
TURNAGAIN COMMUNITY COUNCIL
c/o Federation of Community Councils
1057 W. Fireweed Lane, Suite 100, Anchorage, Alaska 99503
Cathy L. Gleason, President

January 25, 2018

RE: **P&ZC Case 2017-0133 — Draft Stream/Water bodies Setback Ordinance**

Chair and Members of the Planning and Zoning Commission, and MOA Watershed Management Services Staff:

Thank you for the opportunity to provide written comments on the proposed changes to Municipal Code subsection 21.07.020B regarding Water Course, Water Body Setback, and Wetland Protection regulations. We especially want to thank Jeffery Urbanus, who provided information, answered specific questions, and presented the draft proposals at our January 11, 2018, Turnagain Community Council (TCC) meeting. He and other planning department staff members deserve much credit for their work on these draft Code versions.

Overall, the Turnagain Community Council (TCC) supports the intent and goals of the draft ordinance: to better protect Anchorage's waterways, water and environmental quality, property owners, and the overall community by increasing required setbacks from water bodies and limiting allowed uses within sensitive areas adjacent to streams, water bodies and wetlands.

Turnagain is home to many significant waterways, including Hood Creek, Fish Creek and its estuary, Turnagain Bog, Spenard Lake, Lake Hood, Westchester Lagoon, and the shoreline of Cook Inlet. Protection of these important aquatic resources and the important hydrologic, ecologic, and aesthetic functions they provide for our neighborhood is something TCC has endorsed for many years.

TCC SPECIFIC COMMENTS:

TCC has reviewed the proposed Municipal Code changes and submits the following for your consideration. Our comments reflect areas of support as well as indicate areas of concern — and include recommended changes TCC feels would improve the current draft.

1. **AMC 21.07.020B, Minimum Stream Setback Width Per Side, Table 12.07-1., pg. 12 |** While not within the Turnagain area, TCC agrees with Hillside District residents who have raised concerns regarding a regressive change in the proposed draft. This change would reduce the existing Stream Setback non-disturbance distance of 50 feet in the Hillside District to 25 feet — the outer 25 feet would be redesignated as a “Riparian Edge Zone.” This secondary zone would allow many more uses and activities that could compromise the important functions of these waterways. Poor water quality and stream degradation upstream will impact neighborhoods and waterways downstream in this higher elevation area.

- **RECOMMENDATION:**

TCC requests that **in addition to the classifications** in Table 12.07-1, **streams within the Hillside District be given a minimum Streamside Zone Setback of 50 feet, regardless of stream size**, with the larger setback retained for any larger streams already identified for the total 100-foot setback.

2. **AMC 21.07.020B, Minimum Stream Setback Width Per Side, Table 12.07-1., pg. 12 |** TCC acknowledges that a 25-foot Streamside Zone setback, with no additional Riparian Edge Zone setback, is appropriate for sections of Hood Creek and Fish Creek that already exist in residentially- or commercially-developed areas. However, any remaining undeveloped, naturally vegetated setback areas along these creeks — or any creek sections that may be daylighted sometime in the future — would benefit from an overall larger protected setback width.

- **RECOMMENDATION:**

TCC requests that **a 10-foot Riparian Edge Zone setback be added for Fish Creek and Hood Creek (and all other creeks listed the same box) in Table 21.07-1 — for a Total Stream Setback Width Per Side of 35 feet**. This additional setback width requirement would apply to any remaining, undeveloped areas along these creeks — or any creek sections that are currently underground and run through manmade channels that may be daylighted sometime in the future — including creek sections located in MOA parks or other open space tracts of land. *Watershed Management has indicated support for this request.*

AMC 21.07.020B, Stream Setbacks, Section 9(d) and (e), pp. 13-15 |

TCC understands the purpose of defining two separate setback zones, the Streamside Zone and Riparian Edge Zone, and supports this solution to allow flexibility for property owners, while still protecting the most sensitive parts of the streams.

However, our council has concerns and proposes additional restrictions in each zone for the following situations:

Section 9(d) Streamside Zone Setback — Permitted Uses/Activities:

3. **Section 9(d)(iii) and (vi), pg. 14 |**

In the Streamside Zone, uses, such as unpaved trails and utility lines, are still allowed. TCC supports these allowed uses, but it would be beneficial to ensure that these uses, if built within the 25-foot setback, have minimal negative impacts.

- **RECOMMENDATION:**

TCC requests **an additional setback within the Streamside Zone 25 feet, such as 10 or 15 feet from the bank as defined in the ordinance, be required for uses such as unpaved trails and utilities**, to protect the stream as well as minimize the possibility that the allowed uses running parallel to the stream are flooded, eroded away, or otherwise damaged. Unlike other uses, these particular uses may impact long sections of streams.

4. **Section 9(v), pg. 14 |**

Draft language for power generation structures allowed in the Streamside Zone section is too vague/inclusive. Watershed Management has subsequently stated that the power generation facilities allowed in the Streamside Zone would be limited to hydroelectric facilities only.

- **RECOMMENDATION:**

TCC requests **clarification language in this section that reflects hydropower projects would be the only kind of power infrastructure allowed within the Streamside Zone setback.**

Watershed Management has indicated support for this request.

Section 9(e) Riparian Edge Zone Setback — Permitted Uses/Activities:

5. **Section 9(e), pp. 14-15 |**

In the Riparian Edge Zone, TCC has similar concerns about allowed uses having negative impacts on a stream over a large area. For example, a property owner may install several of the allowed structures or improvements in the Riparian Edge Zone, beyond the general intent of this ordinance to protect this area.

- **RECOMMENDATION:**

TCC requests **for some or all of the uses allowed in the Riparian Edge Zone covering a large area, a similar rule should be applied as the one listed in subsection (v) for lawns and other landscaping, which allows changes only up to 50 percent of the total Riparian Edge Zone coverage on the lot.** While each individual use may not cover a large portion of the lot, the cumulative effect would significantly and negatively alter the entire setback area.

6. **Section 9(e)(iv), pg. 15 |**

Also in the Riparian Edge Zone, “Recreational fields and golf course fairways” are stated as allowed uses. These are large uses typically developed on large tracts, which should provide for enough space that these uses are located outside of the Total Stream Setback Width Per Side of 50 feet. In order to ensure adequate protection from complete vegetation removal, compacted soils, herbicides and invasive plant species associated with them, these uses should be located a minimum of 50 feet from the stream — outside of the Riparian Edge Zone.

- **RECOMMENDATION:**

TCC requests **removal of subsection (e)(iv) — “Recreational fields and golf course fairways” as allowed uses in the Riparian Edge Zone setback.**

AMC 21.07.020B, Section 11, Water Body Setbacks:

7. **AMC 21.07.020B, Water Body Setbacks, Section 11, pg. 15 |**

TCC did not see a specific description of what constitutes “water bodies” — either in this section or the proposed amendments included in this draft ordinance for **AMC 21.14.040 Definitions Section (pages 19-22)**. To be more user-friendly...

- **RECOMMENDATION:**

TCC requests **in both above-referenced sections, the Code provides a description/definition of what waterways fall under the heading, “Water Body,” (such as lakes and ponds) for clarification.**

8. **AMC 21.07.020B, Water Body Setbacks Allowed and Prohibited Uses, Section 11(b), pg. 16 |**

TCC supports the draft language as proposed, but noted that trails are not specifically listed as an allowed use within the setback area. Subsequently, Watershed Management has clarified that both paved and unpaved trails would be allowed within the 25-foot setback for waterbodies.

- **RECOMMENDATION:**

TCC requests **this section of the Code provide specific language that includes paved and unpaved trails as allowed uses within the water bodies 25-foot setback,** since it is not specified in the current draft.

Watershed Management has indicated support for this request.

AMC 21.07.020B, Section 12, Wetland Setbacks:

9. **AMC 21.07.020B, Wetland Setbacks, Section 12(c)(i), pp. 16-17 |**

The draft ordinance proposes platting Class A and B wetlands not authorized for permit/development by the U.S. Army Corps of Engineers into separate tracts, and not be included as part of the development lot. TCC asked for clarification from Watershed Management.

Watershed Management responded that this proposed change may have unintended consequences, in terms of providing an incentive to preserve wetlands — and that amended language will be provided later.

- ***TCC will evaluate any Planning Department amendments to this section when they become available and provide comments at that time.***

AMC 21.07.020B, Section 13, Maintenance:

10. **AMC 21.07.020B, Maintenance, Section 13, pp. 17-18 |**

TCC supports the listed maintenance requirements Section 13 (a) thru (f) — but notes that (f) states, “...any maintenance of the stream setback shall be the responsibility of the property owner.” *Effective enforcement* of this ordinance will require compliance by property owners over the long term in order to be effective.

TCC is concerned that property owners will require education about appropriate compliance, such as removal, replacement planting, trimming (including that 25% tree crown removal does NOT mean topping it, which arborists do not recommend) and vegetation maintenance practices.

After receiving information about Watershed Management’s general approach to enforcement (complaint based, rather than proactive monitoring) and the department’s

intent to provide community outreach about the setback ordinance changes and best practices for maintaining the vegetation on their property to comply with the new rules...

● **RECOMMENDATION:**

TCC strongly **supports the Municipality doing community outreach** following passage of the setback ordinance, and **recommends that resources be specifically allocated** (funds, staff time and other resources as needed) to ensure Watershed Management Services can effectively follow through with property owners for compliance to the Maintenance Section of these important Code setback vegetation requirements.

11. **AMC 21.12.045, Variance Requests, Section 6(C), pg. 19 |**

TCC understands the purpose of this waiver request provision, which would provide for justifiable exceptions to the new Code. But **the only circumstance** where a variance should be allowed — and the application fee be waived for a period of five years — should be **for reconstruction of an existing nonconforming structure**. It should NOT apply to expansion or new construction of a structure in the protected zones. Without consistently and clearly applying the rules in the future, this ordinance would continue to perpetuate the issues and negative environmental impacts that small setbacks have caused in Anchorage for several decades.

Rationale:

- According to Watershed Management: The ordinance already grandfathers in “legally established” properties — including existing structures, permitted construction, already approved conditional use proposals, or is part of a development master plan. Properties smaller than 10,000 square feet are also exempt.
- New construction or expansion of an existing structure into a stream setback runs contrary to goals of the new setback widths, which are to protect water quality, habitat and flooding and storm impacts to the property.
- Property owners proposing new construction not yet permitted should appropriately design their proposed development to comply with the new stream setback Code widths.
- A 5-year application fee for variances would likely create a ‘rush’ for property owners to construct within their newly designated protection setbacks, once the new Code is in place.

● **RECOMMENDATIONS:**

TCC requests that a **Variance Request is allowed only for reconstruction for an existing structure within the Riparian Edge Zone — with an application fee for this type of variance be waived for five years after the effective date of the new Code.**

At the very least, the **five-year waiver of variance application fees should only apply to reconstruction of existing structures** — not for existing structure expansions or new construction, if allowed in the final Code revision.

12. **AMC 21.14.040, Definitions, Section 7, pg. 19-22 |**

As stated earlier in this letter (see Water Body Setbacks on pages 3-4)...

- **RECOMMENDATION:**

TCC requests **this section of the Code provide a description/definition of what waterways fall under the heading, “Water Body,” (such as lakes and ponds) for clarification.**

13. Fish Creek Trail to Ocean:

TCC members are part of a Fish Creek Trail to Ocean (FCTO) working group, with the goal of reestablishing a trail between W. Northern Lights Blvd. and the Tony Knowles Coastal Trail (an informal trail on Alaska Railroad right-of-way has now been blocked off). The Parks Department has proposed four conceptual trail routes — some of which could fall within the Fish Creek 25-foot Streamside Setback Zone, or within the Fish Creek Trail Estuary.

TCC supports the concept of this FCTO, but its support is contingent upon the opportunity to collaborate with the Parks Dept. and other entities with regard to the actual route as well as the nature of the trail (paved vs. unpaved), taking into account factors, such as potential impacts to property owners, Fish Creek and its 25-foot setback environment, the wetlands of the estuary, etc. *Watershed Management has indicated support for the FCTO trail project, with the recognition that the final route chosen may need to encroach into the 25-foot stream setback requirement for Fish Creek.*

As a general rule, TCC supports the Code revision requiring paved trails be at least 25 feet away from Fish and Hood Creeks. TCC understands the high costs of maintaining or repairing existing paved trails in other parts of the Municipality — especially those near creeks — and recognize an unpaved, narrower trail may need to be considered in certain locations.

- **RECOMMENDATION:**

TCC requests that the **Municipality recognize TCC as a stakeholder in the continued effort to re-establish a Fish Creek Trail from W. Northern Lights Blvd. to the Tony Knowles Coastal Trail — and that the Stream Setback Ordinance allows provisions (such as a variance) for the trail project to move forward in a manner that ultimately provides the community a route that balances the need to protect the environmental attributes in this area with the desire to provide connectivity** from the existing Fish Creek Trail south of W. Northern Lights Blvd.

Again, thank you very much for your consideration of our comments.

Sincerely,
Cathy L. Gleason
Turnagain Community Council President

Cc:
Mayor Ethan Berkowitz
Assembly Members, including Assembly members Eric Croft and Tim Steele
Parks Superintendent Josh Durand
Spennard Community Council President Jed Smith
Spennard Community Council Vice President
Kristen Collins, The Alaska Center
Executive Director Cherie Northon, Anchorage Waterways Council