



King County
Department of Permitting
and Environmental Review
35030 SE Douglas St., Ste. 210
Snoqualmie, WA 98065-9266
206-296-6600 TTY Relay: 711
www.kingcounty.gov

REGULATORY REVIEW COMMITTEE

- MINUTES -

MEETING DATE: March 20, 2014

TO: Jim Chan Molly Johnson
Wally Archuleta Chris Ricketts
Sheryl Lux Steve Roberge
Ty Peterson Steve Bottheim

John Starbard, Director
Randy Sandin, Product Line Manager, Resource
Devon Shannon, Prosecuting Attorney's Office

FM: Lisa Verner, Legislative Coordinator and RRC Chair

Present: Lisa Verner, Devon Shannon, Sheryl Lux, Randy Sandin, Steve Roberge, Ty Peterson, Wally Archuleta, Molly Johnson, and Steve Bottheim

1. Does K.C.C.21A.24.045 allow interior remodeling to change the use of the building without an alteration exception?

Background

A 900 sf building was permitted in 1982 as an agricultural storage building and is within a wetland buffer. The property owner is selling the property and the potential new owner wants to change the use of the building to residential. The CAD was recently updated (CADS 14-0010, parcel #2523069108) due to the need for a septic design.

Originally, the structure/use was permitted as an agricultural storage structure. Subsequently, the County adopted critical areas regulations and specified buffers for wetlands. This structure/use became a legally non-conforming use because it is located within the wetland buffer.

This property does not have a farm plan.

Discussion

KCC 21A.24.045 identifies allowed alterations in critical areas. In the critical areas and their buffers listed in Subsection B, only the alterations identified in Subsection C are allowed. "Wetlands" is one of the critical areas listed in Subsection B. The chart in Subsection C says "Interior remodeling" is an allowed use in all zones.

The chart in Subsection C also lists construction of new single detached dwelling units as permitted in wetlands and their buffers and in Subsection D says such units are limited to "farm residences in grazed or tilled wet meadows ..." There is no indication that the proposed residential use of this structure will be as a "farm residence."

KCC 21A.24.045(B) allows alteration exceptions consistent with KCC 21A.24.070. KCC 21A.24.070(A)(3) addresses non-linear alterations (such as interior remodeling) except in wetlands; the only exception to no alterations in wetlands is for public school facilities.

KCC 21A.32.055.B discusses modifications to nonconforming uses, structures, or site improvements. Modifications may be approved if "the modification does not create a new type of nonconformance."

The County code (KCC 21A.06.800 Nonconformance) does not distinguish between structure and use when defining a nonconformance.

Conclusion

The proposal is to change the use of the structure. The existing building/use is a legal non-conforming use and would not be allowed in the wetland or its buffer today. Non-farm residential uses are not allowed in wetlands or their buffers either and are nonconforming uses. Therefore, the proposal is in fact a request to change from a non-conforming use (agricultural storage) to a different non-conforming use (non-farm residential). The building/use loses its "legal" status by moving to another nonconforming use and establishment of a new use that is not legally conforming is not permitted.

The operating rule is that a nonconforming use/structure "cannot be changed into some other kind of a nonconforming use." *Open Door Baptist Church v. Clark Cnty.*, 140 Wn.2d 143, 150 (2000); *Coleman v. City of Walla Walla*, 44 Wn.2d 296, 300 (1954).