

ARTICLE VII. NATURAL FEATURES SETBACK**Sec. 74-681. Intent and purpose of article.**

(a) It is the intent of this section to require a minimum setback from natural features, and to regulate property within such 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 would occur, resulting in harm, impairment and/or destruction of natural features contrary to the public health, safety and general welfare. 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.).

(b) It is the purpose of this section to establish and preserve a minimum setback from natural features in order to recognize and protect the special interrelationship and interdependency between the natural feature and the setback area. Components of the interrelationship which this section is intended to protect include:

- (1) The spatial relationship;
 - (2) Interdependency in terms of physical location, plant species, animal species and encouragement of diversity and richness of plant and animal species;
 - (3) Overland and subsurface hydrology;
 - (4) Water table;
 - (5) Water quality;
 - (6) Prevention of erosion or sediment deposition.
- (Ord. of 9-5-1998, § 11.26(A))

Sec. 74-682. Regulation.

A natural feature setback shall be maintained in relation to all areas defined in this chapter 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 section.

(Ord. of 9-5-1998, § 11.26(B))

Sec. 74-683. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Natural feature means, for the purposes of establishing setback standards in this article, a protected wetland, watercourse or steep slope as defined below.

Protected wetlands means any of the following:

- (1) All wetlands subject to regulation by the state department of environmental quality (MDEQ) including:
 - a. Wetlands, regardless of size, which are contiguous to any lake, stream, river, or pond whether partially or entirely contained within the project site.
 - b. Wetlands, regardless of size, which are partially or entirely within 500 feet of the ordinary high water mark of any lake, stream, river or pond unless it is determined by the MDEQ that there is no surface water or groundwater connection between the wetland and the water body.
 - c. Wetlands which are larger than five acres, whether partially or entirely contained within the project site, and which are not contiguous to any lake, stream, river, or pond.
 - d. Wetlands, regardless of size, which are not contiguous to any lake, stream, river, or pond, if the MDEQ determines the protection of the wetland is essential to the preservation of the natural resources of the state from pollution, impairment or destruction.
- (2) All wetlands subject to regulation by the Township including:
 - a. Wetlands two to five acres in size, whether partially or entirely contained within the site of proposed alteration, which are not contiguous to any lake stream, river or pond.
 - b. Wetlands smaller than two acres in size which are not contiguous to any lake, stream, river or pond and are determined to be essential to the preservation of the natural resources of the Township as provided for in section 26-256.

Steep slope means a rise of 12 feet or more over a distance of 100 feet.

Watercourse means any waterway including a river, stream, lake, pond or any body of surface water having definite banks, a bed and visible evidence of a continued flow or continued occurrence of water. A watercourse may or may not be serving as a drain as defined by the Drain Code of 1956 (MCL 280.1 et seq.).

Wetland means land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp or marsh.

(Ord. of 9-5-1998, § 11.26(C))

Sec. 74-684. Authorization and prohibition.

(a) The natural feature setback shall be determined in accordance with the standards and provisions in section 74-685, in relation to the respective types of natural features. The applicant requesting approval is responsible for determining whether natural features, as defined in section 74-683, 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. 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 and Planning Commission will confirm these determinations during the review process.

(b) The individual or body responsible for building permit or site plan approval shall determine the appropriate natural feature setbacks, in accordance with section 74-685, whenever a plan is submitted to develop property or undertake an operation in, on or adjacent to a natural feature.

(c) Within an established natural feature setback there shall be no: construction; deposit of any material, including structures; removal of any soils, minerals and/or vegetation; dredging, filling or land balancing; constructing or undertaking seasonal or permanent operations, except as authorized pursuant to section 74-686.

(Ord. of 9-5-1998, § 11.26(D))

Sec. 74-685. Setback standards.

The following setbacks shall apply:

- (1) A 25-foot vegetated strip setback from the boundary or edge of a protected wetland, as defined and regulated in chapter 22, article IV, wetlands protection, and as shown on the Township wetland map.
- (2) A 25-foot vegetated strip setback from the high-water mark of any watercourse.
- (3) A 100-foot building and construction setback from the high-water mark of any watercourse or outside of the 100-year floodplain, whichever is greater.
- (4) Construction and building activity shall be outside of any area with steep slopes or highly erodible soils, as defined by county soil maps.

(Ord. of 9-5-1998, § 11.26(E))

Sec. 74-686. Natural features setback use permit.

(a) *Authorization.* Under certain conditions defined in this section, a natural features setback use permit may be authorized by the Planning Commission to allow limited construction, activity, use or operations within the natural feature setback. A natural features setback use permit is to be considered a special land use permit, in accordance with the Zoning Enabling Act (MCL 125.3101 et seq.) and authorization of such construction, activity, use or operation shall not be available through a variance.

(b) *Filing of application; fee.* Application for a natural features setback use permit shall be made by filing an application form approved by the Township Board with the required information and the required fee with the Township Clerk. The fee shall be set by resolution of the Township Board. No part of such fee shall be returnable to the applicant. The Clerk shall transmit a copy of the application form and the required information to the chairperson of the Planning Commission within three days of the filing date.

(c) *Contents of application.* An application for a natural features setback use permit shall contain the following information:

- (1) The applicant's name, address and telephone number.
- (2) The names and addresses of all owners of record and proof of ownership.
- (3) 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.
- (4) Legal description, address and tax parcel number of the property.
- (5) A scaled and accurate survey drawing, correlated with the legal description, and showing all existing buildings, drives and other improvements.
- (6) A detailed description of the proposed use.
- (7) A site plan, meeting the requirements of a preliminary site plan, as set forth in section 74-173.

(d) *Review of application; date for public hearing.* The Planning Commission shall review the application to determine if all required information has been provided. The Planning Commission shall establish a date of a public hearing on the petition after confirming that the applicant has provided all information and paid all fees required. 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)—(g) of this section.

(e) *Notice of public hearing.* The Clerk shall give notice of a public hearing in the manner provided in section 74-61. The notices shall:

- (1) Describe that a natural features setback use permit has been requested.
- (2) Indicate the property which is the subject of the natural features setback use permit.
- (3) State when and where the public hearing will be held.
- (4) Indicate when and where written comments will be received concerning the request.

(f) *Construction to be in public interest.* In determining whether to grant a natural features setback use permit the Planning Commission shall determine if 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 natural feature 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 and/or natural feature setback 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 on recognized historic, cultural, scenic, ecological, or recreational values, and on fish, wildlife and the public health.
 - (6) The size and quantity of the natural feature setback being considered.
 - (7) The amount and quantity of the remaining natural feature setback.
 - (8) Proximity of the proposed construction and/or operation in relation to the natural feature, taking into consideration the degree of slope, general topography in the area, soil type and the nature of the natural feature to be protected.
 - (9) Economic value, both public and private, of the proposed construction and/or operation, and economic value, both public and private, if the proposed construction and/or operation were not permitted.
 - (10) The necessity for the proposed construction and/or operation.
- (g) *Conditions of approval.*
- (1) All operations permitted or approved by natural features setback use permits shall be conducted in such a manner as will cause the least possible damage and encroachment or interference within the natural feature setback and with the natural resources and natural processes within the watercourses and wetland areas in the Township as defined in this section.
 - (2) The Planning Commission in granting authorization to conduct an activity within an natural 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 Planning Commission to ensure compliance with the use permit.
 - (3) The review and approval of an application to conduct an activity within a natural feature setback 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 within 24 months of approval of such permit by the Planning Commission, 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 such 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 shall be considered 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 two years or any seasonal operation which is discontinued for two seasons shall be considered terminated and the use permit automatically voided.
 - (8) A natural features setback use permit shall be obtained prior to the issuance of any building permits necessary for construction.
- (Ord. of 9-5-1998, § 11.26(F))

Sec. 74-687. Appeal of approval or denial of application.

A decision on an application regarding a use permit application under this section may be appealed only to the Environmental Review Board provided such appeal is received in writing by the Township Clerk within 21 days of such decision.

(Ord. of 9-5-1998, § 11.26(G))

Sec. 74-688. 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.

(Ord. of 9-5-1998, § 11.26(H))

Sec. 74-689. 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.

(Ord. of 9-5-1998, § 11.26(I))

Sec. 74-690. Planning Commission authority.

Notwithstanding section 74-132, the Planning Commission is authorized to grant special land use permits pursuant to this section based on the standards, procedures, notice and hearing provisions set forth in this section.

(Ord. of 9-5-1998, § 11.26(J))

Secs. 74-691—74-725. Reserved.