

STATE OF MICHIGAN  
COUNTY OF WASHTENAW  
ANN ARBOR CHARTER TOWNSHIP  
ORDINANCE NO. 7 - 2009

**AMENDMENT TO CHAPTER 74, ARTICLE VII**  
**NATURAL FEATURES SETBACK AND STEEP SLOPE USE PROTECTION**  
**ORDINANCE**

CHAPTER 74

ARTICLE VII. NATURAL FEATURES SETBACK AND STEEP SLOPE USE PROTECTION

Sec. 74-681. Intent.

(a) It is the intent of this Article to:

(1) Require a minimum setback from natural features, and to regulate property within a required setback in order to prevent physical harm, impairment and/or destruction of or to a natural feature. It has been determined that, in the absence of such a minimum setback, intrusions in or onto natural features may occur, that may result in harm, impairment and/or destruction of natural features contrary to the public health, safety and general welfare.

(2) Protect and/or limit the risk of degradation by soil erosion to areas with steep slopes, as defined in this Article.

(b) This regulation is based on the police power, for the protection of the public health, safety and welfare, including the authority granted in the Michigan Zoning Enabling Act (MCL 125.3101 et seq.).

Sec. 74-682. Purpose.

(a) The purpose of this Article is to:

(1) Establish and preserve a minimum setback from natural features and to recognize and make provision for the special relationship and interdependency between the natural feature and the setback area. This section acknowledges the unique spatial relationship between the setback and the natural feature. It also acknowledges the interdependency of these areas in terms of physical location, plant and animal species, diversity and hydrology. If a greater setback or prohibition is required by other ordinance, or other provision of the Code, such greater setback or prohibition shall apply.

(2) Establish a means of protecting existing landforms constituting steep slopes and beneficial vegetation on steep slopes by limiting disturbance of such landforms and vegetation in order to minimize erosion.

(b) Natural features, their immediate surroundings, and steep slopes, as defined in this Article, provide important environmental, cultural, and recreational benefits to the residents of Ann Arbor Township, including:

- stormwater attenuation,
- flood protection,
- air quality benefits,
- wildlife habitat,
- scenic beauty, and
- recreational opportunities.

In addition, lands adjacent to natural features also provide important protections for the feature itself, including:

- filtration of pollutants from stormwater,
- bank stabilization, and
- shading to preserve desirable water temperatures.

Sec. 74-683. Natural feature setback.

(a) *Regulation.* A natural feature setback shall be maintained in relation to all areas defined in this Article as being a natural feature, unless and to the extent, it is determined to be in the public interest not to maintain such setback, in accordance with the standards set forth in this Article.

(b) *Definition.*

*Natural Features:* A protected wetland or watercourse, as defined in the Ann Arbor Township Wetland and Watercourse Protection Ordinance, being Article IV of Chapter 26 of the Code, Section 26 – 106 et seq.

(c) *Authorization and prohibition.*

(1) The natural feature setback shall be determined in accordance with the standards and provisions in subsection (d) of this section, in relation to the applicable wetland or watercourse. The applicant requesting approval is responsible for determining whether protected natural features, as defined in this section, exist on the site and determining the boundaries of such natural features. This determination can be made by outside professional consultants retained by the applicant. Additional sources of information on natural features within the Township include, but are not limited to, the Township wetland map, the county planning commission fragile lands study maps, and county soil maps. Township staff, consultants, and Planning Commission will confirm these determinations during the review process.

(2) If during the process of site plan review, an application for a building permit, a soil erosion and sedimentation control permit (“SESC”) or other permit or application for development, construction, disturbance, alteration or operation in the Township it appears that natural features exist on the property and may be affected by the proposed activity, the applicant or owner shall prepare and file an application in accordance with this Article.

(3) Within an established natural feature setback there shall be no: construction; deposit of any material, including structures; removal of any soils or minerals; clearing of

any native vegetation; dredging, filling or land balancing; constructing or undertaking seasonal or permanent operations, except as authorized pursuant to this section.

(d) *Setback standards.* The following setbacks shall apply:

(1) A 25-foot non-disturbance setback from the boundary or edge of a protected wetland, as defined and regulated in chapter 26 of Article IV, wetlands protection.

(2) A 25-foot non-disturbance setback from the ordinary high water mark of a watercourse.

(3) In addition, no building or construction shall occur within the greater of (i) 100 feet from the high water mark of any watercourse or (ii) within the 100-year floodplain.

Sec. 74-684. Steep slope protection.

(a) *Regulation.* Protective measures shall be implemented in relation to all areas defined in this Article as being a steep slope, unless and to the extent, it is determined to be in the public interest not to implement such protective measures, in accordance with the standards set forth in this Article.

(b) *Definitions.*

*Steep Slope:* A naturally occurring or human made landform with a vertical change in elevation of ten (10) feet or more, and a slope of twenty (20) percent or greater, and a length of fifty (50) feet or more, measured parallel to the contour lines. Prohibitive, Precautionary, and Moderate Steep Slopes are included in this definition.

*Forest Fragments:* Remnant patches of formerly large areas of contiguous native forest that retain examples of native forest cover and habitat.

*Beneficial Vegetation:* That vegetation that is both native and well-suited to the soil and climatic conditions found on the site in question so as to be an effective contributor to soil erosion control.

(c) *Steep slope protection priorities.*

(1) Prohibitive Steep Slopes: A naturally occurring or human made landform with either of the following two characteristics is of high-level concern:

i. Steep slopes of forty (40) percent or greater, or

ii. Steep slopes of twenty (20) percent or greater that are within 400 feet of the Huron River or within 100 feet of its open or historic tributaries and that both:

a. Have native forest fragments, and

b. Serve as a source of water for adjacent or connected water features.

(2) Precautionary Steep Slopes: Steep slopes 20 – 39% that are within 400 feet of the Huron River or within 100 feet of its open or historic tributaries that do not meet the criteria for Prohibitive steep slopes.

(3) Moderate Steep Slopes: Steep slopes not within 400 feet of the Huron River or within 100 feet of its open or historic tributaries that do not have native forest fragments.

(d) *Identification of steep slopes.*

(1) The applicant is responsible for determining whether steep slopes, as defined in this section, exist on the site and for determining the boundaries and topographic change of such steep slopes. All topographic survey evidence shall be provided by the applicant for use by the Township staff, consultants, and Planning Commission to confirm these determinations during the review process.

(e) *Steep slope protection standards.*

(1) Prohibitive Steep Slopes: Steep slopes identified as Prohibitive Steep Slopes in this section shall be sustained and cared for as natural areas. No disturbance is allowed unless the Township determines it is in the public interest to do so. In that case, the standards of Precautionary steep slopes shall apply.

(2) Precautionary Steep Slopes: Steep slopes identified as Precautionary Steep Slopes in this section shall be disturbed to the least extent possible. Alteration of the landform and/or vegetation will only be considered for approval if it is proposed in accordance with the following standards:

- i. If any portion of a Precautionary steep slope must be disturbed as part of an approved project, the balance of the steep slope area must be protected from disturbance during construction and it must be managed/restored as a natural area thereafter.
- ii. Native vegetation, as identified by the requirements of Section 74-685, shall not be disturbed to the greatest extent practicable.
- iii. All areas disturbed as part of an approved project must be revegetated by native vegetation of similar caliper on a 1:1 basis.
- iv. The built environment is to be of the lowest impact possible, minimizing the area of impervious surfaces.
- v. The built landscape around any approved built environment shall use minimum impervious surface and shall be complementary to the adjoining natural area.
- vi. If additional stormwater is generated by the built environment or landscape, such additional stormwater is to be managed on-site in such a way that erosion does not occur.
- vii. Protection measures must be in place before landform or vegetation disturbance takes place. Any damage to waterways or off-site locations from erosion must be promptly repaired to the fullest extent practical, using best management techniques.
- viii. Plans presented for development on steep slopes must reflect sound analysis of soil erosion control methods with carefully crafted limits of disturbance lines, and must indicate procedures whereby all contractors, subcontractors, owners, and inspectors are fully and continuously informed of the values on the site that must be protected, without errors.

(3) Moderate Steep Slopes: Development of steep slopes identified as Moderate Steep Slopes in this section requires special techniques to prevent soil erosion. Alteration of the landform and/or vegetation of these areas shall address all of the following goals:

- i. Landscape work on these sites shall be done to restore native ecologies.
- ii. Stormwater runoff shall be reduced.

- iii. Infiltration of stormwater shall be enhanced.
- iv. Only clean water shall exit the site.
- v. Enhance natural linkages of native vegetation with contiguous properties.
- vi. Enhance linkages of habitat with contiguous properties.

Sec. 74-685. Natural feature setback or steep slope use permit.

(a) *Authorization.* Under certain conditions defined in this section, a natural features setback and/or steep slope use permit may be authorized by the Planning Commission to allow limited construction, activity, use, or operations within the natural feature setback or steep slope area.

(b) *Filing of application; fee.* Application for proposed disturbance within a natural features setback or steep slope area shall be made by filing an application form approved by the Township with the required information and the required fee with the Township Clerk. The fee shall be set by resolution of the Township Board. If a natural features setback permit is being applied for in conjunction with activities that require site plan approval, as described Chapter 74, Article II Division 4, Site Plan Review of this ordinance, then the permit application shall be filed at the same time as the preliminary site plan, Section 74-173. In all other cases, the procedure for submission of the application and determination that the application is complete shall be in accordance with Section 74-173 (a), (b) and (c)1.

(c) *Contents of application.*

(1) Site Plan Review Required. An application for a natural features setback use permit for a project that requires site plan review shall contain the information listed in (i) through (viii) below. An application for a steep slope use permit for a project that requires site plan review shall contain all the information listed in (i) through (ix) below:

- i. The applicant's name, address and telephone number.
- ii. The names and addresses of all owners of record and proof of ownership.
- iii. The applicant's interest in the property, and if the applicant is not the fee-simple owner, the owner's signed authorization for the application.
- iv. Legal description, address and tax parcel number of the property.
- v. A scaled and accurate survey drawing, correlated with the legal description, and showing all existing buildings, drives and other improvements.
- vi. A vegetation inventory showing the species and location of trees, shrubs, and groundcover within 300 feet of the proposed disturbance.
- vii. A detailed description of the proposed use.
- viii. A site plan, meeting the requirements of a preliminary site plan, as set forth in section 74-173.
- ix. For steep slope use applications:
  - a. A topographic plan of the entire site under consideration showing all contours at one foot intervals.
  - b. Soils analysis of the site, including soil conditions through soil borings and logs, and in sufficient detail to adequately address the slope's stability and erosion potential.

2. Site Plan Review Not Required. An application for a natural feature setback use permit or steep slope use permit for a project that does not require site plan review

shall contain the information listed in (i) through (vii) below. In addition an application for a steep slope use permit that that does not require site plan review but will result in an earth change of 225 square feet or more shall also include the information set forth in (viii) below:

- i. The applicant's name, address and telephone number.
- ii. The names and addresses of all owners of record and proof of ownership.
- iii. The applicant's interest in the property, and if the applicant is not the fee-simple owner, the owner's signed authorization for the application.
- iv. Legal description, address and tax parcel number of the property.
- v. A plan prepared in accordance with section 26-405 showing the location of any drain tile on the property or a written statement representing that, following a good faith investigation, there is no evidence to indicate the existence of any drain tile on the property.
- vi. A scaled and accurate survey drawing showing:
  - a. Project area boundaries
  - b. Location and dimensions of all existing and proposed buildings, drives, and other improvements
  - c. Existing topography
  - d. Water bodies, waterways, wetlands, and drainage ditches
- vii. Description of the species, size and location of all trees, shrubs, and groundcover in the area of disturbance.
- viii. A topographic plan of the site showing contours at one foot intervals (for a steep slope use permit that will result in an earth change of 225 square feet or more.)

(d) *Additional information.* If, in the course of its review, the Planning Commission determines that additional information is needed to properly analyze the impact of the proposed permit requested in accordance with the standards set forth in this ordinance or in view of the particular characteristics of the site and surrounding area, then the Planning Commission may require the applicant to provide additional information. Such additional information must be provided within a reasonable period of time and before further action by the Planning Commission.

(e) *Review of application.* The Planning Commission shall review the application to determine if all required information has been provided. Within 135 days of receipt of a complete application, the Planning Commission shall render a decision regarding the requested natural features setback use permit, based on the standards set forth in subsections (e) and (f) of this section, provided, if additional time is needed, the Planning Commission may extend the review period for an additional 135 days. The time period set forth in this subsection (d) shall not include any tabling or delay of action or consideration resulting from (i) lack of representation by the applicant at the meeting, (ii) the applicant's request, or (iii) failure of the applicant to supply required information (including required approvals from third parties) by the filing deadline.

(f) *Construction, disturbance, or operation to be in public interest.* In determining whether to grant a natural features setback or steep slope use permit, the Planning Commission shall determine if the proposed construction, disturbance, 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, disturbance, or other operation, taking into consideration the local, state, and national concern for the protection and preservation of the natural feature or steep slope area in question. The following general criteria shall be applied in undertaking this determination:

- (1) The relative extent of the public and private need for the proposed activity.
- (2) The availability of feasible and prudent alternative locations and methods to accomplish the expected benefits from the activity.
- (3) 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 natural feature, natural feature setback, and/or steep slope area provides.
- (4) The probable impact of each proposal in relation to the cumulative effect created by other existing and anticipated activities in the watershed.
- (5) The probable impact of each proposal in relation to soil erosion.
- (6) The probable impact on recognized pre-historic, historic, cultural, scenic, ecological, or recreational values, and on fish, wildlife, and the public health.
- (7) The size and quantity of the natural feature setback and/or steep slope impact being considered.
- (8) The amount and quantity of the remaining natural feature setback and/or steep slope area.
- (9) Proximity of the proposed construction and/or operation in relation to the natural feature and/or steep slope, taking into consideration the degree of slope, general topography in the area, soil type, and the nature of the natural feature and/or steep slope to be protected.
- (10) Economic value, both public and private, of the proposed construction, disturbance, or operation, and economic value, both public and private, if the proposed construction, disturbance and/or operation were not permitted.
- (11) The necessity for the proposed construction, disturbance, or operation.

(g) *Conditions of approval.*

- (1) All operations permitted or approved under a natural features setback or steep slope use permit shall be conducted in such a manner as will cause the least possible damage and encroachment or interference within the natural feature setback, the steep slope area, and with the natural resources and natural processes within the watercourses, wetland areas, and steep slopes in the Township as defined in this section.
- (2) The Planning Commission in granting authorization to conduct an activity within a natural feature setback and/or steep slope area, may:
  - i. Impose such conditions in the manner and extent of the proposed construction, disturbance, operation, development, use, structure, or use activity as are necessary to ensure that the intent of this Article 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 Planning Commission in consultation with the Township Natural Features Consultant, Supervisor, and Attorney to ensure compliance with the use permit.

(3) The review and approval of an application to conduct an activity within a natural feature setback and/or steep slope area may be done concurrently with the review and approval of site plans, subdivision plats, site condominiums, or planned unit development. Use permits approved under this section shall expire (and may be extended) at the same time (or in the same manner) as any subdivision, plat, site plan, site condominium or PUD approval, or if none then 24 months after approval of such permit by the Planning Commission.

(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 such permit will be available for public inspection.

(5) Any change which increases the size, scope, use or hours of operation shall require the filing of an amendment to the use permit which shall be processed in the same manner as an amendment to the building permit, SESC permit, site plan or other permit or approval issued in connection with the original permit under this Article.

(6) Any necessary natural features setback or steep slope use permit shall be obtained prior to the issuance of any building permits or SESC permit necessary for construction.

#### Sec. 74-686. Appeal of approval or denial of application.

A decision on an application regarding a use permit application under this Article may be appealed only to the Ann Arbor Township Zoning Board of Appeals. Any appeal must be received in writing by the Township Clerk within 28 days after the date of the Planning Commission's decision

#### Sec. 74-687. Penalties and enforcement.

(a) Any person found guilty of violating any of the provisions of this Article shall be punished as provided in Article II, Division 2 of this chapter, 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 in this section, the Planning Commission, at a formal meeting, shall have the authority to direct the Zoning Officer or designated person to notify the Township Supervisor that a stop work order (or stop construction order as described in section 74-98) shall be issued upon any project for development, with the concurrence of the Township Supervisor, when it is determined that a violation has occurred.

#### Sec. 74-688. Ordinance conflict.

Nothing in this section shall be interpreted to conflict with present or future state statutes in the same subject matter; conflicting provisions of this chapter shall be abrogated to, but only to, the extent of the conflict. Moreover, the provisions of this section shall be construed, if possible, to be consistent with relevant state regulations and statutes. If any part of this section is found to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision. Such holding shall not affect the validity of the remaining portions thereof, and the remainder of the section shall remain in force. Rights and duties which have matured, penalties which have been incurred, proceedings which have begun and prosecutions for violations of law occurring before the effective date of the ordinance from which this chapter is derived are not affected or abated by this section.

**CERTIFICATION**

It is hereby certified that the foregoing Ordinance was adopted by the Township Board of Ann Arbor Charter Township, Washtenaw County, Michigan at a meeting of the Board duly called and held on December 21, 2009.

ANN ARBOR CHARTER TOWNSHIP

By: \_\_\_\_\_  
Michael C. Moran, Supervisor

By: \_\_\_\_\_  
Rena Basch, Clerk

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