

ORDINANCE #11-1

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE
BOROUGH OF FLORHAM PARK, IN THE COUNTY OF MORRIS,
STATE OF NEW JERSEY, AMENDING THE REVISED
GENERAL CODE OF THE BOROUGH TO ADD A NEW
CHAPTER 192 ENTITLED "RIPARIAN ZONES"**

WHEREAS, the New Jersey Department of Environmental Protection requires that the Borough adopt an ordinance requiring the designation of riparian zones, and to provide for land use regulation therein in order to protect the streams, lakes, and other surface water bodies of the Borough of Florham Park 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 and to prescribe penalties for the failure to comply.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Borough Council of the Borough of Florham Park, County of Morris, and State of New Jersey as follows:

SECTION 1. The Revised General Code of the Borough Code of Florham Park is hereby amended to add a new Chapter 192, to be entitled "Riparian Zones," and to read in its entirety as follows:

Chapter 192

RIPARIAN ZONES

- 192-1 Scope and Purpose**
- 192-2 Definitions**
- 192-3 Establishment and Protection of Riparian Zones**
- 192-4 Variances**
- 192-5 Exceptions**
- 192-6 Appeals, Conflicts, and Severability**
- 192-7 Enforcement**
- 192-8 Effective Date**

192-1 SCOPE AND PURPOSE

The purpose of this Ordinance is to designate riparian zones, and to provide for land use regulation therein in order to protect the streams, lakes, and other surface water bodies of the Borough of Florham Park 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; and furthermore designates any new disturbance for projects or activities in riparian zones as a violation of use necessitating a use variance from the Zoning Board of Adjustment. 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.

192-2 DEFINITIONS

The definitions of the words and/or terms utilized in this Article shall be further 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.

ACID PRODUCING SOILS- means soils that contain geologic deposits of iron sulfide minerals (pyrite and marcasite) which, when exposed to oxygen from the air or from surface waters, oxidize to produce sulfuric acid. Acid producing soils, upon excavation, generally have a pH of 4.0 or lower. After exposure to oxygen, these soils generally have a pH of 3.0 or lower. Information regarding the location of acid producing soils in New Jersey can be obtained from local Soil Conservation District offices.

APPLICANT- means a person, corporation, government body or other legal entity applying to the Planning Board, Board of Adjustment or the Construction Office proposing to engage in an activity that is regulated by the provisions of this ordinance, and that would be located in whole or in part within a regulated Riparian Zone.

CATEGORY ONE WATERS OR C1 WATERS- shall have the meaning ascribed to this term by the Surface Water Quality Standards, N.J.A.C. 7:9B, for purposes of implementing the antidegradation policies set forth in those standards, for protection from measurable changes in water quality characteristics because of their clarity, color, scenic setting, and other characteristics of aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resources.

DISTURBANCE- means the placement of impervious surface, the exposure or movement of soil or bedrock, or the clearing, cutting, or removing of vegetation.

INTERMITTENT STREAM- means a surface water body with definite bed and banks in which there is not a permanent flow of water and shown on the New Jersey Department of Environmental Protection Geographic Information System (GIS) hydrography coverages or, in the case of a Special Water Resource Protection Area (SWRPA) pursuant to the Stormwater Management rules at N.J.A.C. 7:8-5.5(h), C1 waters as shown on the USGS quadrangle map or in the County Soil Surveys.

LAKE, POND, OR RESERVOIR- means any surface water body shown on the New Jersey Department of Environmental Protection Geographic Information System (GIS) hydrography coverages or, in the case of a Special Water Resource Protection Area (SWRPA) pursuant to the Stormwater Management rules at N.J.A.C. 7:8-5.5(h), C1 waters as shown on the USGS quadrangle map or in the County Soil Surveys; that is an impoundment, whether naturally occurring or created in whole or in part by the building of structures for the retention of surface water. This excludes sedimentation control and stormwater retention/detention basins and ponds designed for treatment of wastewater.

PERENNIAL STREAM- means a surface water body that flows continuously throughout the year in most years and shown on the New Jersey Department of Environmental Protection Geographic Information System (GIS) hydrography coverages or, in the case of a Special Water Resource Protection Area (SWRPA) pursuant to the Stormwater Management rules at N.J.A.C. 7:8-5.5(h), C1 waters as shown on the USGS quadrangle map or in the County Soil Surveys.

RIPARIAN ZONE- means the land and vegetation within and directly adjacent to all surface water bodies including, but not limited to lakes, ponds, reservoirs, perennial and intermittent streams, up to and including their point of origin, such as seeps and springs, as shown on the New Jersey Department of Environmental Protection's GIS hydrography coverages or, in the case of a Special Water Resource Protection Area (SWRPA) pursuant to the Stormwater Management rules at N.J.A.C. 7:8-5.5(h), C1 waters as shown on the USGS

quadrangle map or in the County Soil Surveys. There is no riparian zone along the Atlantic Ocean nor along any manmade lagoon or oceanfront barrier island, spit or peninsula.

SPECIAL WATER RESOURCE PROTECTION AREA OR SWRPA- means a 300 foot area provided on each side of a surface water body designated as a C1 water or tributary to a C1 water that is a perennial stream, intermittent stream, lake, pond, or reservoir, as defined herein and shown on the USGS quadrangle map or in the County Soil Surveys within the associated HUC 14 drainage, pursuant to the Stormwater Management rules at N.J.A.C. 7:8-5.5(h).

SURFACE WATER BODY(IES)- means any perennial stream, intermittent stream, lake, pond, or reservoir, as defined herein. In addition, any regulated water under the Flood Hazard Area Control Act rules at N.J.A.C. 7:13-2.2, or State open waters identified in a Letter of Interpretation issued under the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-3 by the New Jersey Department of Environmental Protection Division of Land Use Regulation shall also be considered surface water bodies.

THREATENED OR ENDANGERED SPECIES- means a species identified pursuant to the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., the Endangered Species Act of 1973, 16 U.S.C. §§1531 et seq. or the Endangered Plant Species List, N.J.A.C. 7:5C-5.1, and any subsequent amendments thereto.

TROUT MAINTENANCE WATER- means a section of water designated as trout maintenance in the New Jersey Department of Environmental Protection's Surface Water Quality Standards at N.J.A.C. 7:9B.

TROUT PRODUCTION WATER- means a section of water identified as trout production in the New Jersey Department of Environmental Protection's Surface Water Quality Standards at N.J.A.C. 7:9B.

192-3 ESTABLISHMENT AND PROTECTION OF RIPARIAN ZONES

- A. Except as provided in Sections 192-4 and 192-5 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 Borough of Florham Park in conjunction with an application for a construction permit, subdivision, site plan, land development, or other improvement that requires plan submissions or permits. This initial determination shall be subject to review and approval by the Municipal Engineer and Zoning Officer and, where required by State regulation, the New Jersey Department of Environmental Protection.

192-4 VARIANCES

To the extent allowed by the Stormwater Management Rules (N.J.A.C. 7:8), the Flood Hazard Area Control Act Rules (N.J.A.C. 7:13), and the Highlands Water Protection and Planning Act Rules (N.J.A.C. 7:38), new disturbances for projects or activities in the riparian zone established by this Ordinance may be allowed through a Zoning Board of Adjustment review and approval of a variance, provided 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.

192-5 EXCEPTIONS

To the extent allowed under the Stormwater Management Rules (N.J.A.C. 7:8), the Flood Hazard Area Control Act Rules (N.J.A.C. 7:13), and the Highlands Water Protection and Planning Act Rules (N.J.A.C. 7:38) 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.

192-6 APPEALS, CONFLICTS, AND SEVERABILITY

- A. Any party aggrieved by the location of the riparian zone boundary determination under this Ordinance may appeal to the Borough of Florham Park 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 Borough of Florham Park under this Ordinance may appeal to the governing body of the Borough of Florham Park. 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.

192-7 ENFORCEMENT

A prompt investigation shall be made by Zoning Officer, 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, a civil action in the Special Part of the Superior Court, or in the Superior Court, if the primary relief sought is injunctive or if penalties may exceed the jurisdictional limit of the Special Civil Part, by the filing and serving of appropriate process. Nothing in this Ordinance shall be construed to preclude the right of the Borough of Florham Park, pursuant to N.J.S.A 26:3A2-25, to initiate legal proceedings hereunder in Municipal Court. The violation of any section or subsection of this Ordinance shall constitute a separate and distinct offense independent of the violation of any other section or subsection, or of any order issued pursuant to this Ordinance. Each day a violation continues shall be considered a separate offense. Penalties for violations of this Chapter shall be as set forth in §1-16 of this Code.

192-8 EFFECTIVE DATE

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

SECTION 2. All Ordinances or parts or ordinances inconsistent herewith are hereby repealed as to such inconsistencies.

SECTION 3. If any article, section, subsection, paragraph, phrase, or sentence is for any reason held to be unconstitutional or invalid, said article, section, subsection, paragraph, phrase or sentence shall be deemed separable.

I HEREBY CERTIFY this to be a true and correct Ordinance of the Mayor and Borough Council of the Borough of Florham Park introduced on January 25, 2011, and will be further considered for adoption after Public Hearing held on February 15, 2011, at 7:00 p.m. in the Municipal Building located at 111 Ridgedale Avenue.

INTRODUCED: January 25, 2011

ADOPTED:

R. Scott Eveland, Mayor

ATTEST:

Sheila Williams, Borough Clerk