

WEST BLOOMFIELD TOWNSHIP

Sec. 26-48. Environmental features setback.

(a) Intent and purpose. It is the intent of this article to require a minimum setback from environmental features, and to regulate property within such setback in order to:

(1) Prevent physical harm, impairment and/or destruction of or to an environmental feature. It has been determined that, in the absence of such a minimum setback, intrusions in or onto environmental features would occur, resulting in harm, impairment and/or destruction of environmental features contrary to the public health, safety and general welfare.

(2) Achieve the following objectives in relation to setback areas:

- a. Protect unique wildlife habitat and habitat transition, including, without limitation, feeding, nesting, resting and traveling areas for numerous animals.
- b. Protection of surface water runoff and water quality for pollution prevention purposes, and assistance in beneficial water recharge for drinking, irrigation and other purposes.
- c. Provide water storage area in storm events.
- d. Provide areas which are unique due to geographic relationship to environmental feature.
- e. Preserve aesthetic views and areas for the enjoyment of natural resources.
- f. Preserve threatened and endangered species habitat, including upland species.
- g. Reduce the need for on-site and off-site stormwater storage capacity based upon the availability of a greater area of absorption and a smaller impervious area.
- h. Stabilize and protect soil resources, including the prevention of erosion and prohibition of loss due to moving water resulting in destruction of upland, structures and infrastructure on the upland, and prevention of the alteration of the course of moving waters.

This regulation is based on the police power, for the protection of the public health, safety and welfare, including the authority granted in the Zoning Enabling Act.

It is recognized that there is a special relationship between environmental features and the adjoining upland in terms of: Spatial relationship; interdependency in terms of physical location, plant species, animal species and an encouragement of diversity and richness of plant and animal species; overland and subsurface hydrology; water table; water quality; erosion or sediment deposition.

(b) Regulation. An environmental feature setback shall be maintained in relation to all areas defined in this section as being an "environmental feature," unless, and to the extent, it is determined to be in the public interest not to maintain such a setback.

(c) Authorization, prohibition and method of review:

(1) The environmental feature setback shall be an area or feature with boundaries and limitations determined in accordance with the standards and provisions in this section in relation to respective types of environmental features.

(2) In conjunction with the review of plans submitted for authorization to develop property or otherwise undertake an operation in, on or adjacent to an environmental feature, applicable environmental feature setbacks shall be determined, and authorizations and prohibitions established, by the body undertaking the plan review.

a. Whenever a permit is required for a use or operation that would not otherwise require the review and approval by the planning commission or township board, the planning and environmental director shall refer the application to the wetlands review board, which shall hold a public hearing and modify, approve or deny the application within ninety (90) days after receipt.

b. For those developments and operations where the planning commission is the final approval authority as defined in this chapter or chapter 21 (subdivision and land division), the planning and environmental director shall refer the application to the planning commission, which shall hold a public hearing in accordance with section 26-44 and shall modify, approve or deny the application within the time required to undertake the review of the use or operation.

c. In any instances, the review of an application to perform work within an environmental feature setback shall be done in conjunction with an application, if any, to perform work within the environmental feature itself.

d. In all cases in which the wetlands review board is not the final decision-making body, the wetlands review board shall make a recommendation prior to a final decision being made. For such purposes, prior to a final determination, a copy of the meeting agenda and public hearing notice shall be provided to the members of the wetlands review board. In connection with the public hearing to be conducted by the review body, the wetlands review board shall appear and be entitled to participate fully in the deliberations of the decision making body. While such decision-making body shall be the decision maker for all purposes, the wetlands review board shall, prior to final decision, separately vote to provide its recommendation on the application. The vote of the wetlands review board shall be recorded in the minutes of the decision-making body. The decision-making body shall follow the recommendation of the wetlands review board, unless there is clear and convincing information presented at the hearing that the recommendation of the wetlands review board is clearly erroneous based upon the application of the review criteria for decisions on the application. If the decision-making body does not follow the recommendation of the wetlands review board, the decision-making body shall include in its minutes the reasons why the wetlands review board recommendation was not followed.

(3) Within an established environmental feature setback, unless and only to the extent determined to be in the public interest by the body undertaking the plan review, there shall be no: removal, deposition or assembly of materials or structures, permanent or temporary, above or below the surface of the land or water, including, but not limited to, houses, buildings, plants, bulkheads, piers, docks, rafts, landings, dams or waterway obstructions; removal of any soils, minerals or vegetation; dredging, filling or land balancing; or constructing or undertaking seasonal or permanent operations. This prohibition shall not apply with regard to those activities exempt from this prohibition, below.

(4) In determining whether the proposed construction or operations are in the public interest, the benefit which would reasonably be expected to accrue from the proposal shall be balanced against the reasonably foreseeable detriments of the construction or other operation, taking into consideration the local, state and national concern for the protection and preservation of the environmental feature in question. The following general criteria shall be applied in undertaking this balancing test:

- a. The relative extent of the public and private need for the proposed activity.
- b. The availability of feasible and prudent alternative locations and methods to accomplish the expected benefits from the activity.
- c. The extent and permanence of the beneficial or detrimental effects which the proposed activity may have on the public and private use to which the area is suited, including the benefits the environmental feature or environmental feature setback provides.
- d. The probable impact of the proposed construction or operation in relating to the cumulative effect created by other existing and anticipated activities in the environmental feature to be protected.
- e. The probable impact on recognized historic, cultural, scenic, ecological or recreational values and on fish, wildlife and the public health.
- f. The size and quantity of the environmental feature setback being considered.
- g. The amount and quantity of the remaining environmental feature setback.
- h. Proximity of the proposed construction or operation in relation to the environmental feature, taking into consideration the degree of slope, general topography in the area, soil type, drainage, erosion and sedimentation control, type of vegetation and the nature of the environmental feature to be protected.
- i. Economic value, both public and private, of the proposed construction or operation, and economic value, both public and private, if the proposed construction or operation were not permitted.

(d) Exemption and fast track permits.

(1) Exemption. If and to the extent the township is prohibited by its ordinance or law from regulating or prohibiting the proposed activity in or on the respective environmental feature, regulation under this article shall be exempt.

(2) Fast track permits for native plant installation.

a. Authorization for fast track review. Application, review and approval of a fast track permit under this paragraph shall be authorized for native plant installation within an environmental feature setback. By way of clarification, a fast track permit may not be issued for any other purpose, including, without limitation, a permit for native plant installation after-the-fact, any other new construction, sodding, grading, filling, or altering the existing grade and/or for removing, pruning or trimming native trees, shrubs or ground covers. This provision shall not be applicable to an individual who has a pending wetland violation.

b. Application procedure. An applicant for a fast track permit shall submit twelve (12) copies of a landscape plan to the environmental department. Such plan may be hand-

drawn or professionally drawn, and need not be drawn to scale. The application shall list native plants proposed for installation. The department shall maintain a list of native plants that, in most cases, shall be approved for this purpose. The application shall be accompanied by a fifty dollar (\$50.00) administrative fee.

c. Review by department. The manager of the environmental department shall review the application. If the application is limited to a purpose for which a fast track permit is authorized, as specified above, the manager may approve the permit for native plant installation, subject to confirmation by the wetlands review board, as provided below.

d. Review by wetland review board. In connection with each permit approved by the department, the following shall apply:

(i) The permit shall not be effective until the next regular meeting of the wetland review board at which the permit is considered;

(ii) Notice of the approval of a permit by the department shall be given to the wetland review board, and placed on the consent agenda at its next regular meeting. If the permit is affirmed by action of the wetland review board at such meeting, the permit shall then become immediately effective, and remain effective for a period of sixty (60) days from the date of such approval by the wetland review board; however, if the wetland review board votes to place the matter on the agenda of a future wetland review board meeting, the permit shall not become effective unless and until approved by action of the wetland review board.

(e) Setback standards. Unless otherwise determined by the body undertaking the plan review, the following setbacks shall apply:

(1) A twenty-five-foot setback from the boundary or edge of a wetland.

(2) A twenty-five-foot setback from the ordinary high water mark of a watercourse.

(f) Appeal of approval or denial. A decision on an application regarding a use permit application under this section may be appealed only to the township board and provided such appeal is received in writing by the township clerk within twenty-one (21) days of such decision. Notice that a timely appeal has been made shall be sent by first-class mail by the township clerk to property owners and occupants within three hundred (300) feet of the property on which the requested construction or operation is to take place. Such notice shall also be sent to all subdivision associations and lake associations registered with the township that are contiguous to the property or environmental feature affected and members of the body that reviewed and decided upon the application. The notice shall indicate that an appeal hearing has been requested, use permit being appealed, the appellant's name and address; and the time, date and location of the hearing. A synopsis for the notice shall also be published in at least two (2) of the legally approved newspapers of general circulation in the township.

(g) Conditions of issuance:

(1) All operations permitted or approved by use permits shall be conducted in such a manner as will cause the least possible damage and encroachment or interference within the environmental feature setback and with the natural resources and natural processes within the watercourses and wetland areas in the township as defined in this chapter.

(2) The township, upon the issuance of a use permit or authorization to conduct any activity within an environmental feature setback, may:

a. Impose such conditions in the manner and extent of the proposed operation/development use or structure or use activity as are necessary to ensure that the intent of this section is carried out;

b. Fix a reasonable time for the undertaking and completion of all operations; and

c. Require a cash bond or irrevocable letter of credit in such form and amount as determined necessary by the township to ensure compliance with the use permit.

(3) The review and approval of an application to conduct an activity within an environmental feature setback may be done concurrently with the review and approval of site plans or subdivision plats. Use permits approved under this section shall expire within twenty-four (24) months of approval of the permit by the body undertaking the plan review, the date of issuance of such permit notwithstanding.

(4) Prior to commencement of work on the site and continuing throughout the duration of the project, a copy of the approved use permit which contains the conditions of issuance shall be posted on the site in a conspicuous manner such that the wording of the permit will be available for public inspection.

(5) Use permits for seasonal operations need not be renewed annually unless otherwise stated in the permit.

(6) Any change which increases the size, scope, use or hours of operation must be examined as a new operation and shall require the filing of a new use permit application.

(7) Any temporary or permanent operation which is discontinued for one year or any seasonal operation which is discontinued for one season shall be considered terminated and the use permit automatically voided.

(8) A use permit shall be obtained prior to the issuance of building permits necessary for construction.

(h) Penalties and enforcement:

(1) Any person found guilty of violating any of the provisions of this section shall be punished as provided in section 1-10 and may be cited for each day of violation. The township, in addition to other remedies, may institute any appropriate action or proceeding to prevent, abate or restrain the violation.

(2) In addition to the provisions contained here and above, the body undertaking the review, at a formal meeting, shall have the authority to direct the planning and environmental staff to notify the supervisor that a stop work order shall be issued upon any project for development, with concurrence of the supervisor, when it is determined that a violation has occurred. And if it is not issued, the supervisor shall notify the body undertaking the review in writing within forty-eight (48) hours of the reason for nonissuance.

(Ord. No. C-426, § 1, 5-23-94; Ord. No. C-511, § 1, 5-5-97; Ord. No. C-426-A, § 1, 4-7-97; Ord. No. C-426-B, § 1, 7-15-02)