



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

REGULATORY REVIEW COMMITTEE

- MINUTES -

MEETING DATE: September 28, 2006

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
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: Lisa Dinsmore, Pam Dhanapal, Joe Miles, Cass Newell, Jim Chan, Ray Florent, Randy Sandin, Laura Casey, Deidre Andrus, and Harry Reinert

1. Under K.C.C. 19A.08.070A.1.a do the lots for which recognition is requested need to physically abut sewer, water, or roads?

Background

DDES has received an inquiry about whether under K.C.C. 19A.08.070A, in order to be recognized as a legal lot, infrastructure identified in that section must abut the lot.

Discussion

Prior to its amendment in 2004, K.C.C. 19A.08.070A.1 read as follows:

A. A property owner may request that the department determine whether a lot was legally segregated. The property owner shall demonstrate to the satisfaction of the department that, a lot was created, in compliance with applicable state and local land segregation statutes or codes in effect at the time the lot was created, including, but not limited to, demonstrating that the lot was created:

1. Prior to June 9, 1937 and the lot has been:

- a. Provided with approved sewage disposal or water systems or roads,
or
- b. Conveyed as an individually described parcel to separate,
noncontiguous ownerships through a fee simple transfer or purchase prior to
October 1, 1972
- c. Recognized prior to October 1, 1972, as a separate tax lot by the
county assessor; (Ord. 13694, Sec. 42)

This language was ambiguous because there was no conjunction between paragraphs 1.b. and 1.c. Under the code as it existed at that time, it appeared to be sufficient to claim legal lot status if only one of the three conditions in subsection A.1 was met. DDES recommended as part of the 2004 Comprehensive Plan Update that this ambiguity be removed and that it be made clear that in order for pre-1937 lots to claim legal lot status, they were required to meet two conditions: first, that the lot had been provided with appropriate infrastructure; and second, that prior to 1972, the lot had either been conveyed as a separate lot or that it had been recognized as a separate tax lot.

The resulting language reads as follows:

- A. A property owner may request that the department determine whether a lot was legally segregated. The property owner shall demonstrate to the satisfaction of the department that, a lot was created, in compliance with applicable state and local land segregation statutes or codes in effect at the time the lot was created, including, but not limited to, demonstrating that the lot was created:
 - 1. Prior to June 9, 1937, and has been:
 - a. provided with approved sewage disposal or water systems or roads;
and
 - b.(1) conveyed as an individually described parcel to separate,
noncontiguous ownerships through a fee simple transfer or purchase prior to
October 1, 1972; or
 - (2) recognized prior to October 1, 1972, as a separate tax lot by the
county assessor; (Ord. 15031, Sec. 2.)

K.C.C. 19A.08.070A ensures these pre-1937 lots only receive recognition in cases where it has already been recognized by the county or the property owner as a separate lot through some action, and that it has appropriate infrastructure to support development.

Prior to 1937, the creation of lots did not receive any significant review by the County to ensure that appropriate infrastructure, such as sewer, water, and roads, was available. In many cases, lots were created in blocks of equal size, e.g. 5,000 square feet, that could then be combined in different combinations based on the desires of the property owner and potential purchasers. Many pre-1937 lots are no longer consistent with King County zoning.

In 1969, the Washington Legislature adopted regulations governing subdivisions that provides a mechanism to ensure that the subdivision of land “promote[s] the public health, safety, and general welfare” RCW 58.17.010. The subdivision process accomplishes this by establishing uniform procedural standards, requiring consideration of factors relating to the public health and general welfare, and requiring public notice and an opportunity to comment. Development on lots created outside of the subdivision process limits the ability of the county to ensure that the public health and general welfare considerations have been addressed.

K.C.C. Title 19A incorporates King County’s implementation of state subdivision law. As discussed above, one requirement of K.C.C. 19A.08.070A.1.a. is that, in order to be recognized as a separate lot, a pre-1937 lot must be “provided with” appropriate infrastructure. A graphical representation of one scenario follows:

1	2
3	4
5	6
7	8
9	10
Sewer and Water	

Under this scenario, the question is whether, because sewer and water are currently provided at lots 9 and 10, it is also provided at lots 1 through 8. The answer to this question is no, since infrastructure is not provided to lots 1 through 8. In addition, even if the property owner proposes to extend sewer or water to lots 1 through 8, the answer would still be no. To hold otherwise would result in making K.C.C. 19A.08.070A.1.a essentially meaningless. All a property owner would need to do would be to construct a road to a lot or provide water service through a well or connection to a public water system, or install a septic system or connect to a public sewer to create a legal lot. It was the clear intent of the King County Council to limit the circumstances when lots could be recognized.

The next question, then, is when did infrastructure have to be provided to a lot in order for that lot to be legally recognized as a separate lot. One alternative would be to require that infrastructure was provided at the time K.C.C. Title 19A became effective. The other alternative is that it the infrastructure was provided at the time the amendment to K.C.C. 19A.08.070 became effective in 2004.

Prior to the adoption of K.C.C. Title 19A, King County's subdivision law did not include a provision similar to K.C.C. 19A.08.060A.1. The intent of the King County Council in adopting this provision was to limit the circumstances under which pre-1937 lots would be recognized as legal lots. The 2004 amendments to K.C.C. 19A.080.070 merely clarified the original council intent. Therefore, the effective date of Ordinance 13694, which adopted K.C.C. Title 19A and repealed K.C.C. Title 19, is the date by which infrastructure must have been provided to a pre-1937 lot in order for that lot to be recognized as a separate legal lot. K.C.C. Title 19A became effective January 1, 2000.

Conclusion

In order to be recognized as a legal lot, a lot created prior to 1937 is required to meet two conditions: first, prior to January 1, 2000, it must have been provided with sewer, water, or roads; and second, prior to 1972, it must have been either recognized as a separate tax lot or have been conveyed as a separate lot. January 1, 2000 is the effective date of Ordinance 13694, which was codified as K.C.C. Title 19A.

2. Do K.C.C. 21A.24.045.D. 7 and 8 allow the placement of a new residential structure adjacent to existing impervious surface within a critical area buffer, if the impervious surface is nonresidential and is proposed for removal or demolition?

Background

In a pending building permit application, the applicant has an existing house and multiple outbuildings, and proposes to demolish and replace them with a new residence and attached garage. A portion of three nonresidential structures lie in the outer portion of a wetland buffer. The applicant proposes to place the new residence adjacent to an existing nonresidential structure scheduled for demolition (a gazebo that lies partially within a critical area buffer).

Discussion

K.C.C. 21A.24.045D.7 allows expansion or replacement of existing residential structures within a critical area buffer subject to conditions:

- a. The expansion or replacement does not increase the footprint of a nonresidential structure;
- b.(1) for a dwelling unit, the expansion or replacement ... does not increase the footprint of the dwelling unit and all other structures by more than 1000 square feet;
- (2) for a structure accessory to a dwelling unit, the expansion or replacement is located on or adjacent to existing impervious surface areas and does not increase the footprint of the accessory structure and the dwelling unit by more than 1000 square feet; and
- (3) the location of the expansion has the least (sic) adverse impact on the critical area;

KCC 21A.24.045D.8 allows expansion or replacement of an existing structure “upon another portion of an existing impervious surface outside a several channel migration hazard area if:

- a. the structure is not located closer to the critical area; and
- b. the existing impervious surface within the critical area or buffer is not expanded.

An overall goal of K.C.C. Chapter 21A.24 is to protect the functions and values of critical areas. K.C.C. 21A.24.010. The 2004 amendments to K.C.C. Chapter 21A.24 modified the standards for location of structures in critical area buffers. In particular, the prior regulations generally prohibited expanding structures closer to the critical area. K.C.C. 21A.24.045 modified this general prohibition by allowing the expansion of residential structures in whatever direction that would have the least adverse impact on the critical area. In some cases, this may mean locating the expansion closer to the critical area.

In light of the overall intent of the critical areas regulations to result in the best protection of the environment, locating the proposed expansion or replacement of an existing residential structure in a location with the least adverse impact on the critical area is a primary consideration. In this circumstances presented here, the applicant should be able to locate that replacement residential structure adjacent to existing impervious surface currently within the buffer, even if the impervious surface will be removed following construction of the residence, as long as the final result has the least adverse impact on the critical area. Compensatory mitigation is required for the any new area of impervious surface within the buffer.

Conclusion

An applicant with an existing house and multiple outbuildings who proposes to demolish and replace those structures with a new residence and attached garage, may move the residence to an area adjacent to existing impervious area in the critical area buffer, if the location of the structures will have the least adverse impact on the critical area. Compensatory mitigation is required for the any new area of impervious surface within the buffer.