



King County

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

REGULATORY REVIEW COMMITTEE

- MINUTES -

MEETING DATE: March 9, 2006

TO: Building Services Division Staff Land Use Services Division Staff
Mike Dykeman, Manager Joe Miles, Manager
Chris Ricketts Lisa Dinsmore
Jim Chan Randy Sandin
Pam Dhanapal Deidre Andrus
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, Jim Chan, Cass Newell, Randy Sandin, Chris Ricketts, Lisa Dinsmore,
and Harry Reinert

1. Does K.C.C. 21A.24.045 limit all new docks in aquatic areas and wetlands to 'seasonal floating docks'?

Background and Discussion

The allowed alterations table in K.C.C. 21A.24.045 has three conditions that relate to the construction of new docks or piers: condition 9 to wetlands and aquatic areas and conditions 10 and 11 that apply only in aquatic areas.

Condition 9 provides:

Limited to seasonal floating docks or piers in a category II, III or IV wetland or its buffer or along a lake shoreline or its buffer where:

- a. the existing and zoned density of all properties abutting the entire lake shoreline averages three dwelling units per acre or more;
- b. at least seventy-five percent of the lots abutting the shoreline or seventy-five percent of the lake frontage, whichever constitutes the most lake frontage, has been developed with dwelling units;

- c. there is not any significant vegetation where the alteration is proposed and the loss of vegetation was not the result of any violation of law;
- d. the wetland or lake shoreline is not a salmonid spawning area; and
- e. hazardous substances or toxic materials are not used.

K.C.C. 21A.24.045D.9. This is similar to a condition under K.C.C. Chapter 21A.24 prior to the 2004 amendments – the SAO. See former K.C.C. 21A.24.330J. That provision applied to wetlands. Under the SAO, lakes were regulated under the wetlands provisions. This provision was expanded in the CAO to also apply to aquatic areas, including marine shorelines and rivers. The SAO did not specifically allow docks, piers, or floats in streams. For those streams and marine shorelines covered by the Shoreline Master Program, docks and piers were allowed in some areas, subject to the provisions of K.C.C. Title 25. The main difference between the SAO and the CAO with respect to the structures themselves is that the CAO appears to only allow "seasonal floating docks and piers." The SAO was not so limited.

Conditions 10 and 11 evolved from other miscellaneous conditions in the SAO and a request from the Rivers section in WLRD.

Conditions 10 and 11 provide:

- 10. Allowed on type N or O aquatic areas if hazardous substances or toxic materials are not used.
- 11. Allowed on type S or F aquatic areas outside of the severe channel migration hazard area if in compliance with K.C.C. Title 25.

K.C.C. 21A.24.045D. Condition 10 applies to types N or O aquatic areas with no regulation beyond the use of hazardous substances. Condition 11 applies to type S and F aquatic areas and relies on the shoreline code in Title 25 for standards as long as the dock or pier is kept out of the severe channel migration hazard area. This was a concern for the Rivers section.

The lead in to the table states that where there is more than one numbered condition for a listed activity "each of the relevant conditions specified for that activity within the given critical area applies." K.C.C. 21A.24.045D. For aquatic areas, this would mean that condition 9, which limits docks to seasonal floating docks, would apply even though under condition 11 a fixed dock would be allowed under the shoreline code and under condition 10, the only limitation concerns the types of materials used.

The committee did not believe this was intended. There was speculation that this may have been a drafting error. The committee recommends that this provision be modified.

Conclusion. K.C.C. 21A.24.045 imposes limits on docks and piers in aquatic areas and wetlands. One reading of the conditions would lead to the conclusion that only seasonal floating docks are allowed in aquatic areas. The Committee does not believe that this was the intended result and recommends that the section be amended to clarify its meaning.

2. May an abandoned logging road that crosses steep slopes, landslide hazards, wetlands, aquatic areas, and their buffers and that has not been used for over 15 years be "restored" as a private access road or driveway?

Background

A landowner/developer wants to construct a private road in the same general vicinity of an old abandoned logging road. The logging road was constructed under forest practice permit sometime in the 1970's and crosses steep slopes, landslide hazards, wetlands, aquatic areas and buffers. The finished road would provide access to the upper, flatter portion of the 80 +/- acre parcel. The applicant maintains that the road is existing and that they are only "restoring the road". The road has not been used since at least 1990 when heavy rains washed out a main culvert near the beginning of the road. The old roadbed is 16 to 18 feet wide in spots and in other locations is non-existent or little more than a walking trail. The road bed is overgrown with 12" alder and some Doug Fir, blackberries and other ground cover.

The reconstruction required would be significant and within critical areas. There is another unimproved right of way that accesses the upper portion of the site. The applicant/owner does not wish to use this access because it adds travel time to the site.

A) Would reconstruction or "restoration of existing road" meet the requirements of condition 28 since alternative access is available.

B) Would the criteria in condition 28 even apply if it is concluded the road is existing or would the work be reviewed as replacement of existing structure and be subject to Conditions 5, 6, 7, and 8?

Discussion

K.C.C. 21A.24.045 provides that "Construction of a driveway or private access road is allowed within critical areas only if:

28. Allowed only if:

a. an alternative access is not available;

...

c. the risk associated with landslide and erosion is minimized and impacts to the critical area is minimized to the maximum extent practical."

The road the applicant proposes to "restore" has trees and other vegetation growing through in a number of places. The road has washed out in places and is currently impassible by vehicles. In the past, DDES has determined that roads in a condition similar to that found here have been not considered to be "existing" when applying the drainage and critical area codes. This is supported by the provisions of K.C.C. 21A.32.045, which establishes standards for when a use has been abandoned.

Therefore, in this case, the logging road should be considered to have been abandoned. Reconstruction of the road would be then reviewed as a new road and would be subject to condition 28.

Since there is an alternative location for the road that would avoid the steep slope hazards, an alteration exception or reasonable use exception would be required.

Conclusion

An old logging road that has fallen into disuse, that has not been maintained for at least 15 years, and that is impassible to vehicular traffic is considered abandoned under K.C.C. 21A.32.045. If the logging road crosses critical areas, a proposal to reestablish the road is reviewed as a proposal to construct a new road under K.C.C. 21A.24.045. If the critical areas include steep slopes, wetlands or aquatic areas, the proposal will be subject to K.C.C. 21A.24.045D.28.

3. **In the RA zone, should storage be allowed without a residence, and if so, under what parameters?**

Background

The department has been asked to review the circumstances under which storage is allowed on RA zoned property.

Discussion

The permitted use tables in K.C.C. Chapter 21A.08 do not include any general provisions relating to storage, although there are categories of activity that include storage as a component, for example "self-service storage," "farm product warehousing," "warehousing," and "freight and cargo service" are all classified as business service land uses under K.C.C. 21A.08.060. "Building, hardware and garden materials" is classified as a retail land use under K.C.C. 21A.08.070.

In the RA zone, the types of uses that are allowed are generally limited, often with significant conditions attached. For example, freight cargo service and warehousing are not permitted uses in the RA zone. Farm product warehousing is a permitted use for commodities produced on site and a conditional use as accessory to an agriculture use.

In the RA zone, residential accessory uses are a permitted use. Residential accessory uses are defined in K.C.C. 21A.06.020 as a "use, structure, or activity which is subordinate and incidental to a residence" Residential accessory uses include such things as accessory dwelling units, storage of yard maintenance equipment, storage of private vehicles, greenhouses, home occupations, and home industries. In order to establish a residential accessory use, there must be a residence.

The area that can be devoted to a home industry is limited to fifty percent of the floor area of the dwelling unit. Attached garages and storage areas are not calculated in determining the area of the dwelling unit, but can be used for storage of materials used in the home industry. Home industries require the "site" to be at least one acre.

Resource accessory uses are also permitted in the RA zones. Resource accessory uses are defined as "a use, structure, or part of a structure, which is customarily subordinate and

incidental to a resource use" K.C.C. 21A.24.025. Resource accessory uses include housing for agricultural workers and storage of agricultural products and equipment used on site. A resource accessory use does not require a residence, but does require a resource use to which the accessory use is subordinate.

Conclusion

Storage is allowed on RA zoned lots under limited circumstances. Storage is allowed in an attached garage or barn for a home industry. Resource accessory structures may be used to store equipment used for the resource use, e.g. a tractor for an agricultural operation.

4. May parking for a non-residential use in a residential zone be placed across a street from the lot on which the non-residential use is located?

Background

Code Interpretation Request L04CI003 asks for an interpretation of King County Code provisions establishing standards for off street parking. A church proposes to expand its sanctuary and wants to add parking on a lot located across a public street from the lot on which the church is located. All the properties are zoned residential.

Discussion

K.C.C. 21A.18.110A.3. requires parking spaces for non-residential uses in residential zones to be located on the same lot as the non-residential use that the parking serves. The zoning code defines a lot as "a physically separate and distinct parcel of property, which has been created pursuant to K.C.C. Title 19, Subdivision." K.C.C. 21A.06.725.

The church suggests that all of its lots should be considered a site as defined in K.C.C. 21A.06.1170. A site is defined as a "single lot, or two or more contiguous lots that are under common ownership or documented legal control, used as a single parcel for a development proposal in order to calculate compliance with the standards and regulations of this title." It then argues that the lot located across the street should be considered adjacent to the other lots that are part of the overall development proposal.

K.C.C. 21A.18.110A establishes different standards for the location of required off-street parking based on factors such as the proposed uses and the zoning. Parking for single detached dwelling units (K.C.C. 21A.18.110A.1.) and non-residential uses in residential zones (K.C.C. 21A.18.110A.3.) must be located on the same lot. However, parking for other types of residential uses is required to be located within 150 feet of the building it serves, but does not need to be located on the same lot. K.C.C. 21A.18.110A.2. This indicates that the King County Council established distinct standards for the location of required off-street parking for different types of uses in different zoning districts.

The church suggests that K.C.C. 21A.08.060C.32. is not as limiting as K.C.C. 21A.18.110 and that, under K.C.C. 21A.02.060, any conflict between the two provisions should be read in favor of K.C.C. 21A.08.060.

K.C.C. 21A.08.060 establishes the permitted uses and applicable conditions for government and business services land uses. Off-street required parking is a permitted use in all residential, commercial, and industrial zones, subject to condition 32. That relevant part of condition 32 provides that "[o]ff-street required parking must be located on a lot which would permit, either outright or through a land use permit approval process, the land use the off-street parking will serve.

The church argues that this provision allows parking on a separate lot and that the lot is not required to be directly adjacent to the other lot and that under K.C.C. 21A.02.060 "interpretation issues shall be decided giving preference to the permitted use tables, and to allow for all the necessary structures to support the use.....:

K.C.C. 21A.020.060 provides:

A. In case of inconsistency or conflict, regulations, conditions or procedural requirements that are specific to an individual land use shall supersede regulations, conditions or procedural requirements of general application.

B. A land use includes the necessary structures to support the use unless specifically prohibited or the context clearly indicates otherwise.

C. In case of any ambiguity, difference of meaning, or implication between the text and any heading, caption, or illustration, the text and the permitted use tables in K.C.C. 21A.08 shall control. All applicable requirements shall govern a use whether or not they are cross-referenced in a text section or land use table.

D. Unless the context clearly indicates otherwise, words in the present tense shall include past and future tense, and words in the singular shall include the plural, or vice versa. Except for words and terms defined in this title, all words and terms used in this title shall have their customary meanings.

When considering this section as a whole, it does not, as the church suggests, give a preference to the permitted use tables. What it does say is that in case of conflict between general provisions and more specific provisions in the zoning code, the more specific will govern. There is no conflict presented by the facts at issue here.

Parking that is not required by the zoning code, but is desired by an applicant as part of its development proposal is not subject to the same restrictions as required parking. In particular, K.C.C. 21A.18.110A would not apply, since that subsection applies to required off-street parking.

If an off-street parking lot is not required by the zoning code and is proposed to be located on a lot separate from the lot on which a primary use is located, the parking lot is the primary use on that lot. Automotive parking (SIC 725) as a primary use on a lot is subject to K.C.C. 21A.08.060. Automotive parking as a primary use is not a permitted use in any residential zone. Therefore, if the off-street parking the church proposes is not required under the zoning code, a parking lot providing parking to the church on a separate lot would be the primary use on that

lot. The church's property is zoned residential and, therefore, the separate parking lot is not permitted under the zoning code.

Conclusion

Under K.C.C. 21A.18.110A.3 parking required for a non-residential use in a residential zone must be located on the same lot as the non-residential use. A lot is defined as a physically separate and distinct parcel of property. K.C.C. 21A.18.110A. establishes different standards for the location of required off-street parking for different types of uses in different zoning districts. In some cases those standards explicitly require the parking to be located on the same lot. In others, location within a specified distances is all that is required. This different wording indicates that the King County Council intended to apply different standards in these different circumstances.

If proposed parking is not required by K.C.C. 21A.18, locating a parking lot as a primary use is not permitted in the residential zone. K.C.C. 21A.08.060.