



King County

**Department of Permitting
and Environmental Review**

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REGULATORY REVIEW COMMITTEE

- MINUTES -

MEETING DATE: February 28, 2013

TO: Jim Chan Randy Sandin
Chris Ricketts Steve Bottheim
Jarrod Lewis Molly Johnson
Sheryl Lux Kimberly Claussen

John Starbard, Director
Harry Reinert, Special Projects Manager and RRC Chair
Devon Shannon, Prosecuting Attorney's Office

FM: Harry Reinert, Chair

Present: Steve Bottheim, Molly Johnson, Jarrod Lewis, Devon Shannon, Randy Sandin, and Harry Reinert

1. Is an automobile sales use conducted largely as an internet based business allowed in the NB zone? (Code Interpretation CINT 13-0001)

Background

Mr. Bryan K. Kelley filed a code interpretation request February 6, 2013. The request asks whether a motor vehicle dealer is an allowed use in the NB zone. Mr. Kelley has been selling motor vehicles from his NB zoned property. This use is the subject of code enforcement case ENFR 12-0073. The code enforcement section of the Department of Permitting and Environmental Review (Permitting) has made an initial determination that the use is not allowed under K.C.C. Chapter 21A.08. Mr. Kelley has asked for an interpretation of K.C.C. 21A.04.090, which establishes the purpose of the NB zone.

Mr. Kelley describes his main business as involving auto repair, which is a permitted use in the NB zone under K.C.C. 21A.08.050. He describes the motor vehicle sales as a "secondary business, and only as an 'internet business'." He says the only discernible evidence that motor

vehicle sales occur is a small sign advertising the business. He claims that "Vehicle traffic is minimal or non-existent and does not fit the 'typical' automotive dealership definition."

Discussion

K.C.C. 21A.06.775 defines a "Motor vehicle, boat and mobile home dealer" as

an establishment engaged in the retail sale of new and/or used automobiles, motor homes, motorcycles, trailers, boats or mobile homes, including only uses located in SIC Major Group and Industry Group Nos.:

A. 55-Automotive Dealers and Gasoline Service Stations except:

1. 553-Auto and Home Supply Stores;
2. 554-Gasoline Service Stations; and

B. Aircraft dealers found in 5599:

1. 527-Mobile Home Dealers; and
2. Yacht brokers found in 7389.

K.C.C. Chapter 21A.08 sets forth the permitted uses in the different zone classifications. K.C.C. 21A.08.070 governs retail uses. Motor vehicle and boat dealers are a permitted use only in the RB and I zones.

Mr. Kelley suggests that his particular business fits within the purpose of the NB zone, set forth in K.C.C. 21A.04.090.

21A.04.090 Neighborhood business zone.

A. The purpose of the neighborhood business zone (NB) is to provide convenient daily retail and personal services for a limited service area and to minimize impacts of commercial activities on nearby properties and in urban areas on properties with the land use designation of commercial outside of center, to provide for limited residential development. These purposes are accomplished by:

1. Limiting nonresidential uses to those retail or personal services which can serve the everyday needs of a surrounding urban or rural residential area;
2. Allowing for mixed use (housing and retail/service) developments and for townhouse developments as a sole use on properties in the urban area with the land use designation of commercial outside of center; and
3. Excluding industrial and community/regional business-scaled uses.

B. Use of this zone is appropriate in urban neighborhood business centers, rural towns, or rural neighborhood centers designated by the comprehensive plan, on sites which are served at the time of development by adequate public sewers when located in urban areas or adequate on-site sewage disposal when located in rural areas, water supply, roads and other needed public facilities and services.

K.C.C. 21A.04.090 describes the general purpose of the NB zone, but the more specific provisions of K.C.C. Chapter 21A.08 govern the uses that are allowed in that zone. As a result, even if a motor vehicle dealership were clearly contemplated as a purpose allowed under K.C.C.

21A.04.090, K.C.C. Chapter 21A.08 would control. Moreover, motor vehicle dealerships do not appear to fall within the type of business appropriate for the NB zone. Purchasing a motor vehicle is not a normal daily retail transaction for most people, unlike the purchase of groceries, prescriptions, or gasoline. It is not an "everyday need" as described in 21A.04.090A.1.

The King County Zoning Code does not recognize the distinction between internet based and standard "brick and mortar" automobile sales. Automobile sales, in whatever form, are covered by K.C.C. 21A.08.070, which does not allow for automobile sales in the NB zone.

In one context, the King County Zoning Code does make a distinction between mail order or internet sales and traditional retail sales and treats customer visits made by appointment differently from other types of customer visits. In the rural area, forestry, and agriculture zones, certain types of services may be conducted as a home occupation if customers come by appointment. Retail sales in these zones are also allowed through internet and mail order sales if delivery is off-site. See K.C.C. 21A.30.085. This shows that the King County Council is aware of the different impacts that result from business conducted over the internet or by appointment, but has not applied those regulations in the NB zone.

Decision

K.C.C. 21A.08.070 prohibits motor vehicle dealers in the NB zone. That provision does not contain an exception for or treat internet based sales differently from sales that take place in a more "traditional" setting. K.C.C. 21A.04.090, which establishes the purpose of the NB zone, does not override the more specific provisions of K.C.C. Chapter 21A.08. In addition, motor vehicle dealerships do not fit within the types of retail activities K.C.C. 21A.04.090 describes as being appropriate for the NB zone. Motor vehicle purchases are not the type of everyday retail transaction contemplated for that zoning classification.

2. Does importing and stockpiling of earthen material for use in a nursery in excess of the permit exemption standards in K.C.C. 16.82.051 require a clearing and grading permit?

Background

At its October 11, 2012 meeting, the Regulatory Review Committee considered the question of whether "a permit required for the stockpiling of fill material when it is to be used in conjunction with an approved retail nursery." The Committee concluded that if the amount of material stockpiled on site at any time exceeds the permit exemption threshold in K.C.C. 16.82.051, a clearing and grading permit would be required. The question was posed in the context of a code enforcement complaint involving Thor's Native Plant Nursery. The property is zoned RA-5.

The owner of the nursery, Jeff Jones, has responded to the Committee's conclusion with additional information. He states that the nursery is a wholesale nursery and not a retail nursery. He also states that his activity is covered by the exemption for horticultural activities in K.C.C. 16.82.051.

Discussion

K.C.C. Chapter 21A.08 has separate standards for wholesale and retail nurseries. Wholesale nurseries fall under SIC 5193. For purposes of K.C.C. Chapter 21A.08, these are considered to be warehousing and wholesale trade. See the definition in K.C.C. 21A.06.1375. Warehousing and wholesale trade is not a permitted use in the RA zone. See K.C.C. 21A.08.060. Retail nurseries are a permitted use in the RA zone. See K.C.C. 21A.08.070.

Mr. Jones argues that his activity is covered by the exemption for horticultural activities in K.C.C. 16.82.051. The King County Zoning Code does not define the term “horticulture.” The Merriam-Webster Online Dictionary defines it as “the science and art of growing fruits, vegetables, flowers, or ornamental plants.” Mr. Jones states that the fill material he is importing will be used “to prepare an area of soils for the propagation of willows and dogwoods.” While the propagation of plants is a horticultural activity, the preparation of the area for planting is not a horticultural activity, but is instead a clearing and grading activity.

Mr. Jones also notes that many nurseries are likely to store more than 100 cubic yards of materials on site. The clearing and grading code does not forbid storing earthen materials in excess of 100 cubic yards, but merely requires that the operator obtain a permit. This allows the county to ensure that appropriate measures are taken to protect public safety and the environment.

Conclusion

Wholesale nurseries are not a permitted use in the RA zone. Horticultural activity is exempt from the requirement to obtain a clearing and grading permit. Importing earthen material onto a property to prepare the area for growing trees and other plants is not a horticultural activity and requires a grading permit. Importing earthen material onto the property in excess of 100 cubic yards requires a grading permit under K.C.C. 16.82.051.