



King County

Department of Development
and Environmental Services
900 Oakesdale Avenue Southwest
Renton, WA 98055-1219

PRELIMINARY CODE INTERPRETATION L02CI004

Background

By letter dated December 3, 2002, Ivana Halvorsen on behalf of Christine Balyeat requested a code interpretation. By letter of December 17, 2002, the Department of Development and Environment Services (DDES) acknowledged the request as required under K.C.C. Chapter 2.100.

In 2001, Ms. Balyeat filed an application for a preliminary short subdivision (L01S0006). The property is zoned R-6. According to the site plan provided with the code interpretation request, there is an existing house, accessory dwelling unit, and garage on the property, all of which will be retained and would be located on a single lot (Lot 1) of the proposed short subdivision. Lot 1 as proposed would be approximately 11,505 square feet. According to the property owner, the accessory dwelling unit has been in existence since at least 1985, although no building permit can be found, at least going back to 1980. Letter from Ivana Halvorsen to Greg Borba, December 3, 2002, page 1.

On January 18, 2002, DDES issued its findings and conditions of approval of the proposed short subdivision. DDES found that the proposed short subdivision “conforms to the applicable development standards” of the King County Code. Condition of Approval 7.A. required the applicant, prior to recording the final short subdivision map, to meet “all applicable requirements of K.C.C. 21A.06.030B.7.a for the existing accessory dwelling unit.”

The code interpretation request asks what is necessary to meet the requirements of K.C.C. 21A.06.030B.7.a. for the existing accessory dwelling unit.

Discussion

K.C.C. 21A.08.030B.7.a provides:

- 7.a. Accessory dwelling units:
 - (1) only one accessory dwelling per primary single detached dwelling unit;
 - (2) only in the same building as the primary dwelling unit on an urban lot that is less than ten thousand square feet in area, on a rural lot that is less than the minimum lot size, or on a lot containing more than one primary dwelling;

- (3) the primary dwelling unit or the accessory dwelling unit shall be owner occupied;
- (4)(a) one of the dwelling units shall not exceed a floor area of one thousand square feet except when one of the dwelling units is wholly contained within a basement or attic, and
 - (b) when the primary and accessory dwelling units are located in the same building, only one entrance may be located on each street side of the building;
- (5) one additional off-street parking space shall be provided;
- (6) the accessory dwelling unit shall be converted to another permitted use or shall be removed if one of the dwelling units ceases to be owner occupied; and
- (7) an applicant seeking to build an accessory dwelling unit shall file a notice approved by the department of executive services, records, elections and licensing services division, which identifies the dwelling unit as accessory. The notice shall run with the land. The applicant shall submit proof that the notice was filed before the department shall approve any permit for the construction of the accessory dwelling unit. The required contents and form of the notice shall be set forth in administrative rules. If an accessory dwelling unit in a detached building in the Rural zone is subsequently converted to a primary unit on a separate lot, neither the original lot or the new lot may have an additional detached accessory dwelling unit constructed unless the lot is at least twice the minimum lot area required in the zone.
- (8) accessory dwelling units and accessory living quarters are not allowed in the F zone.
- (9) in the A zone, one accessory dwelling unit is allowed on any lot under twenty acres in size, and two accessory dwelling units are allowed on lots that are twenty acres or more, provided that the accessory dwelling units are occupied only by farm workers and the units are constructed in conformance with the State Building Code.

K.C.C. 19A.12.050 sets forth the contents of the final subdivision or short subdivision. K.C.C. 19A.12.050Q provides that the final subdivision or short subdivision shall include “Restrictions, title encumbrances and notes required by the conditions of approval.” In order to demonstrate compliance with K.C.C. 21A.080.030B.7.a, the proposed short subdivision must include the relevant limitations.

One issue not addressed by these conditions is the legal status of the accessory dwelling unit. According to the applicant, the structure housing the accessory dwelling unit has been on the property since at least 1985, before the present owner purchased the property. The applicant has been unable to find a building permit for the structure back to 1980. This raises the question of whether the accessory dwelling unit is a legal structure and the use is a legal use. If it is not, the next question is whether the structure and use can be legalized.

K.C.C. 21A.06.800 defines a nonconformance as “any use, improvement or structure established in conformance with King County rules and regulations in effect at the time of establishment that

no longer conforms to the range of uses permitted in the site's current zone or to the current development standards of the code due to changes in the code or its application to the subject property.” Assuming the accessory dwelling unit was established some time before 1985, it would not qualify as a nonconforming use under K.C.C. 21A.06.800, since accessory dwelling units were not a legal use at that time.

K.C.C. 21A.08.030B.7.a.(7) requires a property owner who proposes to build a new accessory dwelling unit to record a notice on title that identifies the dwelling unit as accessory. In order to legally establish the existing structure housing the accessory dwelling unit, the property owner is required to apply for a building permit for the already built structure. For purposes of K.C.C. 21A.08.030B.7.a.(7), the property owner is also required to record the appropriate notice on title to identify the dwelling unit as accessory. A reference to this recorded document should be included on the face of the final short subdivision.

Decision

A property owner must include on the face of the final subdivision or short subdivision information demonstrating that the short subdivision or subdivision conforms with conditions of approval. If those conditions of approval require the property owner to demonstrate that an accessory dwelling unit conforms with the relevant requirements of K.C.C. 21A.08.030B.7.a, the applicant must include information on the face of the final short subdivision or subdivision making that demonstration. K.C.C. 21A.08.030B.7.a.(7) requires that a document be recorded on title identifying the accessory dwelling unit as an accessory use. A reference to this recorded document should be included on the face of the final subdivision or short subdivision.

Appeal of Preliminary and Final Code Interpretations

This code interpretation relates to preliminary short subdivision application L01S0006. Under the provisions of K.C.C. 2.100.040, this code interpretation is preliminary. A final code interpretation will be issued at the time DDES makes its final decision on L01S0006.

Under K.C.C. 2.100.050, once a final code interpretation is issued, it is generally not subject to administrative appeal. However, if a code interpretation relates to a development application, the code interpretation is subject to the same administrative appeal provisions that apply to the development permit application.

For purposes of a appealing this code interpretation, the approval or denial of the preliminary short subdivision application constitutes the final agency decision. As a note, K.C.C. 2.100.040H requires the department to mail a copy of the final code interpretation to the person requesting the interpretation, to the applicant for a permit to which the interpretation is related, and to parties of record on the underlying permit.

/s/ Stephanie Warden
Stephanie Warden
Director Designee
Development and Environmental Services

February 18, 2003
Date