

PENNSBURY TOWNSHIP, CHESTER COUNTY

ORDINANCE NO. 2016-08-17-1

**AN ORDINANCE OF PENNSBURY TOWNSHIP ADOPTED PURSUANT TO THE
AUTHORITY OF THE PENNSYLVANIA MUNICIPALITIES PLANNING CODE AMENDING
THE PENNSBURY TOWNSHIP ZONING ORDINANCE OF 2012**

THE BOARD OF SUPERVISORS OF PENNSBURY TOWNSHIP HEREBY ENACTS AND
ORDAINS AS FOLLOWS:

Section 1. The Pennsbury Township Zoning Ordinance of 2012 is amended as follows:

a) Section 162-202. is amended by inserting the following terms, in alphabetical order:

BANKFULL FLOW OR LEVEL – The discharge that just fills the water channel to the top of its banks and at a point where the water begins to overflow onto a floodplain.

BEST MANAGEMENT PRACTICE (BMP) – A structural or non-structural device designed to temporarily store or treat stormwater runoff in order to mitigate flooding and pollution, and reduce soil loss and water quality degradation caused by runoff containing nutrients, animal wastes, toxins, and sediments.

FORESTED RIPARIAN BUFFER – A riparian buffer that consists predominantly of native trees, shrubs and/or herbaceous plants that provide a minimum of sixty (60) percent uniform canopy coverage.

IMPACTED RIPARIAN BUFFER – A riparian buffer that, as a result of land use or land development activity, contains impervious cover or landscape use such that it no longer meets the definition of “forested riparian buffer”.

NORMAL POOL ELEVATION –

- A. For water bodies which have no structural measures to regulate the height of water, the height of water at ordinary stages of low water unaffected by drought.
- B. For structurally regulated water bodies, the elevation of the spillway, outlet control, or dam crest which maintains the water body at a specified height.
- C. The term does not apply to wetlands.

RIPARIAN – Belonging or related to the bank of a water body, river, stream, wetland, lake, pond, or impoundment.

TOP OF BANK – The elevation at which rising waters begin to inundate the floodplain. In case of ambiguous, indefinite, or non-existent floodplain or question regarding the location, the Top of Bank shall be the bankfull water elevation as delineated by a person trained in fluvial geomorphology and utilizing the most recent edition of Applied River Morphology by Dave

Rosgen, or comparable reference book. “Top of Bank” shall be synonymous with “edge of water.”

WATER BODY – Any natural or manmade pond, lake, wetland, impoundment, or watercourse. This shall not include any pond or facility designed and constructed solely to contain stormwater, or a swimming pool.

- b) Section 16-202 is amended by revising the following definitions to read as follows:

IMPERVIOUS COVER – Those surfaces that do not readily absorb precipitation and surface water. The term includes but is not limited to buildings, parking areas, driveways, roads, sidewalks, swimming pools, and any areas in concrete, asphalt, packed stone, or other equivalent surfaces, including those with a coefficient of runoff of 0.7 or higher. Impervious surfaces also include disturbed soils with a bulk density of ninety-five (95) percent of the value at which plant growth limitation is expected for average plant material.

RIPARIAN BUFFER – An area of trees and other vegetation adjacent to a watercourse that forms a transition area between the aquatic and terrestrial environment.

WATERCOURSE – Any channel of conveyance of surface water having a defined bed and banks, such as a stream, river, brook, or creek, whether natural or artificial, with perennial, intermittent or seasonal flow. This shall not include any channel or ditch designed and constructed solely to carry stormwater.

- c) Section 162-1501 is amended by renumbering the current subsection E, subsection G.; and, by adding a new subsection E. and F. as follows:

E. Conserve, protect, and restore forested and non-forested riparian buffers through scientifically supported processes.

F. Protect the watercourses and wetlands otherwise not regulated or superseded by Section 102 of the Pennsylvania State Code.

- d) Section 162-1503 E. shall be amended to read as follows:

E. Waterbody/riparian buffer protection standards. The provisions of this section shall not apply to the footprints of existing primary and accessory uses, including but not limited to all agricultural uses and research related thereto, buildings, transportation facilities, fences, lawns, gardens, utility lines, roads, driveways, sidewalks, bikeways, decks, piers, water, septic and sewage supply facilities and their related appurtenances (well houses, utility pump and lift stations, manholes, etc.).

1. The riparian buffer shall consist of two Zones: Zone One, Inner Riparian Buffer and Zone Two, Outer Riparian Buffer. The provisions of Subsections E.2 and E.3 below shall determine the specific widths of the individual riparian buffer zones. The total

riparian buffer, consisting of Zone One and Zone Two, shall be a minimum of one hundred (100) feet from the edge of a water body, or shall equal the extent of the 100-year floodplain, whichever is greater. Under specific circumstances, where steep slopes occur, additional buffer width may be required in accordance with Subsection E.5 below.

2. Zone One – Inner Riparian Buffer. This zone shall begin at each edge of a water body and shall extend landward a minimum width of fifty (50) feet, measured horizontally on a line perpendicular to the nearest edge of the water body at bankfull flow, as reviewed and approved by the Township Engineer. Where prohibitively steep slopes (+25%) are located within fifty (50) feet of the edge of a water body, Zone One shall be extended to include the entirety of the prohibitively steep slopes up to the total buffer width of one-hundred (100) feet on either side of the subject water body. Under such circumstances, the Zone One buffer may constitute the total riparian buffer and the restrictions of the Zone One buffer shall apply. If the distance is less than one hundred (100) feet, but greater than fifty (50) feet, the width of Zone Two will be adjusted so that the total riparian buffer with (Zone One and Zone Two) is one hundred (100) feet.

With the exception of those uses or activities listed below, no woodland disturbance, land disturbance, or timber harvesting shall be permitted within the Zone One Riparian Buffer shall not be re-graded, filled, built upon or otherwise altered or disturbed:

- a. Regulated activities permitted by the Commonwealth, Army Corps of Engineers or other Federal agency (i.e. permitted stream or wetland crossing);
- b. Wildlife sanctuaries, nature preserves, forest preserves, fishing areas, and passive areas of public and private parklands;
- c. Provision for stone-dust or unpaved trail and trail access;
- d. Selective removal of hazardous or invasive alien vegetative species;
- e. Temporary stream restoration projects, stream bank restoration projects and vegetation management to restore the stream or riparian zone to an ecologically healthy stage utilizing natural channel design practices to the greatest degree possible. The project shall be conducted in accordance with an approved landscape plan or open space management plan, to include project duration and timing;
- f. A soil conservation project approved by the Chester County Conservation District;
- g. Removal of hazardous material or septic system, junk material, overhanging tree or diseased tree; or,

- h. Research and monitoring devices, such as staff gages, water recording, water quality testing, cross vanes, weirs and related demonstration facilities.
3. Zone Two – Outer Riparian Buffer - This zone begins at the outer edge of the Zone One riparian buffer and extends further landward to a minimum total width of one hundred (100) feet including Zone One. However, where Zone One is greater than fifty (50) feet due to the presence of prohibitively steep slopes per Subsection 2 above, Zone Two shall cover the remaining distance necessary to achieve a total one-hundred (100) foot riparian buffer. The following activities shall be permitted by-right, provided that no more than twenty (20) percent of a Zone Two Riparian Buffer on the lot that is affected shall be regraded, filled, built upon, or otherwise altered or disturbed:
- a. Activities permitted in the Zone One Riparian Buffer.
 - b. Timber harvesting, when conducted in compliance with a timber harvesting plan approved by the Township, in accordance with Sections 162-1503 D. and 162-2041 of the Zoning Ordinance.
4. The following uses and activities are prohibited within the riparian buffer (both Zones One and Two) except with approval by the Township (through Conditional Use or Special Exception, as applicable, as determined by the Township) and, if required, the Pennsylvania Department of Environmental Protection (e.g., disturbance for stream bank restoration to repair damage from flooding or erosion). Such uses and activities, listed below, shall also comply with the standards herein:
- a. Clearing of existing vegetation except as specifically permitted in Subsections 2 and 3 above.
 - b. Soil disturbance by grading, stripping, or other practices.
 - c. Use of fertilizers, pesticides, herbicides, and/or other chemicals, except:
 - 1) Where permitted by a valid conservation plan, forest management plan, or approved planting and maintenance plan (See Section 162-1503 E. 7. below);
 - 2) For selective herbicide application by a qualified professional to control noxious weeds and invasive species of plants in riparian buffers.
 - 3) For the use of organic, slow-release fertilizers.
 - d. Housing, grazing or other maintenance of livestock, including horses, with the exception of such activity adjacent to a pond not connected to a water body.
 - e. Structures that, by their nature, cannot be located anywhere except within the riparian buffer. These structures shall include docks, boat launches, public water supply intake structures, facilities for domestic water quality treatment and

purification and public wastewater treatment plant sewer lines and outfalls. The structures shall provide for the minimum practicable disturbance of the riparian buffer by minimizing size and location and by taking advantage of collocation, if possible.

- f. Road crossings (when perpendicular to the stream or buffer), bridges, culverts, utilities, and impoundments.
- g. Provision for paved trail and related trail access when determined by the Township to result in minimum disturbance to existing trees and shrubs.
- h. Stormwater conveyance structures and outfalls may be located in Zone Two only, upon receipt of a Special Exception or Conditional Use, as applicable.

5. The following land uses and or activities are designated as potential water pollution hazards and shall be set back from any watercourse or waterbody by the distance indicated below. Where more restrictive, the requirements of the Flood Hazard Overlay District shall apply:

Storage of hazardous substances	150 feet
Above or below ground petroleum storage facilities	150 feet
Drainfields from on-site sewage disposal and treatment system	100 feet
Raised septic systems	250 feet
Solid waste landfills or junkyards	300 feet
Confined animal feedlot operations	250 feet
Subsurface discharges from a wastewater treatment plant	100 feet

6. Buffer Restoration and Planting Requirements. Such restoration is encouraged throughout the Township and required under the terms of Section 162-1502 A., above.

- a. All riparian buffer areas shall be continually maintained with a dominant mix of native trees, shrubs, and/or herbaceous plants so as to constitute a forested riparian buffer where not otherwise occupied by any existing use excepted in accordance with Section 162-1503 E., or any authorized use permitted in Section 162-1503 E. 2. – 4.
- b. Impacted riparian buffer areas shall be restored by an applicant to a forested riparian buffer, as a condition of approval of any final subdivision plan, final land development plan, or building or zoning permit approval, except as provided in subsection f., through invasive removal and planting of a diverse mix of native tree and shrub species as follows:
 - 1) The applicant shall restore the first one hundred (100) feet of the impacted buffer area.

- 2) Where the applicant is permitted by the Township to disturb up to 20% of Zone Two, as set forth in section 162-1505 E. 3. And 4., planting shall not be required within the 20% land area.

c. Restoration of the impacted riparian buffer shall occur as follows:

- 1) Zone One. Predominant vegetation must be composed of a variety of native tree species planted in accordance with subsection d. below.
- 2) Zone Two. Predominant vegetation must be composed of a variety of native riparian tree and shrub species planted in accordance with subsection d. below. For restoration adjacent to impaired water bodies, in addition to the planting requirements for Zone One, managed native trees and shrubs must occupy at least the first fifty (50) feet of Zone Two, beginning at the outer edge of Zone One.
- 3) Restoration plantings shall be planted at a density sufficient to provide three hundred (300) trees per acre at maturity. To achieve this density, no less than three hundred fifty (350) (@ approximately 10 x 10 feet spacing) trees per acre should be planted initially. The following guide is recommended for tree spacing and density based on plant size at installation:
 - Seedlings – 6-10 feet spacing (approx. 700 seedlings/acre)
 - Bare root stock – 14-16 feet spacing (approx. 200 plants/acre)
 - Larger and container – 16-18 feet spacing (approx. 150 plants/acre)

Additional planting guidance may be obtained from PADEP’s Bureau of Watershed Management Document Number 394-5600-001, entitled “Riparian Forest Buffer Guidance, November 27, 2010.

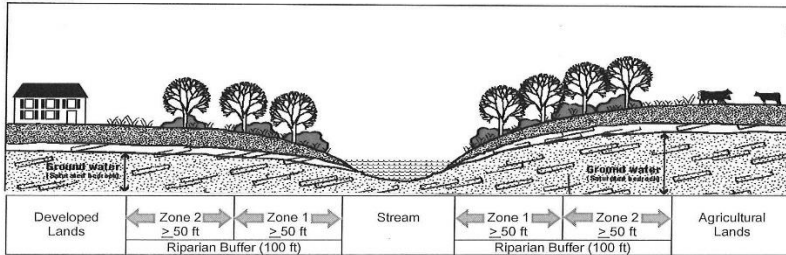
d. Applicants shall submit, and as a condition of approval of any final subdivision plan, final land development plan, or permit, implement a planting and maintenance plan for the impacted riparian buffer. The plan shall be prepared by a registered landscape architect or professional plant ecologist. The plan shall identify the number, density and species of native trees and shrubs appropriate to the geographic location that will achieve a minimum of sixty (60) percent uniform canopy coverage and describe the maintenance program to be conducted by the buffer owner for a minimum of five (5) years, include measures to initially remove, and thereafter control, invasive species, control deer and rodent damage, and require replacement of deceased trees for a minimum of the first three (3) years.

e. Any riparian buffer that is included within a lot created after the effective date of this ordinance shall include as a condition of approval of the subdivision creating the lot, a restrictive covenant approved by the municipal solicitor, and recorded with the final subdivision or land development plan and the deed for the lot. The restrictive covenant shall clearly define the riparian buffer area, shall include

binding provisions for the adequate long-term functioning and integrity of the riparian buffer, and shall include a requirement for notification of all subsequent lot owners of its restrictive nature.

- f. Restoration to a forested riparian buffer shall not be required for issuance of a building permit for a single-family residence or addition thereto.

e) Subsection 162- 1503, Figure 15-1: shall be replaced with the following figure:



f) A new section 162-1506 shall be added to read as follows:

SECTION 162 - 1506. Modifications

- A. For any use or activity subject to Subdivision or Land Development review, as part of applicable Plan submission, modification(s) may be requested to the provisions of this Article. Requested modification(s) may be granted at the discretion of the Board of Supervisors pursuant to the provisions of the Subdivision and Land Development Ordinance.
- B. For any use or activity not subject to Subdivision or Land Development review, but subject to application for approval of a Conditional Use, Special Exception, or Zoning Variance under the provisions of this Ordinance, the applicant may request modification(s) to the provisions of this Article.
- C. For any use or activity not falling within the scope of subsections A or B, the applicant may request modification(s) to the provisions of this Article in the form of an application for grant of a Special Exception by the Zoning Hearing Board. (Optional: Such applications shall be submitted to the Planning Commission for review and comment prior to formal Special Exception application to the Zoning Hearing Board.)
- D. Applicants shall provide appropriate documentation in support of their modification request, and the Board of Supervisors or Zoning Hearing Board (as applicable) may request additional documentation of an applicant, or of its municipal consultants, to help reach its decision.
- E. In consideration of approval of any applicant request for modification(s) under this Article, the following standards shall serve as the basis for a decision:
 - 1. That there are unique physical circumstances or conditions, including but not limited to irregularity, narrowness, or shallowness of lot size or shape, excessive frontage along a water body, presence of existing buildings or structures, or exceptional topographical or

other physical conditions peculiar to the particular property. That because of such physical circumstances or conditions, it is impracticable for the property to be developed in strict conformity with the buffer requirements of this Article and that the approval of the modification is therefore necessary to enable the reasonable use of the property under base zoning provisions.

2. That the modification, if approved, will result in the minimum reduction in performance of the natural resource, pursuant to the purposes set forth in Section 162-1501, as needed to provide for the lawful intended use.

F. No alteration of the Use Regulations set forth in this Article shall be authorized as modification pursuant to this Section 1505. Any such requested alteration shall constitute an application for a variance, meeting all applicable requirements for same, to be submitted to the Zoning Hearing Board.

Section 2. In the event any provision, section, sentence, clause, or part of this Ordinance shall be held to be invalid, illegal, or unconstitutional by court of competent jurisdiction, such invalidity, illegality, or unconstitutionality shall not affect or impair the remaining provisions, sections, sentences, clauses, or parts of this Ordinance, it being the intent of the Board of Supervisors that the remainder of the Ordinance shall remain in full force and effect.

Section 3. This Ordinance shall be effective five days from enactment.

ENACTED AND ORDAINED this 17 day of August, 2016.

BOARD OF SUPERVISORS

PENNSBURY TOWNSHIP

Wendell Fenton, Chairman

Aaron McIntyre, Vice Chairman

Charles Scottoline, Member

Attest:

Kathleen Howley, Secretary