



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

REGULATORY REVIEW COMMITTEE

- MINUTES -

MEETING DATE: December 22, 2004

TO: Building Services Division Staff
Mike Dykeman, Manager
Chris Ricketts
Jim Chan
Kenneth Dinsmore
Pam Dhanapal

Land Use Services Division Staff
Joe Miles, Manager
Lisa Dinsmore
Beth Deraitus
Randy Sandin
Steve Bottheim

Stephanie Warden, Director
Harry Reinert, Special Projects Manager
Paul Reitenbach, Senior Policy Analyst
Tim Barnes, Prosecuting Attorney's Office

FM: Harry Reinert, Co-Chair

Present: Beth Deraitus, Jim Chan, Kenneth Dinsmore, Pam Dhanapal, Randy Sandin, Bill Turner, Steve Bottheim, Nancy Jo Perdue, and Harry Reinert.

- 1. How do footnotes 6, 7, and 8 on the allowed alterations table in the CAO interact with respect to a proposal to replace an existing single family residence on a lake shoreline?**

Background

A property owner wants to demolish and relocate a single family house located on Lake Sammamish. The proposal would relocate the house farther from the lake shoreline than the current house, but the house would be located within 115 of the shoreline.

Under the revised critical areas ordinance, the aquatic area buffer on Lake Sammamish would be 115 feet.

The allowed alterations table includes provisions that allow the expansion or replacement of residential structures in aquatic area buffers. Footnote 6 applies to aquatic areas located within the severe channel migration hazard area. Footnotes 7 and 8 apply to areas located “outside of the severe channel migration hazard area.” It is the meaning of these two footnotes that needs clarification.

Discussion

Section 137, Ordinance 15051 adopts the allowed alterations table. In aquatic areas, expansion or replacement of an existing structure is allowed, subject to three conditions. Condition 6 provides:

6. Within a severe channel migration hazard area allowed for:
 - a. existing primary structures if:
 - (1) there is not an increase of the footprint of any existing structure; and
 - (2) there is not a substantial improvement as defined in K.C.C. 21A.06.1270;and
 - b. existing accessory structures if:
 - (1) additions to the footprint will not make the total footprint of all existing structures more than one-thousand square feet; and
 - (2) there is not an expansion of the footprint towards any source of channel migration hazard, unless the applicant demonstrates that the location is less subject to risk and has less impact on the critical area.

Condition 6 is clearly limited to that part of the aquatic area located within a severe channel migration hazard area. Lake Sammamish is not located within a mapped channel migration hazard area, therefore Condition 6 is not applicable.

Condition 7 provides:

7. Allowed only in grazed wet meadows or the buffer or building setback outside a severe channel migration hazard area if:
 - a. the expansion or replacement does not increase the footprint of a nonresidential structure;
 - b.(1) for a dwelling unit, the expansion or replacement, including any expansion of an accessory structure allowed under this subsection B.7.b., does not increase the footprint of the dwelling unit and all other structures by more than one thousand square feet;
 - (2) for a structure accessory to a dwelling unit, the expansion or replacement is located on or adjacent to existing impervious surface areas and does not increase the footprint of the accessory structure and the dwelling unit by more than one thousand square feet; and
 - (3) the location of the expansion has the least [sic] adverse impact on the critical area;
 - c. the structure was not established as the result of a variance, buffer averaging or reasonable use exception; and

d. to the maximum extent practical, the expansion or replacement is not located closer to the critical area or within the relic of a channel that can be connected to an aquatic area.

The applicant has suggested that condition 7, because it refers to areas “outside of the severe channel migration hazard area” must mean areas that are adjacent to the severe channel migration hazard area. Under this reading, Condition 7 would not be applicable to the development proposal, since there is no severe channel migration hazard area on Lake Sammamish. This reading would limit the applicability of the authority to expand residential structures in only two circumstances, where the proposal is on a grazed wet meadow or where it is adjacent to the severe channel migration hazard area.

Condition 7 carries forward provisions that were a part of the sensitive areas ordinance. K.C.C. 21A.24.060, repealed by Ordinance 15051, created “partial exemptions.” Included as a partial exemption was

Structural modification of, addition to or replacement of single detached residences in existence before November 27, 1990 which do not meet the building setback or buffer requirements for wetlands, streams or steep slope hazard areas if the modification, addition, replacement or related activity does not increase the existing footprint of the residence lying within the above-described buffer or building setback area by more than 1000 square feet over that existing before November 27, 1990 and no portion of the modification, addition or replacement is located closer to the sensitive area or, if the existing residence is in the sensitive area, extends farther into the sensitive area

Prior K.C.C. 21A.24.060A.2. A second problem with the reading suggested by the applicant is that the word “adjacent” is used in other parts of K.C.C. Chapter 21A.24 and in Title 21A. In fact, the word is used in Condition 7.b.(2). Thus, the fact that introductory provisions of Condition 7 do not use the word indicates that some meaning other than adjacent is intended. The proper point of comparison is with Condition 6, which applies to areas “within” a channel migration hazard area. Thus, Condition 7 would apply to a development proposal on Lake Sammamish, because it is not within a severe channel migration hazard area, i.e., it is outside the severe channel migration hazard area.

Condition 8 provides:

8. Allowed upon another portion of an existing impervious surface outside a severe channel migration hazard area if:
 - a. the structure is not located closer to the critical area; and
 - b. the existing impervious surface within the critical area or buffer is not expanded.

Condition 8 applies to a different set of circumstances than Condition 7, since it allows replacement or expansion on existing impervious surface outside a severe channel migration hazard area. Thus, this condition would also apply to Lake Sammamish.

Since the development proposal is to relocate the existing structure, the applicant has asked whether only Condition 8 would apply.

The answer to this question is found in Section 137C, which provides that “Where more than one numbered condition appears for a listed activity, each of the relevant conditions specified for that activity within the given critical area applies.” Thus, Conditions 7 and 8 should be read together. In those cases where an applicant proposes to expand an existing structure, Condition 7 clearly applies and limits the expansion to 1,000 square feet and the other requirements set forth in the condition. If the applicant proposes to relocate a residential structure on another portion of existing impervious surface, Condition 8 applies, as does Condition 7. This means that the relocated structure can expand, but by no more than 1,000 square foot.

Decision

Section 137D.6, .7, and .8, Ordinance 15051, establish conditions that apply to the expansion or replacement of structures in critical areas and critical area buffers. Condition 6 applies to areas located within a severe channel migration hazard area. Conditions 7 and 8 applies to areas that are outside a severe channel migration hazard area, i.e. not within the severe channel migration hazard area. Condition 7 includes limits on how much a residential structure located outside the channel migration hazard area may be expanded. Condition 8 allows relocation to another area of impervious surface. Section 137C, Ordinance 15051 provides that if more than one numbered condition applies to an activity in a critical area on the allowed alterations table, each of the relevant conditions shall apply. Conditions 7 and 8 both apply in aquatic area buffers, therefore, a structure relocated on existing impervious surface may be expanded, but by no more than 1,000 square feet.

2. Can a private motocross track be operated on property zoned A?

Background

A code interpretation request has been received relating to a complaint concerning the operation of what neighbors describe as a “motocross track.” The property is zoned A-35 and is located in the Enumclaw area on Mud Mountain Road. According to the complainants, the property owners have constructed a motocross race track that is used by up to 15 motorcycles at a time. There is no indication that the owners advertise the use of their property or charge a fee for its use. As part of issuing a clearing and grading permit, the property owner provided an affidavit that the track was for “private use.”

The code interpretation request poses three questions:

- Is a motocross track allowed on agricultural zoned lands, given the purpose of those lands set forth in K.C.C. 21A.04.030?
- Is a motocross track a permitted use on agricultural zoned property under K.C.C. Chapter 21A.08?
- Is the motocross track a “race track” und K.C.C. 21A.08.100?

Discussion

K.C.C. 21A.04.030 sets forth the purpose of the Agriculture zone:

A. The purpose of the agricultural zone (A) is to preserve and protect irreplaceable and limited supplies of farmland well suited to agricultural uses by their location, geological formation and chemical and organic composition and to encourage environmentally sound agricultural production. These purposes are accomplished by:

1. Establishing residential density limits to retain lots sized for efficient farming;

2. Allowing for uses related to agricultural production and limiting nonagricultural uses to those compatible with farming, or requiring close proximity for the support of agriculture; and

3. Allowing for residential development primarily to house farm owners, on-site agricultural employees and their respective families.

B. Use of this zone is appropriate for lands within agricultural production districts designated by the Comprehensive Plan and for other farmlands deemed appropriate for long-term protection.

K.C.C. 21A.04.020 states the use to be made of the zoning classification purpose statements.

The purpose statements for each zone and map designation set forth in the following sections shall be used to guide the application of the zones and designations to all lands in unincorporated King County. The purpose statements also shall guide interpretation and application of land use regulations within the zones and designations, and any changes to the range of permitted uses within each zone through amendments to this title.

Therefore, the purpose statements are intended to guide the determination of appropriate uses and application of regulations to uses in each zone.

The zoning code does not define any terms that are relevant to the questions asked. The permitted use that is closest to the activity described is a racetrack, SIC 7948, which is identified as a regional land use in K.C.C. 21A.08.100. SIC 7948 falls under the commercial sport subgroup of the SIC manual and is defined to include “promoters and participants in racing activities, including racetrack operators, operators of racing stables, jockeys, racehorse trainers, and race car owners and operators.” It includes dog racing, horse racing, motorcycle racing, racetrack operation, and similar activities. The other activities listed under commercial sports are professional sports clubs and promoters, which includes arenas, athletic field operation, and other similar activities. Professional sports clubs and promoters are classified as SIC 7941 and membership sports and recreation clubs are classified as SIC 7997. That latter classification includes golf, tennis, and amateur sports and recreation clubs. Miscellaneous amusement and recreations services are classified as SIC 7999.

Racetracks (SIC 7948), Sports Clubs, and Amusement and Recreation Services (SIC 7999) are not permitted uses in the A-zone. K.C.C. 21A.08.100 and 21A.08.040.

Based on the information provided in the code interpretation request and in the department's investigation of the complaint, the activity does not appear to fall within the description of a racetrack. There is no information to suggest that the property is open to general public use or that the property owners charge a fee for its use. As such, it would not be considered a "racetrack" under SIC 7948.

In those cases where a use is not included on a land use table, K.C.C. 21A.02.070 provides guidance on how the department should determine the appropriate classification for that activity.

D. The Director shall determine whether a proposed land use not specifically listed in a land use table or specifically included within a SIC classification is allowed in a zone. The director's determination shall be based on whether or not permitting the proposed use in a particular zone is consistent with the purposes of this title and the zone's purpose as set forth in K.C.C. 21A.04, by considering the following factors:

1. The physical characteristics of the use and its supporting structures, including but not limited to scale, traffic and other impacts, and hours of operation;
2. Whether or not the use complements or is compatible with other uses permitted in the zone; and
3. The SIC classification, if any, assigned to the business or other entity that will carry on the primary activities of the proposed use.

K.C.C. 21A.02.070D.

If the racing activity on the property is as described, although not strictly speaking a racetrack, it has many of the characteristics of a commercial racetrack. There is information to suggest that the property is used several times a week which generates more traffic than is likely to be created by either an agricultural or residential use.

Agricultural production may create dust, noise, and other similar impacts on surrounding properties. However, those impacts are often, although not always, limited to certain periods of the year. Racing, however, is more likely to occur on a regular basis over longer periods of time. The noise impacts, in particular, are likely to be different from those caused by agricultural activities.

In addition, those portions of the property that are devoted to the track have essentially been converted from an agricultural production use. Decisions of the Central Puget Sound Growth Management Hearings Board and the Washington State Supreme Court have found that even soccer fields are incompatible with the use of land for long-term agriculture. See, e.g. ???.

Therefore, following the provisions of K.C.C. 21A.04.070D, the director determines that the type of racing use described in the code interpretation request should be considered the same as a racetrack for purposes of the permitted uses tables.

Based on this determination, the questions posed in the code interpretation request can be answered as follows:

Question 1. Is a [motorcycle racing] track allowed on agricultural zoned lands, given the purpose of those lands set forth in K.C.C. 21A.04.030?

No. Converting agricultural land to motorcycle racing is inconsistent with the purpose of agricultural purposes set forth in K.C.C. 21A.04.030.

Question 2. Is a [motorcycle racing] track a permitted use on agricultural zoned property under K.C.C. Chapter 21A.08?

No. Under K.C.C. 21A.08.100, racetracks are not a permitted use on A-zoned property. Although the described activity does not qualify as a racetrack under SIC 7948, the activity is sufficiently similar to a racetrack, pursuant to K.C.C. 21A.04.070D the director has determined that the described activity should be subject to the same standards as a racetrack. Therefore, the motorcycle racing activity as described would not be a permitted use on agricultural zoned property.

Question 3. Is [a motorcycle racing] track [that is not open to the public and not used for other commercial purposes] a “race track” under K.C.C. 21A.08.100?

No. However, as discussed earlier in this interpretation, the director has determined that a motorcycle racing track as described should be subject to the same land use regulations as a racetrack.

Decision

A motorcycle racing track that is not open to the general public is not a racetrack for purposes of K.C.C. 21A.08.100. However, if the racing track is used on a regular basis by friends and associates of the property owner, the racing track will be subject to the same land use regulations as if it were a racetrack under SIC 7948.

A racing track is not consistent with the Agriculture Zone and it is not a permitted use on agricultural zoned property.

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