



King County

**Department of Permitting
and Environmental Review**

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REGULATORY REVIEW COMMITTEE

- MINUTES -

MEETING DATE: January 9, 2014

TO: Jim Chan Molly Johnson
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Ty Peterson Greg Wessel
Steve Roberge Kimberly Claussen

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

FM: Randy Sandin, Product Line Manager, Resource

Present: Lisa Verner, Devon Shannon, Sheryl Lux, Randy Sandin, Steve Roberge, Ty Peterson,
Molly Johnson, Kim Claussen, Laura Casey, and Greg Wessel

- 1. Can a new accessory residential structure (garage) be constructed within a critical area buffer if the total footprint of all new construction does not exceed 1000 square feet?**

Background

The Department has received several requests to construct new detached accessory residential structures within an aquatic area buffer. KCC 21A.24.045.D.7 allows for expansion or replacement of legally established dwelling units and accessory structures provided the total expansion or replacement of all structures does not exceed 1000 square feet. This topic was the subject of review by the RRC in April 1994. The committee concluded at that time that any new residential construction had to be connected to the primary residence to qualify for exemption under K.C.C. 21.54.030. (see April 1, 1994 minutes).

Discussion

The code provisions for addition or replacement of existing structures have evolved over the years but the basic principles are the same. The provisions are applicable to expansion or replacement of existing, lawfully constructed structures. Under the 1993 zoning code, the allowance for replacement and/or expansion was limited to single, detached residences and only allowed for replacement of other lawfully established structures. Under current regulations, the allowance for expansion or replacement includes accessory residential structures.

Despite past practices, the regulations are very clear in this regard. K.C.C. 21A.24.045 allows for expansion or replacement of existing structures. Structure is defined in K.C.C. 21A.06.1255 as anything permanently constructed in or on the ground... Residential accessory use is defined in K.C.C. 21A.06.020 and includes a range of uses, structures and activities often associated with a single family residence. The code, as written, was clearly intended to allow for an expansion or replacement of a structure and not to an expansion of use.

Conclusion

Construction of a new, detached residential accessory structure is not an allowed alteration under K.C.C. 21A.24.045. The committee also discussed whether a code amendment should be considered to allow for construction of a detached residential structure provided the same 1000 square foot threshold was not exceeded. This topic was tabled for future discussion.

- 2. Is expansion of an existing residential accessory structure located within an aquatic area buffer AND within shoreline jurisdiction allowed if the total square footage of the existing accessory structure and proposed expansion exceeds 150 sq. ft?**

Background

K.C.C. 21A.24.045.D.7 allows for expansion or replacement of legally established dwelling units and accessory structures in an aquatic area buffer, provided the total expansion or replacement of all structures does not exceed 1000 square feet. Chapter 21A.25 allows residential development within all shoreline environments subject to a variety of conditions. Under K.C.C. 21A.25.100.C.24.b, residential accessory uses are allowed within all shoreline environments provided accessory structures located within the aquatic area buffer shall be limited to total footprint of 150 square feet. K.C.C. 21A.25.210 allows for expansion of a dwelling unit or residential accessory structure located in the shoreline jurisdiction provided it is allowed under K.C.C. 21A.24.045 and, unless a shoreline variance is obtained, the total cumulative expansion is less than 1000 square feet.

Discussion

As written, an existing accessory structure could be expanded by 1000 square feet within an aquatic area buffer OR within shoreline jurisdiction but residential accessory structures could not exceed a cumulative total of 150 square feet if located within an aquatic area buffer AND within shoreline jurisdiction. The conclusion of the committee is that was clearly not the intent of the council. When the shoreline regulations were being developed, every effort was made to make sure that regulations in the shoreline chapter aligned with regulations in the critical areas chapter. K.C.C. 21A.24.045 was amended so that shoreline water dependent or water oriented uses that

were allowed under K.C.C. 21A.25 would also be allowed within aquatic areas and buffers. Similarly, K.C.C. 21A.25.210 was included so that expansion of residential accessory structures that was allowed within critical areas would also be allowed within the shoreline jurisdiction.

The 150 square foot cumulative total square footage for residential accessory structures in K.C.C. 21A.25.100 came from the original shorelines regulations King County adopted in 1978. Under the original regulation (K.C.C. 25.16.110), accessory structures to a residence could be placed within the required shoreline setback, provided that no accessory structures, except swimming pools, could exceed 150 square feet. The shoreline setback under the original shoreline regulations varied by shoreline environment and ranged from 20 feet (urban) to 100 feet (natural). These setbacks are no longer applicable under the new shoreline regulations and were replaced by aquatic area buffers.

Conclusion

A code amendment is needed to eliminate the inconsistencies between the three sections of code. In the interim, we will continue to review expansions of lawfully established residential accessory structures under the relevant provisions of K.C.C. 21A.45 and K.C.C. 21A.25.210 that allow for expansion of the dwelling unit and accessory structures up to a total of 1000 square feet. Until the shoreline code is amended, the provisions for residential accessory uses in K.C.C. 21A.25.100 that limit the size to one-hundred fifty square feet would only be applied to new structures, not replacement or expansion of existing structures.

3. Where a code section is not listed in K.C.C. 20.12.205, what effect, if any, does this have on the applicability of the unlisted section to shoreline regulation?

Background

When K.C.C.21A.25 was adopted, K.C.C. 20.12 was amended, creating a new section (K.C.C. 20.12.205), which contained a listing of code amendments that were adopted as “land use and development regulations with the shoreline jurisdiction”. At least one permit applicant has suggested that if a regulation is not specifically included in that list then it is not relevant within shoreline jurisdiction. In one case, the applicant suggested that because the definition of “utility” or “utility facility” was not included in the list of definitions in K.C.C. 20.12.205, we had to rely on the definition of utility or utility facility found in Chapter 5 of the King County Comprehensive Plan.

Discussion

The fact that all of the definitions in the zoning code were not included in K.C.C. 20.12.205 does not have any influence on how DPER implements the shoreline code. All of the definitions listed in K.C.C. 21.12.205 came from the old shoreline code and are terms that are almost exclusively unique to shoreline areas. Terms that had a common meaning, such as “utilities” or “lot”, were already defined in K.C.C. 21A.06. The presence or absence of these definitions from the list of shoreline regulations would have no bearing on how the shoreline code was administered. Just as was the case under prior Title 25, if a term is not defined in the shoreline regulations, one would look to other adopted definitions in the Code for guidance and, if none existed, DPER would look to common dictionary definitions.

Conclusion:

The omission of certain definitions from the list of shoreline land use and development regulations has no effect on how shoreline regulations are implemented or interpreted. K.C.C. 20.12.205 should be revised to make clear that it is not an exhaustive list and is not intended to replace adopted code.

- 4. Can a stormwater facility and other infrastructure necessary to construct a plat be allowed within shoreline jurisdiction? Does K.C.C. 21A.25.230.E allow for creation of lots with building sites that will be located within shoreline jurisdiction?**

Background

Applications for a shoreline substantial development permit and subdivision have been filed for a property on Star Lake. Star Lake has a Residential shoreline designation. K.C.C. 21A.25.230.E requires subdivisions be designed to locate structures outside the shoreline jurisdiction whenever feasible. When lots are located within shoreline jurisdiction, the size and shape of the lots should allow for the construction of the residential units that do not require shoreline protection.

Discussion

Private stormwater management facilities are allowed within the Residential shoreline environment provided the facility is in conformance the utility development standards in K.C.C. 21A.25.260. The proposal is to install a below grade vault, within shoreline jurisdiction but outside of the aquatic area buffer. This construction would be consistent with K.C.C. 21A.25.260 and would also satisfy the requirement of no net loss of shoreline ecological function.

The requirement that subdivisions be designed to locate structures outside the shoreline jurisdiction whenever feasible is a discretionary standard of review, not a prohibition. While it is possible that DPER would allow location of building sites within shoreline jurisdiction, the burden is on the applicant to provide analyses showing that it is not feasible to locate the structure(s) outside of shoreline jurisdiction or in another location that might reduce the impact on shoreline ecological functions.

Conclusion

The proposed stormwater vault can be located within shoreline jurisdiction provided it meets the standards in K.C.C. 21A.25.260 and does not result in net loss of shoreline ecological functions. The applicant needs to demonstrate that it is not feasible to locate the building sites outside of shoreline jurisdiction.

- 5. The Red Barn Farm is requesting a zoning code interpretation as to whether a structure located in the RA-5 zone that is listed on the National Register as an historic site or designated as a King County landmark and is proposed for use as a conference center, may be used as a gathering place for weddings, classes or private parties.**

Background

The Red Barn Farm and Distillery is proposing to locate on a site zoned RA-5 that has received King County Landmark status as the Walter Cooper Dairy Farm. Under K.C.C. 21A.08.040, conference centers are permitted in the RA zone as accessory to a park or within a building listed on the National Register as an historic site or designated as a King County landmark. Conference centers are defined in K.C.C.21A.06 as “an establishment developed primarily as a meeting facility, including only facilities for recreation, overnight lodging and related activities provided for conference participants.” This topic was the subject of a 2013 RRC meeting. Discussion was tabled to see how the question had been previously addressed.

Conclusion

During the earlier RRC discussion it was concluded that a conference center could be used as a wedding venue. This conclusion is consistent with how other conference centers are operated. The Meadowbrook Farm Interpretive Center operated by the Si View Parks District, for example, advertises that it is ideal for “weddings, family reunions, business retreats and social events”. The conclusion is that if a conference center is allowed outright in a building listed on the National Register as an historic site or designated as a King County landmark subject to K.C.C.21A.32, then weddings, classes, private parties and similar gatherings would be allowed within the conference center.

- 6. The Doane’s have an elevated deck that doubles as a boat storage area. The “boathouse” and deck are located within aquatic area buffers and shoreline jurisdiction and within shoreline setback areas. 1) Does the code allow establishment of a 15 foot building setback area around the deck/boat storage structure and, if so, can they add a ground-level deck to the structure within the building setback? 2) The existing deck extends beyond the area used for boat storage. Does the roof-top deck overhang count as building footprint?**

Background

K.C.C. 21A.24.200 requires an applicant to set buildings and other structures back a distance of 15 feet from the edge of a critical area buffer or from the edge of the critical area if buffers are not required. Landscaping, uncovered decks and other minor encroachments are allowed within building setback areas.

Discussion

The boathouse/deck is a non-conforming structure and it is not presently an accessory to a residential structure. It was built within an aquatic area buffer, generally at the edge of the aquatic area, before King County had shoreline or critical area regulations. The building setback boundary line (BSBL) is a setback, similar to a zoning setback or street setback. In this case, the structure was built within the buffer and there is no BSBL because it is a legal non-conforming structure.

Expansion or replacement of non-conforming structures are governed by K.C.C. 21A.25.310 and 21A.32.020 through 085. In this case, since the boathouse/deck is not an accessory residential structure, K.C.C.21A.25.310 would not apply and replacement/expansion would be governed by K.C.C.21A.32. which would allow a ten percent expansion of the structures footprint. If the lot were merged with one that contains a single family residence the 1000 square foot provision would apply.

Footprint of a structure is defined in K.C.C.21A.06.512 as the area encompassed by the foundation of a structure including overhangs if the overhangs do not extend more than eighteen inches beyond the foundation.

Conclusion

There is not a BSBL around the non-conforming boat storage/deck. As the lots are presently configured, the footprint of the deck could be increased by 10 percent. If the lot were merged with one that contained a single family residence, expansions of all structures would be limited to 1000 square feet. Replacement structures have to serve the same purpose. (see K.C.C. 21A.06.998. The footprint of a structure includes its overhang provided the overhang does not exceed 18 inches.