



King County

Department of Local Services Permitting Division

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FINAL CODE INTERPRETATION CINT25-0006 (Nonconformance)

Background

The Department of Local Services, Permitting Division, received a code interpretation application dated August 22, 2025 from Randall Olsen at Cairncross & Hempelmann concerning how King County Code¹ standards would apply to the expansion of an existing, potentially nonconforming structure² located within a Type “S” aquatic area buffer and the Rural shoreline environment. The question was posed for general interpretation and did not pertain to a specific property. The application notes that there are multiple code provisions that would apply to the scenario described above, including portions of the critical areas code (K.C.C. 21A.24.045), the shoreline master program (K.C.C. 21A.25.210), and the nonconformance code (K.C.C. ch. 21A.32).

Code Sections Subject to Interpretation:

The application specifically poses the question of how K.C.C. 21A.32.055 and .065 would apply to the expansion of an existing, potentially nonconforming structure located within a Type “S” aquatic area buffer and the Rural shoreline environment, given that multiple applicable code standards apply.

Discussion & Analysis:

Multiple code provisions would apply to a nonconforming dwelling unit within a Type “S” critical area buffer and the Rural shoreline environment, including:

- K.C.C. 21A.24.045.D.7, which allows a legally established dwelling unit to be expanded if the footprint of the dwelling unit is not increased by more than 1,000 square feet.
- K.C.C. 21A.25.210, which allows a dwelling unit in the shoreline jurisdiction to be expanded if allowed by K.C.C. 21A.24.045 and if the total cumulative expansion of the dwelling unit is 1,000 square feet or less (over which a shoreline variance is required).

¹ <https://kingcounty.gov/en/dept/council/governance-leadership/county-legislation-codes/king-county-code>

² The code interpretation application appears to use the terms “structure” and “dwelling unit” interchangeably and the interpretation follows this convention. But some of the codes referenced in the interpretation address specific types of structures (dwelling units or residential accessory structures) and not structures generally, and the interpretation should be read accordingly.

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- K.C.C. 21A.32.055, which allows the modification of a nonconforming use, structure, or site improvement if the modification does not expand or create a new nonconformance.
- K.C.C. 21A.32.065, which allows the expansion of a nonconformance if building square footage, impervious surface, parking, and building height are each not increased by more than 10% (over which a conditional use permit (CUP) is required).

The applicant contends that because K.C.C. 21A.24.045.D.7 and K.C.C. 21A.25.210 allow the expansion of a dwelling unit within critical areas and the shoreline jurisdiction if the requirements of those sections are met, where a structure is nonconforming only because it was located in a critical area and shoreline jurisdiction, then the 10% limitation in K.C.C. 21A.32.065 would not apply. Under this interpretation of the code, different aspects of a dwelling unit (e.g., location versus dimensions) could be considered conforming or nonconforming, and K.C.C. ch. 21A.32 would only apply to those aspects of the dwelling unit that were nonconforming. As applied to the question posed in the code interpretation application, an existing structure that met building square footage, impervious surface, parking, and building height standards but nonconforming as to its location in a Type S aquatic area buffer and Rural shoreline environment can expand by a cumulative total of 1,000 square feet (pursuant to K.C.C. 21A.24.045.D.7 and K.C.C. 21A.25.210) and would not be required to obtain a CUP if the expansion exceeded the 10% thresholds in K.C.C. 21A.32.065.

The K.C.C. definition of “nonconformance” does not support this interpretation. The code defines “nonconformance”³ as “a use, improvement or structure established in conformance with King County’s rules and regulations and other applicable local and state rules and regulations in effect at the time the use, improvement or structure was established that no longer conforms to King County’s rules and regulations or other applicable local and state rules and regulations due to changes in the rules and regulations or their application to the subject property.” That is, a use, improvement, or structure that is nonconforming in one aspect is nonconforming as a whole. The code does not support a use, improvement, or structure being conforming in one way, but nonconforming in another. Furthermore, a dwelling unit that is nonconforming solely because of its location (as described in the applicant’s example in footnote 2) is nonconforming as to use and falls within the code definition of nonconformance.

Since a dwelling unit with the attributes described in the code interpretation application is considered nonconforming, K.C.C. ch. 21A.32 applies, together with K.C.C. 21A.24.045 and K.C.C. 21A.25.210.

Pursuant to K.C.C. 21A.02.040 and K.C.C. 21A.24.020.D., when multiple code provisions pertain to a proposal, the more restrictive regulation applies. This is further supported by K.C.C. 21A.25.310, which specifically states that the expansion,

³ K.C.C. 21A.06.800

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modification, reestablishment, or replacement of a nonconforming use or development in the shoreline jurisdiction is subject to K.C.C. ch. 21A.32.


While K.C.C. 21A.32.065 includes the 10% limitation discussed above, K.C.C. 21A.32.085 allows nonconforming residences to be expanded “subject to all other applicable codes besides those set forth in this chapter for nonconformances”⁴. Thus nonconforming residences may exceed the 10% limitations listed in K.C.C. 21A.32.065 without obtaining a CUP, provided “all other applicable codes” are met, which would include but not be limited to K.C.C. 21A.24.045, K.C.C. 21A.25.210, and any state or federal permits. Therefore, a nonconforming dwelling unit as described in the code interpretation application can expand building square footage, impervious surface, parking, or building height by more than 10% without obtaining a CUP, provided all other applicable codes were met.

Decision

A use, improvement, or structure that is nonconforming cannot be considered conforming in one aspect and simultaneously nonconforming in another. If a use, improvement, or structure is nonconforming, the nonconformance code standards (K.C.C. ch. 21A.32) apply. When more than one code provision applies to a proposal the more restrictive one applies. For nonconforming residences specifically, K.C.C. 21A.32.085 allows expansions subject to all other applicable codes besides those set forth in K.C.C. ch. 21A.32. Therefore, an expansion of a nonconforming dwelling unit located within a Type “S” aquatic buffer and Rural shoreline environment is subject to K.C.C. 21A.24.045.D.7 and K.C.C. 21A.25.210, and it is not subject to the 10% limitation in K.C.C. 21A.32.065 provided all other applicable requirements are met.

Finality of FinaCode Interpretation

Pursuant to K.C.C. 2.100.050.A, the director’s decision is the county’s final decision, and there is no administrative appeal.

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11/5/2025

Jim Chan
Director, Permitting Division
Department of Local Services

Date

Cc: File CINT25-0006
Yolanda Ho

⁴ K.C.C. 21A.32.085