

than ten (10) feet to a street right-of-way line.

- E. Satellite television dish antennas are permitted subject to the provisions of Section 26-5.19 and require a building department permit prior to placement on any residential zoned site.
- 4. Regulations for accessory buildings and structures including animal enclosures in the RM Multiple Family residential districts:
  - A. In the RM-6, RM-9 and RM-12 multiple-family residential districts satellite television dish antennas are considered to be accessory structures and may be permitted only with the approval of the planning commission.
  - B. A building or structure accessory to a residential building shall not be erected in the required front, side or rear yard (perimeter) of a multiple development.
  - C. Landscaping and/or screening of the accessory building or structure may be required by the planning commission.

### 5.2 ACCESS TO MAJOR OR SECONDARY THOROUGHFARE TO ALLOW ACCESS TO A SIDE STREET UNDER CERTAIN CONDITIONS

Whenever this chapter requires users to have direct access or ingress and egress to a major or secondary thoroughfare, access driveways may be permitted to other than a major or secondary thoroughfare or freeway service drive where such access is provided to a street where the property directly across the street from such driveway and all property abutting such street between the driveway and the major or secondary thoroughfare or freeway service drive is zoned for multiple-family use or any nonresidential uses, is developed with permanent uses other than single-family residences or is an area which in the opinion of the planning commission will be used for other than single-family purposes in the future. This exception shall apply only if the planning commission finds that there are special circumstances which indicate that there will be a substantial improvement in traffic safety by reducing the number of driveways to a thoroughfare.

### 5.3 CORNER CLEARANCE

No fence, wall, shrubbery, sign, landfill or other obstruction to vision above the height of three (3) feet from the established street grades shall be

permitted within the triangular area formed at the intersection of any street right-of-way lines by a straight line drawn between the right-of-way lines at a distance along each line of twenty-five (25) feet from their point of intersection.

### 5.4 ENVIRONMENTAL FEATURES SETBACK

- 1. 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:
  - A. 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.
  - B. Achieve the following objectives in relation to setback areas:
    - i. Protect unique wildlife habitat and habitat transition, including, without limitation, feeding, nesting, resting and traveling areas for numerous animals.
    - ii. Protection of surface water runoff and water quality for pollution prevention purposes, and assistance in beneficial water recharge for drinking, irrigation and other purposes.
    - iii. Provide water storage area in storm events.
    - iv. Provide areas which are unique due to geographic relationship to environmental feature.
    - v. Preserve aesthetic views and areas for the enjoyment of natural resources.
    - vi. Preserve threatened and endangered species habitat, including upland species.
    - vii. 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.
    - viii. 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

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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.

- 2. 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.
- 3. Authorization, prohibition and method of review:
  - A. 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.
  - B. 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.
    - i. 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.
    - ii. 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 26-6.3 and shall modify, approve or deny the application within the time required to undertake the review of the use or operation.

- iii. 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.
- iv. 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.



- C. 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.
- D. 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:
  - i. The relative extent of the public and private need for the proposed activity.
  - ii. The availability of feasible and prudent alternative locations and methods to accomplish the expected benefits from the activity.
  - iii. 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.
  - iv. 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.
  - v. The probable impact on recognized historic, cultural, scenic, ecological or recreational values and on fish, wildlife and the public health.
  - vi. The size and quantity of the environmental feature setback being considered.
  - vii. The amount and quantity of the remaining environmental feature setback.
  - viii. 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.
  - ix. 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.
  - x. Mitigation and the other applicable environmental design criteria and standards in Subsection 26-5.4.3.E.
- E. Mitigation and environmental design criteria and standards. As used in this section, mitigation means actions designed to compensate for or offset impacts from operations to or in the area for which a use permit is requested. Compliance with the applicable design criteria and standards in this section, as determined by the environmental department director, shall be required for a minor project to be considered for approval by an administrative permit under Subsection 26-5.4.4.B and may be required for other use permits by the entity with final approval authority in the absence of a demonstration by the applicant that compliance with a particular design criteria or standard is not feasible and prudent or is not necessary to assure that the operation will cause the least possible damage and encroachment or interference with the environmental features setback and the natural resources and natural processes within the watercourse and wetland areas in the township. References in this section to the "wetland/ environmental mitigation manual" means a written document that is maintained and available to the public at the environmental department containing definitions of terms and detailed or technical lists, descriptions,



characteristics, methods and other information referred to in this chapter that have been recommended by the director and approved by resolution of the township board for use and reference in the administration and enforcement of this section.

- i. The mitigation area which shall be at least as large as the area of disturbance (1:1 mitigation ratio), shall not exceed 0.5 acres in size and shall be on the same site as the proposed operation for which a permit is required. Off-site mitigation may not be approved by an administrative permit.
- ii. Plans for mitigation are required and shall include all of the following:
  - a. A description of the topography, soils, hydrology, and vegetation.
  - b. The acreage to be restored, created, or preserved by ecological type.
  - c. Cut and fill volumes.
  - d. A description of the ecological types, hydrology, soils, and vegetation of the wetlands to be impacted.
  - e. A description of the adjacent protected resource wetland and/or watercourse.
  - f. Existing conditions plan that includes topographic information (one (1) or two (2) foot contour intervals), roads, trails, structures, property lines, directional arrows, scale, and the exact size and boundaries of existing environmental features setback, wetlands, streams, and 100-year floodplain.
  - g. A plan view showing all of the proposed conditions of the mitigation site including all contour elevations (at one (1) foot contour intervals), structures, the type and size of all proposed wetland areas, property lines, directional arrows, scale, the conservation easement area, and the proposed method of demarking the environmental features setback.
  - h. Cross-sections showing the existing and proposed grades.
  - i. Landscape plan which includes a plan view, installation methods, planting list that specifies plant type, species list with scientific and common names, size, and quantity as well as distribution within the mitigation areas in accordance with the wetland/environmental mitigation manual.
  - j. Schedule and construction methods: A schedule and methods for completion of the mitigation site must be provided (e.g., initiation, planting, completion). The site preparation and soil erosion/sedimentation control methods to be used during construction should be described.
  - k. Long-term protection plan: A preservation notice and an accompanying recordable size site plan indicating the wetland, environmental features setback area, and 100-year floodplain must be provided.
- iii. Only native/indigenous trees, shrubs, grasses, sedges, forbs, vines and other herbaceous plants approved by the environmental department director pursuant to the wetland/environmental mitigation manual, may be planted in floodplains, floodways, wetlands, watercourses, woodland or tree preservation areas and environmental features setback areas.
- iv. The location of structures (permanent or temporary) is not allowed within recorded and/or township established preservation areas or easements.
- v. No direct discharge of storm water, sump water or wastewater is permitted to wetlands, watercourses, woodlands/woodland preservation areas and environmental features setback areas.
- vi. Seawalls must meet the following design standards:
  - a. Any type must be installed at or above the ordinary high water mark of a watercourse.



- b. Existing vertical and horizontal contours of the shoreline shall be maintained.
  - c. Vertical seawalls (steel or vinyl) are not permitted where vertical walls do not currently exist.
  - d. Boulder seawalls will be installed on a 1:1 slope (forty-five (45) degree angle), approved geotextile fabric shall be installed behind the proposed seawall, and approved stone backfill shall be used to provide adequate drainage.
  - e. Four- to eight-inch diameter natural cobblestone must be placed (minimum width of twelve (12) inches) at the toe of the entire length of the seawall.
- vii. Impervious surfaces can not exceed twenty-five (25) percent of an environmental features setback area and must be constructed such that runoff is directed away from watercourses and wetlands or to a native plant area to provide the maximum infiltration of storm water and runoff as possible.
- viii. Trees within the environmental features setback can be trimmed to a height of twelve (12) feet and herbaceous and/or shrubs can be cut to a minimum height of four (4) feet for the creation of a viewshed.
- ix. Beach sanding must meet the following design standards:
- a. The purpose of the fill is for the creation, improvement, or restoration of swimming areas and beaches.
  - b. The fill is placed above the ordinary high water mark.
  - c. The fill is ten (10) cubic yards or less and is completed as one complete project.
  - d. The material is from a source approved by the environmental department director and is clean, nonpolluting, free from debris, organic materials, and waste metal products.
  - e. The total area filled shall not exceed twenty-five (25) percent of the environmental features setback.
- x. Driveways must meet the following design standards:
- a. Any upland on the property or other alternatives, such as obtaining a permanent easement for access from adjacent upland if available or a shared driveway shall be utilized to the greatest degree possible.
  - b. The location of the driveway is at the least damaging place on the property and creates the minimum wetland impact.
  - c. No ditches may be placed in the wetland in association with the driveway.
  - d. The driveway must terminate at a buildable upland site.
4. Exemption and administrative permits.
- A. 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.
  - B. Administrative permits. Use permits may be approved administratively as provided in this subsection for the installation of native plants listed in the wetland/ environmental mitigation manual, on any property or for proposed operations on or in connection with the lawful use of a single-family residential property that has received and is or will be in compliance with the conditions of all other required township permits or approvals and that does not involve, include or propose any of the following as determined by the environmental department director upon reviewing a use permit application:
    - i. Operations by or on behalf of a public agency or utility for purposes other than maintenance or repair of existing structures.
    - ii. Operations that require site plan approval under the zoning ordinance.
    - iii. New home construction.
    - iv. More than twenty-five (25) percent impact on the existing environmental features setback area.



- v. A net loss of the function or value of a resource protected by this chapter.
  - vi. Operations that have already been commenced, meaning that after-the-fact permits may not be approved administratively.
  - vii. Property that exists in violation of township or state laws or ordinances or upon or for which there are unsatisfied township permit or approval conditions.
  - viii. Operations allowed but not commenced and/or completed under a prior use permit approval that has expired in the last six (6) months.
- C. Administrative permit applications. An applicant may request an administrative permit by including the following in or with the application:
- i. Agreement to all of the permit terms and conditions in Subsection 26-5.4.7.
  - ii. All plans, documents, agreements and information necessary to establish compliance with all of the mitigation and environmental design criteria and standards in Subsection 26-5.4.3.E.
  - iii. Agreement to the standards and procedures in Subsection 26-5.4.4.D, including the environmental department director's discretion to deny an administrative permit and refer the application to the wetland review board as a new use permit application for purposes of any applicable time period for decisions.
  - iv. A copy of any contract for the work that identifies the cost and contractor and if there is no contract, an accurate cost estimate for the work and identification of the contractor who will be performing it.
  - v. An acknowledgment and agreement by the owners of the property to the recording with the register of deeds of a preservation notice for the areas of the property subject to regulation under this section.
  - vi. An acknowledgement and agreement by the owners of the property that prior to issuance of the administrative permit, the property must be posted as being the subject of a pending permit request, that the proposed work and mitigation areas must be accurately staked and marked and that photographs of the property will be taken and available for public inspection at the environmental department.
- D. Administrative permit review. The environmental department director shall review an application for an administrative permit to determine if it is complete, and if it is not, shall provide written notice to the applicant of the additional requirements. If upon receiving and confirming an application to be complete, the environmental department director determines that an administrative permit should be issued, he shall proceed as provided in Subsection 26-5.4.4.E. If upon receiving and confirming an application to be complete, the environmental department director determines that the proposed operations warrant a broader review or believes that feasible and prudent alternatives exist, he shall provide written notice to the applicant that the administrative permit is denied and refer the application to the wetland review board as a new use permit application for review and decision as provided in Subsection 26-5.4.3.B.
- E. Administrative permit notice. Upon determining that an administrative permit should be issued, the environmental department director shall provide written notice of that determination by first class mail to all persons and associations entitled to notice of a public hearing under Subsection 26-5.4.6, and to the members of the wetland review board in the manner they designate. The notice shall also be given to the public by posting on the township's cable television station and web site and the environmental department director shall cause the property to be posted with a notice that it is the subject of a pending administrative permit request. In addition to the applicant's name, property address and description of the proposed operation, the notice shall also indicate:
- i. That the application is available for inspection at the environmental department during hours the township offices are open.
  - ii. The date on or after which environmental department director may issue the administrative permit



- which shall be at least twenty-one (21) days after the date the notice is given.
- iii. Explain the right of persons, associations and wetland review board members entitled to the notice, to file written objections or challenges to the administrative permit on or before the date of intended permit issuance and that such objections or challenges must be based on and include some substantiation for claims that the environmental department director has not properly interpreted and/or applied this section in determining that the permit should be issued, that the proposed operations warrant a broader review by the wetland review board for specified reasons, or that specified feasible and prudent alternatives exist.
- F. Administrative permit decision. If no objections or challenges described in Subsection 26-5.4.4.E.iii are filed within the time allowed, the environmental department director shall approve the administrative permit for issuance subject to the appeal period under Subsection 26-5.4.6. If objections or challenges described in Subsection 26-5.4.4.E.iii are filed within the time allowed, the environmental department director shall provide copies to the applicant and may:
    - i. Approve the administrative permit for issuance subject to the appeal period under Subsection 26-5.4.6, and shall provide written notice to all persons or associations that filed objections or challenges of the decision and their appeal rights; or
    - ii. Upon determining that the challenges or objections may have merit, provide written notice to the applicant that the administrative permit is denied and refer the application to the wetland review board as a new use permit application for review and decision as provided in Subsection 26-5.4.3.B.
  - G. Administrative permit requirements. An administrative permit shall include a deadline for performance of the operations and mitigation established by the environmental department director and shall not be issued until the applicant has provided a cash bond, irrevocable letter of credit, secured promissory note or other form of performance guarantee approved by the township board, for one hundred twenty-five (125) percent of the cost of the work to assure the satisfactory and timely completion of the operations and mitigation and which shall be available to and enforceable by the township for that purpose upon the applicant's default.
  - H. Administrative permit appeals. Approval of an administrative permit may be appealed to the township board in the same time and manner and subject to the same process as provided in Subsection 26-5.4.6 by a property owner or occupant or subdivision or lake association that would be entitled to receive notice under that subsection.
5. Setback standards. Unless otherwise determined by the body undertaking the plan review, the following setbacks shall apply:
    - A. A twenty-five-foot setback from the boundary or edge of a wetland.
    - B. A twenty-five-foot setback from the ordinary high water mark of a watercourse.
  6. 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.
  7. Conditions of issuance:
    - A. 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.

B. Unless the final permit approval by the wetland review board, planning commission or township board specifically decides otherwise, all of the standards, terms and conditions contained in Subsection 26-5.4.7.1 shall apply and be considered a part of every use permit approved and issued under this section. In addition, a use permit approval by the township may:

- i. 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;
- ii. Fix a reasonable time for the undertaking and completion of all operations; and
- iii. 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.

C. 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.

D. 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.

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

F. 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.

G. 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.

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

I. The following terms and conditions shall apply and be considered a part of every use permit approved and issued under this section unless the final permit approval decision by the wetland review board, planning commission or township board specifically decides otherwise. Administrative permits may not be approved without all these terms and conditions:

- i. A preconstruction meeting between the petitioner and the environmental department director or environmental department director's designee and any contractors/subcontractors is required prior to any construction. A copy of the permit shall be posted in a visible location onsite.
- ii. At the time of the preconstruction meeting, the exact location of the request must be measured in the field by the environmental department director or environmental department director's designee and then field staked by the petitioner or any contractor prior to installation, which for seawalls shall include the exact location of the ordinary high water mark (OHWM) which shall be measured and documented using benchmarks in the field by the director or director's designee.
- iii. Soil protection measures shall be installed prior to any construction and be inspected by the environmental department director or environmental department director's designee for proper location and installation.
- iv. The petitioner and his/her contractor (s) shall be responsible for maintaining all soil erosion and sedimentation control measures throughout the duration of the project with daily inspections.



- v. No materials (organic or inorganic), spoils, and/or equipment shall be stored within the wetland, environmental features setback area, and 100-year floodplain during and after construction.
- vi. No direct discharge of storm water, sump water, or wastewater unless pretreated is allowed to wetlands and/or watercourses. Any existing direct discharge must be eliminated and discharged in a location approved by the environmental department director or environmental department director's designee.
- vii. No fill material beyond the request shall be deposited within any wetland, environmental features setback area and/or 100-year floodplain and the existing vertical and horizontal contours of the shoreline shall be maintained in connection with all seawalls.
- viii. Any and all fill utilized for installation shall be from an approved source.
- ix. Any and all areas of mitigation, restoration, or planting within a wetland, environmental features setback area and 100-year floodplain shall be planted with native/indigenous plants (trees, shrubs, herbs, and/or vines) only in accordance with the wetland/environmental mitigation manual.
- x. Ongoing monitoring by the environmental department director or environmental department director's designee shall be conducted with inspection reports recorded in the case file.
- xi. A final inspection by the environmental department director or environmental department director's designee shall be conducted with a report added to the case file.
- xii. The petitioner shall be responsible for the integrity of all landscaping materials in the mitigation areas for a period of twenty-four (24) months, and replace any vegetation that dies.
- xiii. Invasive and noxious plant eradication by herbicide applications must be completed by a certified applicator with documentation of the work upon

- completion submitted to the environmental department.
  - xiv. The petitioner shall be responsible for installation of department approved preservation signage.
  - xv. The property owner(s) shall be given a copy of the township's fertilizer ordinance.
  - xvi. A preservation notice and an accompanying recordable size site plan showing the wetland, environmental features setback area, and 100-year floodplain shall be recorded for the property indicating that the preservation methods have been employed to protect the environmental features and cannot be disturbed without a permit.
  - xvii. The petitioner shall place sufficient funds in an escrow account to cover the costs connected with the application, including consultant fees, issuance of a permit, and monitoring.
  - xviii. The initiation of any work on a permitted project confirms the permittee's acceptance and agreement to comply with all terms and conditions of the permit.
8. Penalties and enforcement:
- A. Any person found guilty of violating any of the provisions of this section shall be punished as provided in the Township's code of ordinances 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.
  - B. 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 non issuance.

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