

SECTION 655 - ALUM CREEK WATERSHED AND BIG WALNUT CREEK WATERSHED
RIPARIAN SETBACKS

Effective November 11, 2011

655.02 - PURPOSE AND INTENT

The following district is established to protect and enhance the functions of riparian areas by providing reasonable controls governing structures and uses within a riparian setback along watercourses in the Alum Creek watershed and Big Walnut Creek watershed.

655.022 – Findings - It is hereby determined that the system of rivers, streams, and other natural watercourses within the Alum Creek watershed and Big Walnut Creek watershed contribute to the health, safety, and general welfare of the residents of those watersheds. The specific purpose and intent of this district is to govern uses and developments within riparian setbacks that would impair the ability of riparian areas to:

- a) Reduce flood impacts by absorbing peak flows, slowing the velocity of flood waters, and regulating base flow.
- b) Protect watercourse physical, chemical and biological characteristics and maintain watercourse functions.
- c) Preserve to the maximum extent practicable the natural drainage characteristics of the community and building sites.
- d) Preserve to the maximum extent practicable natural infiltration and ground water recharge, and maintain subsurface flow that replenishes water resources, wetlands, and wells.
- e) Reduce the long term expense of remedial projects needed to address problems caused by inadequate storm water control.
- f) Reduce the need for costly maintenance and repairs to roads, embankments, sewage systems, ditches, water resources, and storm water management practices that are the result of inadequate storm water control due to the loss of riparian areas.
- g) Assist in stabilizing the banks of watercourses to reduce streambank erosion and the downstream transport of sediments.
- h) Reduce pollutants in watercourses during periods of high flows by filtering, settling, and transforming pollutants before they enter watercourses.
- i) Provide shade and nutrient inputs, thus regulating in-stream temperatures and providing food for aquatic communities.
- j) Reduce the presence of nuisance species to maintain a healthy, diverse aquatic system.
- k) Provide habitat to a wide array of wildlife by maintaining diverse and connected riparian vegetation.

- l) Benefit the Alum Creek watershed and Big Walnut Creek watershed by minimizing encroachment on watercourse channels and the need for costly engineering solutions to protect structures and reduce property damage and threats to the safety of watershed residents; by contributing to the scenic beauty and environment of the Alum Creek watershed and Big Walnut Creek watershed; and by preserving the character and quality of life for the residents in the Alum Creek watershed and Big Walnut Creek watershed, and corresponding property values.

655.04 - APPLICABILITY AND COMPLIANCE

- a) Except as otherwise provided in Section 655, all property located within a riparian setback from a watercourse that is subject to this Section shall be preserved in its natural state.
- b) Any property owned by a local, State or Federal agency must comply with the provisions of Section 655.
- c) In the event of a conflict between a provision of Section 655 and any other provision of the Franklin County Zoning Resolution, Franklin County Subdivision Regulations, or other adopted regulation, the more stringent regulation applies.

655.06 - ESTABLISHMENT OF DISTRICT

The Alum Creek Watershed and Big Walnut Creek Watershed Riparian Setback Overlay District is hereby established. This district applies in the following areas:

- a) All territory in Blendon, Clinton and Mifflin Townships located within the Alum Creek watershed as designated by the United States Geological Survey Hydrologic Unit Code (HUC) 05060001160
- b) All territory in Blendon and Mifflin Townships located within the Big Walnut Creek watershed as designated by the United States Geological Survey HUC 05060001130 and 05060001150

655.08 – WATERCOURSES

655.082 – Applicability– Riparian setbacks, as established pursuant to Section 655.09, apply to all:

- a) Perennial, ephemeral and intermittent streams with a defined bed, bank or channel, and
- b) Watercourses that happen to generally parallel a road for any distance and are not constructed exclusively for road side drainage

655.084 – Reference Map - The Franklin County Hydrography Dataset developed by the Franklin Soil and Water Conservation District (hereinafter referred to as Franklin Soil and Water) may be used as a reference to determine the location of watercourses and the extent of required riparian setbacks. The dataset is an electronic map, created using GIS software. In the event of a conflict between the dataset and the application of a provision of Section 655, the provision of Section 655 will control. Although the dataset is a guide and believed to be accurate, the presence or absence of a watercourse requiring protection shall be based upon actual conditions on the property. The Reference Map will be updated from time to time as observed or measured field conditions may change. Any changes to the Reference Map will be in accordance with all applicable federal or State of Ohio requirements related to riparian setbacks, storm water controls, flood control, or such other applicable laws or regulations.

655.09 – RIPARIAN SETBACKS – Subject to the inclusion of floodplains, wetlands and steep slopes as determined by Section 655.094, the extent of a riparian setback shall be delineated based upon one of the following two methods:

- a) Method 1: The setback distance from the centerline of the stream must be sized as the greater of the following:
 - 1) The regulatory 100-year floodplain based on Federal Emergency Management Agency (FEMA) mapping; or
 - 2) 100 feet on each side.
- b) Method 2: Site Specific Riparian Setback Delineation. The total setback width is the streamway width centered over the meander pattern of the stream plus an additional 100 feet from the edge of the streamway per side.

“Centering over the meander pattern” can be thought of as determining where a line representing the streamway width would evenly intersect equal elevation lines on either side of the stream.

- c) Notwithstanding the foregoing, the following requirements apply to Site Specific Riparian Setback Delineation:
 - 1) The streamway width must be calculated as ten times the bankfull channel width.
 - 2) The streamway width must vary with bankfull channel width.
 - 3) Calculations may be based on the average site specific width only if the bankfull channel width does not vary significantly through the reach of interest.

655.094 – Inclusion of Floodplain, Wetlands and Steep Slopes– Where applicable, the following provisions governing floodplains, wetlands and steep slopes supersede Section 655.09. In the event of a conflict among the following three (3) provisions, the greatest setback distance applies.

- a) For areas with a FEMA-defined 100-year floodplain: If the 100-year floodplain is wider than the riparian setback on either side of a watercourse, the riparian setback is extended to the outer edge of the 100-year floodplain.
- b) Where a wetland is identified within a riparian setback, the riparian setback width must be extended to the outermost boundary of the wetland. Wetlands must be delineated through a site survey prepared by a qualified wetlands professional retained by the landowner using delineation protocols adopted by the U.S. Army Corps of Engineers at the time an application is made under this Section 655.
- c) Where a slope of 12 percent or greater or a slope designated as Highly Erodible Land (HEL), as defined in Section 720, is partially contained within the riparian setback, the riparian setback width must be extended to the top of the 12 percent slope or the top of the slope designated as HEL.
 - 1) In case of landowner disagreement with any steep slope or HEL designation the property owner may, at their own expense, hire a registered professional surveyor or qualified soil scientist to provide additional information to the Administrative Officer to assist in the determination of steep slope or HEL.

655.096 – Reduced Riparian Setback –A reduced riparian setback may apply to lots of record, with the same geometry as at the time of passage of Section 655.

- a) All areas. All land located in the overlay district, as outlined in Section 655.06, may reduce the riparian setback as follows:
 - 1) For properties without centralized sewer, the riparian setback may be reduced to the point where up to 1 acre of contiguous land area is available outside of the stream buffer, as determined by Section 655.09, but in no circumstance shall the stream buffer be less than 50 feet as measured from the centerline of the stream.
 - 2) For properties with centralized sewer, the riparian setback may be reduced to the point where up to 7,200 square feet of contiguous land area is available outside of the stream buffer, as determined by Section 655.09, but in no circumstance shall the stream buffer be less than 50 feet as measured from the centerline of the stream.
- b) Hoover Reservoir Area. Lands draining to Hoover Reservoir may reduce the riparian setback as follows:
 - 1) For properties without centralized sewer, the riparian setback may be reduced to the point where up to 1 acre of contiguous land area is available outside of the stream buffer, as determined by Section 655.09, but in no circumstance shall the stream buffer be less than 37.5 feet as measured from the centerline of the stream.
 - 2) For properties with centralized sewer, the riparian setback may be reduced to the point where up to 7,200 square feet of contiguous land area is available outside of the stream buffer, as determined by Section 655.09, but in no circumstance shall the stream buffer be less than 37.5 feet as measured from the centerline of the stream.
- c) Notwithstanding the foregoing, the following requirements apply to reduced riparian setbacks:
 - 1) In situations where the stream buffer may be reduced all other provisions under Section 655 still apply.
 - 2) The riparian setback may only be reduced in locations where the original setback was determined by the 100 feet from stream centerline provision of Section 655.09(a(2)).
 - 3) Under no circumstance may the riparian setback be reduced where the original setback was determined by the regulatory 100-year floodplain provision of Section 655.09(a(1)).
 - 4) Development permitted under Section 655.096 must limit clearing of vegetation to only that necessary for the construction of the proposed structure, change in grade, or other permitted use.

655.10 APPLICATIONS AND SITE PLANS - Applicants submitting development applications are responsible for delineating riparian setbacks as required by this regulation.

655.102 – Site Plan Required - Applicants must identify all setbacks on site plans included with subdivision plans, land development plans, and/or zoning permit applications submitted to the Franklin County Economic Development and Planning Department.

655.104 – Preparation of Site Plan - The site plan must be prepared and sealed by a professional engineer, surveyor, or landscape architect.

655.106 – Required Elements on Site Plans - Applicants must submit two (2) copies of the site plan. This site plan must be submitted in addition to any other plan required in conjunction with a development proposal.

a) The site plan must include the following information:

- 1) The site boundaries with dimensions;
- 2) The Drainage Area of the site;
- 3) The locations of all watercourses and wetlands;
- 4) The limits, with dimensions, of the riparian setbacks;
- 5) The existing topography at contour intervals of two (2) feet;
- 6) The location and dimensions of any proposed structures or uses, including proposed soil disturbance, in relationship to all watercourses;
- 7) The proposed location of construction fencing delineating riparian setback area as required in Section 655.108;
- 8) North arrow, scale, date, and stamp bearing the name and registration number of the qualified professional who prepared the site plan;
- 9) Soil types and locations;
- 10) Other such information as may be reasonably necessary for the Administrative Officer to ensure compliance with this regulation; and
- 11) Narrative describing proposed uses and maintenance plan within the riparian setback.

655.108 – Construction Fencing Required - Prior to any soil disturbing activities occurring, the riparian setback must be clearly identified by the applicant on site with construction fencing as shown on the site plan and the fencing must be maintained throughout soil disturbing activities.

655.110 – No Approvals Without Required Site Plan - No approvals or permits will be issued by the Administrative Officer without submission of a site plan as required by this regulation, including the prior identification of riparian setbacks on the affected land.

655.112 – Inspection Of Riparian Setbacks - Prior to soil disturbing activities authorized under this regulation, a preconstruction meeting at the proposed site shall occur to ensure that all riparian setbacks are adequately protected. The meeting shall be arranged by the property owner or designated representative with the Administrative Officer. The property owner, developer and site engineer shall meet with the Administrative Officer prior to beginning any earth-disturbing activity associated with the site.

655.12 PERMITTED USES IN RIPARIAN SETBACKS - Open space uses that are passive in character are permitted in riparian setbacks, including but not limited to those listed in this Section 655.12. No use permitted under this regulation allows trespass on privately held lands.

655.122 – Permitted Uses Not Requiring a Zoning Certificate - The following uses are permitted and do not require a certificate of zoning compliance:

- a) Property Maintenance. The enjoyment, access, and maintenance of lawns, landscaping, shrubbery, or trees existing at the time of passage of this regulation.
- b) Passive Recreational Activity.
 - 1) Non-motorized recreational uses such as hiking, fishing, hunting, picnicking, and similar passive recreational uses, as permitted by federal, state, and local laws.
 - 2) Unimproved trails and stream access points. Improved trails require a certification of zoning compliance as listed below in Section 655.124.

Unimproved trails and stream access points must meet the following development standards:

- a) Surface: unimproved/earthen;
 - b) Width: maximum 5 feet;
 - c) No clearing of woody vegetation is permitted; and
 - d) Distance from edge of stream: minimum 50 feet (except spurs for river access).
- c) Removal of Damaged or Diseased Trees, invasive species, or noxious weeds. Invasive species (as defined by the Ohio Department of Natural Resources), noxious weeds and damaged or diseased trees that endanger people or that pose a serious threat to property, may be removed.

Special care should be taken to remove trees sparingly. Damaged or decaying trees serve important ecological functions such as supplying stream habitat and material for organisms that aid in organic decomposition as well as providing habitat for endangered species, such as Indiana bats.

Applicants or property owners are encouraged to allow these seemingly-damaged trees to remain in their natural state.

Applicants or property owners are further encouraged to seek assistance from Franklin Soil and Water for advice on maintaining these important ecological functions. Franklin Soil and Water can also provide information regarding best management practices in herbicide application techniques for controlling invasive species and noxious weeds in accordance with Ohio DNR and other applicable state and federal regulations.

- d) Revegetation and/or Reforestation. Riparian setbacks may be revegetated and/or reforested with Ohio-native, noninvasive plant species. Applicants or property owners are encouraged to seek guidance from Franklin Soil and Water.

655.124 – Permitted Uses Requiring a Zoning Certificate - The following permitted uses require a zoning certificate as provided for in SECTION 705.02 - CERTIFICATE OF ZONING COMPLIANCE.

- a) Fences and walls. Fences and walls that provide adequate surface water flow through, under or around, as determined by Franklin Soil and Water, are permitted.

- b) Paved or otherwise improved trails. Construction of paved or otherwise improved trails in the riparian setback to further passive recreational uses is permitted with a development plan approved by the Administrative Officer.

Construction of paved or otherwise improved trails must meet the following development standards:

- 1) Paved trail surfaces must be improved with a pervious or semi-pervious material.
 - 2) Trail width is a maximum of 12 feet
 - 3) Clearing width is a maximum of 20 feet
 - 4) Distance from edge of stream is a minimum of 100 feet
 - 5) Trails that become damaged due to natural erosion:
 - a. May not be repaired, and
 - b. Must be moved upland or removed altogether and stabilized.
- c) Crossings. Crossings through riparian setbacks with roads, driveways, easements, bridges, culverts, utility service lines, or other means may be permitted provided such crossings minimize disturbance in riparian setbacks. Mitigation of crossings may be required by state and federal agencies.

A certificate of zoning compliance for a new crossing will only be issued when one of the following findings is made by the Administrative Officer:

- 1) The parcel has no other existing access;
- 2) The crossing is necessary for public health or safety;
- 3) The applicant can demonstrate that important ecological protection and ecological benefits are realized, such as saving a mature woodlot, preventing habitat degradation, avoiding flow alteration, or ensuring passage for fish; or
- 4) The applicant demonstrates that the new crossing is necessary to achieve important ecological protection goals, or maximized ecological benefit, and that the crossing can be installed and maintained with minimal environmental impacts.

Such crossings may only be undertaken upon approval of a Crossing Plan by the Administrative Officer in consultation with Franklin Soil and Water. Such activity must minimize disturbance to the riparian buffer and mitigate any disturbances.

- d) Stream Quality Improvement Projects. Streambank stabilization, erosion control work, or large scale stream channel and riparian buffer restoration work along designated watercourses may be allowed, provided they comply with the following:

- 1) The project is ecologically compatible and substantially uses natural materials and native plant species where practical and available.
- 2) The project must comply with the applicable portions of the Ohio DNR Rainwater and Land Development handbook.
- 3) The project shall only be undertaken upon approval of a Streambank Stabilization Plan by the Administrative Officer.
- 4) All streambank stabilization plans should provide long term streambank protection.

- 5) All erosion control measures shall be limited to the purposes of stream quality protection and enhancing stream channel stability.

In reviewing this plan, the Administrative Officer may consult with representatives of the Ohio Department of Natural Resources, Division of Natural Areas and Preserves or Division of Soil and Water Conservation; the Ohio EPA, Division of Surface Water; the Franklin Soil and Water Conservation District; or other technical experts as necessary.

655.126 – Proof of compliance with outside permits. If any activities will occur below the ordinary high water mark, as defined in Section 720, of the designated watercourse, the applicant must submit proof of compliance with the applicable conditions of a US 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).

Proof of compliance is considered one of the following:

- a) A comprehensive site plan and a copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under the applicable Nationwide Permit, or
- b) A comprehensive site plan and a copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under an Individual Permit.

655.14 PROHIBITED USES IN RIPARIAN SETBACKS

Any use not authorized under Section 655.12 – PERMITTED USES IN RIPARIAN SETBACKS is prohibited in riparian setbacks.

655.142 – List of Prohibited Uses - Prohibited uses are not limited to those examples listed here:

- a) Construction. Construction of buildings or structures of any kind or size are prohibited except as provided for in Sections 655.144 and 655.18. This restriction applies to new construction, and does not apply to existing residential structures and associated accessory structures.
- b) Dredging or Dumping. Drilling, filling, dredging, excavation or dumping of soil, other earthen material, spoils, liquid, or solid materials is prohibited except as permitted under this regulation.
- c) Roads or Driveways. Installation of roads or driveways is prohibited, unless approved in association with an approved crossing plan.
- d) Motorized Vehicles. Use of motorized vehicles is prohibited, with the exception of emergency vehicles when necessary for public health and safety, or except as permitted under this regulation.
- e) Parking Spaces or Lots and Loading/Unloading Spaces for Vehicles. Establishment of parking spaces, parking lots, or loading/unloading spaces is prohibited.
- f) New Surface and/or Subsurface Sewage Disposal or Treatment Areas. Use of areas within riparian setbacks for the disposal or treatment of sewage is prohibited, except as necessary to repair or

replace an existing home sewage disposal system if permitted by the Franklin County Board of Health.

- g) Stormwater management and drainage facilities. Stormwater management and drainage facilities including appurtenances thereto are prohibited within riparian setbacks.
- h) Sediment and Erosion Controls. No structural sediment controls, such as a silt fence, a sediment settling pond, or other structural post-construction controls, may be used in a stream or the delineated setback, except as permitted in Section 655.124.

655.144 – Exceptions to Prohibited Uses – The following activities are exempt from the restrictions set forth in Section 655.14 – PROHIBITED USES IN RIPARIAN SETBACKS. The exceptions listed below do not apply to uses and structures that are non-confirming with respect to the requirements of the underlying zoning district. Such existing non-confirming uses and structures must comply with the requirements of Section 110.04 of the Zoning Resolution.

- a) The construction or reconstruction of any structure, or other impervious surface, permitted in the underlying zoning district on an existing, legal impervious surface on a lot of record developed with a single- or two-family dwelling existing at the time of passage of this regulation.
- b) The installation of conduits flowing from stormwater management facilities designed to treat stormwater.
- c) All activities conducted by the Franklin County Engineer that are necessary to provide and maintain public transportation infrastructure.
- d) All activities conducted by the Franklin County Drainage Engineer that are necessary to provide and maintain public drainage improvements.

655.16 NON-CONFORMING STRUCTURES OR USES IN RIPARIAN SETBACKS

The procedures for reviewing non-conforming structures and uses are set forth in Section 110.04 of the Zoning Resolution.

655.18 VARIANCES WITHIN RIPARIAN SETBACKS

- a) The Franklin County Board of Zoning Appeals (BZA) may grant a variance to this Section 655 as provided for by Section 810.04, APPROVAL OF A VARIANCE. In addition to the findings required by Section 810.04 the BZA must consider the following:
 - 1) The native vegetation of the property.
 - 2) The extent to which the requested variance impairs the flood control, erosion control, water quality protection, or other functions of the riparian setback. This determination must be based on sufficient technical and scientific data as determined by the Technical Review Committee.
 - 3) Soil-disturbing activities permitted in the riparian setback through variances must minimize clearing to the extent possible and must include the use of Best Management Practices necessary to minimize erosion and control sediment.

- 4) The degree to which the presence of significant impervious cover, or smooth vegetation such as maintained lawns, in the riparian setback compromises its benefits to any waterway.
- b) In order to maintain the riparian setback to the maximum extent practicable, the BZA may consider granting variations to other area or setback requirements imposed on a property by the Franklin County Zoning Resolution.

655.20 - PROCEDURES FOR VARIANCES & APPEALS

The procedures for granting variances and appeals of the determinations of the Administrative Officer are set forth in Section 810 of the Zoning Resolution.

655.22 - PENALTIES

The penalties for violation of any provision of this Section are set forth in Section 710 of the Zoning Resolution.