

**TOWNSHIP OF HOPEWELL
MERCER COUNTY, NEW JERSEY**

ORDINANCE NO. 04-1328

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER X, "FEES AND PERMITS," CHAPTER XII, "ENVIRONMENTAL CONTROL," AND CHAPTER XVII, "LAND USE AND DEVELOPMENT," OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF HOPEWELL, NEW JERSEY (1978), IN ORDER TO PROVIDE REGULATIONS FOR STREAM CORRIDOR PROTECTION

BE IT ORDAINED by the Township Committee of the Township of Hopewell, in the County of Mercer and State of New Jersey, as follows:

Section 1.

Section 10-7.1 entitled "Application Fees and Escrow For Review," of CHAPTER X entitled "FEES AND PERMITS" of the Revised General Ordinances of the Township of Hopewell, is hereby amended and supplemented by adding a new paragraph i. as follows:

i. Development application fees, escrows, stream corridor permit fees and appeal fees for development or disturbance in stream corridors shall be as follows:

1. For all uses, a development application fee of \$150.00. For a stream corridor permit, a fee of \$150 for every 100 square feet of development or disturbance as defined in Chapter XVII, Article X, Section 17-181. In addition, for development applications, an escrow fee of \$150.00 for every 100 square feet of development or disturbance as defined in Chapter XVII, Article X, Section 17-181.

2. The fee for an appeal to the Zoning Board of Adjustment from the decision of the administrative officer regarding a stream corridor permit shall be \$500. Where the Zoning Board reverses the decision of the administrative officer, the \$500 appeal fee will be refunded to the applicant.

Section 2.

Chapter XII, entitled "Environmental Control," of the "Revised General Ordinances of the Township of Hopewell, New Jersey (1978)," is hereby amended and supplemented in order to establish a new Section 12-3, entitled "Stream Corridor Protection," as follows:

12-3 STREAM CORRIDOR PROTECTION.

12-3.1 Definitions. Definitions for this Section are set forth in Chapter XVII, Article X, Section 17-181 and are incorporated herein by reference.

12-3.2 General Provisions.

a. *Purposes.* The purposes of the stream corridor protection provisions are to:

Assure that adequate water supply is available and maintain the long-term natural equilibrium of the ground and surface waters in Hopewell Township and in neighboring communities.

Improve and maintain the quality of the water supply and sustain diverse populations of aquatic flora and fauna.

Improve the currently impaired streams in the Township.

Protect significant ecological components of stream corridors such as floodplains, woodlands, steep slopes and habitats for flora and fauna.

Minimize flood related damage to properties in the Township and in neighboring communities.

Complement federal, state, regional, county and municipal watershed, flood hazard and stream corridor protection and management programs.

- b. *Applicability.* The stream corridor provisions apply to any land containing any portion of a stream corridor as defined in Chapter XVII, Article X, Section 17-181. In the event that the requirements of Section 17-115 are not applicable, then the provisions of this Chapter shall be applicable.
- c. *Activities Permitted in Stream Corridors.* Stream corridors shall remain in their natural state and shall not be developed or disturbed, except for the following activities:
 1. Any activity subject to regulation by the New Jersey Department of Environmental Protection under the New Jersey Freshwater Wetlands Protection Act.
 2. Reconstruction of a valid nonconforming structure that pre-dates the adoption of this ordinance in the event of partial destruction by fire, natural hazards, or other acts of God, provided the reconstruction does not have a greater footprint or total area than that of the damaged structure and no change in land use occurs.
 3. Any use or related maintenance thereof that existed prior to the date of adoption of this ordinance.
 4. Any agricultural use or structure existing prior to the date of adoption of this ordinance, but no new agricultural use or structure, except for fences, shall be permitted in a stream corridor, subject to approval by the New Jersey Department of Environmental Protection.
 5. Existing stormwater management facilities located in stream corridors are permitted to remain in a stream corridor and may be expanded or modified in connection with an application for development in accordance with the requirements of the approving authority.
 6. Surveying or activities for the purpose of establishing or re-establishing a boundary line or points, which use only hand held equipment and do not involve the use of motorized vehicles to either clear vegetation or extract soil borings. The clearing of vegetation along the survey line or around the survey points shall not exceed three feet in width or diameter respectively and shall not be kept clear or maintained once the survey or delineation is completed.
- d. *Prohibited Activities.* All activities not specifically permitted by the provisions of subsection c above are prohibited. Prohibited activities include, but are not limited to, the following:
 1. Alteration of watercourses and stream corridors by development or disturbance of any type.
 2. Clearing or cutting of any vegetation, except for removal of dead vegetation, pruning for reasons of safety and harvesting of agricultural products.
 3. Disposal of brush, debris or any solid or liquid waste.
 4. Installation of fences and sheds.

12-3.3 Administration.

- a. *Stream corridor permit.* A stream corridor permit shall be required before any prohibited activity is undertaken within any stream corridor as defined in Chapter XVII, Article X, Section 17-181, provided that if the approving authority has considered an application for development involving a stream corridor, a stream corridor permit may not be sought for five years after the date of completion of the development.
- b. *Duties and Responsibilities of the Administrative Officer.* The administrative officer shall be

responsible for the issuance of stream corridor permits, in accordance with the procedures and standards set forth in Sections 12-3.4 and 12-3.5 below. The administrative officer shall consult with the Township engineer with regard to engineering and technical issues.

- c. *Application for Stream Corridor Permit.* Application for a stream corridor permit to allow prohibited activities to occur within stream corridors shall be made in accordance with the requirements of Section 12-3.4 and subject to the considerations set forth in Section 12-3.5.
- d. *Appeal Procedure.* Appeals from determinations made by the administrative officer relative to the issuance of stream corridor permits may be made to the Zoning Board of Adjustment in accordance with the requirements of Section 12-3.8.

12-3.4 Application for Stream Corridor Permit/Procedures.

- a. *Procedure.* The following procedures shall govern the issuance of stream corridor permits:

The applicant shall file an application with the administrative officer to allow prohibited activities to occur within a stream corridor. Such application shall be on a form prescribed by the Township and shall include a concept sketch drawn to scale showing the proposed development or disturbance. Based on the nature of the development or disturbance proposed, and in the reasonable discretion of the administrative officer and the Township engineer, the applicant may be required to submit, in addition to the application and the concept sketch, ten copies of a true and accurate plot plan, prepared by a qualified and licensed New Jersey professional, drawn to a scale of not less than one (1) inch equals fifty (50) feet. If required by the administrative officer or the Township engineer in order to make an informed decision, the plot plan shall exhibit the following:

The exact size, shape, location and elevation of existing and proposed structures and of any fill, re-grading or areas of disturbance;

Contour lines at intervals of not more than two (2) feet;

The stream corridor for a delineated stream as defined in Chapter XVII, Article X, Section 17-181;

The location of all improvements and disturbance proposed in the stream corridor;
and

The extent of any proposed watercourse alterations.

The administrative officer shall review the submission and shall advise the applicant in writing within thirty (30) days of submission if the application is incomplete and shall specify the items that are lacking. If the administrative officer does not notify the applicant that the application is incomplete, then the application shall be deemed to be complete.

Upon determining the application to be complete, the administrative officer shall refer the stream corridor permit application and all accompanying documents relative thereto to the Environmental Commission and the Township engineer for review and comment. If necessary, the Environmental Commission shall appoint a sub-committee, consisting of less than an effective majority, in order to facilitate the prompt review of permit applications without requiring the application to await the next regularly scheduled meeting of the full Commission. The Commission or the sub-committee, jointly with the Township engineer, shall review the application, and after giving the applicant an opportunity to be heard with respect thereto, shall provide their joint findings and recommendations in writing to the administrative officer utilizing the considerations for review set forth in Section 12-3.5 below. The Commission shall render its written report within thirty days of referral. Failure to do so without written consent to an extension of time by the applicant shall be deemed to constitute a report in favor of issuance of the permit and without recommendations or conditions.

1. After review of the consideration set forth in Section 12-3.5 below and the joint recommendations made by the Environmental Commission or its sub-committee and the Township engineer, the administrative officer may approve the stream corridor permit with or without conditions or may deny the stream corridor permit as deemed necessary to further the purpose of this Chapter. The administrative officer shall make the final determination as to approval with or without conditions or denial of the requested stream corridor permit. Such final determination shall be forwarded in writing to the applicant. The administrative officer shall specify the reasons for the action taken.

If the stream corridor permit is approved, the administrative officer shall issue a permit to the applicant, but such permit shall not relieve the applicant from complying with other applicable laws and ordinances.

If the administrative officer fails to approve or deny the permit within ninety (90) days after the date of submission of a complete application, or within such further time agreed to by the applicant in writing, the application shall be deemed to be approved.

12-3.5 Considerations for Review of Stream Corridor Permits.

- a. The administrative officer shall be guided by the following considerations in reviewing applications for stream corridor permits:
 1. The standards used to grant a design waiver set forth at N.J.S.A. 40:55D-51 a. and b., specifically whether the permit request is reasonable and within the general purpose and intent of the provisions of the ordinance and whether the literal enforcement of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.
 2. The extent to which all necessary permits have been obtained from applicable federal, state or local government agencies having jurisdiction.
 3. The extent to which applicant will mitigate any encroachments into the stream corridor and rehabilitate any and all degraded or disturbed areas within the stream corridor and maintain the integrity of the surrounding habitat.
 4. The extent to which the proposed activity, development or disturbance will measurably increase the danger of flood damage or negatively impact the ecology of the stream corridor.
- b. In the event that the administrative officer grants a stream corridor permit, the stream corridor permit shall only allow the minimum encroachment necessary to afford relief.
- c. *Interpretation of Boundaries.* The administrative officer, with the advice of the Township engineer and sub-committee of the Environmental Commission, shall make interpretations, where needed, as to the exact location of the boundaries of the stream corridors, for example, where there appears to be a conflict between the mapped or proposed mapped boundaries and actual field conditions.

12-3.6 Stream Corridor Averaging. An applicant may undertake stream corridor averaging, as defined in Chapter XVII, Article X, Section 17-181. Stream corridor averaging shall only be permitted along the perimeter of retention basins. Stream corridor width may be reduced to a minimum of twenty-five (25) feet for buildings or other structures or zero (0) feet for dams, pedestrian walkways, walls, and any associated landscaped areas along the perimeter of a retention basin, provided, however, that the total length of stream corridor reduction is not greater than forty percent (40%) of the length of the perimeter of the retention basin. For every stream corridor reduced in area along a retention basin, there shall be an equivalent increase in stream corridor area provided elsewhere along the perimeter of the retention basin.

12-3.7 Appeal Procedure.

- a. The Zoning Board of Adjustment shall be designated as the agency to act as the appeal authority to hear and decide all appeals from the decision of the administrative officer.
- b. Any applicant wishing to appeal the decision of the administrative officer relative to the issuance of a stream corridor permit, shall file a notice of appeal with the administrative officer within twenty (20) days of receipt of the administrative officer's decision, specifying

the grounds of such appeal. The administrative officer shall immediately transmit to the Zoning Board of Adjustment all the documents constituting the record upon which the action appealed from was taken.

- c. The Zoning Board of Adjustment shall follow the requirements set forth in the Municipal Land Use Law, *N.J.S.A. 40:55D-70a et seq.*, relating to the appeal of the administrative officer's determination. However, the role of the Zoning Board of Adjustment shall not be derived from the Municipal Land Use Law but shall be a function assigned to the Zoning Board of Adjustment by this Chapter as the agency to perform this appeal function.
- d. The Zoning Board of Adjustment shall render a decision no later than 120 days from the date of the notice of appeal. Failure of the Board to render a decision within such 120-day period or within such further time as may be consented to by the applicant in writing shall constitute a decision favorable to the applicant.
- e. Any person aggrieved by the decision of the administrative officer may appeal such decision directly to the Superior Court of New Jersey as provided by the laws of the State of New Jersey or may appeal the decision of the Zoning Board of Adjustment, as the case may be.

Section 3.

Section 17-82 entitled "Drainage, Detention, and Stormwater Management," of Chapter XVII, "Land Use and Development," of the "Revised General Ordinances of the Township of Hopewell, New Jersey (1978)," is hereby amended and supplemented in the following respects only:

17-82 DRAINAGE, DETENTION, AND STORMWATER MANAGEMENT.

- a.12. Stream corridors as defined in Section 17-181 shall be preserved by a conservation easement, which shall specify the prohibited uses and contain the customary provisions for a conservation easement as required by the Township Committee.

Section 4.

Chapter XVII, entitled "Land Use and Development," of the "Revised General Ordinances of the Township of Hopewell, New Jersey (1978)," is hereby amended and supplemented in order to establish a new Section 17-115, entitled "Stream Corridors," as follows:

17-115 STREAM CORRIDORS.

- a. *Purposes.* The purposes of the stream corridor protection provisions are to:
 1. Assure that adequate water supply is available and maintain the long-term natural equilibrium of the ground and surface waters in Hopewell Township and in neighboring communities.
 2. Improve and maintain the quality of the water supply and sustain diverse populations of aquatic flora and fauna.
 3. Improve the currently impaired streams in the Township.
 4. Protect significant ecological components of stream corridors such as floodplains, woodlands, steep slopes and habitats for flora and fauna.
 5. Minimize flood related damage to properties in the Township and in neighboring communities.
 6. Complement federal, state, regional, county and municipal watershed, flood hazard and stream corridor protection and management programs.
- b. *Applicability.* The stream corridor provisions apply to any land containing any portion of a stream corridor as defined in Chapter XVII, Article X, Section 17-181.

- c. *Activities Permitted in Stream Corridors.* Stream corridors shall remain in their natural state and shall not be developed or disturbed, except for the following activities:
1. Any activity subject to regulation by the New Jersey Department of Environmental Protection under the New Jersey Freshwater Wetland Protection Act.
 2. Reconstruction of a valid nonconforming structure that pre-dates the adoption of this ordinance in the event of partial destruction by fire, natural hazards, or other acts of God, provided the reconstruction does not have a greater footprint or total area than that of the damaged structure and no change in land use occurs.
 3. Any use or related maintenance thereof that existed prior to the date of adoption of this ordinance.
 4. Any agricultural use or structure existing prior to the date of adoption of this ordinance, but no new agricultural structure, except for fences, shall be permitted in a stream corridor, subject to approval by the New Jersey Department of Environmental Protection.
 5. Existing stormwater management facilities located in stream corridors are permitted to remain in a stream corridor and may be expanded or modified in connection with an application for development and in accordance with the requirements of the approving authority.
 6. Surveying or activities for the purpose of establishing or re-establishing a boundary line or points, which use only hand held equipment and do not involve the use of motorized vehicles to either clear vegetation or extract soil borings. The clearing of vegetation along the survey line or around the survey points shall not exceed three feet in width or diameter respectively and shall not be kept clear or maintained once the survey or delineation is completed.
- d. *Stream Corridor Averaging.* An applicant may undertake stream corridor averaging, as defined in Chapter XVII, Article X, Section 17-181. Stream corridor averaging shall only be permitted along the perimeter of retention basins. Stream corridor width may be reduced to a minimum of twenty-five (25) feet for buildings or other structures or zero (0) feet for dams, pedestrian walkways, walls, and any associated landscaped areas along the perimeter of a retention basin, provided, however, that the total length of stream corridor reduction is not greater than forty percent (40%) of the length of the perimeter of the retention basin. For every stream corridor reduced in area along a retention basin, there shall be an equivalent increase in stream corridor width provided elsewhere along the perimeter of the retention basin.
- e. *Prohibited Activities.* All activities not specifically permitted by the provisions of subsection c above are prohibited. The following activities are prohibited unless a design waiver is obtained:
1. Alteration of watercourses and stream corridors by development or disturbance of any type.
 2. Clearing or cutting of any vegetation, except for removal of dead vegetation, pruning for reasons of safety and harvesting of agricultural products.
 3. Disposal of brush, debris or any solid or liquid waste.
 4. Installation of fences and sheds.

Section 5.

Chapter XVII, entitled "Land Use and Development," of the "Revised General Ordinances of the Township of Hopewell, New Jersey (1978)," Section 17-181 is hereby amended and supplemented in order to add definitions, as follows:

1. "Administrative Officer" for stream corridor permits pursuant to Chapter XII, Section 12-3 entitled "Stream Corridor Protection shall be the zoning officer.
2. "Disturbance" means any activity involving the clearing, excavating, storing, grading,

filling or transporting of soil or any other activity, which causes soil to be exposed to the danger of erosion.

3. *Mitigation* shall include, but not be limited to, reforestation and stabilization of all disturbed stream banks and all other disturbed areas in the stream corridor and removal of all debris, re-establishment of the integrity of the surrounding habitat by undertaking all feasible actions, including, but not limited to, replacement of native vegetation lost as a result of the disturbance to the stream corridor or rehabilitation and cure of all other effects caused by disturbance to the stream corridor.
4. *Stream Bank* shall mean the inclined sides of a stream channel or embankment.
5. *Retention basin* shall mean any impoundment area with a permanent pool of water or pond made by constructing an embankment or by excavating a pit or both and shall include the outfall area related thereto.
6. *Stormwater management facility* means a facility which receives, stores, conveys, or discharges stormwater runoff and is designed in accordance with all applicable local, county, and State regulations. A stormwater management facility may be a retention or detention basin; infiltration structure; grassed swale; filter fabric; rip-rap channel; and/or stormwater outfall.
7. *Stream Corridor* shall mean all areas 150 feet from the centerline in both directions of all waterways that receive surface water runoff from an upland drainage area of fifty (50) acres or more as may be shown on a map entitled *Hopewell Township Stream Centerlines and 150 Foot Buffer*, prepared by the Stony Brook Millstone Watershed Association dated April 12, 2004, and as may be hereafter amended.
8. *Stream Corridor Averaging* shall mean reducing the required stream corridor area along specific lengths of retention basins in exchange for an equivalent increase in width elsewhere along the perimeter of the retention basin.

Section 6.

The provisions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found to be invalid for any reason by any Court of competent jurisdiction, such judgment shall be limited in its effect only to the portion of the Ordinance actually adjudged invalid and shall not be deemed to affect the operation of any other portion thereof, which shall remain in full force and effect.

Section 7.

All other Ordinances or parts of Ordinances inconsistent herewith are hereby repealed.

Section 8.

This Ordinance shall take effect immediately upon final passage and publication in accordance with the law.

Date Introduced: November 22, 2004
Date Advertised: December 2, 2004
Date Adopted: December 13, 2004

Vanessa Sandom
Mayor

Attest:

Annette C. Bielawski

Municipal Clerk