



King County

**Department of Development
and Environmental Services**
900 Oakesdale Avenue Southwest
Renton, WA 98055-1219

FINAL CODE INTERPRETATION L05CI002

Background

By letter dated August 26, 2005, Rhys Steeling, on behalf of Barbara G. Bessler filed a code interpretation request concerning the interpretation of K.C.C. Chapter 16.70 and K.C.C. Chapter 21A.12.

Ms. Bessler owns property in unincorporated King County that includes a home and an in-ground swimming pool. In 1976, a permit to construct a pool was issued by King County. According to King County records, the permit was not finalized. Sometime after the permit for the pool was issued, a pool enclosure was constructed. DDES has no record of a permit for this structure. Ms. Bessler began repair of the pool enclosure in 2004. Based on a complaint, DDES notified Ms. Bessler that she would need to obtain a building permit. Code Enforcement Case E0400433. DDES denied the application she submitted for a pool enclosure because the structure was located within the required setback and did not meet other zoning and building code requirements. Ms. Bessler continued construction, resulting in the issuance of a stop work order.

The property is zoned RA-5.

Ms. Bessler, through her attorney Rhys Sterling, has requested a code interpretation concerning the relationship of K.C.C. Ch. 16.70 and K.C.C. Title 21A.

As a preliminary matter, Mr. Sterling requests that the Director recuse herself and all staff who have been involved in the code enforcement action or any prior analysis or response concerning this matter. Ms. Sterling refers to K.C.C. 2.100.020D as the basis for the request for recusal of the Director. This provision defines the "director" as the director or the director's designee. There is no explanation for the request for recusal. There is no allegation that the Director or other department staff are unable to fairly consider the code interpretation request and make a decision based on the merits. The Director of the Department of Development and Environmental Services (DDES) denies the request for recusal.

Discussion

K.C.C. Ch. 16.70, adopted by Resolution 21284 in 1960, establishes private pool construction standards.

K.C.C. 16.70.010 prohibits locating a private swimming pool in the front yard or having the water surface within five feet of an exterior property line. K.C.C. 16.70.020 requires "a solid structure or a fence not less than five feet in height" that completely surrounds the pool to minimize the risk that unsupervised children will have access to the pool. If the pool is located in a yard surrounded by a fence meeting the design requirements, a fence around the pool is not required. Plans must be resubmitted to DDES for approval before construction. K.C.C. 16.70.030. Pools that were constructed prior to the adoption of the ordinance were required to comply with the fencing requirements within six months of adoption of the ordinance. K.C.C. 16.70.050.

The King County Zoning Code has required side yards of at least five feet since at least 1963. See, Resolution 25789, Sec. 406. A yard was defined as "an open space ... unoccupied and unobstructed from the ground upward" Resolution 25789, Sec. 299.31. The requirement for a side yard was in place until the Zoning Code was recodified as Title 21A in 1993.

The current King County Zoning Code, codified in Title 21A, includes standards for setbacks. In the RA-5 zone, these setbacks are 30 feet from the street and ten feet from interior lot lines. K.C.C. 21A.12.040. The setback is defined as "the minimum distance between a structure and a specified line, such as a lot, ... that is to remain free of structures." K.C.C. 21A.06.1070. A structure is defined as "anything permanently constructed in or on the ground ...; excluding fences six feet or less in height" K.C.C. 21A.06.1255.

Mr. Sterling suggests that K.C.C. Ch. 16.70 and K.C.C. 21A.12.040 are in conflict because each requires setbacks and that it is not possible for the property owner to comply with both requirements, since the pool is located within the required setback.

K.C.C. 16.70.020 requires either a solid structure or a fence at least five feet in height around a private swimming pool. An alternative is a fence around the entire yard. A covered pool enclosure as proposed in this case is an option, but not a requirement. A fence of less than six feet in height may be constructed in required setbacks. K.C.C. 21A.06.1255 and K.C.C. 21A.12.170E.¹ Such a fence would meet the requirement of K.C.C. 16.70.020. Therefore, K.C.C. 16.70.020 and K.C.C. Chapter 21A.12 are not in conflict.

Mr. Sterling suggests that the solid enclosure met the requirements of "the special zoning and building code as set forth in K.C.C. Chapter 16.70" at the time the solid enclosure was constructed in 1976. As discussed above, although it is true that in 1976, the solid enclosure was allowed by K.C.C. Chapter 16.70, it was not allowed by the zoning code in effect at the time

¹As far back as 1963, the King County Zoning Code has defined structures to exclude fences less than six feet in height. See, e.g., Resolution 25789. Sec. 299.19.

because it was constructed in the side yard. In addition, DDES can find no record that a solid pool enclosure was ever issued a permit. Therefore, the covered enclosure that is proposed for replacement did not meet the requirements of the zoning code in effect in 1976.

Decision

K.C.C. Chapter 16.70, which includes requirements for setbacks and fencing around private swimming pools, and K.C.C. Chapter 21A.12, which establishes street and interior setbacks, are not in conflict. K.C.C. 16.70.020 requires a private swimming pool to be surrounded by a fence or other solid enclosure. K.C.C. 21A.12.030 and its predecessor zoning code provisions have required side yards or setbacks since at least 1963. In 1976, the minimum side yard in single family zones was five feet. The current interior setback in the RA-5 zone is ten feet. The side yard or setback has consistently been required to be free of structures or buildings. However, fences less than six feet have been allowed in the side yard or setback since at least 1963.

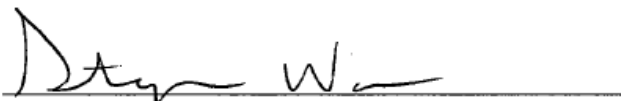
In the present case, the property owner proposes to construct a solid pool enclosure with a roof over a private swimming pool. The pool is located within five feet of an interior lot line. Under the existing zoning code, this type of structure is not allowed within the setback. It was also not allowed under the side yard requirements in effect at the time the existing structure was constructed in 1976.

Under K.C.C. 21A.12.170, a fence less than six feet in height may be constructed in the setback. A fence could also have been constructed in the required side yard at the time the pool was constructed. A fence of at least five feet in height would meet the requirements of K.C.C. 16.70.020.

It is possible to comply with both K.C.C. 16.70.020 and K.C.C. 21A.12.030. There is no conflict that requires further statutory construction.

Appeal of Final Code Interpretations

This code interpretation does not relate to a development proposal. Under K.C.C. 2.100.040, if a code interpretation does not relate to a development proposal, the director issues a final code interpretation. For purposes of appeal, this code interpretation is the final agency action.



Stephanie Warden

Director
Development and Environmental Services

November 23, 2005

Date