

ORDINANCE NO. 36-12

By: Matt Lampke

An Ordinance to add Section 1225 to the Bexley Codified Ordinances  
to establish the Alum Creek Preservation District.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEXLEY:

Section 1.

Section 1225 shall be added to the City of Bexley codified ordinances and shall read as follows:

Section 1225 - ALUM CREEK PRESERVATION DISTRICT

1225.01 – DEFINITIONS:

(a) **HIGHLY ERODIBLE LAND:** A highly erodible soil, or soil map unit, has a maximum potential for erosion that equals, or exceeds, eight times the tolerable erosion rate. The maximum erosion potential is calculated without consideration to crop management or conservation practices, which can markedly lower the actual erosion rate on a given field.

The maximum potential erosion rate is determined by multiplying the rainfall factor (R) by the erodibility value of the soil (K) by the slope factor (LS) and dividing the product by the soil loss tolerance (T). The equation is expressed by the formula  $RKLS/T$ . A soil is highly erodible if the result of the equation  $RKLS/T$  is equal to or greater than eight.

The following list contains common HEL soil types:

Alexandria silt loam (12 to 18 percent slopes, eroded) AdD2  
Alexandria silt loam (18 to 25 percent slopes, eroded) AdE2  
Eldean silt loam (12 to 18 percent slopes, eroded) EID2  
Glynwood silt loam (6 to 12 percent slopes, eroded) GwC2  
Hennepin and Miamian loams (18 to 25 percent slopes, eroded) HeE2  
Hennepin and Miamian loams (25 to 50 percent slopes, eroded) HeF2  
Miamian silty clay loam (12 to 18 percent slopes, eroded) MID2  
Ritchey silt loam (12 to 18 percent slopes, eroded) RhD2  
Udorthents (loamy, rolling) Up  
Udorthents (loamy, sloping) Ur  
Udorthents (loamy, steep) Us

(b) **ORDINARY HIGH WATER MARK:** The line between upland and bottom land which persists through successive changes in water level, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil and the vegetation.

### **1225.02 – ESTABLISHMENT AND PURPOSE**

The following district is established to protect and enhance the functions of riparian areas by providing reasonable controls governing structures and uses within a riparian setback along that portion of Alum Creek that flows through the city of Bexley.

### **1225.03 – FINDINGS**

It is hereby determined that the portion of Alum Creek that flows through the city of Bexley contributes to the health, safety, and general welfare of the residents of Bexley. The specific purpose and intent of this district is to govern uses and developments within riparian setbacks that would impair the ability of riparian areas to:

- a) Reduce flood impacts by absorbing peak flows, slowing the velocity of flood waters, and regulating base flow.
- b) Protect Alum Creek's physical, chemical and biological characteristics and maintain Alum Creek's functions.
- c) Preserve to the maximum extent practicable the natural drainage characteristics of the community and building sites.
- d) Preserve to the maximum extent practicable natural infiltration and ground water recharge, and maintain subsurface flow that replenishes water resources, wetlands, and wells.
- e) Reduce the long term expense of remedial projects needed to address problems caused by inadequate storm water control.
- f) Reduce the need for costly maintenance and repairs to roads, embankments, sewage systems, ditches, water resources, and storm water management practices that are the result of inadequate storm water control due to the loss of riparian areas.
- g) Assist in stabilizing the banks of Alum Creek to reduce streambank erosion and the downstream transport of sediments.
- h) Reduce pollutants in Alum Creek during periods of high flows by filtering, settling, and transforming pollutants before they enter Alum Creek.
- i) Provide shade and nutrient inputs, thus regulating in-stream temperatures and providing food for aquatic communities.
- j) Reduce the presence of nuisance species to maintain a healthy, diverse aquatic system.
- k) Provide habitat to a wide array of wildlife by maintaining diverse and connected riparian vegetation.

- l) Benefit the Alum Creek watershed by minimizing encroachment on watercourse channels and the need for costly engineering solutions to protect structures and reduce property damage and threats to the safety of Alum Creek watershed residents; by contributing to the scenic beauty and environment of Alum Creek watershed; and by preserving the character and quality of life for the residents in the Alum Creek watershed, and corresponding property values.

#### **1225.03 – APPLICABILITY AND COMPLIANCE**

- a) Except as otherwise provided in Chapter 1225, all property located within a riparian setback from Alum Creek that is subject to this Section shall be preserved in its natural state.
- b) Any property owned by a local, State or Federal agency must comply with the provisions of Chapter 1225.
- c) In the event of a conflict between a provision of Chapter 1225 and any other provision of the Bexley City Code, or other adopted regulation, the more stringent regulation applies.

#### **1225.04 – ESTABLISHMENT OF DISTRICT**

The Alum Creek Preservation District is hereby established. This district applies to the riparian setbacks along that portion of Alum Creek that flows through the City of Bexley.

#### **1225.05 – REFERENCE MAP**

The Franklin County Hydrography Dataset developed by the Franklin Soil and Water Conservation District may be used as a reference to determine the location of Alum Creek and the extent of required riparian setbacks. The dataset is an electronic map, created using GIS software. In the event of a conflict between the dataset and the application of a provision of Chapter 1225, the provision of Chapter 1225 will control. Although the dataset is a guide and believed to be accurate, the presence or absence of Alum Creek or riparian setbacks requiring protection shall be based upon actual conditions on the property. The Reference Map will be updated from time to time as observed or measured field conditions may change. Any changes to the Reference Map will be in accordance with all applicable federal or State of Ohio requirements related to riparian setbacks, storm water controls, flood control, or such other applicable laws or regulations.

#### **1225.06 – RIPARIAN SETBACKS**

Subject to the inclusion of floodplains, wetlands and steep slopes as determined by Chapter 1225, the extent of a riparian setback shall be delineated based upon the following method:

- a) The setback distance from the centerline of the stream must be sized as the greater of the following:
  - 1) The regulatory 100-year floodplain based on Federal Emergency Management Agency (FEMA) mapping; or
  - 2) 100 feet from the center of Alum Creek.

### **1225.07 – INCLUSION OF FLOODPLAIN, WETLANDS AND STEEP SLOPES**

Where applicable, the following provisions governing floodplains, wetlands and steep slopes supersede Section 1225.06. In the event of a conflict among the following three (3) provisions, the greatest setback distance applies.

- a) For areas with a FEMA-defined 100-year floodplain: If the 100-year floodplain is wider than the riparian setback on either side of a watercourse, the riparian setback is extended to the outer edge of the 100-year floodplain.
- b) Where a wetland is identified within a riparian setback, the riparian setback width must be extended to the outermost boundary of the wetland. Wetlands must be delineated through a site survey prepared by a qualified wetlands professional retained by the landowner using delineation protocols adopted by the U.S. Army Corps of Engineers at the time an application is made under this Chapter 1225.
- c) Where a slope of 12 percent or greater or a slope designated as Highly Erodible Land (HEL), as defined in Section 1225.01, is partially contained within the riparian setback, the riparian setback width must be extended to the top of the 12 percent slope or the top of the slope designated as HEL.
  - 1) In case of landowner disagreement with any steep slope or HEL designation the property owner may, at their own expense, hire a registered professional surveyor or qualified soil scientist to provide additional information to the Administrative Officer to assist in the determination of steep slope or HEL.

### **1225.08 – APPLICATIONS AND SITE PLANS**

Applicants submitting development applications are responsible for delineating riparian setbacks as required by this regulation.

**1225.081 – Site Plan Required** - Applicants must identify all setbacks, if applicable, on site plans included with subdivision plans, land development plans, and/or zoning permit applications submitted to the appropriate Board or Commission, which may include the Bexley Board of Zoning Appeals, Bexley Planning Commission, Bexley Environmental Review Board, Bexley Architectural Board, or the Bexley Tree and Public Gardens Commission.

**1225.082 – Preparation of Site Plan** - The site plan must be prepared and sealed by a professional engineer, surveyor, or landscape architect.

**1225.083 – Required Elements on Site Plans** - Applicants must submit two (2) copies of the site plan. This site plan must be submitted in addition to any other plan required in conjunction with a development proposal.

- a) The site plan must include the following information:
  - 1) The site boundaries with dimensions;
  - 2) The Drainage Area of the site;

- 3) The locations of all watercourses and wetlands;
- 4) The limits, with dimensions, of the riparian setbacks;
- 5) The existing topography at contour intervals of two (2) feet;
- 6) The location and dimensions of any proposed structures or uses, including proposed soil disturbance, in relationship to all watercourses;
- 7) The proposed location of construction fencing delineating riparian setback area as required in Section 1225.084;
- 8) North arrow, scale, date, and stamp bearing the name and registration number of the qualified professional who prepared the site plan;
- 9) Soil types and locations;
- 10) Other such information as may be reasonably necessary for the Board or Commission to ensure compliance with this regulation; and
- 11) Narrative describing proposed uses and maintenance plan within the riparian setback.

**1225.084 – Construction Fencing Required** - Prior to any soil disturbing activities occurring, the riparian setback must be clearly identified by the applicant on site with construction fencing as shown on the site plan and the fencing must be maintained throughout soil disturbing activities.

**1225.085 – No Approvals Without Required Site Plan** - No approvals or permits will be issued by the Board or Commission without submission of a site plan as required by this regulation, including the prior identification of riparian setbacks on the affected land.

**1225.086 – Inspection Of Riparian Setbacks** - Prior to soil disturbing activities authorized under this regulation, a preconstruction meeting at the proposed site shall occur to ensure that all riparian setbacks are adequately protected. The meeting shall be arranged by the property owner or designated, qualified representative of the City. The property owner, developer and site engineer shall meet with the representative of the City prior to beginning any earth-disturbing activity associated with the site.

**1225.09 – PERMITTED USES IN RIPARIAN SETBACKS**

Open space uses that are passive in character are permitted in riparian setbacks, including but not limited to those listed in this Section 1225.09. No use permitted under this regulation allows trespass on privately held lands.

**1225.091 – Permitted Uses Not Requiring a Zoning Certificate** - The following uses are permitted and do not require a certificate of zoning compliance:

- a) Property Maintenance. The enjoyment, access, and maintenance of lawns, landscaping, shrubbery, or trees existing at the time of passage of this regulation.
- b) Passive Recreational Activity.
  - 1) Non-motorized recreational uses such as hiking, fishing, hunting, picnicking, and similar passive recreational uses, as permitted by federal, state, and local laws.
  - 2) Unimproved trails and stream access points. Improved trails require a certification of zoning compliance as listed below in Section 1225.092.

Unimproved trails and stream access points must meet the following development standards:

- a. Surface: unimproved/earthen;
  - b. Width: maximum 5 feet;
  - c. No clearing of woody vegetation is permitted
- c) The Following Non-Motorized Active Recreational Activities:
- 1) Canoe or Kayak access points or ramps installed by the City of Bexley
- d) Removal of Damaged or Diseased Trees, invasive species, or noxious weeds. Invasive species (as defined by the Ohio Department of Natural Resources), noxious weeds and damaged or diseased trees that endanger people or that pose a serious threat to property, may be removed.

Special care should be taken to remove trees sparingly. Damaged or decaying trees serve important ecological functions such as supplying stream habitat and material for organisms that aid in organic decomposition as well as providing habitat for endangered species, such as Indiana bats. Applicants or property owners are encouraged to allow these seemingly-damaged trees to remain in their natural state.

Applicants or property owners are further encouraged to seek assistance from Franklin County Soil and Water Conservation District for advice on maintaining these important ecological functions. Franklin County Soil and Water Conservation District can also provide information regarding best management practices in herbicide application techniques for controlling invasive species and noxious weeds in accordance with Ohio DNR and other applicable state and federal regulations.

- e) Revegetation and/or Reforestation. Riparian setbacks may be revegetated and/or reforested with Ohio-native, noninvasive plant species. Applicants or property owners are encouraged to seek guidance from Franklin County Soil and Water Conservation District.

**1225.092 – Permitted Uses Requiring a Zoning Certificate** - The following permitted uses require a zoning certificate as provided for in Section 1264.07 through 1264.11 of Bexley Code.

- a) Fences and walls. Fences and walls that provide adequate surface water flow through, under or around, as determined by Franklin County Soil and Water Conservation District, are permitted.
- b) Paved or otherwise improved trails. Construction of paved or otherwise improved trails in the riparian setback to further passive recreational uses is permitted with a development plan approved by the Board or Commission

Construction of paved or otherwise improved trails must meet the following development standards:

- 1) Paved trail surfaces must be improved with a pervious or semi-pervious material.
- 2) Trail width is a maximum of 12 feet
- 3) Clearing width is a maximum of 20 feet
- 4) Trails that become damaged due to natural erosion:
  - a. May not be repaired, and
  - b. Must be moved upland or removed altogether and stabilized.
- c) Crossings. Crossings through riparian setbacks with roads, driveways, easements, bridges, culverts, utility service lines, or other means may be permitted provided such crossings minimize disturbance in riparian setbacks. Mitigation of crossings may be required by state and federal agencies.

A certificate of zoning compliance for a new crossing will only be issued when one or more of the following findings is made by the Board or Commission:

- 1) The parcel has no other existing access;
- 2) The crossing is necessary for public health or safety;
- 3) The applicant can demonstrate that important ecological protection and ecological benefits are realized, such as saving a mature woodlot, preventing habitat degradation, avoiding flow alteration, or ensuring passage for fish; or
- 4) The applicant demonstrates that the new crossing is necessary to achieve important ecological protection goals, or maximized ecological benefit, and that the crossing can be installed and maintained with minimal environmental impacts.

Such crossings may only be undertaken upon approval of a Crossing Plan by the Board or Commission in consultation with Franklin County Soil and Water Conservation District. Such activity must minimize disturbance to the riparian buffer and mitigate any disturbances.

- d) Stream Quality Improvement Projects. Streambank stabilization, erosion control work, or large scale stream channel and riparian buffer restoration work along designated watercourses may be allowed, provided they comply with the following:
  - 1) The project is ecologically compatible and substantially uses natural materials and native plant species where practical and available.
  - 2) The project must comply with the applicable portions of the Ohio DNR Rainwater and Land Development handbook.

- 3) The project shall only be undertaken upon approval of a Streambank Stabilization Plan by the Board or Commission.
- 4) All streambank stabilization plans should provide long term streambank protection.
- 5) All erosion control measures shall be limited to the purposes of stream quality protection and enhancing stream channel stability.

In reviewing this plan, the Board or Commission may consult with representatives of the Ohio Department of Natural Resources, Division of Natural Areas and Preserves or Division of Soil and Water Conservation; the Ohio EPA, Division of Surface Water; the Franklin County Soil and Water Conservation District; or other technical experts as necessary.

- e) The construction of athletic fields and Campus Uses between East Main Street and Astor Avenue, as if extended to Alum Creek. Development in this area must meet the following standards:
  - 1) Steps must be taken and a development and maintenance plan submitted to mitigate against erosion and runoff associated with development.
  - 2) The setback requirements established by Section 1225.07(c) shall not apply to that land area between East Main Street and Astor Avenue extended.

**1225.093 – Proof of compliance with outside permits.** If any activities will occur below the ordinary high water mark, as defined in Section 1225.01, of Alum Creek, the applicant must submit proof of compliance with the applicable conditions of a US Army Corps of Engineers Section 404 Permit (either a Nationwide Permit, including the Ohio State Certification Special Conditions and Limitations, or an Individual Permit, including Ohio 401 water quality certification).

Proof of compliance is considered one of the following:

- a) A comprehensive site plan and a copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under the applicable Nationwide Permit, or
- b) A comprehensive site plan and a copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under an Individual Permit.

#### **1225.10 – PROHIBITED USES IN RIPARIAN SETBACKS**

Any use not authorized under Section 1225.09 – PERMITTED USES IN RIPARIAN SETBACKS is prohibited in riparian setbacks.

**1225.101 – List of Prohibited Uses** - Prohibited uses are not limited to those examples listed here:

- a) Construction. Construction of buildings or structures of any kind or size are prohibited except as provided for in Sections 1225.102 and 1225.12. This restriction applies to new construction, and does not apply to existing residential structures and associated accessory structures.
- b) Dredging or Dumping. Drilling, filling, dredging, excavation or dumping of soil, other earthen material, spoils, liquid, or solid materials is prohibited except as permitted under this regulation.



- c) Roads or Driveways. Installation of roads or driveways is prohibited, unless approved in association with an approved crossing plan.
- d) Motorized Vehicles. Use of motorized vehicles is prohibited, with the exception of emergency vehicles when necessary for public health and safety, or except as permitted under this regulation.
- e) Parking Spaces or Lots and Loading/Unloading Spaces for Vehicles. Establishment of parking spaces, parking lots, or loading/unloading spaces is prohibited.
- f) New Surface and/or Subsurface Sewage Disposal or Treatment Areas. Use of areas within riparian setbacks for the disposal or treatment of sewage is prohibited.
- g) New Stormwater Management and Drainage Facilities. New stormwater management and drainage facilities including appurtenances thereto are prohibited within riparian setbacks.
- h) Sediment and Erosion Controls. No structural sediment controls, such as a silt fence, a sediment settling pond, or other structural post-construction controls, may be used in a stream or the delineated setback, except as permitted in Section 1225.092.

**1225.102 – Exceptions to Prohibited Uses** – The following activities are exempt from the restrictions set forth in Section 1225.10 – PROHIBITED USES IN RIPARIAN SETBACKS. The exceptions listed below do not apply to uses and structures that are non-conforming with respect to the requirements of the underlying zoning district. Such existing non-conforming uses and structures must comply with the requirements of the sections of the City of Bexley Zoning Code applicable to the Board or Commission reviewing the application.

- a) The construction or reconstruction of any structure, or other impervious surface, permitted in the underlying zoning district on an existing, legal impervious surface on a lot of record developed with a use existing at the time of passage of this regulation.
- b) The installation of conduits flowing from stormwater management facilities designed to treat stormwater.
- c) All activities conducted by the City of Bexley that are necessary to provide and maintain public transportation infrastructure.
- d) All activities conducted by the City of Bexley that are necessary to provide and maintain public drainage improvements.

**1225.11 – NON-CONFORMING STRUCTURES OR USES IN RIPARIAN SETBACKS**

The procedures for reviewing non-conforming structures and uses are set forth in the sections of the City of Bexley Zoning Code applicable to the Board or Commission reviewing the application.

**1225.12 – VARIANCES WITHIN RIPARIAN SETBACKS**

- a) The Board or Commission may grant a variance to this Chapter 1225 as provided for in that section of the City of Bexley Zoning Code applicable to the Board or Commission reviewing the application.. In addition to the findings required by that Section of the Zoning Code ,, the Board or Commission must consider the following:
- 1) The native vegetation of the property.
  - 2) The extent to which the requested variance impairs the flood control, erosion control, water quality protection, or other functions of the riparian setback. This determination must be based on sufficient technical and scientific data.
  - 3) Soil-disturbing activities permitted in the riparian setback through variances must minimize clearing to the extent possible and must include the use of Best Management Practices necessary to minimize erosion and control sediment.
  - 4) The degree to which the presence of significant impervious cover, or smooth vegetation such as maintained lawns, in the riparian setback compromises its benefits to any waterway.
- b) In order to maintain the riparian setback to the maximum extent practicable, the Board or Commission may consider granting variations to other area or setback requirements imposed on a property by the sections of the City of Bexley Zoning Code applicable to the Board or Commission reviewing the application.
- c) The City of Bexley recognizes that variance applications may need to be submitted for planned development in the following areas:
- 1) The commercial sites on the north and south side of East Main Street which border the creek.
  - 2) Capital University's development and expansion area north of Astor Avenue and south of East Main Street.
  - 3) The targeted redevelopment area at Livingston and Mayfield.

The above represent areas of anticipated future development, and it is understood and expected that variances will be granted for developments in these development zones, provided however that any development plans that require a variance will limit the impact to native vegetation, address flood control, erosion control, and water quality impact.

#### **1225.13 – PROCEDURES FOR VARIANCES & APPEALS**

The procedures for granting variances and appeals of the determinations of the Board or Commission are set forth in those sections of the City of Bexley of the Zoning Code applicable to the Board or Commission reviewing the application.

#### **1225.14 – PENALTIES**

The penalties for violation of any provision of this Chapter 1225 are set forth in the sections of the City of Bexley Zoning Code applicable to the Board or Commission reviewing the application.

**Section 2.**

This ordinance shall go into effect and be in force from and after the earliest period allowed by law.

Passed: \_\_\_\_\_, 2012

\_\_\_\_\_  
Rick Weber, President of Council

Attest: \_\_\_\_\_  
Clerk of Council

Approved: \_\_\_\_\_, 2012

\_\_\_\_\_  
Ben Kessler, Mayor

First Reading 6-26-12  
Second Reading 8-14-12  
Third Reading 8-28-12  
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