible time. Provided that this legislation receives the affirmative vote of three-fourths of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor, otherwise, it shall take effect and be in force at the earliest time allowed by law.

ADOPTED: Nov. 13, 2012

Molly Stevens
Molly Stevens, Clerk

Joel Reed
Joel Reed, Council President

APPROVED: Nov. 13, 2012

Richard G. Norton
Richard G. Norton, Mayor

APPROVED
SVCE ZONE PARKING
LAW FIN MAY PLAN

ENACTED EFFECTIVE: Nov. 13, 2012

ON ROLL CALL: Colopy -yes France -yes Humphrey -yes Knodel -yes Neugebauer -yes Reed -yes Summerville -yes Adopted 7-0

Suburbanite publication on Nov. 18 and Nov. 25, 2012

Molly Stevens
Molly Stevens, Clerk

10/05/2012 Approved as to form and content by Stephen J. Pruneski, Law Director SP 10/4/12