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Regulatory Review Committee (RRC) **- Minutes -**

Meeting Date: September 27, 2018

Minutes finalized: October 31, 2018

TO: Jim Chan, Interim Director
Randy Sandin, Interim Assistant Director
Devon Shannon, Prosecuting Attorney's Office

Wally Archuleta Chris Ricketts
Sheryl Lux Steve Roberge
Ty Peterson

FM: Christine Jensen, Legislative/Policy Analyst and RRC Co-Chair
Kevin LeClair, Project/Program Manager and RRC Co-Chair

Present: Christine Jensen, Kevin LeClair, Steve Bottheim, Jeri Breazeal, Sheryl Lux, Ty Peterson, Steve Roberge, Randy Sandin, and Chris Ricketts.

- 1. Request for Code Interpretation concerning whether a Native Growth Retention Area (NGRA) required for obtaining a building for a single-family home can be designated on a sensitive area tract with shared ownership interests.**

This was the subject of DPER Director's interpretation CINT18-0003. The discussion and conclusion are documented in that decision document and will not be repeated here.

- 2. Concerning K.C.C. 21A.24.020 and whether conversion between different kinds of residential uses constitutes a "change in use" under the zoning code and, if so, whether the change trigger application of current critical areas regulations.**

Indexes

Subjects: Change in use, residential uses, residential accessory uses, critical areas
Code: 21A.24.020

Background

This issue relates to three examples:

1. A code enforcement case where an existing accessory storage building, potentially in a wetland buffer, was converted to a home office.
2. A code enforcement case where the upstairs portion of an existing accessory storage building, potentially in a wetland buffer, was converted into an Accessory Dwelling Unit (ADU).
3. A proposal to change an existing primary residence to Accessory Living Quarters (ALQ) and an existing outbuilding AQL is proposed to be changed into the primary residence. The outbuilding is within a well radius, and is proposed to be moved outside of the radius and to add 1000 sq. ft. to its footprint. The property is entirely encumbered with aquatic areas and associated buffers.

The question before the committee is whether these kind of conversions are considered a “change in use” under the zoning regulations in King County Code Title 21A and, if so, whether the change triggers application of current critical areas regulations.

Discussion

A 2014 RRC decision noted that changing from one kind of non-conforming use to a different non-conforming use (such as an agricultural use to a residential use) is not permitted. However, each of the uses described in these three examples (primary residences, accessory storage buildings, home offices, ADUs, ALQs) are “residential” uses in the zoning code. In all three cases, the use of the building changed from one residential use to another residential use. As such, the 2014 RRC decision does not apply to this case.

K.C.C. 21A.24.045 does not distinguish between different kinds of residential uses when determining application of critical areas regulations. Application of the regulations are based upon nature of the physical changes being made to the site. Additionally, K.C.C. 21A.24.045.D.7.b allows for an expansion of a dwelling unit (including any expansion of any accessory structures) up to 1,000 sq. ft.

Conclusion

Changes from one residential use to another residential use is not considered a “change in use” in the zoning code; a “change in use” would only be triggered if the uses changed from one kind of land use to a different kind of land use. Furthermore, the proposed expansion in the third case is within the 1,000 sq. ft. allowance in the code. No additional critical areas regulations would apply. A building permit and associated requirements

may still be necessary, depending on the scope of the occupancy change under the building code.

3. Concerning K.C.C. 21A.30.080, K.C.C. 21A.30.085 and square footage limitations for home occupations.

Indexes

Subject: Home occupations
Code: 21A.30.080 and 21A.30.085

Background

This issue is related to a code enforcement case where the resident had converted the attached garage of the dwelling unit into an office for the operation of the home-based business. The question before the committee was whether the square footage of the garage, following the conversion to office, would count against the total floor area of the dwelling unit devoted to the home occupation.

Discussion

The King County Code limits the total floor area devoted to the home occupation to no more than 20% of the dwelling unit, but excludes from that limitation “areas within garages and storage buildings” that are also used for the home occupation.

Once an attached garage is converted to a habitable living space (including such improvements as adding heating, carpeting, etc) it is considered part of the dwelling unit and is no longer considered a “garage.” If the garage is used as an office, but is effectively still usable as a garage, then it is not considered as part of the dwelling unit. Items that would be pertinent to determining its ability to be used as a garage may include but not be limited to: an operable garage door; all-weather driving surface to the garage door; and a concrete, slab-on-grade floor.

Conclusion

If an attached garage is converted to a habitable living space, the floor area of the garage is subject to the 20% limitation on areas of the dwelling unit that can be devoted to a home occupation.

4. Concerning K.C.C. 21A.08.070.B.1.a and covered sales areas for retail nurseries.

Indexes

Subjects: Covered sales area, retail land uses, nurseries
Code: 21A.08.070.B.1.a

Background

This issue is related to a code enforcement case where a business owner is operating a retail nursery and garden center on a property zoned RA-5. The nursery utilizes a permanent greenhouse structure for display of plants for sale, which customers have access to. The question before the committee is whether a greenhouse used for plant sales is considered a “covered sales area.”

Discussion

The King County Code specifies that the retail nursery and garden center uses are permitted in the RA-5 zone if the covered sales area does not exceed 2,000 square feet, unless the building is designated as a historic resource. The code allows expansion of the covered sales area up to a maximum of 3,500 square feet with a Conditional Use Permit.

In calculating the square footage of the covered sales area, the code states that:

- “uncovered outdoor areas” used to grow or display plants are not considered part of the covered sales area, and
- greenhouses used for the display of “merchandise other than plants” are considered part of the covered sales area.

In order for a greenhouse to not be considered as covered sales area, the greenhouse space must only be used for growing, maintaining, and/or displaying plants. This may include plants in pots, as the predominating use of the greenhouse is still growth, maintenance, and display of the plants for sale. Sales of other non-plant merchandise in the greenhouse – such as empty pots, decorative garden items, or garden tools – would require the greenhouse to be considered as part of the covered sales area square footage calculations.

Conclusion

Greenhouses used to grow, maintain, and/or display plants for sale are not considered as part of the square footage of covered sales areas for retail nurseries and garden centers.

5. Process for staff interpretation requests

The Co-Chairs presented a draft of updated protocols for staff requests for administrative code interpretations. The protocols will be updated based on the feedback from the meeting, and will be posted on the S Drive and in SharePoint.