

## ORDINANCE 2005-02

### AN ORDINANCE AMENDING CHAPTER 188 (LAND USE, AND DEVELOPMENT) OF THE MUNICIPAL CODE OF THE TOWNSHIP OF HILLSBOROUGH, COUNTY OF SOMERSET, STATE OF NEW JERSEY

**BE IT ORDAINED** by the Township Committee of the Township of Hillsborough, County of Somerset, State of New Jersey as follows:

**Section 1:** Chapter 188 Section 98B (Residential Districts, Permitted principal uses) of the Municipal Code of the Township of Hillsborough shall be amended as follows:

#### Notes for Schedules for Residential Zones

<sup>1</sup> ~~Except in the AH and RCA, RC and ARPDG Zone Districts, which are exempted from the critical area calculations and requirements herein, the permitted density for all minor residential subdivisions and preliminary major residential subdivisions and site plans shall be determined based upon the extent of critical areas identified in the Natural Resources Inventory and subject to the provisions contained in Section 188-46A. critical areas as determined by the Natural Resource Inventory so far as slopes (over 12%), floodplain and surface water (zero to one foot to the surface during periods of seasonal high water) are concerned shall count as ½ credit towards the density. Floodways shall not count towards density.~~

<sup>6</sup> ~~Except in the AH and RCA Districts, lot sizes must be adjusted to reflect critical areas. In the MZ Zone the minimum lot size may go up to one unit per eight acres. In the AG Zone the minimum lot size may go up to one unit per seven acres.~~

<sup>22</sup> ~~The density percentages shown in the fourth column entitled “Units per acre” and further discussed in Footnote 11 herein are intended to provide only approximations and general guidance as to the maximum density permitted. The determination of density, subject to Board approval, shall be made by the Township Engineer based on an actual conceptual subdivision plat of the tract to be submitted by the applicant. This plat shall demonstrate the maximum number of noncluster lots to be accommodated in the tract without variance or waiver. It shall show all streets, easements and stormwater management facilities, and take into account material topographic features such as critical slopes, critical soils, wetlands and floodplains. The number of lots reflected in that plat and approved by the Township Engineer shall be the maximum number of lots permitted, subject to Board approval, whether that tract is developed as a standard subdivision or as a cluster development.~~

**Section 2:** Chapter 188 Section 3 (Words and terms defined) of the Municipal Code of the Township of Hillsborough shall be amended as follows:

ACTIVITY – Any land disturbance, including any development for which an application for development is necessary.

BEST MANAGEMENT PRACTICES (BMPs)-Conservation practices or systems of practices and management measures that (1) control soil loss and reduce water quality degradation caused by nutrients.

animal waste, toxics, and sediment; and (2) minimize adverse impacts to surface water and ground water flow, circulation patterns, and to the chemical, physical and biological characteristics of critical areas.

CHANNEL-A watercourse with a definite bed and banks that confine and conduct the normal continuous or intermittent flow of water.

CRITICAL AREA – Any area which is environmentally sensitive or which, if disturbed during construction, would adversely affect the environment, including but not limited to slopes of 12% or greater, floodplains, floodways, areas of critical seasonal high water table, wetlands and wetland transition areas, and stream corridors.

CRITICAL SEASONAL HIGH WATER TABLE – Conditions which generally occur between January and April when groundwater rises in the soil towards the surface such that areas of high water at 0-1 foot from the surface may exist.

FLOOD -The temporary overflowing of water onto land that is usually devoid of surface water.

FLOOD FRINGE AREA-That portion of the flood hazard area outside of the floodway based on the total area inundated during the regulatory base flood plus 25%of the regulatory base flood discharge.

FLOOD HAZARD AREA-The floodplain consisting of the floodway and the flood fringe area.

FRESHWATER WETLAND-An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

LAND DISTURBANCE-Any activity involving the clearing, cutting, excavation, filling or grading of land or any other activity that alters land topography or vegetative cover.

SLOPE-The deviation of a surface from the horizontal, usually expressed in percent or degrees.

STREAM – A watercourse having a source and terminus, banks, and channel through which waters flow at least periodically.

STREAM CORRIDOR – All areas as measured 150 feet in both directions from the top of the channel banks of a stream. If slopes greater than (10%) or wetlands or wetland transition areas abut the outer boundary of the stream corridor, then the slope, wetland or wetland transition area should be included within the boundaries of the stream corridor area.

WETLAND TRANSITION AREA-An area of land adjacent to a freshwater wetland which minimizes adverse impacts on the wetland or serve as an integral component of the wetlands ecosystem.

**Section 3:** Chapter 188 Section 46 (Environmental impact report) of the Municipal Code of the Township of Hillsborough shall be amended by adding Section 46A as follows:

#### **46-A. Critical Area Calculations**

(1) Purpose

The purpose of the regulations for critical areas is to protect critical areas from adverse effects such as flooding, erosion, loss of erosion seepage, and downstream deposits of silt, gravel and stone, to prevent burdensome costs to the public arising from such damage, and to protect environmentally fragile lands.

- (2) The Environmental Impact Report required by the site plan and subdivision checklist, must identify all critical areas, as referred to below in (3), on a separate map or maps, as appropriate, and as relating to minor residential subdivision and preliminary major residential subdivisions and site plans.
- (3) Except in the AH, RCA, RC and ARPDG Zone Districts, which are exempted from the critical area calculations and requirements herein, the permitted density for all minor and major residential subdivisions shall be calculated after reducing the total area by portions of land subject to the specific constraints as provided below.

<u>Constraint</u>	<u>MZ Zone</u>	<u>AG Zone</u>	<u>Other Residential Zones</u>
<u>Slopes 12% to 24.99%</u>	<u>100</u>	<u>75</u>	<u>50</u>
<u>Slopes 25% or greater</u>	<u>100</u>	<u>100</u>	<u>100</u>
<u>Floodplain</u>	<u>100</u>	<u>75</u>	<u>50</u>
<u>Floodway</u>	<u>100</u>	<u>100</u>	<u>100</u>
<u>Wetlands/Transition Areas</u>	<u>100</u>	<u>75</u>	<u>50</u>
<u>Stream Corridors</u>	<u>100</u>	<u>75</u>	<u>50</u>
<u>Critical Seasonal High Water</u>	<u>100</u>	<u>75</u>	<u>50</u>

Table

(4) Enforcement

A. Unauthorized Critical Area Alterations

- 1. When a critical area has been altered in violation of this Section, all ongoing development work shall stop and the critical area shall be restored. The Township shall have the authority to issue a stop work order to cease all ongoing development work and order restoration, rehabilitation or replacement measures at the expense of the owner or other responsible party, as appropriate, in order to compensate for violation of the provisions of this Section.

B. Site Investigations

- 1. The Zoning Officer is authorized to make site inspections and take such actions that are necessary in order to enforce the provisions of this Section.

C. Penalties

- 1. For penalties refer to Section 188-25 (Violations and Penalties)

**Section 4:** Chapter 188 Section 64 (Natural features) of the Municipal Code of the Township of Hillsborough shall be amended by adding Section 64 D. as follows:

**64-D. Stream Corridor Protection**

(1) Purposes.

The purposes of this ordinance are as follows:

Maintain the quality streams and improve the currently impaired streams within the Township.

Protect significant ecological components of stream corridors such as wetlands, floodplains, woodlands, steep slopes and wildlife and plant life habitats within the stream corridors and to prevent flood related damage to the Township.

Complement the existing state, regional and county stream corridor protection and management regulations and initiatives.

Ensure that only appropriately placed development on a property will not increase the danger to human, plant or animal life and that it represents an acceptable use of the land in relation to the hazards involved.

This is not intended to conflict with any applicable regulations from the NJ Department of Environmental Protection, which shall govern.

## (2) Applicability

All tracts falling in whole or in part within a stream corridor shall be subject to the standards set forth in this Section, which may exceed and be further subject to review by the Delaware and Raritan Canal Commission under the standards set forth in NJAC 7:45-6.6 of the Delaware & Raritan Canal Commission Regulations.

## (3) Standards

### A. Permitted Activities in Stream Corridors

Stream corridors shall remain in their natural state with no clearing or cutting of trees and brush (except for removal of dead vegetation and pruning for reasons of public health, safety and welfare), altering of watercourses (including filling or dredging), regrading or construction, except for the following activities:

1. Farming and agricultural-related activities, subject to application of Best Management Practices (BMPs) in effect, but excluding enclosed structures.
2. Wildlife sanctuaries, woodland preserves and arboretums, but excluding enclosed structures.
3. Game farms, fish hatcheries and fishing reserves, operated for the protection and propagation of wildlife, but excluding enclosed structures.
4. Unpaved hiking, bicycle and bridle trails.
5. Fishing areas.
6. Reconstruction of a structure which pre-dates the adoption of this Ordinance in the event of damage or destruction by fire, storms, natural hazards, or other acts of God, provided that the reconstruction does not have a greater footprint or total area than that of the damaged structure and that no change in land use occurs, and further provided that the reconstruction shall not be permitted only if no more than 50% of the structure is destroyed.

### B. Location of Activities on Tracts Partially Within Stream Corridors

1. All new lots created by minor or major subdivisions, as well as the subject of a site plan application, shall be designed to provide sufficient areas outside of stream corridors to accommodate primary structures as well as any normal accessory uses appurtenant hereto.
2. The board having jurisdiction may allow stream corridor averaging, thus allowing reasonable flexibility to accommodate site planning when necessitated by the size and shape of the tract and physical conditions thereon. The stream corridor width may be reduced to a minimum of 50 feet from the outer boundary of the corridor provided there is an equivalent increase in the width elsewhere on the site and that all applicable permits are obtained.

### C. Waiver Required for Activities Permitted in Stream Corridors When There is No Reasonable or Prudent Alternative:

(a) Subject to a waiver by the board having jurisdiction, in a stream corridor when subdivision or site plans can not be designed in the manner set forth in Section B. above, or, (b) in the case of a pre-existing lot with a one or two family dwelling, when the Zoning Officer determines there is insufficient room outside the stream corridor for proposed permitted accessory uses (in either case, there must be no other reasonable or prudent alternative to placement in the stream corridor), the following activities are permitted subject to conformance with Best Management Practices:

1. Yard improvements such as lawns, and accessory structures such as swimming pools.
2. Recreational use, whether open to the public or restricted to private membership, such as parks, camps, picnic areas, golf courses, sports or boating clubs, not to include the enclosed structures, but permitting piers, docks, floats or shelters usually found in developed outdoor recreational areas.
3. Outlet installation for sewerage treatment plants and sewerage pumping stations, and the expansion of existing sewerage treatment facilities.
4. Private or public water supply wells that have a sanitary seal, flood-proofed water treatment facilities or pumping facilities.
5. Dredging or grading when incidental to permitted structures or uses, including stream cleaning and stream rehabilitation work undertaken to improve hydraulics or to protect public health, safety and welfare.
6. Dams, culverts, bridges and roads, provided that they cross the corridor as directly as practical.
7. Sanitary or storm sewers.
8. Utility transmission lines installed during periods of low stream flow in accordance with soil erosion and sediment control practices and approved by the Soil Conservation District in a manner which will not impede flows or cause ponding of water.
9. Structures comprising part of a regional flood control/detention project.
10. Detention or retention basins and related outfall facilities.

D. Waiver Required for Activities Permitted in Stream Corridors When Prohibiting Such Activities Would Cause Hardship

1. New structures (other than those permitted as exceptions in A. and C. above), including retaining walls, parking facilities and roads (but not those which are parallel to the stream) are permitted, subject to a waiver by the board having jurisdiction, in a stream corridor only upon a demonstration by the applicant that prohibiting such activities would result in a hardship and or would conflict with a compelling public need. The board having jurisdiction shall use the following standards in determining whether a hardship exists:
  - a. Prohibiting the activity would result in a hardship, as distinguished from a mere inconvenience, because of the particular physical surroundings, shape or topographical conditions of the property involved. The necessity of acquiring additional land to locate development outside the stream corridor shall not be considered a hardship unless the applicant can demonstrate that there is no adjacent land that is available.
  - b. An applicant shall be deemed to have established the existence of a hardship, based on specific facts, if it is demonstrated that the subject property is not capable of being developed as authorized by provisions of this Ordinance and that this inability to yield a reasonable economic return results from unique circumstances particular to the subject property which:
    - i. do not apply to or affect other property in the immediate vicinity,

- ii. relate to or arise out of the characteristics of the subject property rather than the personal situation of the applicant.
- iii. are not the result of any action or inaction by the applicant or owner or any predecessors in title.
- c. An applicant shall be deemed to have established compelling public need, based on the specific facts, if it is demonstrated that:
  - i. the proposed project will serve as an essential public health, safety or welfare need.
  - ii. the public health, safety or welfare require the proposed activity.
  - iii. the proposed use is required to serve existing public health, safety or welfare need.
  - iv. there is no alternative available to meet the established public health, safety or welfare need.
  - v. the activity will not be materially detrimental or injurious to other property or improvements in the area in which the subject property is located and will not endanger public health, safety or welfare
  - vi. the relief granted under this waiver is the minimum necessary to relieve the compelling public health, safety or welfare need.

#### E. Prohibited Activities

All activities not permitted pursuant to A, C, and D above shall be prohibited. In no circumstance shall the following be permitted as waivers to such subsections:

1. Any solid or hazardous waste facilities, including but not limited to sanitary landfills, transfer stations and wastewater lagoons.
2. Junkyards, commercial and industrial storage facilities and open storage of vehicles and materials.
3. Septic systems.
4. Driveways and parking areas (pervious or impervious).
5. Buildings or structures, except as permitted herein.

#### F. Provisions Governing Activities in Stream Corridors

1. The applicant shall provide whatever additional measures are necessary to assure that areas designated as stream corridors will be preserved and to prevent additional encroachments in stream corridors which may occur as a result of the approval.
2. The board having jurisdiction, in the case of an application for development, may require conservation easements or deed restrictions assuring that there will be no further intrusion on the stream corridor than that permitted by the approved activity.

#### (4) Submission Requirements

An applicant for an activity in a stream corridor shall submit a map showing the project site at a scale of 1 inch equals 40 feet or larger, as appropriate, in order to show the following information:

- i. one-hundred year flood line.
- B. state wetland boundary line.
- C. stream corridor boundary.
- D. slopes of 12% and greater based on 2 foot contour intervals.
- E. the location of all improvements and land disturbance proposed to be located within any of the above boundaries.
- F. all existing natural and manmade features on the subject property.
- G. any existing or proposed easements on the subject property.

(5) Enforcement

Enforcement of the provisions contained in this Section shall be as provided in Section 188-46A (4) as related to critical areas.

**Section 5:** This ordinance shall take effect upon its adoption, passage, and publication according to law.

ATTEST:

TOWNSHIP OF HILLSBOROUGH:

\_\_\_\_\_  
Kevin P. Davis, RMC, Township Clerk

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Robert C. Wagner, Jr., Mayor

***Introduced:***

***Published:***

***Public Hearing:***

***Adopted:***

***Published:***