

AN ORDINANCE ENACTING CHAPTER 1187 OF THE PLANNING AND
ZONING CODE ESTABLISHING RIPARIAN SETBACKS

WHEREAS, flooding is a significant threat to public health and safety, and public and private property, in the Cuyahoga River watershed, and vegetated riparian areas lessen the damage from such flooding by slowing runoff, enabling water to soak into the ground, and by absorbing excess flow during flood events; and

WHEREAS, streambank erosion in the Cuyahoga River watershed is a significant threat to public health and safety, and public and private property, and vegetated riparian areas slow runoff and stabilize streambanks, thus reducing the erosive force of runoff and strengthening banks against high velocity waters; and

WHEREAS, the presence of natural vegetation on streambanks provides protection against erosive forces both within streams and on adjacent lands, whether publicly or privately owned; and

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

WHEREAS, the establishment of protected riparian areas provides a right-of-way for natural movement and relocation of stream and watercourse channels, which can encroach upon adjacent land; 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, there is a watershed-wide effort to reduce the flooding and erosion within the Cuyahoga River watershed and to protect and enhance the water resources of the Cuyahoga River and its tributaries, and the Village of Richfield recognizes its obligations as a part of the watershed to reduce flooding and erosion by controlling runoff within its borders; and

WHEREAS, the water quality and quantity flowing through areas downstream is heavily dependent upon the protective measures and good stewardship adopted by upstream communities, regardless of the size of the upstream channel; and

WHEREAS, the Summit Soil and Water Conservation District, the Natural Resource Conservation Service of the U.S. Department of Agriculture, the Ohio Environmental Protection Agency and the U.S. Environmental Protection Agency recommend riparian setbacks as a valuable tool in an overall natural resource 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 Village of Richfield 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 Village of Richfield; and to preserve the character of the Village of Richfield, the quality of life of the residents of the Village of Richfield, and corresponding property values, it is necessary and appropriate to regulate the construction of structures and uses within a riparian setback along the banks of designated watercourses in the Village of Richfield; 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.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Richfield, Summit County, State of Ohio:

SECTION 1. That a new Chapter 1187 in the Planning and Zoning Code be enacted to read as follows:

CHAPTER 1187
RIPARIAN SETBACKS

SECTION 1187.01 PUBLIC PURPOSE.

(a) It is hereby determined that the system of rivers, streams and other watercourses within the Community contributes to the health, safety and general welfare of the residents of the Community. The specific purpose and intent of these regulations 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 floodwaters and regulating base flow.
- (2) Stabilize the banks of watercourses to reduce bank 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 areas for natural meandering and lateral movement of stream and watercourse channels.
- (6) Provide high quality watercourse habitats with shade and food.
- (7) Reduce the presence of aquatic nuisance species to maintain a diverse aquatic system.
- (8) Provide habitat to a wide array of wildlife by maintaining diverse and connected riparian vegetation.
- (9) Benefit the Community economically by minimizing encroachment on watercourse channels and the need for costly engineering solutions such as dams, retention basins, 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.
- (10) Protect the health, safety and welfare of the citizens of the Village of Richfield.

(b) The following regulation has been enacted to protect these services of riparian areas by providing reasonable controls governing structures and uses in riparian setbacks.

SECTION 1187.02 CONFLICTS WITH OTHER REGULATIONS &
SEVERABILITY.

(a) Where these regulations impose a greater restriction upon land than is imposed or required by any other provision of law, regulation, contract or deed, the provisions of these regulations shall control.

(b) These regulations 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 (a) of this section.

(c) If any clause, section or provision of these regulations is declared invalid or unconstitutional by a court of competent jurisdiction, validity of the remainder shall not be affected thereby.

SECTION 1187.03 DEFINITIONS

For the purpose of these regulations, the following terms shall have the meaning herein indicated:

(a) Best Management Practices (BMPs): Conservation practices or protection measures, which reduce the impacts from a particular land use. Best Management Practices for construction are outlined in "Rainwater and Land Development, Ohio's Standard for Stormwater Management, Land Development, and Urban Stream Protection" prepared by the Ohio Department of Natural Resources.

(b) Community: Throughout these regulations, this shall refer to the Village of Richfield or its designated representative.

(c) 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.

(d) Federal Emergency Management Agency (FEMA): The agency with overall responsibility for administering the National Flood Insurance Program.

(e) Impervious Cover: Any surface that cannot effectively absorb or infiltrate water. Impervious surfaces may include roads, streets, parking lots, rooftops, sidewalks and other areas not covered by vegetation.

(f) Natural Succession: A gradual and continuous replacement of one kind of plant and animal group by a more complex group. The plants and animals present in the initial group modify the environment through their life activities thereby making it unfavorable for themselves. They are gradually replaced by a different group of plants and animals better adapted to the new environment.

(g) 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 these regulations, the most recent version of this list at the time of application of these regulations shall prevail.

(h) 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.

(i) Perennial Stream: A natural watercourse that contains water throughout the year except possibly during periods of extreme drought.

(j) Pollution: Any contamination or alteration of the physical, chemical or biological properties of any waters that will render the waters harmful or detrimental to: public health, safety or welfare; domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses; livestock, wildlife, including birds, fish or other aquatic life.

- (1) “Point Source” pollution is traceable to a discrete point or pipe.
- (2) “Non-Point Source” pollution is generated by various land use activities rather than from an identifiable or discrete source, and is conveyed to waterways through natural processes, such as rainfall, storm runoff or ground water seepage rather than direct discharge.

(k) Practical Difficulties: In determining whether a property owner has encountered “practical difficulties” in meeting the requirements set forth in this Chapter, the following factors are to be considered and weighed:

- (1) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance or modification;
- (2) Whether the variance or modification is substantial;
- (3) Whether the essential character of the neighborhood would be substantially altered, or whether adjoining properties would suffer substantial detriment as a result of the variance or modification;
- (4) Whether the variance or modification would adversely affect the delivery of governmental services;
- (5) Whether the property owner purchased the property with knowledge of the restrictions contained in this chapter;
- (6) Whether the property owner’s predicament feasibly can be obviated through some method other than a variance, and;

- (7) Whether the spirit and intent behind this chapter's requirement would be observed and substantial justice done by granting a variance or modification.

(l) Riparian Area: Naturally vegetated land adjacent to watercourses that, if appropriately sized, stabilizes streambanks, limits erosion, reduces flood size flows and/or filters and settles out runoff pollutants, or performs other functions consistent with the purposes of these regulations.

(m) Riparian Setback: Those lands within the Community that fall within the area defined by the criteria set forth in these regulations. The setback shall be the perpendicular (shortest) distance between any point along the ordinary high water mark and the setback line.

(n) Riparian Setback Map: Current edition of a map, developed using the Summit County Geographic Information System and other information, identifying watercourses and their riparian setbacks within the Village of Richfield. Riparian Setbacks shall be determined using the Riparian Setback Map. Riparian Areas and watercourses shall not be limited to those shown on the Riparian Setback Map.

(o) 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.

(p) Stormwater Quality Treatment: The removal of pollutants from urban runoff and improvement of water quality accomplished largely by deposition and utilizing the benefits of natural processes and Best Management Practices.

(q) Watercourse: Any natural, perennial or intermittent stream, river or brook, or one that has been altered by unnatural processes, with a defined bed and bank that is contained, within, flows through or borders the Community.

(r) Watershed: An area of land that drains into a particular watercourse, usually divided by topography.

SECTION 1187.04 ESTABLISHMENT OF RIPARIAN SETBACKS

(a) Riparian setbacks are established as follows:

- (1) A minimum distance on either side of the watercourse as shown on the Riparian Setback Map.
- (2) Riparian Areas, watercourses and setbacks shall not be limited to those shown on the Riparian Setback Map. The Planning and Zoning Commission shall determine the setbacks for any watercourses not shown on the Riparian Setback Map.
- (3) Because the gradient of the riparian corridor significantly influences impacts on the stream or watercourse, the following adjustment for steep

slopes will be integrated into the riparian setback distance shown on the Riparian Setback Map:

| <u>Average Percent Slope</u> | <u>Width of Adjustment</u> |
|------------------------------|----------------------------|
| 15% - 20% | Add 25 feet |
| 21% - 25% | Add 50 feet |
| > 25% | Add 100 feet |

- (b) 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 watercourse.
 - (2) Except as otherwise provided in these regulations, riparian setbacks shall be preserved in their natural state.

(c) The developer, applicant or designated representative shall be responsible for delineating riparian setbacks and identifying those setbacks on all subdivisions, land development plans and/or building permit applications submitted to the Zoning Inspector. This delineation shall be done at the time of application of the preliminary plan or at the time of submission of any permit applications. This delineation shall be done through a metes and bounds survey and shall be subject to review and approval by the Zoning Inspector. As the result of this review, the Planning and Zoning Commission may require further studies from the developer, applicant or designated representative.

(d) Prior to any soil disturbing activity, riparian setbacks shall be clearly delineated by the landowner on site, and such delineation shall be maintained throughout soil disturbing activities.

(e) No approvals or permits shall be issued by the Zoning Inspector prior to delineation of riparian setbacks in conformance with these regulations.

(f) Upon completion of an approved subdivision, land development or other improvement, riparian setbacks shall be permanently recorded on the plat records for the Community. A plat, showing property lines, riparian area, setbacks, existing improvements, proposed improvements and watercourse(s), shall be submitted for all proposed improvements. The plat shall be a scaled drawing prepared by a registered surveyor and shall contain enough information (bearings, distances, dimensions, etc.) so that the riparian setback can be definitely located and defined relative to the property lines, improvements and watercourse(s).

SECTION 1176.05 USES PERMITTED IN RIPARIAN SETBACKS

(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 (a)(1) through (a)(4) of this section. No use permitted under these regulations shall be construed as allowing trespass on privately held lands.

- (1) Recreational Activity. Passive recreational uses, as permitted by federal, state, and local laws, such as hiking, fishing, hunting, picnicking and similar uses.
- (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.
- (4) Private Recreational and Maintenance Access Paths. Mowed, mulch or gravel private access paths, not more than ten (10) feet wide, may be constructed for private recreational activity permitted under Section 1176.05(a)(1) and private maintenance activity permitted under Section 1176.05(a)(2) and (3). Excavation of soil, altering of topography or removal of non-damaged or non-diseased trees is prohibited when constructing Private Recreational and Maintenance Access Paths.

(b) By Right Uses With A Permit.

- (1) Streambank Stabilization/Erosion Control Measures. Streambank stabilization/erosion control measures may be allowed provided that such measures are ecologically compatible and substantially utilize natural materials and native plant species where practical and available. Such streambank stabilization/erosion control measures shall only be undertaken upon approval of an Erosion Control Plan by the Zoning Inspector. In reviewing this plan, the Zoning Inspector may consult with a representative of the Ohio Department of Natural Resources, Division of Natural Areas and Preserves; Ohio Environmental Protection Agency, Division of Surface Water; Summit County Soil and Water conservation District; or other technical experts as necessary.
- (2) Crossings. Crossings of designated watercourses through riparian setbacks by publicly owned sewer and/or water lines and public utility transmission lines may only be allowed upon approval of a Crossing Plan by the Zoning Inspector. Such crossings shall minimize disturbance to riparian areas and shall mitigate any necessary disturbances. In reviewing this plan, the Zoning Inspector may consult with a representative of the Ohio Department of Natural Resources, Division of Natural Areas and Preserves; Ohio Environmental Protection Agency, Division of Surface Water; Summit County Soil and Water Conservation District; or other related technical experts as necessary.
- (3) Cultivation. The cultivation of lawns, landscaping, shrubbery or trees may be allowed provided that such cultivation is designed to assist in streambank stabilization and/or erosion control and is done in conformance with a Landscaping Plan approved by the Zoning Inspector.

In reviewing this plan, the Zoning Inspector may consult with a representative of the Ohio Department of Natural Resources, Division of Natural Areas and Preserves; Ohio Environmental Protection Agency, Director of Surface Water; Summit County Soil and Water Conservation District; or other technical experts as necessary. Such Landscaping Plan shall meet the following criteria:

- (1) Maintain trees in the riparian setback larger than nine (9) inches in caliper (diameter) as measured fifty-four (54) inches above the ground.
- (2) Maintain trees, shrubbery and other non-lawn, woody vegetation in the riparian setback to the maximum extent possible.
- (4) Public Recreational and Maintenance Access Paths. Mowed, mulch, gravel or paved public access paths, not more than twelve (12) feet wide, may be constructed for public recreational activity permitted under Section 1176.05(a)(1) and other uses permitted by 1176.05(b). The Planning and Zoning Commission may approve excavation of soil, altering of topography or removal of non-damaged or non-diseased trees necessary for the construction of Public Recreational and Maintenance Access.
- (5) Private Driveways. Paved or unpaved driveways, not more than fifteen (15) feet wide, constructed for pedestrian and vehicular access to residential dwellings and detached garages, and paved or unpaved driveways not more than twenty-four (24) feet wide constructed to provide pedestrian and vehicular access to commercial buildings, providing the driveway is used to access structures that are permitted by 1187.08(b)(6).

SECTION 1187.06 USES PROHIBITED IN RIPARIAN SETBACKS

Any use not authorized under these regulations 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 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 Section 1187.05 of these regulations.
- (c) Roads or Driveways. There shall be no roads or driveways, except as permitted under Section 1187.05 of these regulations.
- (d) Motorized Vehicles. There shall be no use of motorized vehicles, except for the use of lawn mowers, tractors and other mechanized vehicles or equipment necessary to mow,

trim, cut, cultivate, plant or maintain vegetation permitted in riparian setbacks under Section 1187.05 of these regulations, or as needed to eradicate invasive species or noxious weeds.

(e) Disturbance of Natural Vegetation. There shall be no disturbance of the natural vegetation, except for the following:

- (1) Maintenance of lawns, landscaping, shrubbery or trees existing at the time of passage of these regulations.
- (2) Cultivation of lawns, landscaping, shrubbery or trees designed to assist in streambank stabilization and/or erosion control and approved by the Zoning Inspector under a Landscaping Plan submitted in conformance with Section 1187.05 of these regulations.
- (3) Conservation measures designed to control noxious weeds or invasive species.
- (4) Construction and maintenance of Private Recreational and Maintenance Access Paths permitted by Section 1176.05(a)(4); Public Recreational and Maintenance Access Paths permitted by section 1176.05(b)(4); and private driveways permitted by Section 1176.05(b)(5).

Nothing in section 1187.06(e) shall be construed as requiring a landowner to undertake any cultivation activities in the riparian setback.

(f) New Surface and/or Subsurface Sewage Disposal or Treatment Areas. Riparian areas shall not be used for the disposal or treatment of sewage except in accordance with Summit County District Board of Health regulations at the time of application of these regulations.

SECTION 1187.07 NON-CONFORMING STRUCTURES OR USES IN RIPARIAN SETBACKS

Non-conforming structures or uses in riparian setbacks shall be regulated under the provisions of Chapter 1111 of the Zoning Code. Where the following language is more restrictive or conflicts with Chapter 1111 of the Zoning Code, the following language shall prevail:

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

(b) A non-conforming residential or commercial structure that exists at the time of passage of these regulations, is within a riparian setback, and is not permitted under these regulations may be continued, or may be removed or replaced, changed, expanded or enlarged providing: Any such proposed structure is setback no less than the distance between the ordinary high water mark and the foundation of the existing residential or commercial structure.

(c) A non-conforming accessory structure, existing at the time of passage of these regulations and within a riparian setback, that is not permitted under these regulations, may be

continued or replaced but shall not have the existing building footprint or roofline expanded or enlarged.

(d) A non-conforming structure or use, existing at the time of passage of these regulations and within a riparian setback, that has substantial damage and which is discontinued, terminated or abandoned for a period of two (2) years or more may not be revived, restored or re-established.

SECTION 1187.08 MODIFICATION TO RIPARIAN SETBACKS AND BOUNDARY INTERPRETATION

(a) The Planning and Zoning Commission may modify these regulations provided herein, and other setback and yard requirements in this Zoning Code, in cases where practical difficulties in the use of the property are imposed by the regulations and the need for requested relief outweighs the potential harm or reduction in riparian area functions which may be caused by a proposed use.

(b) In making a determination under (a), the Planning and Zoning Commission may consider, in addition to practical difficulties, the following factors:

- (1) The soil type and natural vegetation of the parcel as well as the percentage of the parcel that is in the riparian area.
- (2) The extent to which the requested variance impairs the flood control, erosion control, water quality protection, and other functions of the riparian area. This determination shall be based on sufficient technical and scientific data.
- (3) The degree of difficulty these regulations place on the landowner and the availability of alternatives to the proposed activity.
- (4) Soil-disturbing activities permitted in the riparian setback 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 in the riparian setback compromises its benefits to the Community. Variances should not be granted for asphalt or concrete paving within the riparian setback unless permitted by Sections 1176.05(a)(4); 1176.05(b)(5) and 1176.05(b)(6). Variances may be granted for gravel driveways.
- (6) That no lot, otherwise buildable under the ordinances of the Community, shall be made unbuildable because of the riparian setback requirements, with special emphasis on lots of one acre or less trying to find the optimum location for a structure or other improvements on the lot.

(c) When a landowner or applicant disputes the boundary of a riparian setback or the ordinary high water mark of a watercourse, the landowner or applicant shall submit evidence to the Zoning Inspector that describes the boundary, the landowner or applicant's proposed boundary, and justification for the proposed boundary change.

(d) The Zoning Inspector shall evaluate materials submitted and shall make a written recommendation within a reasonable period of time not to exceed sixty (60) days, a copy of which shall be submitted to the landowner or applicant. If during this evaluation the Zoning Inspector requires further information, he or she may require this to be provided by the landowner or applicant.

(e) Any party aggrieved by any such determination or requesting a modification to these regulations may request a hearing before the Planning and Zoning Commission. The Planning and Zoning Commission shall follow the procedures and have the authority set forth in Sections 1105.03 to 1105.11 of the Zoning Code as applicable, when undertaking any such hearing. The party requesting the modification or contesting the location of the riparian setback or the ordinary high water mark of a watercourse shall have the burden of proof in case of any such hearing.

SECTION 1187.09 INSPECTION OF RIPARIAN SETBACKS

(a) Riparian setbacks shall be inspected by the Zoning Inspector when:

- (1) A preliminary subdivision plat or other land development plan is submitted to the Community.
- (2) A building permit is requested.
- (3) Prior to any soil disturbing activity to inspect the delineation of riparian setbacks as required under these regulations.

(b) Riparian setbacks shall also be inspected periodically by the Zoning Inspector for compliance with approvals under Section 1187.06 of these regulations or at any time evidence is brought to the attention of the Zoning Inspector that uses or structures are occurring that may reasonably be expected to violate the provisions of these regulations.

SECTION 2. This Ordinance shall take effect and be in force from and after the earliest period allowed by law.

PASSED: October 7, 2003

Michael Lyons
President of Council

ATTEST:
Carole Libar
Clerk of Council

Ronald H. Larsen
Mayor

Dated: 10/15/2003