



King County

**Department of Development
and Environmental Services**

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REGULATORY REVIEW COMMITTEE

- MINUTES -

MEETING DATE: May 22, 2002

TO: Building Services Division Staff
Chris Ricketts
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Land Use Services Division Staff
Joe Miles
Greg Borba
Lisa Pringle

Caroline Whalen, Deputy Director
Harry Reinert, Special Projects Manager
Tim Barnes, Prosecuting Attorney's Office

FM: Harry Reinert, Co-Chair

Present: Greg Borba, Ken Dinsmore, Chris Ricketts, Pam Dhanapal, Lisa Pringle, Steve Boyce, and Harry Reinert

1. Is there a limitation on the number of animals that can be kept in a kennel or cattery?

Background

K.C.C. chapter 11.04 and K.C.C. 21A.30.020 establish small animal regulations. K.C.C. 21A.30.020B sets a limitation on the number of small animals that can be kept outside, "unless more are allowed as an accessory use pursuant to paragraph E." K.C.C. 21A.30.020E provides that "Small animals and household pets kept as an accessory use outside the dwelling, shall be raised, kept or bred only as an accessory use on the premises of the owner, or in a kennel or cattery approved through the conditional use permit process, ..."

Discussion

K.C.C. chapter 11.04 establishes general standards for the number of animals allowed in kennels and catteries. A kennel or cattery is defined as a facility housing four or more adult dogs or cats, respectively. K.C.C. 11.04.020. The number of animals allowed in a kennel or cattery depends in part on whether the kennel or cattery is a commercial or hobby establishment. See, e.g. K.C.C. 11.04.040 and 11.04.050 which require a kennel or cattery to obtain a license to comply with the zoning code and K.C.C. 11.04.060A which establishes standards limiting the number of dogs and cats allowed in a hobby kennel or hobby cattery.

K.C.C. 21A.30.020 establishes small animal regulations under the zoning code. Small animals kept indoors as pets in cages, terrariums, or similar containers are not limited in numbers, unless otherwise limited by the animal control regulations in K.C.C. chapter 11.04. No more than three of these animals may be unaltered cats or dog, although there are also no limitations on the number of cats if they are kept indoors as pets. K.C.C. 21A.030.020A. Small animals kept outside, including adult dogs and cats, are limited to three on lots of less than 20,000 square feet. The number of animals allowed increases as the size of the lot increases, up to a maximum of 20 small animals, unless otherwise allowed as an accessory use. K.C.C. 21A.30.020B.

K.C.C. 21A.30.020E allows small animals to be kept as an accessory use when housed outside the dwelling or housed in a kennel or cattery approved through the conditional use process. K.C.C. 21A.30.020E sets conditions for these accessory uses, which include standards for size of facilities, minimum site area, and similar requirements. For kennels in residential zones, the minimum site area is five acres. Catteries must be located on site of 35,000 square feet or more. There are additional requirements for structure setbacks and run area requirements. K.C.C. 21A.30.020E.3. There are no stated limitations on the number of animals that are allowed.

The conditional use permit is governed by K.C.C. 21A.44.040. The applicant must demonstrate that the proposed conditional use meets the standards set forth in that section. These include a requirement that the use is compatible with the property in the vicinity and that it is not in conflict with the health and safety of the community. The conditional use permit decision making process allows the imposition of limitations on the number of animals allowed in a kennel or cattery.

Conclusion

There are no absolute limitations on the number of cats or dogs that may be housed in a cattery or kennel established as an accessory use. A cattery or kennel established as an accessory use requires a conditional use permit. The conditional use permit decision making process does allow the imposition of a maximum number of animals as one of the conditions for the conditional use permit.

2. Does K.C.C. 21A.26.400 limit the increase in height of a replacement utility pole in the right of way when the replacement pole will also be used as a telecommunications support structure?

Background

K.C.C. 21A.26.400 establishes the allowable height of telecommunication facilities located in a road or utility right-of-way. A telecommunication facility on an existing structure in the right-of-way is permitted outright. An existing structure can be modified or replaced and its height increased if necessary to accommodate an antenna, if the new structure will serve the same purpose as the original structure and does not exceed the original height by forty feet.

A "sole purpose" transmission support structure constructed in a road or utility right-of-way is subject to the height limits of the abutting zone. In the case of the CB zone, a sole purpose structure of up to 120 feet in height would be allowed outright (see 21A.26.310 and .320).

There are no restrictions on the height of a utility pole. K.C.C. 21A.12.180B.

There is a proposal to replace an existing 35-foot high electrical utility pole with a 110-foot high pole that will be jointly used by a utility and telecommunications provider. The zoning adjacent to the r-o-w is CB.

Discussion:

If the utility and telecommunications company apply for a joint use structure in a utility or road right of way, K.C.C. 21A.26.400A limits the increase in height of the new joint use structure to forty feet. However, if the telecommunications company were to construct a new tower, the structure in the right of way, the height of the structure is limited by the height allowed in the neighboring zone. In a similar manner, if the utility were to replace the existing utility pole, there is no maximum height limit applicable.

These provisions create an inconsistency in application. A joint use tower is subject to more restrictive requirements than a single use tower. On one hand, a cell/wireless carrier can install a single purpose 120-foot tower in the right-of-way, abutting a CB zone, as a permitted use and a utility can replace a utility pole with a taller pole without any height restrictions. On the other hand, in the same location, replacement or extension of an existing utility pole as a joint use structure is limited to only 40 additional feet of height.

If a telecommunications company constructs a single purpose structure or a utility replaces an existing utility pole, there is nothing that limits a subsequent decision to attach telecommunications facilities to the utility pole or utility facilities to the telecommunications structure. In fact, in the case of attaching telecommunications facilities, K.C.C. 21A.26.400A provides that mounting antenna on an existing structure in a right of way is permitted outright.

Conclusion.

K.C.C. 21A.26.400 limits a replacement utility pole or structure in a road or utility right of way that is designed to accommodate telecommunications facilities to an height increase of only forty feet. A new telecommunications support structure in a right of way is allowed to match the height of the neighboring zone. There are no limits on the height of a utility pole replaced for reasons other than supporting a telecommunications facility.

A utility pole may be replaced by the utility and antenna subsequently attached without running afoul of the height restrictions of K.C.C. 21A.26.400. In a similar manner, a new transmission support structure may be constructed and utility lines subsequently attached to it, also without violating the height restrictions of that section.

A code amendment should be prepared to clarify this matter.

3. What are the stacking space requirements for an espresso stand? (See minutes from the RRC August 22, 2001 meeting.)

Background

At its August 22, 2001 meeting, the RRC reviewed the requirements for stacking space requirements for an espresso stand. The RRC concluded that an espresso stand is a restaurant under the zoning code and must meet the stacking space requirements required of drive through eating and drinking establishments. See K.C.C. 21A.18.080.

Councilmember Irons has requested the RRC to reconsider this matter and determine whether additional factors, such as the scale of the business, the size of building, the number of windows, number of items available, processing time, whether indoor seating is available, the number of employees working at any given time, and the number or similar businesses in the area, should also taken into consideration when establishing the stacking requirements for an espresso stand.

Discussion

K.C.C. 21A.18.080 provides:

A. A stacking space shall be an area measuring eight feet by 20 feet with direct forward access to a service window of a drive-through facility. A stacking space shall be located to prevent any vehicles from extending onto the public right-of-way, or interfering with any pedestrian circulation, traffic maneuvering, or other parking space areas. Stacking spaces for drive-through or drive-in uses may not be counted as required parking spaces.

B. Uses providing drive-up or drive-through services shall provide vehicle stacking spaces as follows:

1. For each drive-through lane of a bank/financial institution, business service, or other drive-through use not listed, a minimum of five stacking spaces shall be provided; and

2. For each drive-through lane of a restaurant, a minimum of seven stacking spaces shall be provided.

This provision does not provide any discretion to the department to modify the number of stacking spaces that are required for a drive through business.

K.C.C. 21A.44.030 allows an applicant to request a variance from the requirements of the zoning code and sets forth the reasons that can support a variance. Stacking space requirements can be modified through the variance process. However, an applicant must show that the proposed variance meets all of the criteria set forth in K.C.C. 21A.44.030. This can be a difficult burden to meet.

Councilmember Irons suggests that additional factors should be taken into account when determining the number of stacking spaces required. This approach would present a number of implementation issues that could increase the complexity of the permitting process and would probably add expenses that would be born by the permit applicant.

Depending on the nature of the standards that are used to determine the requirements, DDES would be required to review the business plan to determine the number of stacking spaces that would be required. This might include a need to evaluate the number of similar businesses in the surrounding area. Once an application was approved, any changes in operation would require an evaluation to determine whether those changes require the addition of stacking spaces. Since DDES bills for its time by the hour, these expenses would be passed on to the applicant. Such a scheme would also create uncertainty for the business owner, since at any time it might be required to add stacking spaces based on the fact that business had increased or that it had added to the items it had for sale or the number of employees.

The current code provisions on stacking spaces is based on physically verifiable information and are not dependent on fluctuations in business or services provided. It is also static and only changes when the number of windows offering drive-through service changes.

Summary

K.C.C. 21A.18.080 establishes standards for stacking space requirements. The code does not give the department discretion authority to modify those standards. Stacking space requirements can be modified through the variance process, but the applicant must demonstrate that the reasons for the variance exist.

Basing stacking space requirements on the business operation of an espresso stand would add complexity to the permitting process and increase the cost to the applicant in reviewing the permit application. There would also be increased costs involved in inspection of ongoing operations to ensure the business is operating consistent with its permit.

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