



King County
Department of Permitting
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FINAL 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.

Finality of Code Interpretations

Under K.C.C. 2.100.040, a code interpretation that relates to a permit application or a code enforcement action is final when the department makes its decision on the underlying permit or code enforcement action. Under K.C.C. 2.100.050, the administrative appeal of a code interpretation that relates to a code enforcement case is consolidated with the appeal of the underlying code enforcement action. The Director determines that this code interpretation relates to Code Enforcement Case ENFR 12-0073. Any appeal of this code interpretation shall be consolidated with an appeal of the Department's decision on Code Enforcement Case ENFR 12-0073.

John Starbard
Director
Permitting and Environmental Review

Date