

Cranbury Township Ordinance # 05-11-13

AN ORDINANCE DESIGNATING RIPARIAN ZONES AND PROVIDING FOR LAND USE REGULATIONS TO PROTECT STREAMS, LAKES AND OTHER SURFACE WATER BODIES OF CRANBURY TOWNSHIP

Cranbury Township Development Ordinance Chapter 150 with a new Section 150-29.2 Chapter 150 "Land Development" of the Code of the Township of Cranbury shall be supplemented to add a new Section 150-29.2 as follows:

§ 29.2

I. PURPOSE AND AUTHORITY

The purpose of this Ordinance is to designate riparian zones, and to provide for land use regulations therein in order to protect the streams, lakes, and other surface water bodies of Cranbury Township and to comply with N.J.A.C. 7:15-5.25(g)3, which requires municipalities to adopt an ordinance that prevents new disturbance for projects or activities in riparian zones as described herein. Compliance with the riparian zone requirements of this Ordinance does not constitute compliance with the riparian zone or buffer requirements imposed under any other Federal, State or local statute, regulation or ordinance. Property owners remain subject to compliance with all other municipal ordinances, inclusive of stream and flood way requirements.

II. DEFINITIONS

The definitions of the words and/or terms utilized in this Article shall be as defined or described in the Water Quality Management Planning rules, N.J.A.C. 7:15, the Stormwater Management Rules, N.J.A.C. 7:8, and/or Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, as they exist as of the effective date of this Ordinance and as they may be amended over time.

III. ESTABLISHMENT AND PROTECTION OF RIPARIAN ZONES

A. Except as provided in Sections IV. and V. below, riparian zones adjacent to all surface water bodies shall be protected from avoidable disturbance and shall be delineated as follows:

1. The riparian zone shall be 300 feet wide along both sides of any Category One water (C1 water), and all upstream tributaries situated within the same HUC 14 watershed.
2. The riparian zone shall be 150 feet wide along both sides of the following waters not designated as C1 waters:
 - a. Any trout production water and all upstream waters (including tributaries);
 - b. Any trout maintenance water and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water;
 - c. Any segment of a water flowing through an area that contains documented habitat for a threatened or endangered species of plant or animal, which is critically dependent on the surface water body for survival, and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water; and
 - d. Any segment of a water flowing through an area that contains acid producing soils.
3. For all other surface water bodies, a riparian zone of 50 feet wide shall be maintained along both sides of the water.

- B. If a discernible bank is not present along a surface water body, the portion of the riparian zone outside the surface water body is measured landward as follows:
1. Along a linear fluvial or tidal water, such as a stream, the riparian zone is measured landward of the feature's centerline;
 2. Along a non-linear fluvial water, such as a lake or pond, the riparian zone is measured landward of the normal water surface limit;
 3. Along a non-linear tidal water, such as a bay or inlet, the riparian zone is measured landward of the mean high water line; and
 4. Along an amorphously-shaped feature such as a wetland complex, through which water flows but which lacks a discernible channel, the riparian zone is measured landward of the feature's centerline
- C. The applicant or designated representative shall be responsible for the initial determination of the presence of a riparian zone on a site, and for identifying the area of the riparian zone on any plan submitted to the Township of Cranbury in conjunction with an application for a construction permit, subdivision, land development, or other improvement that requires plan submissions or permits. This initial determination shall be subject to review and approval by the Township Engineer, governing body, or its appointed representative, and, where required by State regulation, the New Jersey Department of Environmental Protection.

IV. VARIANCES

To the extent allowed by the Stormwater Management Rules (N.J.A.C. 7:8) and the Flood Hazard Area Control Act Rules (N.J.A.C. 7:13), new disturbances for projects or activities in the riparian zone established by this Ordinance may only be allowed through the approval of a variance to this section of the Township Ordinance. A variance may be granted only if the disturbance is proposed to be located on a pre-existing lot (existing as of the effective date of this ordinance) when there is insufficient room outside the riparian zone for the proposed use otherwise permitted by the underlying zoning; there is no other reasonable or prudent alternative to placement in the riparian zone, including obtaining variances from setback or other requirements that would allow conformance with the riparian zone requirements; and upon proof by virtue of submission of appropriate maps, drawings, reports and testimony, that the disturbance is:

- A. Necessary to protect public health, safety or welfare;
- B. To provide an environmental benefit;
- C. To prevent extraordinary hardship on the property owner peculiar to the property; or
- D. To prevent extraordinary hardship, provided the hardship was not created by the property owner, by not allowing a minimum economically viable use of the property based upon reasonable investment

V. EXCEPTIONS

To the extent allowed under the Stormwater Management Rules (N.J.A.C. 7:8) and the Flood Hazard Area Control Act Rules (N.J.A.C. 7:13) and subject to review and approval by the New Jersey Department of Environmental Protection to the extent required by those rules, the following disturbances for projects or activities in the riparian zone established by this Ordinance are allowed:

- A. Redevelopment within the limits of existing impervious surfaces;
- B. Linear development with no feasible alternative route;
- C. Disturbance that is in accordance with a stream corridor restoration or stream bank

stabilization plan or project approved by the New Jersey Department of Environmental Protection;

- D. Disturbance necessary to provide for public pedestrian access or water dependent recreation that meets the requirements of the Freshwater Wetlands Protection Act rules, N.J.A.C. 7:7A, the Flood Hazard Area Control Act rules, N.J.A.C. 7:13, or the Coastal Zone Management rules, N.J.A.C. 7:7E; or
- E. Disturbance with no feasible alternative required for the remediation of hazardous substances performed with New Jersey Department of Environmental Protection or Federal oversight pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq. or the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§9601 et seq.

VI. APPEALS, CONFLICTS, AND SEVERABILITY

- A. Any party aggrieved by the location of the riparian zone boundary determination under this Ordinance may appeal to the Township Engineer under the provisions of this Ordinance. The party contesting the location of the riparian zone boundary shall have the burden of proof in case of any such appeal.
- B. Any party aggrieved by any determination or decision of the Township Engineer under this Ordinance may appeal to the Zoning Board of the Township of Cranbury pursuant to N.J.S.A. 40:55-D-72. The party contesting the determination or decision shall have the burden of proof in case of any such appeal.
- C. Conflicts: All other ordinances, parts of ordinances, or other local requirements that are inconsistent or in conflict with this ordinance are hereby superseded to the extent of any inconsistency or conflict, and the provisions of this Ordinance shall apply.
- D. Severability:
 - 1. Interpretation: This Ordinance shall be so construed as not to conflict with any provision of New Jersey or Federal law.
 - 2. Notwithstanding that any provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, all remaining provisions of the Ordinance shall continue to be of full force and effect.
 - 3. The provisions of this Ordinance shall be cumulative with, and not in substitution for, all other applicable zoning, planning and land use regulations.

VII. ENFORCEMENT

A prompt investigation shall be made by the Township Engineer of any person or entity believed to be in violation hereof. If, upon inspection, a condition which is in violation of this Ordinance is discovered, the remedies found in Article IX Sections 150-103 Violations and 150-104 Penalties of the Township Code shall be used by the Township to rectify the violations and bring site into compliance with this ordinance.

VIII. EFFECTIVE DATE

This Ordinance shall take effect upon final adoption and publication in accordance with the law on July 1, 2011 the date it is filed with the County Planning Board after adoption.

CERTIFICATION

This ordinance was introduced and passed upon first reading at a meeting of the governing body of the Township of Cranbury, in the County of Middlesex, State of New Jersey, on May 23, 2011. It will be further considered for final passage, after public hearing thereon, at a meeting of the governing body to be held at the Town Hall Meeting Room on Monday, June 27, 2011 at 7:00 p.m. During the week prior to and up to and including the date of such meeting, copies of the full ordinance will be available at no cost during regular business hours at the Clerk's Office for the members of the general public who shall request the same or by accessing the Township's web site at www.cranburytownship.org.

Kathleen R. Cunningham, Clerk