

SUBJECT: AN ORDINANCE OF THE MATANUSKA SUSITNA BOROUGH ASSEMBLY ESTABLISHING A NONCONFORMING USE SECTION WITHIN MSB 17.29 AND MODIFYING MSB 17.80 BY ELIMINATING REFERENCE TO NONCONFORMING USES IN FLOOD HAZARD AREAS.

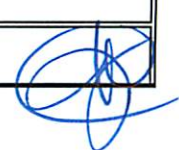
AGENDA OF: December 19, 2017

ASSEMBLY ACTION:

Adopted without objection 1-2-18


MANAGER RECOMMENDATION: Introduce and set for public hearing.

APPROVED BY JOHN MOOSEY, BOROUGH MANAGER: 

Route To:	Department/Individual	Initials	Remarks
	Originator - T. Boothby	HB	
	Planning and Land Use Director	CP	
	Borough Attorney	JS for MS	
	Borough Clerk	JAM	12/11/17 

ATTACHMENT (S): Fiscal Note: YES ____ NO X
Planning Commission Reso number 17-55 (2 pp)
MSB 17.29 (12 pp)
MSB 17.80 (5 pp)
Ordinance Serial No. 17-142 (3 pp)

SUMMARY STATEMENT:

This ordinance will amend MSB 17.29 and MSB 17.80 to grant legal non-conforming status to certain structures within the special flood hazard area.

Under this ordinance, structures within the special flood hazard area will be held to the standards that applied at the time they were constructed, provided the structure has not been substantially damaged or substantially improved. The ordinance also explicitly grants pre-existing legal nonconforming status to structures which are within, but were constructed prior to,

adoption of the applicable Flood Insurance Rate Map (FIRM).

The MSB adopted the first FIRM effective May 1, 1985. All structures constructed prior to that date are considered pre-FIRM and will be eligible for pre-existing legal nonconforming status. Several areas throughout the Borough have had their FIRMs amended at various times since 1985. Development within those areas may be eligible for pre-existing legal nonconforming status depending on when they were built.

Under 44 Code of Federal Regulations 60.3, structures which were constructed prior adoption of being mapped in the FIRM are considered pre-FIRM. However, once the building is substantially damaged or substantially improved, the structure must be brought into compliance with current regulations. MSB 17.29 defines "substantial damage" and "substantial improvement" as follows:

- "Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

- "Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- (1) before the improvement or repair is started;
or

- (2) if the structure has been damaged and is being restored, before the damage occurred.

For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure; however, the term does not include any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, nor does it include any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

The Assembly adopted a two-foot freeboard requirement on all new structures in the Special Flood Hazard Area (SFHA) beginning July 31, 2017. Ordinance no. 17-142 grants pre-existing legal nonconforming status to structures which were built at or above the Base Flood Elevation prior to July 31, 2017, regardless of whether or not the development occurred under a lawfully issued permit.

The Borough is currently going through an update to the FIRMs. The new flood maps are expected to be adopted late 2018 or early 2019. This ordinance will grant pre-existing legal nonconforming status to structures which will be brought into the flood zone with adoption of the new flood boundaries.

An administrative determination can be requested by the owner to validate the pre-existing legal nonconforming status.

RECOMMENDATION OF ADMINISTRATION:

Staff respectfully recommends approval of this ordinance.

By: Taunnie Boothby
Introduced: November 6, 2017
Public Hearing: December 4, 2017
Action: Approved

**MATANUSKA-SUSITNA BOROUGH
PLANNING COMMISSION RESOLUTION NO. 17-55**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH PLANNING COMMISSION RECOMMENDING APPROVAL OF ORDINANCE SERIAL NO. 17-142 ESTABLISHING A NONCONFORMING USE SECTION WITHIN MSB 17.29 AND MODIFYING MSB 17.80 BY ELIMINATING REFERENCE TO NONCONFORMING USES IN FLOOD HAZARD AREAS.

WHEREAS, the Matanuska-Susitna is a participating community in the National Flood Insurance Program (NFIP); and

WHEREAS, an overall goal of the NFIP is to promote the public health, safety, and welfare by adopting methods of development for the Special Flood Hazard Areas; and

WHEREAS, the Matanuska-Susitna Borough adopted the first Flood Insurance Rate Map (FIRM) effective May 1, 1985; and

WHEREAS, FEMA updated portions of the FIRMs effective March 17, 2011; and

WHEREAS, the MSB recently adopted a two-foot freeboard standard for all new, substantially damaged, and substantially improved structures; and

WHEREAS, modifications to the maps and standards create structures which were built legally at the time of construction but which were made nonconforming by adoption of subsequent ordinances or maps; and

WHEREAS, 44 Code of Federal Regulations 60.3 recognizes structures built prior to the effective FIRM as pre-FIRM unless substantially Damaged or substantially improved; and

WHEREAS, MSB 17.29 does not have a Preexisting legal nonconforming status; and

WHEREAS, MSB 17.80 currently does not allow structures built in the Special Flood Hazard Area (SFHA) to have Preexisting legal nonconforming status exemption.

NOW, THEREFORE, BE IT RESOLVED, that the Matanuska-Susitna Borough Planning Commission hereby recommends approval of an ordinance establishing a nonconforming use section within MSB 17.29 and modifying MSB 17.80 by eliminating reference to nonconforming uses in flood hazard areas.

ADOPTED by the Matanuska-Susitna Borough Planning Commission this 4th day of December, 2017.


COLLEEN VAGUE, Chair

ATTEST


MARY BRODIGAN, Planning Clerk

(SEAL)

YES: *Vague, Healey, Chesbro, Elder, Washer, and*
NO: *Rauchert*

CHAPTER 17.29: FLOOD DAMAGE PREVENTION

Section

<u>17.29.010</u>	Findings of fact
<u>17.29.020</u>	Purpose
<u>17.29.030</u>	Methods of reducing flood losses
<u>17.29.040</u>	Definitions
<u>17.29.050</u>	Application
<u>17.29.060</u>	Basis for establishing the areas of special flood hazard
<u>17.29.065</u>	Penalties for noncompliance
<u>17.29.070</u>	Abrogation and greater restrictions
<u>17.29.080</u>	Interpretation
<u>17.29.090</u>	Warning and disclaimer of liability
<u>17.29.100</u>	Development permit required
<u>17.29.110</u>	Application for development permit
<u>17.29.120</u>	Designation of the director
<u>17.29.130</u>	Duties and responsibilities of the director
<u>17.29.140</u>	Appeals
<u>17.29.150</u>	Variances
<u>17.29.160</u>	General standards for flood hazard reduction
<u>17.29.170</u>	Specific standards
<u>17.29.180</u>	Floodways
<u>17.29.185</u>	Standards for shallow flood areas (AO Zones)
<u>17.29.190</u>	Critical facility

17.29.010 FINDINGS OF FACT.

(A) The flood hazard areas of the Matanuska-Susitna Borough are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(B) These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards, which increases flood heights and velocities, and when structures in such areas are inadequately anchored, damage to such structures and to other property and injury to persons. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to the flood loss.

(Ord. 87-52, § 2 (part), 1987)

17.29.020 PURPOSE.

(A) It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- (1) to protect human life and health;
- (2) to minimize expenditure of public money and costly flood control projects;
- (3) to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) to minimize prolonged business interruptions;

1M 17-191
OR 17-142

- (5) to minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;
- (6) to help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- (7) to ensure that potential buyers are notified that property is in an area of special flood hazard;
- (8) to ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

(Ord. 87-52, § 2 (part), 1987)

17.29.030 METHODS OF REDUCING FLOOD LOSSES.

(A) In order to accomplish its purposes, this chapter includes methods and provisions for:

- (1) restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- (2) requiring the uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- (4) controlling filling, grading, dredging and other development which may increase flood damage;
- (5) preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or may increase flood hazards in other areas.

(Ord. 87-52, § 2 (part), 1987)

17.29.040 DEFINITIONS.

(A) Unless specifically defined below, words or phrases used in this chapter shall be interpreted as defined in the current edition of the Code of Federal Regulations.

- "Appeal" means a request for a review of the director's interpretation or application of any provision of this chapter.
- "Area of shallow flooding" means a designated AO or AH zone on the flood insurance rate map (FIRM) with a one percent or greater chance of flooding. The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. Such flooding is characterized by ponding (AH) or sheet flow (AO).
- "Base flood" means the flood having a one percent chance of being equalled or exceeded in any given year.
- "Borough" means the Matanuska-Susitna Borough.
- "Critical facilities" include all manmade structures or other improvements which because of their function, size, service area, or uniqueness have the potential to result in serious bodily harm, extensive property damage, or disruption of vital socioeconomic activities if they are destroyed, damaged, or if their services are repeatedly interrupted.
- "Development" means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials located within the area of special flood hazard.

1m 17-191
OR 17-142

- “Director” means the director of the planning department or the director’s designee.
- “Flood” or “flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:
 - (1) the overflow of inland or tidal waters; or
 - (2) the unusual and rapid accumulation of runoff of surface waters from any source.
- “Flood insurance rate map (FIRM)” means the official paper or digital map on which the Federal Insurance Administration has previously delineated both the areas of special flood hazards and the risk premium zones applicable to the borough.
- “Flood insurance study” means an examination, evaluation, and determination of flood hazards, and if appropriate, corresponding water surface elevations identified in the March 17, 2011, study.
- “Floodplain administrator” means the person designated by the director to administer the provisions of this chapter.
- “Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.
- “Grade” means the surface level of the ground.
- “Lowest floor” means the lowest floor of the lowest enclosed area, including a basement. An unfinished or flood-resistant nonresidential enclosure, usable solely for parking of vehicles, building access or storage in any area other than a basement area, is not considered a building’s lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of MSB 17.29.170(A)(2).
- “Manufactured home” means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term “manufactured home” also includes travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term “manufactured home” does not include travel trailers, and other similar vehicles.
- “Manufactured home park or subdivision” means a parcel or contiguous parcels of land divided into two or more manufactured home lots for rent or sale.
- “New construction” means structures for which the “start of construction” commenced on or after the effective date of the ordinance codified in this chapter.
- “Recreational vehicle” means a vehicle which is:
 - (1) built on a single chassis;
 - (2) four hundred square feet or less when measured at the largest horizontal projection; and
 - (3) designed to be self propelled or permanently towable by a light duty truck.
- “Special flood hazard area” means land in the floodplain within the borough subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A, AO, AH, or AE on the flood insurance rate map (FIRM). This is also known as the “area of special flood hazard.”
- “Start of construction” includes substantial improvement, and means the date the flood hazard development permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The “actual start” means either the first placement of permanent

17-191
OR 17-142

construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets or walkways; nor does it include excavation for a basement, footings, piers, or foundation or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

- “Structure” means a walled and roofed building including a gas or liquid storage tank that is principally above ground.
- “Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
- “Substantial improvement” means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:
 - (1) before the improvement or repair is started; or
 - (2) if the structure has been damaged and is being restored, before the damage occurred.

For the purposes of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure; however, the term does not include any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, nor does it include any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

- “Variance” means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

(Ord. 17-035, § 2, 2017; Ord. 11-106, § 2, 2011; Ord. 11-018, § 3, 2011; Ord. 88-60, § 3 (part), 1988; Ord. 87-52, § 2 (part), 1987)

17.29.050 APPLICATION.

This chapter shall apply to all areas of special flood hazards within the borough.

(Ord. 87-52, § 2 (part), 1987)

17.29.060 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD.

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled “The Flood Insurance Study for Matanuska-Susitna Borough, Alaska and Incorporated Areas” dated March 17, 2011, with accompanying flood insurance rate map (FIRM), is hereby adopted by reference and declared to be part of this chapter. The flood insurance study and the FIRM are on file at the Matanuska-Susitna Borough.

(Ord. 17-035, § 3, 2017; Ord. 11-018, § 4, 2011; Ord. 87-52, § 2 (part), 1987)

17.29.065 PENALTIES FOR NONCOMPLIANCE.

No structure may be constructed, located, extended, or converted, nor may any structure or land be altered without full compliance with the terms of this chapter and other applicable regulations. Nothing herein contained shall prevent the borough from taking such lawful action as is necessary to prevent or remedy any violation.

(Ord. 87-52, § 2 (part), 1987)

1M 17-191
OR 17-142

17.29.070 ABROGATION AND GREATER RESTRICTIONS.

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another chapter, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Ord. 87-52, § 2 (part), 1987)

17.29.080 INTERPRETATION.

(A) In the interpretation and application of this chapter all provisions shall be:

- (1) considered as minimum requirements;
- (2) liberally construed in favor of the governing body;
- (3) deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. 87-52, § 2 (part), 1987)

17.29.090 WARNING AND DISCLAIMER OF LIABILITY.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter does not create any duty or liability on the part of the borough, any officer or employee thereof, or the Federal Insurance Administration for any flood damages that result from reliance on this chapter or any administrative decision made hereunder.

(Ord. 87-52, § 2 (part), 1987)

17.29.100 DEVELOPMENT PERMIT REQUIRED.

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in MSB 17.29.060. The permit shall be for all structures, including manufactured homes, as set forth in the definitions, and for all development including fill and other activities, also as set forth in the definitions.

(Ord. 87-52, § 2 (part), 1987)

17.29.110 APPLICATION FOR DEVELOPMENT PERMIT.

(A) Application for a development permit shall be made on forms furnished by the director and must be accompanied by a fee established by the assembly. The application shall include but not be limited to plans drawn to scale showing the nature, location, dimensions, and elevations of the area in question; and existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically:

- (1) elevation in relation to North American Vertical Datum of 1988 (NAVD88) of the lowest floor (including basement) of all structures;
- (2) elevation in relation to North American Vertical Datum of 1988 (NAVD88) to which any structure has been floodproofed;
- (3) certification by a registered professional engineer that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in MSB 17.29.170(A)(2).

(Ord. 17-035, §§ 4, 5, 2017; Ord. 11-018, § 5, 2011; Ord. 87-52, § 2 (part), 1987)

1m 17-191
OR 17-142

17.29.120 DESIGNATION OF THE DIRECTOR.

The director shall administer and implement this chapter by granting or denying development permit applications in accordance with its provisions.

(Ord. 87-52, § 2 (part), 1987)

17.29.130 DUTIES AND RESPONSIBILITIES OF THE DIRECTOR.

(A) The director shall:

- (1) review all development permits to determine that the permit requirements of this chapter have been satisfied;
- (2) review all development permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required;
- (3) review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of MSB 17.29.180(A) are met;
- (4) when base flood elevation data has not been provided in accordance with MSB 17.29.060 obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source in order to administer MSB 17.29.160 through 17.29.180;
- (5) where base flood elevation is provided through the Flood Insurance Study or required as in subsection (A)(4) of this section, obtain and record the actual elevation in relation to mean sea level of the lowest floor, including basement of all new or substantially improved structures, and whether or not the structure contains a basement;
- (6) for all new or substantially improved floodproofed structures:
 - (a) verify and record the actual elevation in relation to mean sea level;
 - (b) maintain the floodproofing certifications required in MSB 17.29.110(A)(3);
- (7) maintain for public inspection all records pertaining to the provisions of this chapter;
- (8) notify adjacent communities and the Alaska Department of Community and Regional Affairs prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration;
- (9) require that maintenance be provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished;
- (10) make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards, particularly where there appears to be a conflict between a mapped boundary and actual field conditions. The person contesting the location of the boundary may appeal the interpretation as provided in MSB 15.39;
- (11) maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

(Ord. 11-018, § 6, 2011; IM 96-013, page 1 (part), presented 3-19-96; Ord. 87-52, § 2 (part). 1987)

17.29.140 APPEALS.

(A) The board of adjustment and appeals shall hear and decide appeals as provided under MSB 15.39.

IM 17-191
OR 17-142

(B) The board of adjustment and appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the director in the application, enforcement or other administration of this chapter.

(IM 96-013, page 1 (part), presented 3-19-96; Ord. 87-52, § 2 (part) 1987)

17.29.150 VARIANCES.

(A) A request for a variance from the provisions of this chapter must be made in writing to the planning commission. The application must contain sufficient information for the planning commission to make a determination based upon criteria set out in this section and must be accompanied by a filing fee.

(B) The planning commission shall hear requests for variances.

(C) In passing upon such requests, the planning commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:

- (1) the danger the materials may be swept onto other lands to the injury of others;
- (2) the danger to life and property due to flooding or erosion damage;
- (3) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (4) the importance of the services provided by the proposed facility to the borough;
- (5) the necessity to the facility of a waterfront location, where applicable;
- (6) the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (7) the compatibility of the proposed use with existing and anticipated development;
- (8) the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (9) the safety of access to the property in times of flood for ordinary and emergency vehicles;
- (10) the expected heights, velocity duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
- (11) the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(D) Upon consideration of the factors of subsection (C) of this section and the purposes of this chapter, the commission may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

(E) Variances may be granted only when the standards and criteria set out in this subsection (E) of this section are met.

- (1) Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing

IM 17-191
OR 17-142

the factors set out in subsection (C)(1) through (11) of this section have been fully considered. As the lot size increases the technical justification required for issuing the variance increases.

(2) Variances may be issued for the construction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in this section.

(3) Variances may not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.

(4) Variances may be issued only upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(5) Variances shall be issued only upon:

- (a) a showing of good and sufficient cause;
- (b) a determination that failure to grant the variance would result in exceptional hardship to the applicant;
- (c) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(6) Variances, as interpreted in the National Flood Insurance Program, are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.

(7) Variances may be issued for non-residential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except subsection (E)(1) of this section, and otherwise complies with MSB 17.29.160(A)(1) and (2).

(8) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(Ord. 87-52, § 2 (part), 1987)

17.29.160 GENERAL STANDARDS FOR FLOOD HAZARD REDUCTION.

(A) In all areas of special flood hazard, the following standards are required:

(1) *Anchoring.*

(a) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

(b) All manufactured homes must likewise be elevated and anchored to prevent flotation, collapse or lateral movement and shall be installed using methods and practices that minimize flood damage.

Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors and other techniques set out in "Manufactured Home Installation in Flood Hazard Areas," a guidebook published by the Federal Emergency Management Agency.

(2) *Construction materials and methods.*

Im 17-191
OR 17-142

(a) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(b) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

(c) Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(3) *Utilities.*

(a) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

(b) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into floodwaters;

(c) On-site water disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(4) *Subdivision proposals.*

(a) Within FEMA mapped special flood hazard areas in Zones A, AO, AH, or AE on the FIRM, subdivision proposals or other similar housing development such as mobile home parks shall verify they are reasonably safe from flooding by demonstrating that:

(i) the subdivision is consistent with the need to minimize flood damage; and

(ii) the public utilities and facilities such as sewer, gas, electrical, and water systems are located and constructed to minimize flood damage; and

(iii) the subdivision has adequate drainage provided to reduce exposure to flood damage.

(b) Within FEMA mapped special flood hazard areas in Zones A, AO, AH, or AE on the FIRM, if the subdivision and other proposed new development is greater than five acres or 50 lots, whichever is less, the applicant shall also:

(i) map special flood hazard areas and floodways on the preliminary and final plats; and

(ii) provide base flood elevation data where base flood elevation is available; or

(iii) generate base flood elevation where base flood elevation data is not available from the borough or other authoritative source.

(c) The test of reasonableness shall be in accordance with subsection (B) of this section.

(B) *Review of development permits.* Where elevation data is not available either through the flood insurance study or from another authoritative source pursuant to MSB 17.29.130(A)(4), applications for development permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment based on mapped flood hazard data, use of historical records, high water marks, photographs of past flooding, anecdotal information from long-time residents, and other similar information, where available.

(Ord. 17-035, §§ 6, 7, 2017; Ord. 11-106, § 3, 2011; Ord. 11-018, §§ 7, 8, 2011; Ord. 05-170, § 2, 2005; Ord. 87-52, § 2 (part), 1987)

IM 17-191
OR 17-142

17.29.170 SPECIFIC STANDARDS.

(A) In all areas of special flood hazards where base flood elevation data has been provided as set out in MSB 17.29.060 or 17.29.130(A)(4), the following provisions are required:

(1) *Residential construction.*

(a) New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated a minimum of two feet above base flood elevation.

(b) Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or must meet or exceed the following minimum criteria:

(i) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

(ii) The bottom of all openings shall be no higher than one foot above grade.

(iii) Openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic entry and exit of floodwaters.

(2) *Nonresidential construction.* New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall either have the lowest floor, including basement, elevated a minimum of two feet above the level of the base flood elevation or, together with attendant utility and sanitary facilities, shall:

(a) be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;

(b) have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

(c) be certified by a registered professional engineer that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and review of the structural design, specifications, and plans. Such certifications shall be provided to the official as set forth in MSB 17.29.130(A)(6);

(d) Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in subsection (A)(1) of this section;

(e) Applicants floodproofing non-residential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (for example, a building constructed to the base flood level will be rated as one foot below that level).

(3) *Manufactured homes.*

(a) All manufactured homes to be placed or substantially improved on sites:

(i) outside of a manufactured home park or subdivision;

(ii) in a new manufactured home park or subdivision;

(iii) in an expansion to an existing manufactured home park or subdivision; or

1m 17-191
OR 17-142

(iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood, shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated a minimum of two feet above the base flood elevation, and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(b) Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision that are not subject to the provisions of subsection (A)(3)(a) of this section shall be elevated so that either:

(i) the lowest floor of the manufactured home is a minimum of two feet above the base flood elevation; or

(ii) the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 48 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(4) *Recreational vehicles.* Recreational vehicles placed on sites are required to either:

(a) be on the site for fewer than 180 consecutive days;

(b) be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions; or

(c) meet the requirements of subsection (A)(3) of this section and the elevation and anchoring requirements for manufactured homes.

(Ord. 17-035, §§ 8 – 11, 2017; Ord. 11-018, § 9, 2011; Ord. 87-52, § 2 (part), 1987)

17.29.180 FLOODWAYS.

(A) Located within areas of special flood hazard established under MSB 17.29.160 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions apply:

(1) Encroachments, including fill, new construction, substantial improvements, and other development, are prohibited unless certification by a registered professional engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(2) If the requirement of subsection (A)(1) of this section is satisfied, all new construction and substantial improvements must comply with all applicable flood hazard reduction provisions of MSB 17.29.160 through 17.29.170.

(Ord. 11-018, § 10, 2011; Ord. 87-52, § 2 (part), 1987)

17.29.185 STANDARDS FOR SHALLOW FLOOD AREAS (AO ZONES).

(A) New construction and substantial improvements of residential structures within AO zones shall have the lowest floor (including basement) elevated above the highest grade adjacent to the structure at least a minimum of two feet higher than the depth number specified in feet on the community's FIRM (at least four feet if no depth number is specified).

(B) New construction and substantial improvements of nonresidential structures within AO zones shall either:

1m 17-191
OR 17-142

(1) have the lowest floor (including basement) elevated above the highest adjacent grade of the building site at least a minimum of two feet higher than the depth number specified in feet on the community's FIRM (at least four feet if no depth number is specified); or

(2) together with attendant utility and sanitary facilities, be completely floodproofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer as in MSB 17.29.170(A)(2)(c).

(C) Require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

(D) Recreational vehicles placed on sites within AO Zones on the community's FIRM shall either:

(1) be on the site for fewer than 180 consecutive days;

(2) be fully licensed and ready for highway use on wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions; or

(3) meet the requirements of subsections (A) and (C) of this section and the anchoring requirements for manufactured homes in MSB 17.29.160(A)(1)(b).

(Ord. 17-035, §§ 12 – 14, 2017; Ord. 11-018, § 11, 2011)

17.29.190 CRITICAL FACILITY.

(A) Construction of new critical facilities shall be, to the extent possible, located outside of the special flood hazard area (SFHA). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet above the highest adjacent grade or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

(Ord. 11-018, § 12, 2011)

The Matanuska-Susitna Borough Code is current through Ordinance 17-086, passed June 20, 2017.

Disclaimer: The Borough Clerk's Office has the official version of the Matanuska-Susitna Borough Code. Users should contact the Borough Clerk's Office for ordinances passed subsequent to the ordinance cited above.

Borough Website: <http://www.matsugov.us/> (<http://www.matsugov.us/>)

Borough Telephone: (907) 745-4801

Code Publishing Company (<http://www.codepublishing.com/>)

im 17-191
OR 17-142

CHAPTER 17.80: NONCONFORMING STRUCTURES

Section

<u>17.80.010</u>	Intent
<u>17.80.020</u>	Legal nonconforming structures
<u>17.80.030</u>	Fees
<u>17.80.040</u>	Written determination required
<u>17.80.050</u>	Nonconforming lots of record
<u>17.80.060</u>	Standards for nonconforming structures
<u>17.80.070</u>	Application for a determination of legal nonconforming status
<u>17.80.080</u>	Repairs and maintenance
<u>17.80.090</u>	Restoration of damaged property
<u>17.80.100</u>	Termination of nonconformities
<u>17.80.110</u>	Violations and enforcement

17.80.010 INTENT.

(A) Within the Matanuska-Susitna Borough there may exist lots, permanent structures, and uses of land and structures, which were lawful before the effective date of the applicable regulations but which would be prohibited, regulated or restricted under the terms of current regulations, or a future amendment. Except as otherwise provided by code, it is the intent of this chapter to permit nonconforming permanent structures to remain until they are removed or abandoned but not to encourage their perpetuation. It is not intended that this chapter replace or supersede nonconformity regulations in other chapters within this title. This ordinance is promulgated pursuant to AS 29.40.040(A)(2) "Land Use Regulations" and encourages the minimization of the unfavorable effects of the construction of structures that do not conform to code.

(B) Nothing in this chapter requires a change in the plans or construction of any building actually under construction or development prior to the effective date of adoption of this ordinance as long as the building was allowable under the code in effect at the start of development. Where excavation, demolition or removal of an existing building has begun in preparation of rebuilding, such excavation, demolition or removal shall be considered to be actual construction or development, provided that continuous progress is being made toward completion of the project. Development is defined as any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.

(Ord. 95-011(SUB1), § 3 (part), 1995)

17.80.020 LEGAL NONCONFORMING STRUCTURES.

(A) The following structures qualify as legal nonconforming structures without an administrative determination, however, an administrative determination may be issued if requested by the property owner:

- (1) structures built lawfully and made nonconforming by adoption of subsequent ordinances;
- (2) structures built in violation of the ordinance existing at the time of construction, then made legal by adoption of subsequent ordinance, and later made nonconforming by adoption of subsequent ordinances;
- (3) permanent structures which were constructed lawfully after the date of adoption of the Acknowledgement of Existing Regulations, Chapter 17.01, but which were made unlawful after the date of start of construction due to adoption of subsequent regulations.

(B) The following structures require an administrative determination in order to be granted legal nonconforming status;

Im 17-191
OR 17-142

- (1) structures granted a variance in accordance with Chapter 17.65;
- (2) structures built in violation of shoreline setback ordinances existing at the time of construction, and subsequently granted an exemption from shoreline setbacks in accordance with MSB 17.55.020(C);
- (3) permanent structures built in violation of ordinances existing at the time of construction, and subsequently granted legal nonconforming status in accordance with MSB 17.80.070.

(Ord. 95-011(SUB1), § 3 (part), 1995)

17.80.030 FEES.

(A) Applications for determination of legal nonconforming status, made pursuant to MSB 17.80.020(A)(1), (2) and (3), and (B)(1) and (2), are not subject to fees set forth in MSB 17.80.070.

(B) Applications for determination of legal nonconforming status, made pursuant to MSB 17.80.020(B)(3) are subject to fees as set forth in MSB 17.80.070.

(Ord. 95-011(SUB1), § 3 (part), 1995)

17.80.040 WRITTEN DETERMINATION REQUIRED.

Nonconforming structures, covered under MSB 17.80.020(B)(3), shall not have legal nonconforming status for purposes of this chapter unless a written administrative determination of legal nonconforming status has been issued by the planning director, pursuant to MSB 17.80.070.

(Ord. 95-011(SUB1), § 3 (part), 1995)

17.80.050 NONCONFORMING LOTS OF RECORD.

Structures and accessory buildings may be erected on nonconforming lots of record as long as they meet all applicable provisions of code. This provision shall apply even though the lot fails to meet the requirements for area, or width, or both, currently applicable.

(Ord. 95-011(SUB1), § 3 (part), 1995)

17.80.060 STANDARDS FOR NONCONFORMING STRUCTURES.

(A) Where a permanent structure exists that could not be built under the terms of the current regulations, the structure may continue to exist as long as it remains lawful subject to subsections of MSB 17.80.060(A). However:

- (1) a nonconforming structure may not be enlarged or altered in any way unless the alteration or enlargement is otherwise specifically allowed by code. Any nonconforming structure or portion of a nonconforming structure may be altered to decrease its nonconformity.
- (2) a nonconforming structure may not be enlarged or altered vertically or horizontally, in a way which would increase the height, width, depth, area, or volume of the structure except as specifically allowed by current code for similar new structures in that location. A nonconforming structure which straddles a required minimum setback line may be expanded vertically or horizontally only where the expansion is located outside the minimum setback distance.
- (3) the physical location of a nonconforming structure may be changed only to reduce or eliminate the nonconformity.
- (4) an existing structure devoted to a use not permitted by code shall not be enlarged, extended, moved, or structurally altered.

IM 17-191
OR 17-142

(B) Structures found in violation of any of the standards set forth in MSB 17.80.060(A), are not eligible for a determination of legal nonconforming status.

(C) Structures which are in trespass are not eligible for a legal nonconforming status determination.

(D) Structures are not eligible for a legal nonconforming status determination if located in a federally-designated flood hazard area if a development permit, as required by the Flood Damage Prevention ordinance, was required at the time of construction.

(E) The planning director may not grant legal nonconforming status, pursuant to MSB 17.80.070, unless the applicant provides evidence that the structure was erected prior to the adoption of the Acknowledgement of Existing Regulations Chapter 17.01.

(F) The planning director will consider public health, safety, and welfare concerns raised in comments received pursuant to MSB 17.80.070(C) when making a determination whether to grant a legal nonconforming determination.

(Ord. 01-016, § 2, 2001; Ord. 95-011(SUB1), § 3 (part), 1995)

17.80.070 APPLICATION FOR A DETERMINATION OF LEGAL NONCONFORMING STATUS.

(A) An application for a determination of legal nonconforming status may be initiated by the property owner or his authorized agent. The application shall be filed with the planning director on a form provided by the planning department. The application shall be accompanied by a nonrefundable application fee, established by the assembly, and made payable to the Matanuska-Susitna Borough. The planning director may not grant legal nonconforming status unless the applicant provides evidence that the structure was erected prior to the adoption of the Acknowledgement of Existing Regulations chapter except as noted herein.

(B) In addition to the completed application form, the submittal shall contain the following items:

- (1) description and photographs of the structure;
- (2) as-built drawing(s), prepared by a professional surveyor, registered in the state of Alaska, verifying the location(s) or the structure(s);
- (3) any other documentation the planning director may deem necessary to evaluate the application.

(C) When an application is submitted, the borough shall give notice of the application by publication in a newspaper of general circulation in the borough at least 15 calendar days before the earliest date the planning director may render a decision.

(D) Notice of the application shall be mailed to owners of all property within 600 feet of the lot lines of the property containing the nonconforming structure at least 10 calendar days prior to the earliest date upon which the planning director may make a final decision on the application. The notice shall contain the following:

- (1) the earliest date a decision may be rendered;
- (2) brief description of the application;
- (3) a vicinity map of the area surrounding the subject property;
- (4) legal description of the subject property;
- (5) the names of the applicants and owners of the subject property;
- (6) the planning department's telephone number; and

im 17-191
OR 17-142

(7) identify the location where the application and other supporting material will be available for public inspection.

(E) Prior to the date of the decision, the applicant shall pay the cost of all mailings or advertisements required by this section.

(Ord. 95-011(SUB1), § 3 (part), 1995)

17.80.080 REPAIRS AND MAINTENANCE.

Except as otherwise addressed by code, nothing in this chapter shall prevent keeping in good repair a nonconforming permanent building or a building in which a nonconforming use is conducted. However, any building that is declared by an authorized official to be unsafe or unlawful by reason of physical condition shall not be restored, repaired or rebuilt in violation of the standards set forth in MSB 17.80.060(A).

(Ord. 95-011(SUB1), § 3 (part), 1995)

17.80.090 RESTORATION OF DAMAGED PROPERTY.

(A) Except as otherwise addressed by borough code, nothing in this ordinance shall prevent restoration and subsequent continued occupancy and use of a permanent building destroyed to up to 50 percent of its replacement value by fire, explosion, or other casualty or act of God.

(B) A dwelling made nonconforming through adoption or amendments to Title 17, Zoning, may be replaced or reconstructed within two years after accidental damage or accidental destruction by fire, explosion, or other casualty or act of God. Reconstruction or replacement not completed within two years of the date of the damage is prohibited except in compliance with current regulations. Replacement or reconstruction may be undertaken in the same three dimensional space that it occupied prior to damage or destruction even though the damage or destruction exceeded 50 percent of its replacement value provided it was a legal structure at the date of construction. Except as otherwise specifically allowed by code, reconstruction and replacement shall not increase the height, depth, area, or volume of the structure beyond that which existed on the date the structure became a pre-existing legal nonconforming structure.

(1) The borough manager may grant a one time extension of the allowed time to complete rebuilding of a pre-existing legal nonconforming structure which is otherwise eligible for reconstruction under this section. To grant the time extension authorized under this section, the borough manager must find from evidence presented that:

(a) the requirement to rebuild within two years from the date of destruction would result in undue hardship on the applicant;

(b) the applicant diligently pursued reconstruction during the original two-year period; and

(c) the need for an extension is caused by unforeseen and unavoidable circumstances beyond the control of the applicant.

(2) The extension shall be for a specific amount of time, not to exceed three years from the original two-year deadline.

(3) An application for the three-year extension of time to rebuild a pre-existing legal nonconforming structure shall be submitted in writing to the borough manager and shall provide sufficient detail to describe the proposed structure and its compliance with applicable borough code. The application must also contain the evidence required by MSB 17.80.090(B)(1)(a-c).

1M 17-191
OR 17-142

(4) The borough manager will review the application and make a decision regarding the request. A public hearing is not required. Appeals of this decision are as prescribed in MSB 15.39.030.

(C) The percentage of loss, under MSB 17.80.090(A) and (B) shall be determined by an independent adjuster or appraiser who is Financial Institutions Reform and Recovery Enforcement Act (FIRREA) certified or the appraisal must be accompanied by the appraiser's license number and certification of type of appraisal they are licensed to perform.

(Ord. 01-016, § 3, 2001; Ord. 99-197, § 2, 1999; Ord. 95-011(SUB1), § 3 (part), 1995)

17.80.100 TERMINATION OF NONCONFORMITIES.

When a legal nonconforming permanent structure is abandoned for a period of one year or more, the building shall not then be used except in compliance with this chapter. For the purposes of this chapter, abandonment means discontinuation or failure to complete construction and begin use, for a continuous period of more than one year. Whether the property owners intended to abandon the structure is not relevant to an abandonment determination. Reconstruction of a damaged nonconforming structure is not prohibited after the one-year period if the reconstruction was prohibited due to lawful orders issued by a court or in the course of an arson or criminal investigation.

(Ord. 95-011(SUB1), § 3 (part), 1995)

17.80.110 VIOLATIONS AND ENFORCEMENT.

Violations and enforcement of this chapter shall be consistent with the terms and provisions of Chapter 17.56.

(Ord. 95-011(SUB1), § 3 (part), 1995)

The Matanuska-Susitna Borough Code is current through Ordinance 17-086, passed June 20, 2017.

Disclaimer: The Borough Clerk's Office has the official version of the Matanuska-Susitna Borough Code. Users should contact the Borough Clerk's Office for ordinances passed subsequent to the ordinance cited above.

Borough Website: <http://www.matsugov.us/> (<http://www.matsugov.us/>)

Borough Telephone: (907) 745-4801

Code Publishing Company (<http://www.codepublishing.com/>)

IM 17-191
OR 17-142