



King County
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REGULATORY REVIEW COMMITTEE

- MINUTES -

MEETING DATE: January 22, 2015

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

John Starbard, Director
Randy Sandin, Product Line Manager, Resource and RRC Co-Chair
Devon Shannon, Prosecuting Attorney's Office

FM: Lisa Verner, Legislative Coordinator and RRC Co-Chair

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

- 1. Does K.C.C. 21A.24.200 Building setbacks regarding 15' BSBL (building setback line) automatically apply to all boundaries in critical area exceptions approved under K.C.C. 21.24.070 Alteration exceptions?**

Background

Two Critical Area Alteration Exceptions (CAEX14-001 and CAEX14-002) were issued for the two Billmaier properties near Woodinville. The Alteration Exceptions allowed a site disturbance area of no more than 5,000 sf within the critical area buffer on each lot. The location and shape of these site disturbance areas were drawn on the map in the permit approval package. Each approval contained the following condition of approval (Condition #4):

The establishment of the site improvements including a 15-foot BSBL shall result in no more (than) 9,204 (8,852) square feet of permanent buffer disturbance. The remainder of the site outside of areas approved for site disturbance and areas of mitigation planning shall remain in undisturbed vegetation.

This is a Type 2 decision and is appealable to the Hearing Examiner within a specified time frame. Neither the applicant (Mr. Billmaier) nor his representative appealed the conditions during the stated appeal period.

The following code provision addresses building setbacks in critical areas:

K.C.C. 21A.24.070 Alteration exception.

B. The director may approve alterations to critical areas, critical area buffers and critical area setbacks if the application of this chapter would deny all reasonable use of the property as follow:

d. for dwelling units, no more than five thousand square feet or ten percent of the site, whichever is greater, may be disturbed by structures, building setbacks or other land alteration, including grading, utility installations and landscaping but not including the area used for a driveway or for an on-site sewage disposal system;

KCC 21A.24.200 Building setbacks. Unless otherwise provided, an applicant shall set buildings and other structures back a distance of fifteen feet from the edges of all critical area buffers or from the edges of all critical areas, if no buffers are required. The following are allowed in the building setback area:

- A. Landscaping;
- B. Uncovered decks;
- C. Building overhangs if the overhangs do not extend more than eighteen inches into the setback area;
- D. Impervious ground surfaces, such as driveways and patios, but the improvements are required to meet any special drainage provisions specified in public rules adopted for the various critical areas;
- E. Utility service connections as long as the excavation for installation avoids impacts to the buffer; and
- F. Minor encroachments if adequate protection of the buffer will be maintained.

Discussion

In reviewing the Critical Area Alteration Exception application, staff determined that site disturbance of a maximum of 5,000 sf located within the wetland buffer was acceptable, per K.C.C. 21A.24.070. The permit was approved with conditions; one of these conditions specified building setbacks.

The purpose of building setbacks is to reduce impacts to the buffer and to allow adequate circulation access around the structure. The director has the discretion to alter the setbacks in order to provide reasonable use of the property. In this case, it was determined that 15' setbacks were necessary to address the impacts to the buffer.

Under K.C.C. 21A.24.200, staff has the discretion to impose building setbacks of 15 feet or another distance when the building envelope is adjacent to and/or outside the critical area buffer, depending on the degree of impact to the buffer or critical area. In this case, K.C.C. 21A.24.200 does not apply because the building envelope is wholly within the buffer setback.

Conclusion

The exception process allows for a reduction in setbacks based on identified impacts to the critical area. In this case, staff specified in the condition of approval for both permits that the required setback was 15 feet under the discretion authorized in K.C.C. 21A.24.070. Since the building envelope area is drawn with four sides and each side borders on the critical area buffer, the building setback of 15 feet applies to each side.

2. Is a solar panel array mounted on a pole allowed to extend into the side yard setbacks?

Background

The owner of a very small triangular parcel wishes to erect a solar panel tower on the property. The triangle parcel is separated from the rest of lot 1123049094 by road right-of-way. The other two sides of the triangle parcel also abut road rights-of way. The triangular piece is zoned R24.

The R24 zoning calls for 10 foot setbacks on all sides. The array will be mounted on a 15 foot tall pole; its location meets the setback requirements. The array itself is 16 feet by 16 feet and projects into the setbacks approximately nine feet on each of the three sides. A cabinet will hold the battery backup and other electrical equipment for the solar and will be located within the 10 foot setback area.

K.C.C. 21A.12.170.H. specifies setbacks for projections and structures as follows:

21A.12.170 Setbacks - projections and structures allowed. Provided that the required setbacks from regional utility corridors of K.C.C. 21A.12.140, the adjoining half-street or designated arterial setbacks of K.C.C. 21A.12.160 and the sight distance requirements of K.C.C. 21A.12.210 are maintained, structures may extend into or be located in required setbacks, including setbacks as required by K.C.C. 21A.12.220.B, as follows:

H. Telephone, power, light and flag poles;

Discussion

The solar array is considered a source of power. The property owner wishes to use the solar energy to power street lights and other electrical needs of the homeowners association of the development proposed on the separated remainder of the parcel. Power facilities are allowed to encroach in setback areas.

The height of the pole raises the solar array to meet the Roads Division's 10 foot clear zone for sight distances.

Conclusion

The solar array panel is covered under the term "power" in K.C.C. 21A.12.170.H. and is allowed to encroach within the setback areas on the triangle site.

3. If a use listed in a Use Table is allowed through a Conditional Use Permit (CUP) subject to a development condition, does the use also have to meet the general CUP decision criteria?

Background

Commuter parking lots of up to 30 stalls are outright permitted in the RA zone subject to development condition 19 ("P19") (K.C.C. 21A.08.060.A and K.C.C. 21A.08.060.B.19). Commuter parking lots larger than 30 stalls are allowed as a Conditional Use subject to development condition 33 ("C33") (K.C.C. 21A.08.060.A and K.C.C. 21A.08.060.B.33).

K.C.C. 21A.44.040 governs the approval of conditional use permits.

Discussion

Use tables are interpreted in the following manner:

If the use table said "P19" for commuter parking lots in the RA zone, staff would interpret that to mean anything in excess of what is specified in development condition 19 is not allowed. If the use table said "P19, C", staff would interpret it to mean anything in excess of development condition 19 would require a conditional use permit and would review the application in accordance with the criteria for CUPs (K.C.C. 21A.44.040). Where the use table says "P19, C33", staff would interpret it to mean anything in excess of development condition 19 would require a CUP; the CUP would be reviewed in accord with K.C.C. 21A.44.040 and would have to meet development condition 33.

Conclusion

A CUP application is reviewed for compliance with both the development condition listed in the use table, if any, and with the conditional use criteria identified in K.C.C. 21A.44.040. The application must meet both in order to be approved.