



**King County**

**Department of Permitting  
and Environmental Review**

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**FINAL CODE INTERPRETATION  
CINT17-0003 (Barfuse)**

**Background**

Mr. Corey Evan Parker, Esq., filed a code interpretation request on October 18, 2017 with the Department of Permitting and Environmental Review (DPER) on behalf of his client, Ulis Barfuse. The request concerns property at 4050 Fall City-Carnation Road SE, Fall City, WA 98024 (tax lot 1424079063). The request seeks clarification of the following code sections:

- K.C.C. 21A.06.1345 – Use
- K.C.C. 21A.06.1347 – Use, established
- K.C.C. 21A.32.040 – Nonconformance – abatement of illegal use, structure or development
- K.C.C. 21A.32.045 – Nonconformance – reestablishment of discontinued nonconforming use, or damaged or destroyed nonconforming structure or site improvement
- K.C.C. 21A.32.055 – Nonconformance – modifications to nonconforming uses, structure or site improvement

These code sections are cited with respect to a Zoning Certification (ZCRT17-0019) which Mr. Parker's client received on August 7, 2017. The Zoning Certification found that the current use of a restaurant onsite is a legal non-conforming use.

The code interpretation submittal included a letter explaining why the Zoning Certification was wrong and should uphold a "75% retail and 25% restaurant" use of the property; a copy of the Zoning Certification; an unsigned letter from Ulis Barfuse, property owner; a letter from Bobby Harold Jones, former property owner; a copy of the Certificate of Occupancy No. 661035 for an addition to a drive-in restaurant dated "6-2-66;" two pages from separate books describing businesses onsite; eight historical letters about the site; emails and other documentation from King County Archives; and various correspondence with Paul McCombs, King County GIS Program Manager.

**Discussion**

This code interpretation addresses nonconforming uses. A nonconforming use is a use, improvement or structure established on conformance with King County's rules and regulations in effect at the time the use, improvement or structure was established that

no longer conforms to the County's rules and regulations due to changes in the rules and regulations or their application to the specified property (K.C.C. 21A.06.800).

In K.C.C. 21A.06.1345 – Use, the code identifies what a use is. In K.C.C. 21A.06.1347 – Use, established, the code explains that an established use is one that has been in continuous operation for more than sixty days and is in conformance with the rules and regulations in effect at the time operation was begun.

In K.C.C. 21A.32.040 - Nonconformance – abatement of illegal use, structure or development, the code says that any use not established in compliance with the code's use and development regulations is deemed illegal. "K.C.C. 21A.32.045 – Nonconformance – reestablishment of discontinued nonconforming use, or damaged or destroyed nonconforming structure or site improvement" says that if the use is discontinued, it may be reestablished if it meets certain criteria. "K.C.C.21A.32.055 - Nonconformance – modifications to nonconforming uses, structure or site improvement" discusses modifications to nonconforming uses under certain circumstances.

The zoning on this property is RA-10 (Rural Area – 10 acre minimum); the primary use permitted on this property is single family residential. The property is in the floodplain for the Snoqualmie River and in the Conservancy environment for Shoreline Master Program purposes. The restaurant was established in 1962 when the property was zoned commercial and restaurants were allowed uses. This was prior to 1993 when the current, revised King County Zoning Code was established and the property was zoned RA-10. As demonstrated by a timeline supplied by Mr. Parker, a restaurant has been located continuously on this site since 1962. Therefore the restaurant is a legal nonconforming use on this property.

The original owners of the site and the restaurant ("Bob's Drive-In") said they expanded the building to add space for sales of small items. The building diagram from the King County Assessor's Office shows the original restaurant at 672 sf with the new addition at 2,040 sf. According to a letter from the original owner, he added a retail component to supplement the restaurant's income. According to Mr. Parker's timeline, retail has occurred continuously since 1966, when it was an allowed use under the then-current zoning.

It appears that the restaurant changed from a drive-in to a sit down restaurant over the years, thus taking up more of the building space. There are no records about how much of the space was restaurant and how much was retail. Since no permits were issued, there is no documentation concerning these uses and this muddies the issue.

Since the business names on Mr. Parker's timeline are all restaurant related (Bob's Drive-In, Big Willies, The Other Place, Fall City Grill, Small Fryes and Fall City Bistro), the assumption is that restaurant/food service was the majority of the use of the space.

### Decision

The activities that have continuously occurred on the site at 4050 Fall City-Carnation Road SE have been restaurants and retail uses, with the retail uses having evolved from being a majority to being something of a minority. Both are legal nonconforming uses. Practically, the impact of one use is the same as the impact from the other use.

The determination of this code interpretation is that both restaurants and retail are allowed on this site. Each use must be a continuous use on the property in order to retain the nonconforming status for that use. If the use is discontinued for a year or more, the property will lose its nonconforming status (K.C.C. 21A.32.045.C).

### Finality of Code Interpretations

Under K.C.C. 2.100.050.A, the director's decision on a code interpretation is final. A code interpretation issued by the director governs all staff review and decisions unless withdrawn or modified by the director or modified or reversed on appeal by the King County Hearing Examiner, King County Council or an adjudicatory body (K.C.C. 2.100.040.H).

  
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Jim Chan  
Interim Director  
Department of Permitting and Environmental Review

12/20/17  
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Date