

**THE BOROUGH OF RIVERTON
BURLINGTON COUNTY**

ORDINANCE NO. 2-08

**AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER
128, ARTICLE XV TO PROVIDE FOR A STREAM CORRIDOR
PROTECTION BUFFER IN THE BOROUGH OF RIVERTON**

WHEREAS, the Mayor and Council of the Borough of Riverton have previously received a grant from the State of New Jersey, Department of Community Affairs, which, in part, provides for the preparation and implementation of Environmental Protection ordinances; and

WHEREAS, the Borough Planner has recommended to the Borough Planning Board the adoption of a stream corridor protection buffer ordinance; and

WHEREAS, the Planning Board by Resolution dated April 15, 2008, has reviewed and recommended for Borough Council's adoption, the subject stream corridor protection buffer ordinance; and

**NOW THEREFORE BE IT ORDAINED BY THE MAYOR AND COUNCIL
OF THE BOROUGH OF RIVERTON THAT:**

I. Chapter 128, Article XV be amended and supplemented as follows:

ARTICLE XV

Buffers

§128-67. Landscape Buffer Requirements and Standards.

- A. A planted, landscaped buffer shall be provided and maintained by the owner or lessee of a nonresidential property and a contiguous residentially used or zoned property, except where natural or physical barriers exist.
- B. This landscaped buffer shall be developed in accordance with all of the requirements of the Borough Subdivision Ordinance.

- C. Buffers shall be 100% evergreen, planted six feet apart in two rows within a ten-foot width, and shall be six to eight feet high at the time of initial planting. Such plantings shall provide a thick, dense visual buffer from the ground to a height of eight feet.
- D. At the discretion of the Planning Board or Zoning Board, the use of a suitable fence or wall (for small lots) with possible reduction of width requirements may be approved in lieu of the required landscape buffer.

§128-67.1. Stream Corridor Protection Buffer Ordinance. (New)

A. Purposes:

The purposes of this ordinance are as follows:

- (1) To provide meaningful protection against further degradation of water quality within the stream corridor.
- (2) To promote continued restoration of the stream corridor ecosystem.
- (3) To protect significant ecological components of the stream corridor, including, but not limited to wildlife and plant habitat, steep slopes, stable streambanks, woodland areas, groundwater recharge zones, flood plains and wetlands.
- (4) To prevent excessive nutrients, sediment, organic matter and pollutants from reaching the surface water.
- (5) To provide shading of the aquatic realm so as to moderate temperatures, retain dissolved oxygen and support a healthy assemblage of aquatic flora and fauna.
- (6) To provide natural organic matter (fallen leaves, twigs, trees and limbs) as food and habitat for lower classification organisms essential to the ecosystem's food chain.
- (7) To preserve and restore natural stream flow patterns.
- (8) To insure adequate flood event capacity, thereby protecting the natural communities from flood damage.
- (9) To preserve recreational and education resources of the Pompeston Creek, including the visual integrity of the Creek experience.
- (10) To complement state, regional, county and municipal corridor protection and management regulations and initiatives.

B. Findings:

The purposes of this ordinance are based upon the findings that:

- (1) It is in the public interest to restore and then maintain the ecological health and vitality of the Pompeston Creek for present and future generations.
- (2) It is in the public interest to protect and enhance the scenic value of the creek, as well as its educational and recreational resources.
- (3) It is necessary and desirable to regulate the impact of land development because such activity has proven to be a significant source of environmental degradation along the Pompeston Creek.
- (4) It is necessary to regulate the total impact of site specific developments and avoid disjointed and ad hoc reviews of individual projects that affect the stream.
- (5) It is desirable to provide land use regulations that protect riparian and aquatic ecosystems in a manner that is also cognizant of the land owners' interest in making reasonable use of parcels of land that include protected stream corridor zones.

C. Jurisdiction:

These regulations shall apply to all areas of the Pompeston Creek within the Borough of Riverton which are not otherwise under the jurisdiction of State regulations pertaining to stream buffer protection. In incidents where these regulations conflict with regulations of other jurisdictions, the more restrictive regulations shall apply.

D. Definitions:

Activity means any land disturbance, including but not limited to clearing of vegetation, excavating, grading, or construction upon the land, with or without a land use development application.

Bank means stream bank.

Buffer means stream buffer zone.

Hydrological flood plain means the relatively flat, distinctly edged physiographic landform adjacent to the top of the stream bank onto which the stream waters would historical flow if the stream overtops its banks during unusually intense storm events.

One hundred year flood plain means the area adjacent to the stream that is subject to inundation during a storm event that has an estimated recurrence interval of one hundred (100) years. For the purposes of this ordinance, the one hundred year flood plain must be calculated using standard engineering practices for each subject site or parcel.

Riparian means living on or related to the stream bank.

Stream means the Pompeston Creek and its primary tributaries.

Stream bank means that land area immediately adjacent to the bed of the stream and which is essential to defining the limits of the stream bed.

Stream bed means the maximum area covered by the waters of the stream for not less than 15 consecutive days in one year.

Stream buffer zone means the area which functions to remove or mitigate the effects of development and its associated sediments and pollutants prior to their entry in the stream. The width of, and the standards for the buffer zone are prescribed in this ordinance. This area may or may not contain trees and other native vegetation at the time of ordinance enactment.

Stream corridor shall include the stream bed, stream bank, the site-specific and calculated one hundred year flood plain associated with the stream, any adjacent steep slopes greater than 12 percent, and the associated stream buffer zone as prescribed herein.

E. Activities permitted within the stream buffer zone:

- (1) Wildlife sanctuaries, woodland preserves, public parks, and existing municipal facilities.
- (2) Pervious pedestrian and bicycle trails.
- (3) Passive recreation, including recreational fishing.
- (4) Environmentally sensitive stream restoration activity and reforestation.
- (5) Water quality and ecosystem monitoring activities.
- (6) Removal of invasive plant species as identified in the Riverton Environmental Resource Inventory.
- (7) Removal of dead or dying trees only when they threaten the health or real property (such as a building) of the land owner.
- (8) Boardwalks that are designed and constructed to minimize disturbance of the stream corridor's ecosystem.
- (9) Reconstruction of existing structures within the stream buffer zone provided such structures existed at the time this ordinance was adopted, and the reconstructed structures are built in the same location or farther from the stream, on the same or smaller footprint and do not exceed the height of the original structure.

- (10) Pre-existing accessory uses and structures, such as lawns, driveways, swimming pools, gardens, and sheds.

F. Activities prohibited within the stream buffer zone:

- (1) Alteration of the stream bed or stream corridor by development, construction or land disturbance activity.
- (2) Clearing or cutting of any vegetation, except for the removal of invasive plant species as identified in the Riverton Environmental Resource Inventory.
- (3) Application or storage of pesticides, fertilizers, herbicides, and other environmentally hazardous substances unless otherwise permitted with valid State or Federal approval.
- (4) Disposal of brush, debris or solid or liquid waste unless otherwise permitted with State or Federal approval.
- (5) Construction of any type of permanent structures, including fences.
- (6) The expansion of existing principal structure, accessory structures and/or accessory uses.
- (7) Construction of new structures, accessory uses, surface or subsurface stormwater management and/or drainage systems, new impervious surfaces.
- (8) Discontinued uses or structures that do not resume use within one year of their discontinuation shall not be permitted and any new activity on the site for which municipal approval is required shall include the removal of discontinued uses or structures unless otherwise determined by the Zoning Board of Adjustment.

G. Stream Buffer Protection and Standards

- (1) Stream Buffer Zone – All property with 100 feet of a) the top of stream bank, or b) the seasonal high water line of the stream bed if a stream bank is not discernible or c) the calculated one hundred year flood plain, whichever is greater, shall be subject to the standards included herein. The stream buffer zone shall be increased by two feet (2') for every one percent (1%) slope as calculated based on the average slope of the initial hundred foot buffer zone, beginning at the seasonal high water line. The average slope shall be calculated perpendicular to the stream, at twenty foot (20') intervals across the property, with a minimum of three transects per site. The land owner or applicant shall be responsible for the initial determination of the stream buffer zone, which shall be reviewed and approved by the Zoning Officer in consultation as necessary with the Borough Engineer or Planner.

- (2) Provisions governing the stream buffer zone – There shall be no disturbance within the stream buffer zone unless otherwise approved in accordance with this ordinance. Only permitted activities noted in Section E above may be undertaken within a stream buffer zone. All other activities, not expressly noted in Section E above are expressly prohibited. Any activity within the stream buffer zone, including permitted activities, with the exception of activities E(6) and E(7) shall require review and approval by the Zoning Officer. Should the Zoning Officer determine that a site plan of the proposed activity is required, a site plan for permitted activities shall be submitted for review by the Planning Board. Proposed activities that are not permitted shall be reviewed by the Zoning Board as part of a use variance application. Proposed activities that are not permitted in the stream buffer zone, but which receive variance approval from the Zoning Board of Adjustment shall not be visible from the stream bed. All activities within the stream buffer zone shall rehabilitate or cure the affects of disturbance to the zone, maintain the integrity of the surrounding habitat and advance the purposes of this ordinance.
- (3) Stream buffer restoration – An applicant for any land development application which includes a stream buffer zone shall rehabilitate degraded areas of the stream as part of the development application. Such rehabilitation shall be conducted in such a manner as to be acceptable to the board of jurisdiction.
- (4) Stream buffer averaging – To accommodate reasonable flexibility for site planning, the Planning or Zoning Board of Adjustment may modify the stream buffer zone line and reduce it by no more than twenty-five feet (25') as long as the buffer zone is increased by an equal amount elsewhere on-site and such an adjustment does not adversely impact the purposes of this ordinance.
- (5) Stream Buffer Conservation Easement – On sites on which the stream buffer zone is modified by the local board of jurisdiction or because of pre-existing, non-conforming buildings or other improvements, no new activity may begin within the stream buffer zone until a stream buffer conservation easement has been drafted, approved by the Borough and recorded with the deed of the property at the County. Such an easement will define the limits of the stream buffer zone and stipulate that the zone cannot be further reduced in size.
- (6) Development Density – The land area within the stream buffer zone which is not subject to State regulated wetlands, wetlands buffers or flood plain restriction, shall not be subtracted from the buildable area of the lot relative to permissible housing density or commercial floor area development.

- (7) Stormwater management – All stormwater shall be discharged outside the stream buffer zone, but may flow through it, provided the area is stabilized adequately against increased soil erosion.

H. Submission Requirements

- (1) Stream Buffer Zone Plan Review Required – All development applications and building permit applications on lots encumbered by a stream buffer zone shall be subject to a stream buffer zone plan review.

In addition, any activity within a stream buffer zone, whether regulated by other land use procedures or not, shall require a stream buffer zone plan review, unless specifically exempt by under Sections E(6) and E(7) of this ordinance.

- (2) Plan submission requirements – Site plan(s) for any project or parcel that requires a stream buffer zone plan review shall include the following information:

- a survey of the property
- the calculated, engineered site-specific one hundred year flood plain line
- a current Letter of Interpretation from the NJDEP identifying the wetlands line and the wetlands buffer line
- contour lines at intervals of not more than one foot with the stream bed, stream bank and steep slopes delineated
- the proposed stream buffer zone, calculated in accordance with Section G of this ordinance
- The location of all existing and proposed improvements on the site
- The proposed limit of disturbance

- (3) Review process – Once the submission is deemed complete by the Zoning Officer, the Zoning Officer shall review the application within fifteen (15) days and/or refer the application to the appropriate municipal board for review if required. If the stream buffer zone plan is not referred to a municipal board, the Zoning Officer will review, and if appropriate, approve the plan and issue a permit for the proposed activity. If a stream buffer conservation easement is required, it must be recorded with the County before a permit for the proposed activity can be issued and the applicant will be advised accordingly in writing by the Zoning Officer.

- (4) Appeals process – The Zoning Board of Adjustment shall be authorized to

consider and decide all appeals pertaining to stream buffer zone plans, reviews and decisions.

I. Enforcement

- (1) Where a lot owner disturbs the stream buffer in violation of this ordinance, the Zoning Officer shall require a complete remediation of the disturbed area of the stream buffer zone. Depending on the severity of the unauthorized disturbance, such restoration may return the disturbed area to its original condition or, using reasonable discretion, the Zoning Officer may require an enhanced restoration plan that will improve the environmental state of the disturbed areas. It is the intention of this ordinance that egregious and woeful acts of disregard for the purposes of this ordinance shall be addressed with more stringent remediation requirements. Remedial work may include the removal of unauthorized improvements, revegetation of groundcover, understory and overstory vegetation, restoration of natural topographic features, creation of habitat and other remedial operations as may be necessary to reverse the unauthorized disturbance. In incidences where a property owner refuses to calculate the site specific limits of the one hundred year flood, the one hundred year line as determined by FEMA (Federal Emergency Management Agency) shall apply.
- (2) All areas subject to erosion shall be corrected and stabilized within thirty (30) days of notification of the violation from the Zoning Officer. All other remedial work shall occur within 30 days of notification or, if it is not the season for planting, work shall occur prior to the end of the following April. The notice of violation shall stipulate the anticipated completion time for remedial work.
- (3) If it is determined that the violation continues after the time affixed for remediation, the Zoning Officer shall issue a citation by certified mail to the person who is in violation. The person to whom the citation is sent shall have 30 days to complete the remediation or appeal it to the Zoning Board of Adjustment. Failing to do so will result in civil penalties, not to exceed \$1,000 for each violation, unless other penalties are deemed appropriate by the Court. The person to whom the citation is sent shall also be responsible for any and all costs and expenses incurred by the Borough for the violation.

II. This Ordinance shall take effect upon immediate adoption.

BOROUGH OF RIVERTON

Attest:

By: _____
Mary Longbottom, Borough Clerk

By: _____
Robert Martin, Mayor

CERTIFICATE OF CLERK

I, Mary Longbottom, Municipal Clerk of the Borough of Riverton, County of Burlington and State of New Jersey, do hereby **CERTIFY** that the foregoing to be a true and correct copy of an Ordinance introduced and passed by the Borough Council at a meeting of said Council held May 7, 2008, and said Ordinance was finally adopted at a regular meeting of the Borough Council held June 11, 2008 after a public hearing.

Mary Longbottom, RMC
Municipal Clerk

RECORDED VOTE	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
DANIEL	_____	_____	_____	_____
BROWN	_____	_____	_____	_____
CAIRNS-WELLS	_____	_____	_____	_____
SMYTH	_____	_____	_____	_____
KINZLER	_____	_____	_____	_____
CESARETTI	_____	_____	_____	_____
MAYOR (TIE)	_____	_____	_____	_____