



## King County

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

# REGULATORY REVIEW COMMITTEE

- MINUTES -

**MEETING DATE: October 20, 2005**

**TO:** Building Services Division Staff  
Mike Dykeman, Manager  
Chris Ricketts  
Jim Chan  
Pam Dhanapal

Land Use Services Division Staff  
Joe Miles, Manager  
Lisa Dinsmore  
Randy Sandin  
Jeri Breazeal  
Steve Bottheim

Stephanie Warden, Director  
Harry Reinert, Special Projects Manager and RRC Co-Chair  
Cass Newell, Prosecuting Attorney's Office

**FM:** Harry Reinert, Co-Chair

Present: Steve Bottheim, Jeri Breazeal, Jim Chan, Pam Dhanapal, Lisa Dinsmore, Cass Newell,  
Nancy Jo Perdue and Harry Reinert

**1. May an existing gas station/grocery store that is a nonconforming use add a drive-through window for espresso sales? An espresso stand?**

Background

An espresso stand was placed without permits on an RA zoned site. The operator of the espresso stand also operates a gas station/grocery store as a non-conforming use on the same site. The grocery store includes some food service. Code enforcement notified the operator that he needed approval for the espresso stand.

Discussion

K.C.C. 21A.32.065 governs the expansion of nonconforming uses, structures, or site improvements. An expansion of a nonconforming use is generally allowed, as long as the "project-wide nonconformance" with respect to building square footage, impervious surface, parking, and building height is not increased by more than ten percent. The expansion must comply with all other zoning code requirements.

Adding an espresso stand to the existing, non-conforming use would increase the building footprint. In determining whether the expansion exceeds the ten percent threshold, the footprint of the entire building is considered, since the entire use is nonconforming. Expansions are also cumulative. Any prior expansions of the building footprint are considered in calculating the additional building footprint that is allowed.

An expansion of a non-conforming use must also conform to all other provisions of Title 21A. K.C.C. 21A.32.065. Eating and drinking establishments are governed by RCW 21A.08.070. In the RA zone, they are a permitted use, subject to Condition 22 and a conditional use, subject to Condition 24. As a permitted use, drinking and eating establishments must be accessory to a park and are limited to a floor area of 750 square feet. K.C.C. 21A.08.070B.24. As a conditional use, they must be accessory to a winery or brewery, a "permitted" manufacturing or retail use, or a large, active recreation and multi-use park. K.C.C. 21A.08.070B.22. As an accessory use to a permitted manufacturing or retail use, only espresso stands are allowed and drive-through sales are not permitted. K.C.C. 21A.08.070B.22.b. In this context, the existing gas station/grocery store is not a "permitted" use. Therefore, an espresso stand would not be allowed as accessory use to the store under the provisions of K.C.C. 21A.08.070B.22.b. As a result, the expansion would not meet the requirement of K.C.C. 21A.32.065 that the expansion of a non-conforming use must comply with all of the provisions of Title 21A.

As an alternative to placing a new structure on the site, the operator might locate espresso sales in the existing structure. K.C.C. 21A.32.055 governs the modification of nonconforming uses, structures, and site improvements. Modifications are generally allowed as long as they do not expand an existing nonconformance or create a new type of nonconformance. Adding espresso sales to the existing food service would not expand the non-conformance and would be allowed. However, as discussed above, a drinking and eating establishment is only allowed as a permitted or conditional use in RA zones under limited circumstances. The only condition that would apply to the existing operation is Condition 22.b. which applies to a "permitted" retail use. That condition is limited to espresso stands, but also prohibits drive-through facilities. Therefore, the existing store may include espresso sales as part of its existing food service. However, adding drive-through sales would create a new type of nonconformance, which is prohibited by K.C.C. 21A.32.055B.

#### Conclusion

Pursuant to K.C.C. 21A.32.055, an existing legal nonconforming gas station/grocery store with existing food and beverage service, under K.C.C. 21A. may modify its operation to add espresso sales in the existing structure as long as there is no expansion of the building footprint. Drive-through sales are not allowed. Pursuant to K.C.C. 21A.32.065, the store may not expand to include an espresso stand.