

THE CITY COUNCIL OF NORTH ROYALTON, OHIO

ORDINANCE NO. 07-102

INTRODUCED BY: Stefanik, Antoskiewicz, Nickell, Gentile

AN ORDINANCE AMENDING THE CODIFIED ORDINANCES OF THE CITY OF NORTH ROYALTON, PART 14 BUILDING AND HOUSING CODE, CHAPTER 1492 CONTROLLING RIPARIAN SETBACKS AND WETLANDS SETBACKS, SECTION 1492.11, VARIANCES WITHIN RIPARIAN SETBACK AND WETLAND SETBACK BY AMENDING PARAGRAPH (f) AND CREATING A NEW PARAGRAPH (h), AND DECLARING AN EMERGENCY

WHEREAS: Upon recent review of the regulations set forth in Chapter 1492 it was determined that there were no provisions allowing for or requiring mitigation in the event that a variance to these regulations was granted; and

WHEREAS: Additionally, paragraph (f) is in need of amendment to provide for other factors for consideration by the Board of Zoning Appeals in its determinations; and

WHEREAS: Council desires to make these amendments.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORTH ROYALTON, COUNTY OF CUYAHOGA AND STATE OF OHIO, THAT:

Section 1. Chapter 1492 Controlling Riparian Setbacks and Wetlands Setbacks, Section 1492.11, Variances Within Riparian Setback and Wetland Setback is hereby amended by amending paragraph (f) as follows:

(f) In reviewing whether to grant variances, the Board of Zoning Appeals shall consider the following:

- (9) A parcel existing at the time of passage of this ordinance is made substantially unbuildable.*
- (10) A requested above ground fence does not increase the existing area of mowed grass or lawn.*
- (11) Modifying parking requirements before varying the riparian setback.*
- (12) Modifying building shape, size or design to avoid or minimize intrusion into the riparian setback.*
- (13) In the case of a lot made substantially unbuildable by this regulation, consider the minimum variance needed to make it buildable for an appropriately sized and compatibly designed structure, while following the guidance provided in this section.*
- (14) Whether the variance will increase the likelihood for flood or erosion damage to either the applicant's property or to other properties.*
- (15) Culverting of watercourses should be avoided.*
- (16) Whether the variance will result in the need for artificial slope or bank stabilization measures that could interfere with the function of the riparian zone.*

Section 2. Chapter 1492 Controlling Riparian Setbacks and Wetlands Setbacks, Section 1492.11, Variances Within Riparian Setback and Wetland Setback is hereby amended by creating a new paragraph (h) as follows:

- (h) When a variance is granted that results in a loss of riparian or wetland function, that loss must be mitigated according to the following:**
- (1) If the loss will result in increased flooding, stream bank erosion, or in-stream sedimentation, the loss shall be mitigated at the site or upstream of the site in the same watershed.*
 - (2) If biological functions are the only loss, mitigation will occur upstream whenever feasible. If not, a downstream site will be sought. If no suitable mitigation sites can be found on the affected stream, a site located anywhere in the community shall be selected.*
 - (3) All wetland setback losses must be mitigated upstream of the disturbed location.*
 - (4) Mitigation or riparian and wetland setback losses shall consist of a minimum of 100% of the area disturbed by the variance granted.*
 - (5) Mitigation of actual wetland losses shall be at the rate of 100% of the area lost by the variance granted.*
 - (6) Mitigation of wetland setback losses can occur at any previously impacted site in the community or in an upstream tributary area outside of the community.*
 - (7) Prior to granting any variance that results in a loss of riparian or wetland function or wetland setback area, the applicant must submit a statement that identifies all requested losses, an evaluation of mitigation needs and documentation of the planned mitigation to offset the losses; this statement will be submitted to Ohio EPA as part of the community's Annual Storm Water Program Report.*
 - (8) Prior to granting any variance that results in a loss of riparian or wetland function or wetland setback area, the applicant must submit a statement that legally binds the applicant to complete, at his or her personal expense, any future mitigation and to pay any penalties or fines that may be assessed or assigned to the community by any regulatory authority relative to the granting of any of the applicants requested variances under this ordinance.*

(9) Completion of all mitigation projects resulting from the granting of variances under this section shall be completed before any construction or maintenance guarantee for the project can be released.

Section 3. Chapter 1492 of the Codified Ordinances of the City of North Royalton is hereby amended as provided for herein and all other provisions of Chapter 1492 shall remain in full force and effect.

Section 4. This Ordinance shall supersede all previously adopted Ordinances in direct conflict herewith.

Section 5. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Section 6. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of the city, and for the further reason that Council has determined that it is immediately necessary to make provisions allowing for or requiring mitigation in the event that a variance to these regulations was granted; and to provide for other factors for consideration by the Board of Zoning Appeals in its determinations.

THEREFORE, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

/s/ Vincent A. Gentile
PRESIDENT OF COUNCIL

APPROVED: /s/ Robert A. Stefanik
MAYOR

DATE PASSED: July 1, 2008

DATE APPROVED: July 1, 2008

ATTEST: /s/ Laura J. Haller
DIRECTOR OF LEGISLATIVE SERVICES

First reading September 4, 2007
Second reading April 15, 2008
Amended April 15, 2008
Third reading July 1, 2008
Amended July 1, 2008

YEAS: Gentile, Nickell, Petrusky, Willey,
McKee, Antoskiewicz, Kasaris

NAYS: none