



## King County

### Department of Development and Environmental Services

900 Oakesdale Avenue Southwest  
Renton, WA 98057-5212

206-296-6600 TTY 206-296-7217

[www.kingcounty.gov](http://www.kingcounty.gov)

## FINAL CODE INTERPRETATION L10CI003

### Background

By letter dated August 18, 2010, Ms. Jane Ryan Koler, on behalf of her client Pacific Topsoils, requested a code interpretation concerning retail nurseries located in the RA zone. Pacific Topsoils operates the Gray Barn Nursery on a property located along the Redmond-Fall City Road. The property is zoned RA.

The request relates to Code Enforcement Case E0900525.

Ms. Koler asks several questions concerning the nursery operation. They are paraphrased below:

1. For purposes of determining the amount of covered sales area under K.C.C. 21A.08.070B.1:
  - a. Are outdoor areas under a building's eaves considered part of the covered sales area?
  - b. Are indoor areas of a building that are not open to the public considered part of the covered sales area?
  - c. Are covered outdoor areas used for plant propagation and display of plants for sale considered part of the covered sales area?
  
2. Could Pacific Topsoils' predecessor establish a retail nursery under the King County Zoning Code in effect in the 1980s? If so, is the Gray Barn Nursery subject to the limitations on covered sales area that were added at a later time?

### Discussion

#### Covered Sales Areas

K.C.C. 21A.08.070 establishes standards for retail uses in King County. Nurseries, Garden Centers and Farm Supply Stores are allowed in the RA zone, subject to the following conditions:

- a. As a permitted use, covered sales areas shall not exceed a total area of two thousand square feet, unless located in a building designated as historic resource under K.C.C. chapter 20.62. With a conditional uses permit, covered sales areas of up to three thousand five hundred square feet may be allowed.

Greenhouses used for the display of merchandise other than plants shall be considered part of the covered sales area. Uncovered outdoor areas used to grow or display trees, shrubs, or other plants are not considered part of the covered sales area;

- b. The site area shall be at least four and one-half acres;
- c. Sales may include locally made arts and crafts; and
- d. Outside lighting is permitted if no off-site glare is allowed.

#### K.C.C. 21A.08.070B.1.

Under subsection 1.a, a nursery is allowed as a permitted use in the RA zone if the covered sales area is 2,000 square feet or less. A nursery is allowed as a conditional use if the covered sales area is 3,500 square feet or less. Greenhouses that display merchandise other than plants are considered part of the covered sales area. Uncovered outdoor areas that are used to grow or display plants for sale are not part of the covered sales area. The zoning code does not define either "covered sales area" or "greenhouse."

Two principles can be derived from these provisions:

- Areas outside of a building, such as uncovered areas or greenhouses or similar open structures, that are only used to grow or display plants for sale are not a covered sales area
- Indoor areas and covered outdoor areas that display merchandise other than plants are included in the covered sales area

With these principles, it is possible to answer the questions posed by Ms. Koler.

*Are outdoor areas under the eaves of the building part of the covered sales area?* Under the International Building Code, building floor area is defined as

The area included within surrounding exterior walls (or exterior walls and fire walls ) exclusive of vent shafts and courts. Areas of the building not provided with surrounding walls shall be included in the building area if such areas are included within the horizontal projection of the roof or floor above.

International Building Code 2009, Sec. 502.1. The department has interpreted this provision to mean that any areas of usable space under a roof overhang or covered porch, particularly if that area is supported by posts or other structures, are part of the building area. Therefore, those areas would also be considered part of the covered sales area for purposes of K.C.C. 21A.08.070B.1.

*Are indoor areas of a building that are not open to the public considered part of the covered sales area?* Indoor areas not open to the public and not used to display merchandise are not considered part of the covered sales area. Ms. Koler mentions two specific examples in her request. One is an upstairs area that she states is blocked to public access. The other is a staircase that she states is roped off and not accessible to the public. In the case of the attic, if the public is not allowed to enter, it would not be considered part of the covered sales area. In the case of the staircase, if the public is not permitted on the staircase and it is not used to display

merchandise for sale, it would not be considered part of the covered sales area. However, even if the public is not allowed on the staircase, if merchandise for sale is displayed on the staircase, the staircase would be considered part of the covered sales area.

*Are covered outdoor areas used for plant propagation and display of plants for sale considered part of the covered sales area?* K.C.C. 21A.08.070B.1.a. specifically excludes from covered sales areas greenhouses that are only used to grow or display plants for sale. The section also excludes uncovered outdoor areas that are used to grow or display plants for sale. The area included within surrounding exterior walls (or exterior walls and fire walls) exclusive of vent shafts and courts. Areas of the building not provided with surrounding walls shall be included in the building area if such areas are included within the horizontal projection of the roof or floor above. A reasonable inference from these provisions is that a covered outdoor area, such as a pole building without walls, that is only used to grow and display plants for sale should also be excluded from the covered sales area.

#### Retail nurseries under prior King County Zoning

Ms. Koler submitted documentation to support a claim that under prior zoning, retail nurseries were allowed without condition on the property on which the Gray Barn Nursery is located. According to her documentation, the nursery was established sometime in the early 1980s. At that time, the property was zoned either Suburban Estate or Suburban Cluster. The Suburban Estate zone was placed on the property in December 1982.

Ms. Koler provides a declaration from John Luidema, who owned the Gray Barn Nursery in 1982. Mr. Luidema states that he contacted King County about the nursery and whether he could sell railroad ties along with nursery items. He states that because the property was 6.25 acres, retail nursery sales were an allowed use.

Former K.C.C. 21.18.020 established the permitted uses in the SE zone. Retail nurseries were not an allowed use in the SE zone in 1982. The following are the relevant provisions related to nurseries in effect at that time:

- B. Agricultural crops, provided no retail sales of products are permitted on the premises for parcels less than one acre.
- C. Accessory buildings and uses, including the following:
  - 1. Private stables, provided such buildings or structures shall not be located closer than thirty-five feet to any boundary line or closer than forty-five feet to any building containing a dwelling unit or accessory living quarters on the same premises; and provided further, that there shall be no open-air storage of manure, hay, straw, shavings or similar organic material closer than thirty-five feet to any property boundary line or closer than forty-five feet to any dwelling unit or accessory living quarters on the same premises;
  - 2. Greenhouses provided no retail sales are permitted on the premises for parcels of less than one acre;
  - 3. Marketing of agricultural products produced on-site or on immediately adjacent properties, provided the site on which the stand is located is one acre or

larger, and only one stand to be used for such purposes, and such stand shall not have more than three hundred square feet of floor area, and shall not be located in any required yard or open space....

Former K.C.C. 21.18.020 (Ord. 3678, 1978).

Former K.C.C. 21.18.020 was amended in 1986 to add a new subsection C that read as follows:

C. Marketing of agricultural products, dairy products, arts and crafts and small animals not raised or produced on site, provided:

1. Any structure, building, or farm stand used for the sale of such products shall not exceed 6500 square feet in size.
2. The site shall have direct access to an arterial.
3. The site shall be located within 800 feet of a city with a population in excess of 28,000.
4. The sales area or structure shall not be located closer than 800 feet to any off site residence.
5. The use shall be subject to site plan approval pursuant to K.C.C. 21.46.150 through 21.46.200.
6. Operations shall be permitted daily, except during the period of October through April, when operations shall be limited to Saturdays, Sundays and holidays.
7. Hours of operation shall be 7:00 a.m. to 9:00 p.m.

Former K.C.C. 21.18.020 (Ord. 7559, 1986).

Former K.C.C. 21.19.020 made these permitted uses applicable to the suburban cluster zone, with some restrictions applicable to lots of less than 35,000 square feet that are inapplicable here.

Based on this legislative history, at the time that Mr. Luidema in his declaration states that the Gray Barn Nursery was established, nurseries were not a permitted use in the SC or SE zone. It was not until 1986 that the zoning code was amended to allow marketing of agricultural products in the SE zone. Even if the 1986 provisions had been in effect in 1982, the Gray Barn Nursery would not have been allowed because it did not meet the requirement in subsection C.3 that the site to be located within 800 feet of a city with a population of more than 28,000. In 2010, the Gray Barn Nursery site is approximately 1400 feet from the Sammamish city boundary. The city of Sammamish did not exist in 1982. The distance to the nearest city would have been even greater at that time.

In addition, the 1986 version of K.C.C. 21.18.020 required that the nursery use was "subject to site plan approval pursuant to [former] K.C.C. 21.46.150 through 21.46.200." Former K.C.C. 21.18.020C.5. The department has no records that indicate that Mr. Luidema or any subsequent owner of this site obtained site plan approval of the nursery.

The Gray Barn Nursery was not legally established in 1982 or at any subsequent time under prior zoning codes. Therefore, it is not a legal non-conforming use under the current zoning code and is subject to the current zoning code provisions on retail nurseries.

### **Decision**

Pacific Topsoils operates the Gray Barn Nursery on the Redmond-Fall City Road. The site is currently zoned RA-5. Ms. Jane Ryan Koler, on behalf of Pacific Topsoils, asks several questions concerning the calculation of covered sales areas under K.C.C. 21A.08.070B.1. She also asks whether the Gray Barn Nursery is a legal non-conforming use and is therefore not subject to existing limits on retail nurseries in the RA zone.

Covered Sales Areas. Based on K.C.C. 21A.20.070B.1., indoor areas that are not accessible to the public and that are not used to display merchandise are not considered part of the covered sales area. Outdoor areas beyond the boundaries of the building, whether covered or uncovered or in a greenhouse, are also not considered part of the covered sales area if they are used solely to grow and display plants.

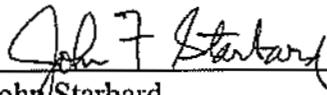
This leads to the following answers to Ms. Koler's questions concerning covered sales areas:

- a. The outdoor area under a building's eaves is included in the covered sales area.
- b. Indoor areas of a building not open to the public are not considered part of the covered sales area. However, an indoor area that is roped off, such as the staircase in Ms. Koler's example, that is used to display plants or other merchandise for sale is considered part of the covered sales area.
- c. Covered outdoor areas and greenhouses used only for plant propagation and display are not part of the covered sales area.

Gray Barn Nursery as a Legally Established Non-Conforming Use. Gray Barn Nursery was not established as a legal use under the zoning code in effect in 1982. At that time, the Gray Barn Nursery was zoned Suburban Cluster and then Suburban Estate. The permitted uses with respect to nurseries were the same in both zones. Nurseries were not a permitted use in the SC zone in 1982. In 1986, the zoning code was amended to allow marketing of agricultural products. Even if Gray Barn Nursery qualified under this provision, former K.C.C. 21.18.020 required the site to be located within 800 feet of a city with a population of at least 28,000. The Gray Barn Nursery site did not meet this requirement. In addition, former K.C.C. 21.18.020 required review under the site plan approval process in effect at the time. The Department has no records that Gray Barn Nursery was approved under this process. The Gray Barn Nursery was not established as a legal use under the zoning code in effect in 1982 or as amended in 1986. It is, therefore, not a legal non-conforming use.

**Finality of Code Interpretations**

Under K.C.C. 2.100.040, a code interpretation that relates to a permit application or a code enforcement action is final when the department makes its decision on the underlying permit or code enforcement action. Under K.C.C. 2.100.050, the administrative appeal of a code interpretation that relates to a code enforcement case is consolidated with the appeal of the underlying code enforcement action. The Director determines that this code interpretation relates to Code Enforcement Case E0900525. Any appeal of this code interpretation shall be consolidated with an appeal of the Department's decision on Code Enforcement Case E0900525.

  
\_\_\_\_\_  
John Starbard  
Director  
Development and Environmental Services

Date 10/28/10