

RO-43-05

**AN ORDINANCE OF THE TOWNSHIP OF WASHINGTON,
COUNTY OF MORRIS, AND STATE OF NEW JERSEY TO
AMEND THE CODE OF THE TOWNSHIP OF WASHINGTON TO
PROVIDE REGULATIONS FOR STREAM CORRIDOR AND OPEN
WATER BUFFERS**

BE IT ORDAINED, by the Township Committee of the Township of Washington, in the County of Morris, and State of New Jersey, as follows:

SECTION 1. Chapter 111, Land Use Procedures, Article VI, Definitions, Section 111-46, Terms defined, of the Code of the Township of Washington, Morris County, New Jersey is hereby amended and supplemented to add the following definitions in the proper alphabetical order, to read as follows:

“CATEGORY ONE WATERS or C1 - Those waters designated in N.J.A.C. 7:9B-1.15

INTERMITTENT STREAM - Surface water drainage channels with definite bed and banks in which there is not a permanent flow of water. Most intermittent streams are shown on Soil Conservation Service county soil surveys and/or as watercourses shown on U.S.G.S. quadrangle maps. These are portrayed as a dashed line on a USDA Soil Survey Map of the most recent edition, or as state open water identified in a letter of interpretation issued by the NJDEP Land Use Regulation Program, whichever is more inclusive.

STREAM CHANNEL – The bed and banks of a stream that confine and conduct continuously or intermittently flowing water. Stream channels shall include 1) all watercourses shown on U.S.G.S. quadrangle maps and/or the Morris County Soil Survey, 2) watercourses identified as State Open Waters by the NJDEP (e.g., during the course of a wetlands delineation LOI or Stream Encroachment permit process), or 3) any flow path with a definable bed and banks regardless of the size of the contributory drainage.

STATE OPEN WATERS – Those waters of the United States within the boundary of the State or subject to its jurisdiction that are not wetlands.

STREAM CORRIDOR – The stream channel and all the lands within the 100-year flood line on either side of that portion of the designated stream or tributary. In cases where slopes greater than 20% abut the 100-year flood line, the area of such slopes shall be included in the stream corridor.

100-YEAR FLOOD LINE – The area adjacent to the stream that is inundated by the 100-year storm event as calculated per NJDEP accepted methods unless a Federal Emergency Management Act (FEMA) flood line (i.e., limits of the 100-Year Flood Hazard

Area) or NJDEP flood line has previously been calculated, in which case the FEMA flood line, NJDEP flood line, or the more recently calculated of these two will be the standard.

STREAM CORRIDOR AND OPEN WATER BUFFER –For all Category 1 streams a width of 300 feet on each side of all stream corridors and open waters, measured perpendicular to the edge of the stream corridor or open water, provided that if the width of the stream corridor **on a side of the designated stream, tributary or open water** exceeds 300 feet, no additional buffer area shall be required **on that side of the designated stream, tributary or open water**. For all other streams a width of 100 feet on each side of all stream corridors and open waters, measured perpendicular to the edge of the stream corridor or open water, provided that if the width of the stream corridor **on a side of the designated stream, tributary or open water** exceeds 100 feet, no additional buffer area shall be required **on that side of the designated stream, tributary or open water**. For streams located within the preservation area as defined in the Highlands Water Protection and Preservation Act buffers as required under the act will apply.”

SECTION 2. Chapter 111, Land Use Procedures, Article VI, Definitions, Section 111-46, Terms defined, “Improvable Lot Area” of the Code of the Township of Washington, Morris County, New Jersey is hereby amended to read as follows:

“IMPROVABLE LOT AREA – A contiguous area located on a residential lot within the minimum required setbacks that is free of areas of existing conservation easements, bodies of water, area of floodplains, wetlands, stream corridor and open water buffers; areas of slopes 20% and greater based on 10’ contour intervals, NJDEP-required wetland transition areas; and Highlands Special Resource Protection Areas, except that the improvable lot area may contain a total of 1,000 sq. ft. of area of slopes 20% and greater.”

SECTION 3. Chapter 159, Site Plan Review, Article VII, Design Details, Section 159-44, Environmental considerations, is hereby amended to read as follows:

“159-44. Environmental considerations. The site plan shall be designed in accordance with applicable township ordinance sections designed to protect the environment. These include but are not limited to stormwater management, flood plain, soil erosion and sedimentation control requirements and stream corridor and open water buffers. Drainage and conservation easement requirements set forth in Chapter 175, Subdivision of Land, Section 175-47, and environmental protection requirements set forth in Section 175-48, shall be followed.”

SECTION 4. Chapter 175, Subdivision of Land, Article VII, Design Standards, Section 175-47, Public use and service areas; utility placement, Paragraph B, Drainage and conservation easement, item (1) is hereby amended in its entirety to read as follows:

“(1) **STREAM CORRIDOR AND OPEN WATER BUFFERS**

(a) Purpose. The purposes of this section are the following:

(i) Maintain the quality of streams and open waters and improve the quality of currently impaired streams and open waters in the township.

(ii) Protect significant ecological components of stream corridors and open waters such as riparian areas, floodplains, wetlands, woodlands, steep slopes, and plant and associated wildlife communities within the stream corridors and open waters of the township; and minimize flood-related damage to properties in the township.

(iii) Complement the existing state, regional, county and municipal stream corridor and open water protection and management regulations and initiatives.

(b) Applicability. The development of all land containing a stream corridor and/or state open waters shall be subject to the regulations set forth in this Section 175-47.B. (1). These provisions are intended to regulate the type of activities, siting of structures, and engineering of all proposed development on parcels located within a stream corridor and open water buffer as defined in Chapter 111, Land Use Procedures. These provisions apply to land disturbances resulting from or related to any activity or use requiring a zoning variance, subdivision and/or site plan approval

(c) Exceptions.

(i) The full stream corridor and open water buffer area requirement may be waived by the Zoning Board of Adjustment in connection with variance applications for improvements to existing developed lots which do not exceed 2500 square feet of additional impervious coverage for those portions of such lots that include or border a C1 or other stream or state open water having a demonstrated drainage area of less than 50 acres or where there is existing clearing adjacent to the C1 or other stream or state open water, provided that not more than 50 linear feet of mowed lawn is permitted along the water's edge. The remainder of any existing developed lot that includes or borders a C1 or other stream or state open waters must have a minimum of 25 feet of naturalized area (non-mowed) as measured from the top of the bank of the C1 or other stream or state open waters. Specifications for naturalizing such reduced buffer areas as native meadow or restored forest are available from the Township Planning Department. A conservation easement for this area shall be dedicated to the Township, in form satisfactory to the Township Attorney, pursuant to §217-36.

(ii) Maintenance of the berm of a dam is exempted from the requirements of (i) above.

(iii) If a 50-foot long (parallel to the C1 or other stream or state open water) section of lawn is maintained adjacent to a C1 or other stream or state open water, residents are encouraged to substitute fine fescues (i.e., red fescue,

chewings fescue, hard fescue) within the 25-foot zone, as measured from the edge of the bank of the water, in which fertilizers and pesticides are prohibited pursuant to Chapter 85, in place of turf grasses such as Kentucky bluegrass and perennial ryegrass. Fine fescues are low growing and can be left non-mowed, or need to be mowed only 2-3 times per year.

(d) Permitted Activities. All land which is in a stream corridor and open water buffer shall remain in a natural condition or, if in a disturbed condition, including agricultural activities, at the time of adoption of this ordinance, may be restored to a natural condition. There shall be no clearing or cutting of trees and brush, except for removal of dead vegetation and pruning for reasons of public safety or for the replacement of invasive species with indigenous species; no altering of watercourses; no dumping of trash, soil, dirt, fill, vegetative or other debris; or re-grading or construction, except for the following activities.

(i) Open space uses that are primarily passive in character shall be permitted to extend into the stream corridor and open water buffer, provided near stream vegetation is preserved, including:

[a] Wildlife sanctuaries, nature preserves, forest preserves, fishing areas, with bank stabilization measures implemented, game farms, fish hatcheries and fishing reserves, operated for the protection and propagation of wildlife, but excluding enclosed structures.

[b] Passive areas of public and private parklands including unpaved hiking, bicycle and bridle trails outside of the stream channel, provided that said trails have been stabilized with pervious materials.

(ii) Stream bank stabilization or riparian reforestation, which conform to the guidelines of the restoration plan described in §175-47.B.(1)(h) or wetlands mitigation projects that have been approved by the Department of Environmental Protection, are permitted to extend into the stream corridor and open water buffer.

(iii) Stream corridor and open water buffer crossings by recreational trails, roads, railroads, sewer and/or water lines, and public utility transmission lines, are permitted, provided that any disturbance is offset by buffer improvements in compliance with the restoration plan, as required by §175-47B.(1)(h) and any applicable State permits are acquired.

(iv) Agricultural land uses, including but not limited to cropland, pasture, fencing, nursery operations, silviculture and greenhouses, in existence as of the effective date of this section are permitted. With the exception of fencing to exclude livestock from the stream corridor or open water, or placement of livestock watering troughs to keep livestock out of the stream channels or open waters, no new agricultural structures shall be permitted in the stream corridor buffer after the effective date of this section, unless specifically permitted under the provisions of any state law which pre-empts the provisions of this ordinance. Necessary livestock crossings are permitted, with design approval.

(e) The following activities associated with development applications after the

effective date of this ordinance are permitted within the stream corridor and open water buffer *only* if no other reasonable or prudent alternative is available:

- (i) Private or public water supply wells that have a sanitary seal, flood proofed water treatment facilities or pumping facilities.
- (ii) Dredging or grading work incidental to permitted structures or uses, including stream cleaning and stream rehabilitation, lake dredging, and other work undertaken to improve hydraulics or to protect public health permitted and approved by the New Jersey Department of Environmental Protection (NJDEP).
- (iii) NJDEP-approved culverts, bridges, and roads provided that they cross the stream corridor as directly as practical.
- (iv) NJDEP-approved sanitary or storm sewers and outfalls.
- (v) Health Department approved septic systems.
- (vi) Utility transmission lines installed during periods of low stream flow in accordance with soil erosion and sediment control practices and approved by the Morris County Soil Conservation District and permitted through the NJDEP.

(f) Prohibited Activities. Any activity not specifically authorized within Paragraphs (d) and (e) of this Section 175-47.B.(1) shall be prohibited within the stream corridor and open water buffer. In no circumstances shall the following be permitted as exceptions to such provisions:

- (i) Any solid or hazardous waste facilities, including but not limited to sanitary landfills, transfer stations or wastewater lagoons.
- (ii) Junkyards, commercial and industrial storage facilities and open storage of vehicles or materials.

(g) Requirements For Activities in Stream Corridor and Open Water Buffers.

- (i) All new major and minor subdivisions and site plans shall be designed to provide sufficient areas outside of the stream corridor and open water buffer to accommodate principal structures, any customary accessory uses appurtenant thereto, as well as all planned lawn areas.
- (ii) The applicant for any activity permitted in a stream corridor and open water buffer shall rehabilitate any degraded areas within the stream corridor and open water buffer in a manner acceptable to the Planning Board/Zoning Board unless the applicant demonstrates that it is not economically feasible to do so. The applicant shall also:

- [a] Rehabilitate and cure the effects of disturbance caused during construction through the use of best management practices (BMP's) recommended by the NJDEP;

- [b] Maintain the integrity of the surrounding plant community;
- [c] Maintain the existing ability of the stream corridor and open water buffer to protect the water quality of the stream. The applicant shall provide whatever additional measures are necessary to assure that the stream corridor and open water buffer will be rehabilitated or preserved and to prevent additional encroachments in the stream corridor and open water buffer likely to occur as a result of the approval granted. Conservation easements dedicated to the Township of Washington, in form satisfactory to the Township Attorney, shall be provided assuring that there will be no further intrusion on the stream corridor and open water buffer than that permitted by the activity approved.

(h) Submission requirements and restoration plans.

(i) At the time of application to the Planning or Zoning Board for development, the landowner, applicant, or developer shall submit a map of the project site delineating the following conditions (at a scale of 1 inch equals 100 feet):

- [a] Topographic information at a 2' contour
- [b] Any slopes equal to or greater than 15% within the site
- [c] Streams, wetlands, and the 100-year floodplain;
- [d] Wetland boundary line(s);
- [e] Stream corridor and open water buffer boundary line(s)
- [f] The location of all existing and proposed activities, including improvements and land disturbance to be located within any of the above boundaries;
- [g] The applicant shall also provide, at a scale not smaller than one inch equals 30 feet, a stream corridor and open water buffer restoration plan that specifies best management practices and construction methods to be used to restore all land disturbed (see paragraph (g)) within the stream corridor and open water buffer. The restoration plan is subject to the approval of the Township Environmental Consultant. All plantings included in the Plan shall consist of all native trees, shrubs, grasses and wild flowers. The Township can provide suggested specifications.

(ii) A map and restoration plan pursuant to this subsection is not required where the stream corridor and open water buffer is not being disturbed and conservation easements/deed restrictions are dedicated to the Township to ensure that there will be no future clearing or disturbance of the stream corridor and open water buffer.”

SECTION 5. Chapter 217, Zoning, Article V, Supplementary Lot, Height and

Yard Regulations, Section 217-36, Setbacks from watercourses and other bodies of water, is

hereby amended to read as follows:

“§217-36. Setbacks from stream corridors and state open waters.

A. Notwithstanding any other provisions of this chapter, no development shall be permitted adjacent to a C1 or other stream or state open waters, except in conformance with Chapter 92, Floodplain Management. In addition, except in connection with subdivisions and site plans as provided in Chapter 175, Subdivision of Land, §175-47.B. and Chapter 159, Site Plan Review, §159-44, or in connection with variance applications, an easement of not less than 25 feet along each side or edge of a C1 or other stream or state open waters shall be dedicated to the Township, in form satisfactory to the Township Attorney, which shall carry the following limitations:

(1) No trees or shrubs shall be removed or destroyed on lands in the easement, except in accordance with approved forest management practices.

(2) No topsoil, sand, gravel or minerals shall be excavated or removed, except as may be required to build a pond, and then only after the Township Planning Board approves the design and structure of the pond, it being the intent to preserve the natural function of the floodplain.

(3) No buildings or structures of any description shall be erected.

(4) No fill of any kind shall be permitted, except as may be required to build a road, and then only after the Planning Board approves the design of such road.

(5) No fertilizers or pesticides, except for Rodeo, shall be applied.

B. With regard to existing lawn areas, residents are encouraged to substitute fine fescues (i.e., red fescue, chewings fescue, hard fescue) within the 25-foot zone, as measured from the edge of the bank of the water, in which fertilizers and pesticides are prohibited pursuant to Chapter 85, in place of turf grasses such as Kentucky bluegrass and perennial ryegrass. Fine fescues are low growing and can be left non-mowed, or need to be mowed only 2 or 3 times per year. Residents are encouraged to maintain wooded buffers along streams and open waters within their properties wherever possible.”

SECTION 6. All ordinances of the Township of Washington, which are inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of such inconsistency.

SECTION 7. This ordinance may be renumbered for codification purposes.

SECTION 8. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

SECTION 9. The Township Clerk is hereby directed to give notice at least ten

days prior to hearing on the adoption of this Ordinance to the County Planning Board and to all other persons entitled thereto pursuant to N.J.S. 40:55D-15 and N.J.S. 40:55D-63 (if required). Upon the adoption of this Ordinance after public hearing thereon, the Township Clerk is further directed to publish notice of the passage thereof and to file a copy of the Ordinance as finally adopted with the Morris County Planning Board as required by N.J.S. 40:55D-16. The Clerk shall also forthwith transmit a copy of this Ordinance after final passage to the Township Tax Assessor as required by N.J.S. 40:49-2.1.

SECTION 10. This Ordinance shall take effect immediately upon final passage, approval, and publication as required by law.

TOWNSHIP OF WASHINGTON
COUNTY OF MORRIS
STATE OF NEW JERSEY

ATTEST:

Dianne S. Gallets, Township Clerk

By: _____
Kenneth W. Short, Mayor

November 21, 2005*