



A Lender's Perspective

Setback Concerns

1. Setback Questions:

- Which are the most restrictive? (Borough, City or CC&R Setbacks)
- When was the setback established?
- Is the setback recorded or on public record?
- Can a variance be granted?

2. Collateral Questions:

- Can the structure be rebuilt? If not in the same place, can a like structure be constructed on the lot for similar value?
- Is the structure insurable as it currently exists?
- Are there environmental concerns with the collateral?
- Where are the well and septic located in relation to the waterway?
- Was the structure built before the setbacks were established?
- Does the property have a pre-existing non-conforming status?
- Have additions been made after the non-conforming status was granted, or the setbacks established, that create a new violation?
- Does the loan require Mortgage Insurance? (Any property type ineligible for sale to the Agencies is generally ineligible for MI)
- Does distance to the water place the property in a special flood hazard area?

Additional Factors:

Title companies will only provide coverage related to recorded setbacks, which means no coverage is provided for unrecorded setbacks and those which can be altered without notice.



An appraiser must be able to indicate whether the subject property presents:

1. A legal conforming use
2. A legal non-conforming use (grandfathered)
3. An illegal use under current regulations
4. If there are no regulations or local requirements

The appraiser must also address any adverse effect a non-conforming use has on the value and marketability of the property.



A surveyor can provide an As-built which should identify setbacks, recorded easements, boundary lines, structure locations and square footage. By identifying the “building envelope,” or the space in which a structure can be built, helps lenders locate the existing buildings, lots lines, and distance between an existing well and septic system.

Government Sponsored Enterprises



Portfolio Lending and Selling

Many lenders sell to GSEs, either directly or through other parties. While a portion of the lending portfolio may be retained “in-house” the ability to sell loans is an important avenue to maintain appropriate risk and desired loan to share ratios.

To be able to sell said loans, either at origination or later, the loans must meet standard GSE guidelines. If these guidelines are not met, the loan may not qualify for sale, or the sale may require a deep discount.

In addition, lenders may also need to share risk or rebalance the portfolio. This may be accomplished by selling a percentage of a loan, or a bundle of loans, through participation with other lenders. To do so, underwriting and collateral standards must be in line with the industry.

Fannie Mae

- Fannie Mae only purchases or securitizes mortgage loans on properties if the improvements constitute a legal conforming use of the land. However, Fannie Mae will purchase or securitize a mortgage for a property that constitutes a legal, nonconforming use of the land provided that **the appraisal analysis reflects any adverse effect that the nonconforming use has on the value and the marketability of the property.** This requirement applies to all property types. Fannie Mae will not purchase or securitize a mortgage secured by a property that is subject to certain land-use regulations, such as coastal tideland or wetland laws, that *create setback lines or other provisions that prevent the reconstruction or maintenance of the property improvements if they are damaged or destroyed.*
- Fannie Mae will not purchase or securitize a loan secured by property that has survey exceptions.



Freddie Mac

- An exception may be acceptable only if all the following conditions are met:
- The subject of the exception must not interfere with the use and enjoyment of any present or proposed improvements on the Mortgaged Premises or with the use and enjoyment of the balance of the Mortgaged Premises not occupied by improvements
- The subject of the exception must not affect the marketability of the Mortgaged Premises
- The subject of the exception must **have no or minimal effect on the value of the Mortgaged Premises**
- The subject of the exception must be acceptable to the MI if the Mortgage is insured
- The subject of the exception must be commonly acceptable to private institutional Mortgage investors in the area where the Mortgaged Premises is located

- For Mortgaged Premises with a land use that is legal non-conforming, the appraisal report must reflect any adverse effect the non-conforming use has on the opinion of market value.

- A Mortgage is ineligible for sale to Freddie Mac if the Mortgage is secured by property that is subject to coastal tideland, wetland or setback laws and/or regulations **that prevent the rebuilding or maintenance of the property improvements if they are damaged or destroyed.**

Federal Housing Administration (FHA)

- Consider all easements, restrictions or encroachments and their impact on the market value of the subject property and list them on the appraisal. These factors are often discovered during the survey and title report once the appraisal has begun. Perform limited due diligence to verify the existence of these types of significant limiting factors. Also record these items in the URAR which were considered in the value estimate.
- As a general rule, an encroachment will cause a property to be ineligible for FHA mortgage insurance. However, there are exceptions to this rule and further information can be found by calling the lender. The appraiser should identify any of these conditions:
 - encroachment of a dwelling, garage, another physical structure or other improvement onto an adjacent property, right-of-way or utility easement
 - encroachment of a dwelling, garage, another physical structure or improvements on the subject property
 - encroachment of a dwelling, garage or another physical structure into the setback requirement
- An encroachment may be acceptable if the adjoining landowner or the local governing authority provides a **perpetual encroachment easement** that is filed in the County Clerk and Recorder's Office.



USDA/RD

When unpermitted work is discovered in the existing dwelling, the lender must ensure that the owner and/or contractor contact the appropriate code enforcement office to obtain retroactive permitting or **devise a plan to permit the previous construction.**

All newly constructed homes must meet local zoning requirements. The Appraiser must determine if current use complies with zoning ordinances. If the existing property does not comply with all of the current zoning ordinances but is **accepted by the local zoning authority**, the Appraiser must report the property as “Legal Non-Conforming” and provide a brief explanation. The Appraiser must analyze and report any adverse effect that the non-conforming use has on the property’s value and marketability.

What do local programs say?

- The appraiser must research governmental records to ascertain the zoning of the property and to insure the property is in conformance with the zoning regulations. *If non-conforming, the appraiser needs to disclose this and discuss any impact on utility and/or value.* In addition, *the local government and lender are to provide any information necessary to adequately document any conditions or constraints on legal non-conforming use.* Specifically, the lender must clarify when the structure can be similarly rebuilt, if damaged, and whether there are any setback violations or other constraints that would require a variance to rebuild. Prior to submitting a loan, the parties involved in the transaction should evaluate all pertinent information and resolve any problems related to the zoning non-conformance.
- Seller/Serviceers are reminded that zoning ordinances vary widely from community to community. It is necessary to read and understand what is required by the specific community in which the property is located. In the submission package, the Seller/Serviceer should provide a memo discussing their interpretation of the non-conformance as well as any statements from local government, copies of appropriate zoning regulations, and a copy of the as-built survey.
- The Lender must ensure that any additional square footage added to the foundation footprint conforms to the lot setbacks and does not create encroachments of any kind.



Wrapping Up

Lenders are likely to seek the following related to qualifying the collateral:

- Permanent acceptance of the existing location of the structure(s)
- The non-conforming status to follow the chain of ownership/title and be granted in perpetuity
- The property would need adequate space to allow for a similar structure to be rebuilt if destroyed
- Granted status filed on public record (i.e. recorded with the State)
- The property must not violate EPA, U.S. Army Corp of Engineers, State of Alaska, or other regulations
- If the property is in a flood zone it must qualify and maintain flood insurance as required by FEMA



Questions

Thank you



**MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 24-XX**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB 17.55 TO ALLOW STRUCTURES TO BE CONSTRUCTED WITHIN 75 FEET OF A WATERBODY, SO LONG AS CERTAIN ENGINEERING STANDARDS TO PROTECT WATER QUALITY ARE APPLIED.

BE IT ENACTED:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the Borough Code.

Section 2. Amendment of Subsection. MSB 17.55.004(A) is hereby amended by adding the following definition:

- "Lake" means a standing body of open water that occurs in a natural depression fed by one or more streams from which a stream may flow, that occurs due to the widening or natural blockage or cutoff of a river or stream, or that occurs in an isolated natural depression that is not a part of a surface river or stream. The term also includes artificial lakes or ponds created by excavation, as well as artificial blocking or restriction of the flow of a river, stream, or tidal area.
- "Qualified professional" means a professional civil engineer or other professional registered with the state

of Alaska under Alaska Statute 08.48 qualified to practice the type of work required by this chapter.

Section 3. Amendment of Section. MSB 17.55.020 is hereby amended to read as follows:

17.55.020 SETBACKS [FOR SHORELANDS] FROM WATER BODIES

(A) Except as provided in subsections s (B) and (F) of this section, no structure or footing shall be located closer than 75 feet from the ordinary high water mark of a body of water. Except as provided otherwise, eaves may project three feet into the required setback area.

(B) Docks, piers, marinas, aircraft hangars, and boathouses 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. Structures permitted over water under this subsection shall conform to all applicable state and federal statutes and regulations.

(1) Boathouses or aircraft hangars which are exempt from a minimum shoreline setback for structures shall:

(a) be built over, in, or immediately adjacent to a waterbody and used solely for storing boats and boating accessories;

(b) be designed, constructed and oriented for primary access by boats or aircraft directly to a waterbody;

(c) not have more than incidental accessory access to a street or driveway; and

(d) not be usable as a garage or habitable structure without significant alteration.

(C) [IN THE CITY OF WASILLA, THIS SECTION DOES NOT APPLY TO STRUCTURES WHERE CONSTRUCTION WAS COMPLETED PRIOR TO NOVEMBER 16, 1982. ELSEWHERE IN THE BOROUGH,] [T]his section does not apply to structures where construction was completed prior to January 1, 1987[, IF THE PRESENT OWNER OR OWNERS OF THE PROPERTY HAD NO PERSONAL KNOWLEDGE OF ANY VIOLATION OF THE REQUIREMENTS OF THIS SECTION PRIOR TO SUBSTANTIAL COMPLETION OF THE STRUCTURES]. The director of the Planning Department shall, upon application by a property owner, determine whether a property qualifies for an exception under this subsection.

(1) An application for a shoreline setback exception shall include a filing fee as established by resolution of the assembly.

(D) In this section, a "structure" is any [DWELLING] commercial building, [OR] habitable building,

or garage.

(1) open air structures such as gazebos or pavilions are not considered structures under this section.

(E) No part of a subsurface sewage disposal system shall be closer than 100 feet from the ordinary high water mark of any body of water. [THE PLANNING COMMISSION SHALL REQUIRE THIS DISTANCE BE INCREASED WHERE NECESSARY TO PROTECT WATERS WITHIN THE BOROUGH.]

(F) Structures are allowed to be located within 75 feet of the ordinary high water mark of a lake, but no less than 45 feet, if runoff pollution mitigation measures are designed and installed under the supervision of a qualified professional.

(1) Runoff pollution mitigation measures include any combination of bio-swales, rain gardens, riparian buffers, flow barriers, filter strips, or other features adequate to treat and retain all stormwater or snowmelt runoff associated with a development. Natural riparian buffers are preferred over man-made measures such as bioswales or rain gardens.

(a) Mitigation measures shall include measures to mitigate the potential for petroleum contamination, such as installation of secondary

containment systems equal to 110 percent of the storage volume or pump-fed top-outlet fuel tanks.

(2) Engineered plans and specifications shall be submitted for an engineering review as part of a mandatory land use permit, in accordance with MSB 17.02.

(3) The development shall be designed and constructed in accordance with local, state, and federal laws.

(4) The landowners are responsible for maintenance of approved runoff pollution mitigation measures specified in their permit as long as the structure permitted under this subsection remains within 75 feet of a lake.

Section 4. Effective date. This ordinance shall take effect upon adoption.

ADOPTED by the Matanuska-Susitna Borough Assembly this - day of -, 2024.

EDNA DeVRIES, Borough Mayor

ATTEST:

LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)