

SUBJECT: AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB 17.55 SETBACKS AND SCREENING EASEMENTS, AMENDING DEFINITIONS, CLARIFYING WHICH STRUCTURES ARE EXEMPT FROM WATERBODY SETBACKS, AND ELIMINATING UNNECESSARY LANGUAGE.

AGENDA OF: August 15, 2017

ASSEMBLY ACTION:

OR 17-088 was amended by
Substitute Ordinance 17-088(SUB)

MANAGER RECOMMENDATION: Introduce and set for public hearing. 9-19-17

APPROVED BY JOHN MOOSEY, BOROUGH MANAGER: *John Moosey*

Route To:	Department/Individual	Initials	Remarks
	Originator	<i>AS</i>	A. Strawn
	Planning and Land Use Director	<i>EP</i>	
	Borough Attorney	<i>JK</i>	
	Borough Clerk	<i>JM</i>	8/7/17 <i>AS</i>

ATTACHMENT (S): Fiscal Note: YES ____ NO X
 Administrative Definition of Boathouse (2 pp)
 Planning Commission Resolution 17-27 (3 pp)
 Ordinance Serial No. 17-088 (6 pp)

SUMMARY STATEMENT:

This ordinance modifies the definition of "structure," creates definitions for "aircraft hangar," "boathouse," and "ordinary high water mark," and eliminates the definition of "shorelands."

The term "structure" within MSB 17.55 is modified by eliminating objects that are placed under the ground from the definition. While the intent of MSB 17.55 is not explicitly codified, Rathkopf's Law of Zoning & Planning (2015) identifies the following purposes for setbacks:

Today, zoning setback and yard requirements are considered by courts to promote a variety of public purposes. They are held to relate to provisions for

light and air, fire protection, traffic safety, prevention of overcrowding, rest and recreation, solving drainage problems, protecting the appearance and character of a neighborhood, conserving property values, and may in particular cases, promote a variety of aesthetic and physiological values as well as ecological and environmental interests.

The definition of "structure" within MSB 17.55.004 applies to setbacks from rights-of-way, as well as side and rear lot lines. Currently, septic tanks would be included given a plain reading of the definition. There are likely hundreds, or even thousands of septic tanks placed within 25 feet of public rights of way within the borough. Removal of setbacks for underground objects would preserve the aforementioned purposes of setbacks from rights-of-way and would remedy the existing violations with no apparent impediment to maintenance, safety, or thoroughfare of public rights-of-way.

Adding structures which are built above ground is intended to explicitly regulate structures which hang over into the ROW setback, regardless of where the base of the structure is located.

This ordinance eliminates the term "watercourse" from MSB 17.55. Because no definition currently exists within MSB 17.55, MSB 17.125.005(B) requires reference be made to the most recent publication of *"The Illustrated Book of Development Definitions"* which defines watercourse as:

Any natural or artificial stream, river, creek, ditch, channel, canal, conduit, culvert, drain, waterway, gully, ravine, or wash in which water flows in a definite direction or course, either continuously or intermittently; has a definite channel, bed, and banks; and includes any area adjacent thereto subject to inundation by reason of overflow or floodwater.

Reference to the *Illustrated Book of Development Definitions* was made well after adoption of the provisions of code which references the term watercourse; making it unlikely that the aforementioned definition was originally intended. The definition is very broad because it includes features such as culverts and ditches which have not historically been contemplated for purposes of setbacks.

The term "high water mark" is not currently defined within title 17. The proposed definition within the attached ordinance is taken from the most current version of *"The Zoning Dictionary"*

by Lehman and Associates. Adding the word "ordinary" is important because the term "high water mark" by itself often refers to the extreme high water mark caused by flooding events.

The definition of "shorelands" within MSB 17.55.015 is being deleted because it is not used within MSB 17.55.

A definition and specific standards for what constitutes a "boathouse," or "aircraft hangar" is being added to finally codify a longstanding administrative definition held by the Borough. Enforcement of waterbody setbacks would be very difficult without a clear definition of the type of structures that are eligible for exemptions from the setbacks.

RECOMMENDATION OF ADMINISTRATION:

Staff respectfully recommends adoption of the attached ordinance.

MATANUSKA-SUSITNA BOROUGH

350 East Dahlia Avenue, Palmer, Alaska 99645-6488

Planning and Land Use Department

Code Compliance Division (907) 745-9865

FAX (907) 745-9876



MEMORANDUM

DATE: August 25, 1993

TO: John Duffy, Planning Director *JD*

FROM: Ken Hudson, Chief of Code Compliance *KH*

SUBJECT: Administrative Definition of Boathouse

MSB Code 17.55. (Setbacks), establishes minimum structural setbacks from water bodies. Garages and habitable structures are subject to the 75 foot setback. Boathouses and aircraft hangars may be located closer than 75 feet and over the water, provided they are not used for habitation and do not contain sanitary or petroleum fuel storage facilities. Unfortunately the terms (boathouse) and (aircraft hangars) are not defined. Staff has encountered the problem of defining what exactly is a boathouse when people have stated that the structure they have built is a boathouse and not a garage or habitable structure. This is especially true in cases where the structure does not access the water directly, is oriented directly to street use and has evidence of use as a garage or habitation.

Staff is recommending that definitions be adopted for "boathouse" and "aircraft hangar". Until such time as definitions are formally adopted by the assembly and become part of code staff requests administrative directive to utilize the proposed definitions for the purpose of implementing MSB 17.55. Staff has discussed appropriate definitions of boathouse with the Alaska Dept. of Fish and Game and ADNR. As a result of those discussions and an analysis of issues related to shoreline setbacks under borough code, staff recommends the following definitions be adopted;

Boathouse means a roofed structure which is used to completely or partially enclose and store boats and boating accessories. For the purpose of implementing MSB 17.55.020 a boathouse which is exempt from a minimum shoreline setback for structures shall be a structure built over, in or immediately adjacent to a water body and used solely for storing boats and boating accessories. Exempt boathouses shall be designed, constructed and oriented for primary access by boats directly to a water body. Exempt boathouses may not have more than incidental accessory access to a street or driveway and may not be useable as a garage or habitable structure without significant alteration.

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Aircraft hangar means a roofed structure which is used to completely or partially enclose and store aircraft and aircraft accessories. For the purpose of implementing MSB 17.55.020 an aircraft hangar exempt from minimum shoreline setbacks for structures must be built over, in, or immediately adjacent to the water and used solely for storing aircraft and aircraft accessories. Exempt aircraft hangars must be designed, constructed, and oriented for primary access by airplanes directly to a water body. Exempt aircraft hangars may not have more than incidental accessory upland access to air strips, streets, or driveways.

By: Alex Strawn
Introduced: June 19, 2017
Public Hearing: July 17, 2017
Action: Approved

**MATANUSKA-SUSITNA BOROUGH
PLANNING COMMISSION RESOLUTION NO. 17-27**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH PLANNING COMMISSION RECOMMENDING APPROVAL OF AN ORDINANCE AMENDING MSB 17.55 SETBACKS AND SCREENING EASEMENTS, AMENDING DEFINITIONS, CLARIFYING WHICH STRUCTURES ARE EXEMPT FROM WATERBODY SETBACKS, AND ELIMINATING UNNECESSARY LANGUAGE.

WHEREAS, Assembly ordinance 17-088 modifies the definition of "structure," creates definitions for "aircraft hangar," "boathouse," "ordinary high water mark," and "below ground structure," and eliminates the definition of "shorelands"; and

WHEREAS, the purpose of setbacks are to provide for light and air, fire protection, traffic safety, prevention of overcrowding, rest and recreation, solving drainage problems, protecting the appearance and character of neighborhoods, conserving property values, and promoting a variety of aesthetic and physiological values; and

WHEREAS, removal of setbacks for underground objects would preserve the purpose of ROW setbacks, remedy many violations throughout the Borough, and would not create an impediment to maintenance, safety, or thoroughfare of public rights-of-way; and

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WHEREAS, the term "watercourse" is not currently defined in MSB title 17 and the definition within the Illustrated Book of Development Definitions is overly broad for setback purposes; and

WHEREAS, the ordinance will include a definition for the term "high water mark" which is not currently defined within title 17; and

WHEREAS, the definition of "shorelands" within MSB 17.55.015 is being deleted because it is not used within MSB 17.55; and

WHEREAS, a definition and specific standards for what constitutes a "boathouse" or "aircraft hangar" is being added to finally codify a longstanding administrative definition held by the Borough.

NOW, THEREFORE, BE IT RESOLVED, that the Matanuska-Susitna Borough Planning Commission hereby recommends approval of Assembly Ordinance 17-088.

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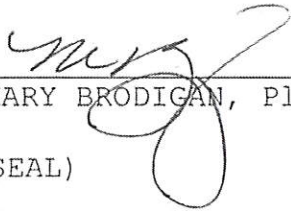
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ADOPTED by the Matanuska-Susitna Borough Planning Commission
this 17th day of July, 2017.



MARY ANDERSON, Vice Chair

ATTEST



MARY BRODIGAN, Planning Clerk
(SEAL)

YES: *Anderson, Chusbro, Elder, Goshan, and*
NO: *Rauchenstein*