

## **CHAPTER 470 ENVIRONMENTAL PROTECTION REGULATIONS**

### **Section 470.01 Purpose**

These regulations are designed to assist the development of land and structures to be compatible with the environment and to protect the quality of the environment in those locations where the characteristics of the environment are vulnerable to damage by development, are of significant public value and contribute to the general welfare of the community. These regulations are designed to protect the public and private property owners in the Village:

- A. From unsafe buildings or unstable land which would be caused by uncontrolled development of areas unsuitable for manmade development.
- B. From blighting influences which might be caused by the application of conventional land use regulations to properties and areas of sensitive environmental qualities.
- C. From significant damage or destruction of prominent hillsides and/or valleys caused by improper development.
- D. From significant damage to the economic value and efficiency of operation of existing properties and/or new developments due to the interdependence of their visual and functional relationships.
- E. From soil erosion, stream siltation, and degradation of water quality.
- F. From the destruction of mature and/or valuable trees and other vegetation which degrades the local environment and increases runoff.
- G. From damage/destruction of non-tidal wetlands which will involve the following nuisance/hazardous activities:
  - 1. Blocking flood flows, destroying flood storage areas, or destroying storm barriers, thereby raising flood heights or velocities on other land and increasing flood damage.
  - 2. Causing water pollution through any means, including location of wastewater disposal systems in wet soils; unauthorized application of pesticides, herbicides and algacides; disposal of solid wastes or stormwater runoff at inappropriate sites; or the creation of unstabilized fills.
  - 3. Increasing erosion.
  - 4. Increasing runoff of sediment and storm water.

In addition, activities in or affecting nontidal wetlands shall not destroy natural wetland functions important to the general welfare of the community by:

1. Decreasing breeding, propagating, spawning, nesting, wintering, feeding or other critical habitat for fish and wildlife including rare, threatened and endangered plant and animal species and commercially and recreationally important wildlife.
2. Interfering with the exchange of nutrients needed by fish and other forms of wildlife.
3. Decreasing groundwater recharge.
4. Destroying sites needed for education and scientific research as outdoor biophysical laboratories, living classrooms, and training areas.
5. Interfering with public rights in waters and the recreation opportunities for fishing, hunting, boating, hiking, birdwatching, other such activities in nontidal wetlands.
6. Destroying aesthetic and property values.

#### **Section 470.02      Applicability**

Where applicable by provisions of this code, requirements imposed herein shall be in addition to those of the applicable zoning district. Areas of applicability of these regulations include and shall be based on the following at a minimum, or the most current information available:

- A. *Areas with hydric soils*: (on site inspection may be required), from U.S. Soil Conservation Service, Soils Survey of Portage County.
- B. *Flood plains/flood hazard areas*: from Federal Emergency Management Agency, Community Flood Hazard Maps, or U.S. Army Corps of Engineers Study.
- C. *Wetlands*: National Wetland Inventory, U.S. Department of the Interior, or Ohio Department of Natural Resources Wetlands Inventory.
- D. *Areas of Steep Slopes*: U.S. Soil Conservation Service, Soil Survey of Portage County; U.S. Geological Survey Topographic Quadrangle Maps.
- E. *Forested/Wooded Areas*: 2000 Aerial Photos, Current Land Use Inventory.

F. *Ponds, lakes, streams, rivers, ditches*: U.S. Soil Conservation Service, Soils Survey of Portage County; 2000 aerial photos, Ohio Department of Natural Resources data/maps.

### **Section 470.03            General Standards**

Prior to commencement of any development subject to this code, plans and other data reasonably necessary to identify and verify the existence of any of the natural resource features noted above shall be submitted to the zoning inspector. Development subject to site plan review shall incorporate such information/date with the site plan for review by the Planning Commission. All plans for development shall account for such features and shall fully comply with the natural resource protection standards applicable to each feature. Site alterations, re-grading, filling and clearing of vegetation prior to the submission and approval of such plans shall be a violation of this resolution.

### **Section 470.04            Development Regulated:**

- A. Any use/activity of land or buildings/structures that may be detrimental to the natural, scenic and environmental characteristics described herein are regulated by the provisions of this ordinance and subject to the review process set forth in this chapter.
- B. All other activities/uses not subject to site plan review provisions of this ordinance posing a detriment to environmental resources and in violation of the regulations of this Code shall require review of the Zoning Inspector to determine the extent of potential or existing environmental impacts. The Zoning Inspector may utilize other governmental agency(ies) resources to assist in this determination such as the Village Engineer, Soil and Water Conservation District Office, Ohio Department of Natural Resources, Army Corps of Engineers, or Portage County Regional Planning Commission. If negative, detrimental impacts are proposed or occurring, the Zoning Inspector may order corrective actions be taken to assure the above environmental resources will not be negatively impacted and utilize the regulations of 470.05 as applicable to the environmental resource/constraint.

### **Section 470.05            Minimum Regulations**

#### *A. Flood Hazard Areas:*

Floodplains shall not be developed except for non-intensive recreational uses, or accessory uses unless structures and uses are in compliance with the Flood Hazard Reduction Regulations (Codified Ordinances Chapter 1309) (Also see subsection F.)  
(*Ordinance 2012-17, effective April 17, 2012*)

#### *B. Steep Slopes:*

**18-25% slopes**-At least 70% of such areas shall remain as permanent open space. No more than 30% of such areas shall be developed and/or regraded or stripped of vegetation.

**Greater than 25% slope:** at least 85% of such areas shall remain as permanent open space. No more than 15% of such areas shall be developed and/or regraded or stripped of vegetation. Erosion control plans shall be approved by the Village Engineer or Soil and Water Conservation District Office.

C. *Wetlands:*

1. *Definition*

The U.S. Fish and Wildlife Service has developed a wetland definition and classification system for the primary purpose of inventorying the nation's wetlands. This definition emphasizes three key attributes of wetlands: wetland vegetation (hydrophytes); hydrology (degree of flooding or soil saturation); and hydric soils (periodically flooded and/or saturated soils). The service has developed a list of plants occurring in the nations wetlands, and the U.S.D.A. Soil Conservation Service has prepared a list of hydric soils to help further define wetlands.

2. *Activities Regulated*

Dredging, filling, grading, draining, unnatural flooding, excavation or construction in a wetlands area, or on lands immediately abutting, adjoining or affecting said area if such activity upon these adjacent areas is incompatible with the preservation of those wetlands in their natural state, is prohibited. Wetlands are regulated by the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency through Section 404 of the Clean Water Act. Prior to conducting any activities affecting a wetland, the Army Corps of Engineers response shall be required to be submitted to the Zoning Inspector and Village Engineer. The response from the Corps will determine the activity allowed. Violation of this regulation could be considered a violation of federal law and Village law and subject to actions and penalties of both entities.

If the Army Corps does not respond in a timely manner the Zoning Inspector may require the owner/lessor to obtain verification of wetland boundary through field assessment of a qualified biologist, botanist, or other qualified person/organization. (Wetland Delineation).

3. *Uses Allowed*

The following uses shall be allowed within a nontidal wetland to the extent that they are not prohibited by any other ordinance or law and provided they do not require structures, grading, fill, draining or dredging except as provided herein or authorized by special permit:

- a. Conservation or preservation of soil, water, vegetation, fish, shellfish and other wildlife;
- b. Outdoor recreational activities, including hunting, fishing, trapping, bird watching, hiking, boating, horseback riding, swimming, and other similar recreational activities.
- c. The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree/bush fruits and seeds in a manner that is not injurious to natural reproduction of such crops and providing the harvesting does not require alteration of the non-tidal wetland by changing existing non-tidal wetland conditions or sources.
- d. Forestry practices limited to the thinning and harvesting of native timber in accordance with a forest management plan that incorporates best management practices approved by the State Forester or Soil and Water Conservation Office pursuant to regulations or guidelines.
- e. Continued cultivation of agricultural crops, provided no non-tidal wetlands are subject to cultivation where no such use existed five years prior to the effective date of application.

No-till /organic farming can be utilized for new agricultural use and is encouraged to be used for prior existing agricultural uses.

- f. Occasional pasturing of livestock.
- g. Fishing and trapping in accordance with state and federal laws.
- h. Education, scientific research, and nature trails.
- i. Uses by right that do not require a permit that may involve filling, flooding, draining, dredging, ditching or excavating to the extent specifically provided below:
  1. Maintenance or repair of lawfully located roads or structures and of facilities used in the service of the public to provide transportation, electric, gas, water, telephone, telegraph, telecommunication or other services, provided that such roads, structures or facilities are not materially changed or enlarged and written notice prior to the commencement of work has been given to the zoning inspector and provided the work is conducted using the best management practices to insure that flow and circulation patterns and chemical and biological characteristics of the

wetland is not impaired and that any adverse effect on the aquatic environment will be minimized.

2. Limited ditching, tiling, dredging, excavating or filling done solely for the purpose of maintaining or repairing existing drainage systems necessary for the cultivation of crops, provided the maintenance or repair does not result in the impairment, alteration or loss of non-tidal wetlands not previously used agriculturally.
  3. Limited excavating and filling necessary for the repair and maintenance of piers, walkways, observation decks, duck blinds, wildlife management shelters, boat houses, and other similar water related structures, provided they are built on pilings to allow unobstructed flow of water and preserve the natural contour of the wetland.
- j. Uses other than those cited above in C.3. may only be considered after the Army Corps of Engineers determines jurisdiction and appropriate course of action.

#### D. *Unstable Soils*

Soils that are indicated by the Soil Survey as unstable and/or subject to slippage shall not be built upon to protect personal and real property and lives. On site soil borings may be utilized to verify the exact extent of such soils.

#### E. *Forested/Wooded Areas*

The purpose of regulation and protection of forested/wooded areas is to provide for the protection, preservation, proper maintenance and use of woodlands located in the village in order to minimize disturbance to them and to prevent damage from erosion, siltation, loss of wildlife and vegetation, and degradation of air quality.

No more than 75% of any forest/woodlot shall be cleared for timber sale within a ten year period, unless such clearing is part of an approved management plan, approved by NRCS, Soil and Water Conservation District. No more than 50% of any wooded lot shall be cleared for development purposes. (Also see River Buffer Areas)

#### F. *Lakes, Ponds, Rivers, Drainageways*

The purpose of these regulations is to provide for the protection, proper maintenance, and use of ponds, lakes, rivers, streams, ditches in order to minimize disturbance to them and to prevent damage from erosion, turbidity, siltation, non-point source pollution, unnatural flooding, and to prevent a loss of fish populations or other beneficial aquatic organisms, loss of wildlife and vegetation and to prevent degradation of water quality.

*Regulations:*

1. *Ponds or lakes:* All such areas shall be permanent open space. No development or diversion of these bodies of water shall be permitted except to provide required roads. Filling shall be permitted only in conjunction with the deepening of a lake or pond and shall be permitted only if the surface area and flood retention capabilities remain unchanged or are enlarged and such activity within the lake or pond is not considered subject to provisions and federal law under the jurisdiction of the Army Corp of Engineers.
2. *Pond Shorelines:* The shorelines of ponds consisting of the area within 50 feet from the shoreline shall contain no more than 15% impervious surfaces. At least 75% of all such areas shall be permanent open space.
3. *Lake Shorelines:* Shorelines of lakes, consisting of 100 feet from the shorelines, shall contain no more than 15% impervious surfaces. At least 75% of all such areas shall be permanent open space.
4. *Rivers, Streams, Drainage Ways:* There shall be no alteration, filling, dredging or damming of any stream or drainage way without submission and review of such plan to the Planning Commission, Village Engineer, Portage Soil and Water Conservation District Office, U.S. EPA and Army Corps of Engineers. Proof of positive impacts of such action will be required to be submitted. No such activity shall occur until approvals have been granted by the above appropriate authorities.
  - a. A minimum setback/buffer of 100 feet from the primary channel river bank of Cuyahoga River and any other streams/tributaries, shall be maintained, in which no structures are to be located other than those listed in this Chapter for floodplain and wetland areas. The Planning Commission may allow a reduced buffer if applicant provides evidence of best management practices that will be applied that will allow for such reduction without impacting the river/stream. The Planning Commission may consult with Portage Soil and Water Conservation District staff or other professionals in aiding in this determination.
  - b. Within 25 feet of the primary channel riverbank of the Cuyahoga River and any other streams/tributaries:
    1. Clearcutting is prohibited.
    2. Clearing of all vegetation is prohibited.
    3. The selected and dispersed cutting of vegetation for wildlife management, or to create a view of the river which does not adversely affect the stability of the riverbank, character of the shoreline, nor have an adverse environmental impact on the river such as by adding silt to the river, is permitted.

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4. No more than 25% of trees 4 inches in diameter, 4 feet above the ground shall be cut in any 10 year period.
  5. New plantings shall consist of indigenous trees and shrubs and plants.
- c. Within 25 feet of the primary channel river bank of the Cuyahoga River banks and any other streams/tributaries, trees are to be maintained and new trees and vegetation are encouraged to be planted to reduce erosion, filter storm water, reduce non-point source pollution and provide habitat areas.
  - d. Buffers can count towards meeting any open space requirements of the Village Subdivision Regulations and any other open space provisions of this ordinance.
  - e. Landowners are encouraged to place conservation easements on these buffer areas.
  - f. Planning Commission may allow for up to a 10% increase in density for residential uses or 10% increase in floor area for non residential uses above the district in which the proposed use is located when the landowner exceeds the minimum buffers required by at least 25%. Impacts of the proposed uses on the particular site shall be taken into consideration when evaluating any increase in density or floor area.