

BOROUGH OF NEW PROVIDENCE
ORDINANCE 2010-4

**AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION,
STATE OF NEW JERSEY, TO PROVIDE FOR REGULATION OF RIPARIAN ZONES**

BE IT ORDAINED by the Mayor and Council of the Borough of New Providence, County of Union, State of New Jersey as follows:

Section 1. Purpose.

The purpose of this Ordinance shall be to provide for the regulation of Riparian Zones in the Borough of New Providence.

Section 2. Definitions.

The definitions of the words and/or terms utilized in this Article shall be as defined in N.J.A.C. 7:15-1.5, Definitions, as they exist at the time of passage of this ordinance and as they may change from time to time.

Section 3. Intent.

It is the intent of this Article to provide compliance with NJAC 7:15-5.25(g)3, which requires municipalities to adopt an ordinance regulating new disturbances for projects or activities in riparian zones as part of a Wastewater Management Plan.

- A. Compliance with the riparian zone requirements of this chapter does not constitute compliance with the riparian zone or buffer requirements imposed under any other Federal, State or local statute, regulation or ordinance.

Section 4. Riparian Zone Protection.

Riparian zones adjacent to all waters as described below in this paragraph shall be protected from avoidable disturbance:

- A. The riparian zone is 300 feet wide along both sides of any Category One water, and all upstream tributaries situated within the same HUC 14 watershed;
- B. The riparian zone is 150 feet wide along both sides of the following waters not identified in A. above:
 - (1) Any trout production water and all upstream waters (including tributaries);

- (2) Any trout maintenance water and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water;
 - (3) Any segment of a water flowing through an area that contains documented habitat for a threatened or endangered species of plant or animal, which is critically dependent on the regulated water for survival, and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water; and
 - (4) Any segment of a water flowing through an area that contains acid producing soils.
- C. A riparian zone 50 feet wide shall be maintained along both sides of all waters not subject to A or B above.

Section 5. Exceptions.

- A. The following disturbances are excepted:
- (1) Redevelopment within the limits of existing impervious surfaces; and
 - (2) The Flood Hazard Area Control Act Rules (N.J.A.C. 7:13), Subchapter 7, Permits by Rule, establishes permits-by-rule for certain regulated activities. This Article hereby adopts by reference said Subchapter as it exists at the time of passage of this ordinance and as it may be modified from time to time, as a means of allowing regulated activities in the riparian zone without any other permits or approvals, except as may be required by any other provisions of this Code (e.g., lot grading, tree removal, zoning, site plan). In addition, any permit-by-rule provision that requires notification to The New Jersey Department of Environmental Protection shall also be copied to the Borough Engineer.
 - (3) New disturbance in the riparian zone necessary to protect public health, safety or welfare; to provide an environmental benefit; to prevent extraordinary hardship on the property owner peculiar to the property; or to prevent extraordinary hardship, provided the hardship was not created by the property owner, that would not permit a minimum economically viable use of the property based upon reasonable investment.

- B. An exception to any of the disturbances listed in A(1) and A(2) above shall be granted by the Borough Engineer upon proof, in the case of A(1), by virtue of submission of appropriate maps and drawings, that the proposed redevelopment is within the limits of impervious surfaces that existed at the time of passage of this ordinance, or, in the case of A(2), that it complies with the requirements of the applicable NJDEP regulations. Application for an exception under A(1) or A(2) above shall be made in the form of an application for a lot grading permit.

- C. An exception to any of the disturbances listed in A(3) above shall be granted by the Planning Board upon proof, by virtue of submission of appropriate maps, drawings, reports and testimony, that the disturbance protects public health, safety or welfare; provides an environmental benefit; prevents extraordinary hardship on the property owner peculiar to the property; or prevents extraordinary hardship, provided the hardship was not created by the property owner, that would not permit a minimum economically viable use of the property based upon reasonable investment. The Board of Adjustment shall have the power to grant these same exceptions if an exception is sought in conjunction with an application required to be heard by it in accordance with NJSA 40:55D-1. et. seq. (Municipal Land Use Law).

- D. Appeals of a determination by the Borough Engineer made in accordance with B. above may be made to the Planning Board.

Section 6. Adjustments.

Adjustments to the riparian zones established by this article are allowed to the extent they comply with the Stormwater Management Rules (N.J.A.C. 7:8), and the Flood Hazard Area Control Act Rules (N.J.A.C. 7:13).

Section 7. Repealer.

All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed to the extent of such inconsistencies.

Section 8. Severability.

If any article, section, subsection, paragraph, phrase or sentence is, for any reason, held to be unconstitutional or invalid, said article, section, subsection, paragraph, phrase or sentence shall be deemed severable.

Section 9. Effective Date.

This ordinance shall take effect as provided by law.

Introduced: May 24, 2010
Public Hearing: June 14, 2010
Adopted: June 14, 2010

BOROUGH OF NEW PROVIDENCE
COUNTY OF UNION
STATE OF NEW JERSEY

John A. Thoms, Mayor

Attest:

Wendi B. Barry, Borough Clerk