

**Borough of Pennington
Ordinance 2008-2**

**AN ORDINANCE CONCERNING RIPARIAN BUFFER
CONSERVATION ZONES AND AMENDING THE CODE
OF THE BOROUGH OF PENNINGTON**

WHEREAS, the Borough Council of the Borough of Pennington seeks to adopt and to incorporate in the Code of the Borough of Pennington an Ordinance establishing a Riparian Buffer Conservation Zone;

WHEREAS, the Borough of Pennington believes the Ordinance is consistent with the requirements set forth in New Jersey Stormwater Management Rule N.J.A.C. 7:8;

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Pennington, that the Code of the Borough of Pennington is hereby amended to incorporate the following:

I. INTENT AND PURPOSE

The governing body of the Borough of Pennington finds that riparian lands adjacent to streams, lakes, or other surface water bodies that are adequately vegetated provide an important environmental protection and water resource management benefit. It is necessary to protect and maintain the beneficial character of riparian areas by implementing specifications for the establishment, protection, and maintenance of vegetation along the surface water bodies within the jurisdiction of the Borough, consistent with the interest of landowners in making reasonable economic use of parcels of land that include such designated areas. The purpose of this Ordinance is to designate Riparian Buffer Conservation Zones, and to provide for land use regulation therein in order to protect the streams, lakes, and other surface water bodies of the Borough; to protect the water quality of watercourses, reservoirs, lakes, and other significant water resources within the Borough; to protect the riparian and aquatic ecosystems of the Borough; to provide for the environmentally sound use of the land resources of the Borough; and to complement existing state, regional, county, and municipal stream corridor protection and management regulations and initiatives. The specific purposes and intent of this Ordinance are to:

A. Restore and maintain the chemical, physical, and biological integrity of the water resources of the Borough;

B. Prevent excessive nutrients, sediment, and organic matter, as well as biocides and other pollutants, from reaching surface waters by optimizing opportunities for filtration, deposition, absorption, adsorption, plant uptake, biodegradation, and denitrification, which occur when stormwater runoff is conveyed through vegetated buffers as stable, distributed sheet flow prior to reaching receiving waters;

C. Provide for shading of the aquatic environment so as to moderate temperatures, retain more dissolved oxygen, and support a healthy assemblage of aquatic flora and fauna;

D. Provide for the availability of natural organic matter (fallen leaves and twigs) and large woody debris (fallen trees and limbs) that provide food and habitat for small bottom dwelling organisms (insects, amphibians, crustaceans, and small fish), which are essential to maintain the food chain;

E. Increase stream bank stability and maintain natural fluvial geomorphology of the stream system, thereby reducing stream bank erosion and sedimentation and protecting habitat for aquatic organisms;

F. Maintain base flows in streams and moisture in wetlands;

G. Control downstream flooding; and

H. Conserve the natural features important to land and water resources, e.g., headwater areas, groundwater recharge zones, floodways, floodplains, springs, streams, wetlands, woodlands, and prime wildlife habitats.

II. STATUTORY AUTHORITY

The Borough of Pennington is empowered to regulate land uses under the provisions of the New Jersey Municipal Land Use Law, N.J.S.A 40:55D-1 et seq., which authorizes each

municipality to plan and regulate land use in order to protect public health, safety and welfare by protecting and maintaining native vegetation in riparian areas. The Borough is also empowered to adopt and implement this Ordinance under provisions provided by the following legislative authorities of the State of New Jersey:

- A. Water Pollution Control Act, N.J.S.A. 58:10A et seq.
- B. Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.
- C. Spill Compensation and Control Act, N.J.S.A. 58:10-23 et seq.
- D. Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq.
- E. Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq.

III. DEFINITIONS

“Administrative Authority” means the Planning Board and Board of Adjustment or Construction Office with all of the powers delegated, assigned, or assumed by them according to statute or ordinance.

“Applicant” means a person applying to the Planning Board and 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 Buffer Conservation Zone.

“Floodway” shall have the meaning ascribed to this term by the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.) and regulations promulgated there under published at N.J.A.C. 7.13 et seq., and any supplementary or successor legislation and regulations from time to time enacted or promulgated.

“Intermittent Stream” means surface water drainage channels with definite natural bed and banks in which there is not a permanent flow of water. Streams shown as a dashed line on either the USGS topographic quadrangle maps or the USDA County Soil Survey Maps of the most recent edition that includes hydrography are included as intermittent streams.

“Lake, pond, or reservoir” means any impoundment, whether naturally occurring or created in whole or in part by the building of structures for the retention of surface water, excluding sedimentation control and stormwater retention/detention basins and ponds designed for treatment of wastewater.

“Perennial stream” means a stream that flows continuously throughout the year in most years. These streams usually appear as a blue line on USGS topographic quadrangle maps or on USDA County Soil Survey Maps.

“Riparian Buffer Conservation Zone (RBCZ)” means an area of land or water within or adjacent to a Surface Water Body within the Borough of Pennington.

“Surface Water Body” means any above ground perennial stream, intermittent stream, lake, pond, or reservoir, as defined herein. In addition, any state open waters identified in a letter of interpretation issued by the New Jersey Department of Environmental Protection Land Use Regulation Program shall also be considered surface water bodies.

IV. ESTABLISHMENT OF RIPARIAN BUFFER CONSERVATION ZONES

A. Riparian Buffer Conservation Zones (RBCZs) shall be delineated as follows:

1. For areas adjacent to surface water bodies, the RBCZ shall be measured from the top of bank of an intermittent or perennial stream, or centerline if bank is not defined, and shall extend 50 feet horizontally outward from the perpendicular.
2. For areas adjacent to surface water bodies for which the Floodway has been delineated, the RBCZ shall cover the entire Floodway area, or the area described in Section IV.A.1. or IV.A.2., whichever area has the greatest extent. Floodway delineations shall be based upon the State’s adopted floodway delineations. However, requests for alterations to the adopted delineations can be provided to the New Jersey Department of Environmental Protection for consideration if site specific information is available.

B. An RBCZ is an overlay to the existing zoning districts. The provisions of the underlying district shall remain in full force except where the provisions of the RBCZ differ from

the provisions of the underlying district, in which case the provision that is more restrictive shall apply. These provisions apply to land disturbances resulting from or related to any activity or use requiring application for any of the following permits or approvals: Building permit; Zoning variance; Special exception; Conditional use; Subdivision/land development approval.

C. The applicant or designated representative shall be responsible for the initial determination of the presence of an RBCZ on a site, and for identifying the area on any plan submitted to the Borough in conjunction with an application for a construction permit, subdivision, 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, governing body, or its appointed representative, and, where required, by the New Jersey Department of Environmental Protection.

V. USES PERMITTED IN RIPARIAN BUFFER CONSERVATION ZONES

A. Any RBCZ area shall remain in a natural condition or, if in a disturbed condition, including agricultural activities, at the time of adoption of this ordinance may be restored to a natural condition. There shall be no clearing or cutting of trees and brush, except for removal of dead vegetation and pruning for reasons of public safety or for the replacement of invasive species with indigenous species. There shall be no altering of watercourses, dumping of trash, soil, dirt, fill, vegetative or other debris, regrading or construction. The following uses are permitted either by right or after review and approval by the Planning Board and Board of Adjustment in RBCZs. No new construction, development, use, activity, encroachment, or structure shall take place in an RBCZ, except as specifically authorized in this Section. The following uses shall be permitted within an RBCZ:

1. Open space uses that are primarily passive in character shall be permitted by right to extend into an RBCZ, provided near stream vegetation is preserved. These uses, if permitted uses in the affected Land Use Zone District, do not require approval by the Zoning Enforcement Officer or compliance with an approved RBCZ Management Plan. Such uses include passive recreation areas of public and private lands, including lawns and gardens, hiking, bicycle and bridle trails.
2. Fences, for which a permit has been issued by the Construction Code Office, to the extent required by applicable law, rule or regulation.
3. Crossings by farm vehicles and livestock, recreational trails, roads, railroads, storm water lines, sanitary sewer lines, water lines and public utility transmission lines, provided that the land disturbance is the minimum required to accomplish the permitted use, subject to approval by the Zoning Enforcement Officer, provided that any applicable State permits are acquired, and provided that any disturbance is offset by buffer improvements in compliance with an approved RBCZ Management Plan and that the area of the crossing is stabilized against significant erosion due to its use as a crossing.
4. Stream bank stabilization or riparian reforestation, which conform to the guidelines of an approved RBCZ Management Plan, or wetlands mitigation projects that have been approved by the Department of Environmental Protection, subject to approval by the Zoning Enforcement Officer and subject to compliance with an approved RBCZ Management Plan.
5. Uses permitted under Section VII and Section IX.

VI. PERFORMANCE STANDARDS FOR RIPARIAN BUFFER CONSERVATION ZONES

A. For all RBCZs, the following conditions shall apply when the applicant is required to appear before the Planning Board:

1. All new major and minor subdivisions and site plans shall be designed to provide sufficient areas outside of the RBCZ to accommodate primary structures, any normal accessory uses appurtenant thereto, as well as all additional or expanded lawn areas.
2. Any proposed use or any portion of a lot or lots within the RBCZ except those not requiring Planning Board and/or Zoning Board approval as described in Section V above, must be permanently restricted by deed or conservation easement held by the Borough, its agent, or another public or private land

conservation organization, which has the ability to provide adequate protection to prevent adverse impacts within the RBCZ. A complete copy of the recorded conservation restriction that clearly identifies the deed book and pages where it has been recorded in the office of the clerk of the applicable county or the registrar of deeds and mortgages of the applicable county must be submitted to the municipality. The applicant shall not commence with the project or activity prior to making this submittal and receiving actual approval of the plan modification and receipt of any applicable permits from the Department of Environmental Protection. The recorded conservation restriction shall be in the form approved by the municipality and shall run with the land and be binding upon the property owner and the successors in interest in the property or in any part thereof. The conservation restriction may include language reserving the right to make de minimus changes to accommodate necessary regulatory approvals upon the written consent of the municipality, provided such changes are otherwise consistent with this chapter. The recorded conservation restriction shall, at a minimum, include:

- a. A written narrative of the authorized regulated activity, date of issuance, and date of expiration, and the conservation restriction that, in addition, includes all of the prohibitions set forth at N.J.S.A. 13:8B-2b(1) through (7);
 - b. Survey plans for the property as a whole and, where applicable, for any additional properties subject to the conservation restrictions. Such survey plans shall be submitted on the surveyor's letterhead, signed and sealed by the surveyor, and shall include metes and bounds descriptions of the property, the site, and the areas subject to the conservation restriction in New Jersey State Plane Coordinates, North American Datum 1983, and shall depict the boundaries of the site and all areas subject to the conservation restriction as marked with flags or stakes onsite. All such survey plans shall be submitted on paper and in digital CAD or GIS file on a media and format defined by the Borough. The flags or stakes shall be numbered and identified on the survey plan; and
 - c. A copy or copies of deeds for the property as a whole that indicate the deed book and pages where it has been recorded in the office of the clerk of the applicable county or the registrar of deeds and mortgages of the applicable county.
3. Any lands proposed for development which include all or a portion of an RBCZ shall as a condition of any major subdivision or major site plan approval, encourage the vegetation or revegetation of any portions of the RBCZ which are not vegetated at the time of the application or which were disturbed by prior land uses, including for agricultural use. Said vegetation plan shall utilize native and non-invasive tree and plant species to the maximum extent practicable in accordance with an approved Riparian Buffer Conservation Zone Management Plan, described in Section X.
4. For building lots which exist as of the date of adoption of this ordinance, but for which a building permit or a preliminary site plan approval has not been obtained or is no longer valid, the required minimum front, side, and rear setbacks may extend into the RBCZ, provided that a deed restriction and/or conservation easement is applied which prohibits clearing or construction in the RBCZ.
5. All stormwater shall be discharged outside of but may flow through an RBCZ and shall comply with the Standard For Off-Site Stability in the "Standards for Soil Erosion and Sediment Control in New Jersey", established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq. (See N.J.A.C. 2:90-1.3.)
6. If stormwater discharged outside of and flowing through an RBCZ cannot comply with the Standard For Off-Site Stability cited in Section VI.5, then the stabilization measures in accordance with the requirements of the above standards may be placed within the RBCZ, provided that:
- a. Stabilization measures shall not be placed closer than 50 feet from the top of the bank at bank-full flow or level of affected surface water bodies unless such disturbance can be completed within the allowable limits of the Flood Hazard Area Control Act;

- b. The encroachment shall only be allowed where the applicant demonstrates that the functional value and overall conditions of the RBCZ will be maintained to the maximum extent practicable;
- c. A conceptual project design meeting shall be held with the appropriate Borough staff and Soil Conservation District staff to identify necessary stabilization measures; and
- d. All encroachments proposed under this section shall be subject to review and approval by the Administrative Authority.

VII. NONCONFORMING STRUCTURES AND USES IN RIPARIAN BUFFER CONSERVATION ZONES

Nonconforming structures and uses of land within the RBCZ are subject to the following requirements:

- A. Legally existing but nonconforming structures or uses may be continued.
- B. For all RBCZs:
 - 1. Encroachment within the RBCZ shall only be allowed where previous development or disturbance has occurred unless it serves the public health or safety in accordance with Section IX..
 - 2. Existing impervious cover shall not be increased within the RBCZ as a result of encroachments where previous development or disturbances have occurred.
 - 3. Discontinued nonconforming uses may be resumed any time within three years from such discontinuance but not thereafter when showing clear indications of abandonment. No change or resumption shall be permitted that is more detrimental to the RBCZ, as measured against the intent and purpose under Section I, than the existing or former nonconforming use. This three-year time frame shall not apply to agricultural uses that are following prescribed Best Management Practices for crop rotation. However, resumption of agricultural uses must be strictly confined to the extent of disturbance existing at the time of adoption of this ordinance.

VIII. USES PROHIBITED IN RIPARIAN BUFFER CONSERVATION ZONES

A. For RBCZs, any use or activity not specifically authorized in Section V or Section VII shall be prohibited within the RBCZ. By way of example, the following activities and facilities are prohibited:

- 1. Removal or clear-cutting of trees and other vegetation or soil disturbance such as grading, except for selective vegetation removal for the purpose of stream or riparian area stabilization or restoration projects that require vegetation removal or grading prior to implementation.
- 2. Storage of any hazardous or noxious materials.
- 3. Use of fertilizers, pesticides, herbicides, and/or other chemicals in excess of prescribed industry standards or the recommendations of the Soil Conservation District.
- 4. Roads or driveways, except where permitted in compliance with Section V or Section VII.
- 5. Motor or wheeled vehicle traffic in any area, except as permitted by this Ordinance.
- 6. Parking lots.
- 7. Any type of permanent structure, except structures needed for a use permitted by Section V.
- 8. New subsurface sewage disposal areas. The expansion and replacement of existing subsurface sewage disposal areas for existing uses is permitted.

IX. ACTIVITIES PERMITTED IN STREAM BUFFER CONSERVATION ZONES WHEN NECESSARY FOR PUBLIC HEALTH AND SAFETY.

A. For RBCZs, hardship variances may be granted by the Zoning Board of Adjustment in cases of a preexisting lot (existing at the time of adoption of this ordinance) when there is insufficient room outside the RBCZ for uses permitted by the underlying zoning and there is no other reasonable or prudent alternative to placement in the RBCZ, including obtaining variances from setback or other requirements that would allow conformance with the RBCZ requirements, and provided the following demonstrations are made:

1. The proposed project will serve an essential public health or safety need; or
2. The proposed use is required to serve an existing public health or safety need; or
3. There is no alternative available to meet the established public health or safety need.

B. A variance can only be granted if it is shown that the activity is in conformance with all applicable local, state, and federal regulations, and that the exception granted is the minimum relief necessary to relieve the hardship.

C. If the above demonstrations are made, then the encroachment of impervious surfaces (structures or pavement) otherwise permitted by the underlying zoning is permitted to the extent of 1,500 square feet total.

X. BOUNDARY INTERPRETATION, APPEALS PROCEDURES, INSPECTIONS, CONFLICTS, SEVERABILITY

A. When a landowner or applicant disputes the boundaries of an RBCZ, the landowner or applicant shall submit evidence to the Planning Board that describes the RBCZ, presents the landowner or applicant's proposed RBCZ delineation, and presents all justification for the proposed boundary change.

B. Within 45 days of a complete submission of Section .A above, the Engineer of the Borough, or appointed representative, shall evaluate all material submitted and shall make a written determination, a copy of which shall be submitted to the Board and the landowner or applicant. Failure to act within the 45-day period shall not be interpreted to be an approval of the proposed boundary change.

C. Any party aggrieved by any such determination or other decision or determination under Section X.B. may appeal to the Planning Board under the provisions of this ordinance. The party contesting the location of the RBCZ boundary shall have the burden of proof in case of any such appeal.

D. Any party aggrieved by any determination or decision of the Planning Board under this Ordinance may appeal to the Borough Council. The party contesting the determination or decision shall have the burden of proof in case of any such appeal.

E. Inspections:

1. Lands within or adjacent to an identified RBCZ shall be inspected by the Borough Zoning Officer when:

- a. A subdivision or land development plan is submitted;
- b. A building permit is requested;
- c. A change or resumption of a nonconforming use is proposed;

d. A discontinued nonconforming use is resumed more than a year later, as described in Section VII.

2. The RBCZ may also be inspected periodically by representatives from the Borough if excessive or potentially problematic erosion is present, other problems are discovered, or at any time when the presence of an unauthorized activity or structure is brought to the attention of municipal officials or when the downstream surface waters are indicating reduction in quality.

F. 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 apply.

G. 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.

XII. ENFORCEMENT

A prompt investigation shall be made by the appropriate personnel of the Borough 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 may be brought 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, 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 may be considered a separate offense.

XIII. EFFECTIVE DATE

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

Introduced: July 7, 2008

Advertised: July 17, 2008

Public Hearing: August 4, 2008

Adoption: August 4, 2008

Final Publication: August 14, 2008

ATTEST:

APPROVED:

Elizabeth Sterling, Borough Clerk

Anthony Persichilli, Mayor