

Appendix 7.2 Chagrin River Watershed Partners Model Ordinance
for Riparian Setbacks



**MODEL ORDINANCE FOR THE
ESTABLISHMENT OF RIPARIAN SETBACKS**

PLEASE NOTE

- The following model riparian setback ordinance is recommended as part of a community's storm water management program for flood control, erosion control, and water quality protection.
- This model ordinance **MUST BE TAILORED TO THE SPECIFIC NEEDS OF EACH COMMUNITY**. Text throughout the model indicates decision points with a ☞ symbol. It is also **IMPORTANT THAT COMMUNITIES DEVELOP A MAP OF POTENTIAL RIPARIAN SETBACKS**. Please contact CRWP for assistance in tailoring this model to your community's needs and in developing such maps.
- Throughout this model duties are assigned to the "Community." These should be assigned to specific staff and departments.

WHEREAS, flooding is a significant threat to property and public health and safety, and vegetated riparian areas lessen the damage from flooding by slowing the water velocity, enabling water to soak into the ground, and by providing temporary storage of overbank flood flow; and,

WHEREAS, streambank erosion is a significant threat to property and public health and safety, and vegetated riparian areas stabilize streambanks and provide resistance to erosive forces both within streams and on adjacent lands; and,

WHEREAS, the protection of riparian areas results in the presence of plants best suited to each individual environment along a stream, with proven capability for survival and regeneration at no cost; and,

WHEREAS, vegetated riparian areas filter and trap sediments, chemicals, salts, septic discharge, and other pollutants from runoff and floodwaters, thus protecting surface and ground water quality; and,

WHEREAS, vegetated riparian areas can provide a dense tree canopy that helps to maintain and improve the stability of watercourse temperatures, thus protecting aquatic ecosystems, and helps to reduce the presence of aquatic nuisance species; and,

WHEREAS, the protection of riparian areas can result in a diverse and interconnected riparian corridor that provides habitat to a wide array of wildlife; and,

WHEREAS, the woody debris from fallen, damaged, and cut trees increases flood levels and damage to bridges in [*community*] and neighboring communities; and,

WHEREAS, sedimentation of eroded soil adversely affects aquatic communities and incurs removal costs to downstream communities; and,

WHEREAS, there are watershed-wide efforts to minimize flooding and streambank erosion in the [*watersheds to which community belongs*] watersheds and to protect and enhance the water resources of the [*major watercourses to which community drains*] and its tributaries and [*community*] recognizes its obligation as a part of these watersheds to minimize flooding and streambank erosion by controlling runoff within its borders; and,



WHEREAS, the *[state scenic rivers if applicable]*, including that portion which flows through the *[community]*, has been designated as an “Ohio Scenic River” in recognition of the fact that its watershed harbors an extraordinary array of wildlife, including fish, freshwater mussels, birds, mammals, reptiles, and amphibians; and,

☞ ***This whereas clause should only be used in INCORPORATED communities establishing riparian setbacks along designated Ohio Scenic Rivers.***

WHEREAS, the Chagrin River Watershed Partners, Inc.; the Cuyahoga Soil and Water Conservation District; the Geauga Soil and Water Conservation District; the Lake County Soil and Water Conservation District; the Natural Resource Conservation Service of the U.S. Department of Agriculture; the Northeast Ohio Areawide Coordinating Agency; the Ohio Department of Natural Resources, Division of Natural Areas and Preserves; the Ohio Environmental Protection Agency; and the U.S. Environmental Protection Agency recommend riparian setbacks as a valuable tool in an overall management program for flood risk reduction, erosion control, water quality control, and aquatic habitat protection; and,

WHEREAS, studies undertaken by, and reviewed by, the Ohio Environmental Protection Agency and other independent scientific bodies recommend the minimum widths for riparian setbacks; and,

WHEREAS, the Council of the *[community]* has reviewed and adopted the recommendations of the above government agencies, and the Council finds that in order to minimize encroachment on watercourses and the need for costly engineering solutions to protect structures and reduce property damage and threats to the safety of watershed residents; to protect and enhance the scenic beauty of the *[community]*; and to preserve the character of the *[community]*, the quality of life of the residents of the *[community]*, and corresponding property values, it is necessary and appropriate to regulate structures and uses within a riparian setback along the banks of designated watercourses in the *[community]*; and,

WHEREAS, Article XVIII, Section 3 of the Ohio Constitution grants municipalities the legal authority to adopt land use and control measures for promoting the peace, health, safety, and general welfare of its citizens; and,

WHEREAS, 40 C.F.R. Parts 9, 122, 123, and 124, referred to as NPDES Storm Water Phase II, require designated communities, including *[community]*, to develop a Storm Water Management Program to address the quality of storm water runoff during and after soil disturbing activities.

☞ ***Remove this whereas clause if your community is not designated under the NPDES Phase II regulation.***

NOW, THEREFORE, BE IT ORDAINED by the Council of the *[community]*, County of *[county]*, State of Ohio, that:

SECTION 1: Codified Ordinance *Chapter XXXX Riparian Setbacks*, is hereby adopted to read in total as follows:



**CHAPTER XXXX
RIPARIAN SETBACKS**

XXXX.01 PURPOSE AND SCOPE

- A. It is hereby determined that the system of rivers, streams, and other natural watercourses within the *[community]* contributes to the health, safety, and general welfare of the residents of the *[community]*. The specific purpose and intent of this regulation is to regulate uses and developments within riparian setbacks that would impair the ability of riparian areas to:
1. Reduce flood impacts by absorbing peak flows, slowing the velocity of flood waters, and regulating base flow.
 2. Assist stabilizing the banks of watercourses to reduce woody debris from fallen or damaged trees, streambank 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 habitat to a wide array of wildlife by maintaining diverse and connected riparian vegetation.
 8. Benefit the *[community]* by minimizing encroachment on watercourse channels and the need for costly engineering solutions such as gabion baskets and rip rap to protect structures and reduce property damage and threats to the safety of watershed residents; and by contributing to the scenic beauty and environment of the *[community]*, and thereby preserving the character of the *[community]*, the quality of life of the residents of the *[community]*, and corresponding property values.
- B. The following regulation has been enacted to protect and enhance these functions of riparian areas by providing reasonable controls governing structures and uses within a riparian setback along designated watercourses in the *[community]*.

XXXX.02 APPLICABILITY, COMPLIANCE & VIOLATIONS

- A. This regulation shall apply to all zoning districts.
- B. This regulation shall apply to all structures and uses on lands containing a designated watercourse as defined in this regulation, except as provided herein.
- C. No approvals or permits shall be issued by the *[community]* without full compliance with the terms of this regulation.



XXXX.03 CONFLICTS WITH OTHER REGULATIONS & SEVERABILITY

- A. Where this regulation 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 regulation shall control.
- B. This regulation shall not limit or restrict the application of other provisions of law, regulation, contract, or deed, or the legal remedies available thereunder, except as provided in **Section XXXX.03 (A)** of this regulation.
- C. If any clause, section, or provision of this regulation is declared invalid or unconstitutional by a court of competent jurisdiction, validity of the remainder shall not be affected thereby.

XXXX.04 DEFINITIONS

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

- A. **COMMUNITY:** Throughout this regulation, this shall refer to the *[community]* or its designated representatives, boards, or commissions.
- B. **DAMAGED OR DISEASED TREES:** 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 of 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 onto a structure.
- C. **DESIGNATED WATERCOURSE:** A watercourse within the *[community]* that is in conformity with the criteria set forth in this regulation.
- D. **FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA):** The agency with overall responsibility for administering the National Flood Insurance Program.
- E. **IMPERVIOUS COVER:** Any paved, hardened, or structural surface regardless of its composition including but not limited to buildings, roads, driveways, parking lots, loading/unloading areas, decks, patios, and swimming pools
- F. **NOXIOUS WEED:** Any plant species defined by the Ohio Department of Agriculture as a “noxious weed” and listed as such by the Department. For the purposes of this regulation, the most recent version of this list at the time of application of this regulation shall prevail.
- G. **100-YEAR FLOODPLAIN:** 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.
- H. **OHIO ENVIRONMENTAL PROTECTION AGENCY:** Referred throughout this regulation as the "Ohio EPA."
- I. **ORDINARY HIGH WATER MARK:** The point of the bank or shore to which the presence and action of surface water is so continuous as to leave a district 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:** Naturally vegetated land adjacent to watercourses that, if appropriately sized, helps to stabilize streambanks, 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 SETBACK:** The real property adjacent to a designated watercourse located in the area defined by the criteria set forth in this regulation.
- L. **SOIL AND WATER CONSERVATION DISTRICT:** An entity organized under Chapter 1515 of the Ohio Revised Code referring to either the Soil and Water Conservation District Board or its designated employee(s), hereinafter referred to as *[county]* SWCD.
- M. **SOIL DISTURBING ACTIVITY:** Clearing, grading, excavating, filling, 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. **SUBSTANTIAL DAMAGE:** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would be equal to, or would exceed, 50% of the market value of the structure before the damage occurred.
- O. **WATERCOURSE:** Any brook, channel, creek, river, or stream having banks, a defined bed, and a definite direction of flow, either continuously or intermittently flowing.
- P. **WETLAND:** 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).

XXXX.05 ESTABLISHMENT OF DESIGNATED WATERCOURSES AND RIPARIAN SETBACKS

- A. Designated watercourses shall include those watercourses meeting any ONE of the following criteria:
 - 1. All watercourses draining an area greater than ½ square mile, OR
 - 2. All watercourses draining an area less than ½ square mile and having a defined bed and bank. In determining if watercourses have a defined bed and bank, the *[community]* may consult with a representative of the *[county]* SWCD or other technical experts as necessary. Any costs associated with such consultations may be assessed to the applicant.
- B. Riparian setbacks on designated watercourses are established as follows:
 - 1. A minimum of 300 feet on either side of all watercourses draining an area greater than 300 square miles.
 - 2. A minimum of 120 feet on either side of all watercourses draining an area greater than 20



square miles and up to 300 square miles.

3. A minimum of 75 feet on either side of all watercourses draining an area greater than ½ square mile and up to 20 square miles.
4. A minimum of 25 feet on either side of all watercourses draining an area less than ½ square mile and having a defined bed and bank as determined by the *[community]* in *Section XXXX.05* of this regulation.

C. Riparian Setback Map. The *[community]* shall create a map identifying designated watercourses and their riparian setbacks. Said map is attached hereto and made part of this regulation and is identified as Exhibit A. The following shall apply to the Riparian Setback Map:

1. It shall be used as a reference document and the information contained therein shall be believed to be accurate.
2. It shall be a guide only.

☞ *Communities should add the following disclaimer language to this map. “This map was prepared as a Riparian Setback Map by the [community] in accordance with Section XXXX.05 of Chapter XXXX. [Community] digital data is a representation of recorded plats, surveys, deeds, and other collected information for use within a Geographic Information System for purposes of analysis. These and other digital data do not replace or modify land surveys, deeds, and/or other legal instruments defining land ownership or use. The [community] assumes no legal responsibility for this information.”*

3. Nothing herein shall prevent the *[community]* from amending the Riparian Setback Map from time to time as may be necessary.
4. If any discrepancy is found between the Riparian Setback Map and this regulation, the criteria set forth in *Section XXXX.05 (A) and (B)* shall prevail.

D. The following conditions shall apply in riparian setbacks:

1. Riparian setbacks shall be measured in a horizontal direction outward from the ordinary high water mark of each designated watercourse.
2. Except as otherwise provided in this regulation, riparian setbacks shall be preserved in their natural state.
3. Where the 100-year floodplain is wider than a minimum riparian setback on either or both sides of a designated watercourse, the minimum riparian setback shall be extended to the outer edge of the 100-year floodplain. The 100-year floodplain shall be defined by FEMA. If a FEMA defined floodplain does not exist for a designated watercourse, the *[community]* may require a site-specific floodplain delineation in conformance with standard engineering practices and approved by the *[community]*. Any costs associated with reviewing this site-specific floodplain delineation may be assessed to the applicant.

☞ *In many communities, extension of the riparian setback to the outer edge of the 100-year floodplain will represent a stronger standard than that found in a community’s Flood Damage*



Prevention Ordinance as required for participation in the National Flood Insurance Program (NFIP). The standards required by NFIP are MINIMUM STANDARDS and communities are encouraged by FEMA and the ODNR Floodplain Management Division to enact stronger standards. A Riparian Setback Ordinance is such a standard.

☞ *The building standards set forth in a community’s Flood Damage Prevention Ordinance may be used to guide variances granted in the riparian setback.*

- 4. Where a wetland is identified within a minimum riparian setback, the minimum riparian setback width shall be extended to the outermost boundary of the wetland. ***In addition, wetlands within riparian setbacks shall be protected to the extent detailed in the Community’s Wetland Setback Ordinance (cite appropriate code if Community has adopted such an ordinance).*** Wetlands shall be delineated through a site survey prepared by a qualified wetlands professional retained by the landowner using delineation protocols accepted by the U.S. Army Corps of Engineers at the time an application is made under this regulation. Any costs associated with reviewing these delineations may be assessed by the *[community]* to the applicant.

☞ *Expansion of the riparian setback to include wetlands will help to maintain the functions of the riparian area. However, because wetlands provide flood control, erosion control, and water quality protection regardless of location, CRWP recommends that communities adopt a separate Wetland Setback Ordinance. Please contact CRWP for a copy of the Wetland Setback Model.*

XXXX.06 APPLICATIONS AND SITE PLANS

- A. The applicant shall be responsible for delineating riparian setbacks as required by this regulation and shall identify such setbacks on a site plan included with all subdivision plans, land development plans, and/or zoning permit applications submitted to the *[community]*. The site plan shall be prepared by a professional engineer, surveyor, landscape architect, or such other qualified professional as determined by the *[community]* and shall be based on a survey of the affected land. Two (2) copies of the site plan shall be submitted. The site plans shall include the following information:
 - 1. The boundaries of the lot with dimensions.
 - 2. The locations of all designated watercourses.
 - 3. The limits, with dimensions, of the riparian setbacks.
 - 4. The existing topography at intervals of two (2) feet.
 - 5. The location and dimensions of any proposed structures or uses, including proposed soil disturbance, in relationship to all designated watercourses.
 - 6. North arrow, scale, date, and stamp bearing the name and registration number of the qualified professional who prepared the site plan.
 - 7. Other such information as may be necessary for the *[community]* to ensure compliance with this regulation.
- B. The *[community]* may, in reviewing the site plan, consult with the *[county]* SWCD or other such experts. Any costs associated with this review may be assessed to the applicant.
- C. If soil disturbing activities will occur within 50 feet of the outer boundary of the applicable riparian setback as specified in this regulation, the riparian setback shall be clearly identified by



the applicant on site with construction fencing as shown on the site plan. Such identification shall be completed prior to the initiation of any soil disturbing activities and shall be maintained throughout soil disturbing activities.

- D. No approvals or permits shall be issued by the *[community]* prior to identification of riparian setbacks on the affected land in conformance with this regulation.

XXXX.07 USES PERMITTED IN RIPARIAN SETBACKS

Communities should review, and modify as necessary, the following lists of permitted and prohibited uses for consistency with existing codes and community concerns.

A. By Right Uses Without A Permit. Open space uses that are passive in character shall be permitted in riparian setbacks, including, but not limited to, those listed in this regulation. No use permitted under this regulation shall be construed as allowing trespass on privately held lands.

- 1. Recreational Activity. Hiking, fishing, hunting, picnicking, and similar passive recreational uses, as permitted by federal, state, and local laws.
- 2. Removal of Damaged or Diseased Trees. Damaged or diseased trees may be removed.
- 3. Revegetation and/or Reforestation. Riparian setbacks may be revegetated and/or reforested with native, noninvasive plant species.

B. By Conditional Use Permit Granted by the *Planning and Zoning Commission*: When granting Conditional Use Permits for the following uses, the *Planning and Zoning Commission* may, for good cause, attach such conditions as it deems appropriate. Permits issued under this regulation are issued to the applicant only, shall not be transferred, and shall be void if not implemented within one (1) year of issuance.

- 1. Crossings: Crossings of designated watercourses 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 and mitigate any necessary disturbances. Such crossings shall only be undertaken upon approval of a Crossing Plan by the *Planning and Zoning Commission*. Any costs associated with review of Crossing Plans may be assessed to the applicant.

If work will occur below the ordinary high water mark of the designated watercourse, 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), shall also be provided to the *[community]*. Proof of compliance shall be the following:

- a. A site plan showing that any proposed crossing conforms to the general and special conditions of the applicable Nationwide Permit, or
- b. A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under the applicable Nationwide Permit, or



- c. A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under an Individual Permit.
2. Streambank Stabilization Projects. Streambank stabilization projects along designated watercourses may be allowed, provided that such measures are ecologically compatible and substantially utilize natural materials and native plant species to the maximum extent practicable. Such streambank stabilization measures shall only be undertaken upon approval of a Streambank Stabilization Plan by the **Planning and Zoning Commission**. Any costs associated with review of Streambank Stabilization Plans may be assessed to the applicant.

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 US 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 *[community]*. Proof of compliance shall be the following:

- a. A site plan showing that any proposed crossing conforms to the general and special conditions of Nationwide Permit 13, or
 - b. A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under Nationwide Permit 13, or,
 - c. A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under an Individual Permit.
3. Storm Water Retention and Detention Facilities: Storm water retention and detention facilities may be constructed in the riparian setback, provided:
 - a. Storm water quality treatment consistent with current Ohio EPA regulations is incorporated into the basin.
 - b. Storm water retention and detention facilities are located at least 50 feet from the ordinary high water mark of the designated watercourse.
4. Landscaping: The removal of natural vegetation within a riparian setback and the subsequent cultivation of lawns, landscaping, shrubbery, or trees may be allowed provided that such cultivation is done in conformance with a Landscaping Plan approved by the **Planning and Zoning Commission**. Any costs associated with review of Landscaping Plans may be assessed to the applicant. Landscaping Plans shall meet the following criteria:
 - a. Maintain trees in the riparian setback larger than nine (9) inches in caliper (diameter) as measured fifty-four inches above the ground to the maximum extent practicable.
 - b. Maintain trees, shrubbery, and other non-lawn, woody vegetation in the riparian setback to the maximum extent practicable.



XXXX.08 USES PROHIBITED IN RIPARIAN SETBACKS

Any use not authorized under this regulation shall be prohibited in riparian setbacks. By way of example, the following uses are specifically prohibited, however, prohibited uses are not limited to those examples listed here:

- A. Construction. There shall be no buildings or structures of any kind.
- B. Dredging or Dumping. There shall be no drilling, filling, dredging, or dumping of soil, spoils, liquid, 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, except as permitted under this regulation.
- D. Roads or Driveways. There shall be no roads or driveways, except as permitted under this regulation.
- E. Motorized Vehicles. There shall be no use of motorized vehicles, except as permitted under this regulation.
- F. Disturbance of Natural Vegetation: There shall be no disturbance of natural vegetation within riparian setbacks except for the following:
 - 1. Maintenance of lawns, landscaping, shrubbery, or trees existing at the time of passage of this regulation.
 - 2. Cultivation of lawns, landscaping, shrubbery, or trees in accordance with an approved Landscaping Plan submitted in conformance with this regulation.
 - 3. Conservation measures designed to remove damaged or diseased trees or to control noxious weeds or invasive species.
- G. Parking Spaces or Lots and Loading/Unloading Spaces for Vehicles: There shall be no parking spaces, parking lots, or loading/unloading spaces.
- H. New Surface and/or Subsurface Sewage Disposal or Treatment Areas. Riparian setbacks shall not be used for the disposal or treatment of sewage, except as necessary to repair or replace an existing home sewage disposal system and in accordance with recommendations of the [county] Board of Health.

XXXX.09 NON-CONFORMING STRUCTURES OR USES IN RIPARIAN SETBACKS

☞ Communities may want to remove this section if non-conforming structures and uses are addressed elsewhere in their codes.

- A. A non-conforming use, existing at the time of passage of this regulation and within a riparian setback, that is not permitted under this regulation may be continued but shall not be changed or enlarged unless changed to a use permitted under this regulation.
- B. A non-conforming structure, existing at the time of passage of this regulation and within a



riparian setback, that is not permitted under this regulation may be continued but shall not have the existing building footprint or roofline expanded or enlarged.

- C. A non-conforming structure or use, existing at the time of passage of this regulation and within a riparian setback, that has substantial damage and that is discontinued, terminated, or abandoned for a period of six (6) months or more may not be revived, restored, or re-established.

XXXX.10 VARIANCES WITHIN RIPARIAN SETBACKS

Sections XXXX.10 and XXXX.11 assign the authority to review and grant variances in the riparian setback to the Planning and Zoning Commission (P&Z), a role traditionally filled by the Board of Zoning Appeals. This role for the P&Z, developed by the City of Kirtland, is recommended because P&Z will be the body developing the riparian setback ordinance and recommending it to Council. Through this process of ordinance development, the members of P&Z become familiar with the intent of riparian setbacks, the technical issues involved, and the importance of adjusting other setbacks, such as side yard and rear yard, to ensure buildability while maintaining riparian areas. For this reason, the members of P&Z may be better able to grant reasonable riparian setback variances. Communities should consult their law director regarding this modification of authorities.

- A. The **Planning and Zoning Commission** may grant a variance to this regulation as provided herein. In granting a variance, 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 variance, the **Planning and Zoning Commission** shall consider the potential harm or reduction in riparian functions that may be caused by a proposed structure or use.
 - 2. The **Planning and Zoning Commission** may not authorize any structure or use in a Zoning District other than those authorized in the Zoning Code.
 - 3. Variances shall be void if not implemented within one (1) year of the date of issuance.
- B. In making a determination under **Section XXXX.10 (A)** of this regulation, the **Planning and Zoning 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. The criteria of **Chapter XXXX Flood Damage Prevention** may be used as guidance when granting variances in the 100-year floodplain.
 - 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 shall be based on sufficient technical and scientific data.
 - 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 variances should be implemented to minimize clearing to the extent possible and to include Best Management Practices necessary to minimize erosion and control sediment.
 5. The presence of significant impervious cover, or smooth vegetation such as maintained lawns, in the riparian setback compromises its benefits to the *[community]*. Variances should not be granted for asphalt or concrete paving in the riparian setback. Variances may be granted for gravel driveways when necessary.
 6. Whether a property, otherwise buildable under the ordinances of the *[community]*, will be made unbuildable because of this regulation.
- C. In order to maintain the riparian setback to the maximum extent practicable, the *Planning and Zoning Commission* may consider granting variations to other area or setback requirements imposed on a property by the Zoning Code.
- D. In granting a variance under this regulation, the *Planning and Zoning Commission*, for good cause, may impose such conditions that it deems appropriate to maintain the purposes of this regulation.

XXXX.11 PROCEDURES FOR VARIANCES & APPEALS

- A. Any applicant seeking a variance to the conditions imposed under this regulation or an appeal to an administrative decision made under this regulation, other than a decision by the *Planning and Zoning Commission*, may apply to or appeal to the *Planning and Zoning Commission*. The following conditions shall apply:
1. When filing an application for an appeal to an administrative decision, the applicant shall file a notice of appeal specifying the grounds therefor with the administrative official within **20 days** of the administrative official's decision. Upon determining that the application is complete and upon receipt of the required fee of **\$100**, the administrative official shall transmit to the *Planning and Zoning Commission* the application and a transcript constituting the record from which the administrative decision subject to appeal was based. This transmission shall occur no less than fourteen (14) days prior to a regularly scheduled meeting of the *Planning and Zoning Commission* in order to be placed on the agenda for that meeting.
 2. When applying for a variance, the applicant shall file a variance request with the *Planning and Zoning Commission*.
 3. Applications for appeals or variances made under this regulation shall contain the following information:
 - 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.
 - f. A description of the administrative decision being appealed or the conditions of the regulation from which a variance is sought.
 - g. Names and addresses of each property owner within 500 feet as shown in the current records of the *[county]* Auditor typed on gummed labels.
4. Applications for variances or appeals of administrative decisions shall not be resubmitted to the *Planning and Zoning Commission* within one (1) year of the date of a final decision by the *Planning and Zoning Commission* on the original application, unless the applicant shows the *Planning and Zoning Commission* 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.
- B. A decision by the *Planning and Zoning Commission* in response to an application for a variance request or an appeal of an administrative decision filed pursuant to this regulation shall be final.

XXXX.12 INSPECTION OF RIPARIAN SETBACKS

The identification of riparian setbacks shall be inspected by the *[community]*:

- A. Prior to soil disturbing activities authorized under this regulation. The applicant shall provide the *[community]* with at least two (2) working days written notice prior to starting such soil disturbing activities.
- B. Any time evidence is brought to the attention of the *[community]* that uses or structures are occurring that may reasonably be expected to violate the provisions of this regulation.

XXXX.99 PENALTY

- A. Any person who shall violate any section of this regulation shall be guilty of a misdemeanor of first degree and, upon conviction thereof, shall be subject to punishment as provided in *Chapter XXXX* and shall be required to restore the riparian setback through a restoration plan approved by the *Planning and Zoning Commission*.
- B. The imposition of any other penalties provided herein shall not preclude the *[community]* from 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 *[community]* Zoning Inspector.