



King County

Department of Development and Environmental Services

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REGULATORY REVIEW COMMITTEE

- MINUTES -

MEETING DATE: July 24, 2008

TO: Building Services Division Staff
Jim Chan, Manager
Chris Ricketts
Mark Bergam
Jarrod Lewis
Joelyn Higgins

Land Use Services Division Staff
Randy Sandin, Manager
Lisa Dinsmore
Deidre Andrus
Steve Bottheim
Doug Dobkins
Pesha Klein

Fire Marshal Division Staff
John Klopfenstein, Fire Marshal

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

FM: Harry Reinert, Co-Chair

Present: Mark Bergam, Matt Caskey, Doug Dobkins, Pesha Klein, Hillary Schafer, Joelyn Higgins, Deidre Andrus, Steve Bottheim, Jarrod Lewis, Cass Newell, and Harry Reinert

- 1. Is an outdoor exercise area allowed in conjunction with a permitted dog kennel facility in the Agricultural (A) zone? Are there square footage, fencing and flooring requirements different from dog kennel/run areas?**

Background

A dog kennel located on A zoned property was originally established under a variance. The variance allowed an existing barn to be converted for kennel use within the 150 foot required setback. Another approval condition was that all outdoor areas used as a dog kennel or outdoor confinement had to be surrounded by an eight foot high solid wall and the floor area had to be

surfaced with concrete or other impervious material. It further stated that the existing fenced area shall not be used for the commercial dog kennel.

The latter requirement was based on the conclusion reached by the Regulatory Review Committee at its July 7, 2005 meeting. See, <http://your.kingcounty.gov/ddes/RRC/RegReviewDocs/MinRRC05Jul07.pdf>. The Department recently received a request from the Ombudsman asking that the Regulatory Review Committee revisit its conclusion.

Discussion

In the A zone, kennels are a permitted use, subject to a requirement that they may only be operated as a home occupation as follows:

- 9.a. As a home occupation only, but the square footage limitations in K.C.C. chapter 21A.30 for home occupations apply only to the office space for the veterinary clinic, office space for the kennel or office space for the cattery, and:
- (1) Boarding or overnight stay of animals is allowed only on sites of five acres or more;
 - (2) No burning of refuse or dead animals is allowed;
 - (3) The portion of the building or structure in which animals are kept or treated shall be soundproofed. All run areas, excluding confinement areas for livestock, shall be surrounded by an eight-foot-high solid wall and the floor area shall be surfaced with concrete or other impervious material; and
 - (4) The provisions of K.C.C. chapter 21A.30 relative to animal keeping are met.
- b. The following additional provisions apply to kennels or catteries in the A zone:
- (1) Impervious surface for the kennel or cattery shall not exceed twelve thousand square feet;
 - (2) Obedience training classes are not allowed except as provided in subsection B.34. of this section; and
 - (3) Any buildings or structures used for housing animals and any outdoor runs shall be set back one hundred and fifty feet from property lines.

K.C.C. 21A.08.050B.9.

Kennel is a defined term under the King County Zoning Code. K.C.C. 21A.06.660. The definition does not make reference to any specific types of facilities, such as runs or exercise areas.

The King County Zoning Code does not define the terms "run" in the context of a kennel nor does it define "exercise area." However, in 2007 a new use of "animal specialty services" was added to the permitted use table. A new definition was also added for a kennel-free dog boarding and daycare service, which is defined as a "dog boarding or daycare facility that utilizes

rooms or outdoor exercise area, rather than cages or cement floored runs, to allow for and encourage the socialization, interaction and exercise of dogs." K.C.C. 21A.06.661. This definition clearly distinguishes between exercise areas and dog runs.

Information from the American Kennel Club, the Pet Care Services Association and King County Department of Executive Services' Animal Services and Programs Section suggests that "runs" are the fenced areas used to house dogs individually, or in small groups of 2 or 3. An exercise area is a larger area that may allow many dogs to run and interact with one another, consistent with the definition in K.C.C. 21A.06.661.

The Regulatory Review Committee at its July 7, 2006 meeting concluded that failure of K.C.C. 21A.08.050B.9. to reference outdoor exercise areas meant that outdoor exercise areas are not allowed for kennels that are subject to this condition. This conclusion appears to have been based on the assumption that if a specific element of a use is not mentioned in the zoning code, that element is not allowed.

As discussed above, outdoor exercise areas are common elements of a kennel. K.C.C. 21A.08.050B.9. should be read as only setting conditions on structures housing the dogs and runs. Other elements of a kennel, such as an outdoor exercise area, are allowed as long as they are consistent with other provisions of the King County Code. To read the code as suggested by the earlier RRC discussion could result in a significantly expanded code, as the County Council attempts to identify all aspects of each permitted use and determine whether it is permitted and under what conditions. It is much more reasonable to assume that as long as a specific element of a use is not subject to conditions, that element of the use is permitted. In the case of kennels in the A zone, runs are required to be enclosed by a solid wall or fence and to have a concrete or other impervious surface. Outdoor exercise areas, because they are not circumscribed in any way, would not be subject to these conditions.

In the case of outdoor exercise areas, King County Animal Control regulations do include provisions for outdoor facilities that give Animal Control authority to make sure that the facilities are properly constructed.

11.04.110 Animal shelters, kennels, catteries and pet shops - Outdoor facilities. Animal shelters, kennels, catteries and pet shops which have outdoor facilities for animals and birds shall:

A. Be constructed to provide shelter from excessive sunlight, rain, snow, wind, or other elements. In addition, such facilities shall be constructed to provide sufficient space for the proper exercise and movement of each animal contained therein;

B. Be constructed to provide drainage and to prevent the accumulation of water, mud, debris, excreta, or other materials and shall be designed to facilitate the removal of animal and food wastes;

C. Be constructed with adequate walls or fences to contain the animals kept therein and to prevent entrance of other animals.

Conclusion

Outdoor exercise runs are allowed as part of a kennel. K.C.C. 21A.08.050B.9.a., which requires a solid wall or fence for dog runs, does not apply to outdoor exercise areas. K.C.C. 11.04.110, which is administered by King County Animal Control, does establish standards for outdoor exercise areas and requires "adequate walls or fences to contain the animals."

2. Does a P-Suffix Condition that requires a 25 foot native growth protection buffer on all property boundaries adjacent to any urban development preclude extending a road through the native growth protection buffer to connect to roads in an adjacent subdivision? (Code Interpretation Request L08CI004)

Background

Roseanne Zemp filed a Code Interpretation Request concerning a P-Suffix Condition that applies to property she owns. Parcel 172308-9006 is zoned RA-5P. P-Suffix Condition SV-P36 imposes three conditions on the property. One on the conditions requires that "a twenty-five foot native growth protection buffer shall be placed on all property boundaries adjacent to any urban development."

Ms. Zemp has asked whether this requirement precludes road access through the buffer to an adjacent urban subdivision with dead end streets that end at the parcel boundary. Ms. Zemp notes that if she cannot provide road access through the native growth protection buffer, a road of nearly 3,600 feet that would have to cross five streams and several wetlands would need to be constructed.

Discussion

Parcel 172308-9006 was rezoned in 2001 from F to RA-5P. The parcel is slightly larger than 166 acres and is triangular shaped. Two sides of the parcel are adjacent to urban growth area and the city of North Bend. This is the Forster Woods subdivision. The remainder of the parcel is adjacent to RA-5 or RA-10 zoned property without any P-Suffix conditions or to F zoned property.

P-Suffix Condition SV-P36 applies to this parcel and reads as follows:

1. All residential lots shall be clustered on the lower (approximately 50 acre) portion of the property adjacent to the Forster Woods development;
2. A twenty-five foot native growth protection buffer shall be placed on all property boundaries adjacent to any urban development; and
3. The remainder of the parcel shall be voluntarily dedicated upon final plat approval as permanent open space and shall remain in a natural state.

There is little legislative history that discloses the King County Council's intent when it rezoned this property and added the P-Suffix Condition. The change was not a recommendation from the King County Executive. The amendment proposing to rezone the property was offered by Councilmember Pullen. The effect statement that accompanies the proposal mostly restates the

terms of the proposed condition. However, it does state that the clustering of residential lots on the lower 50 acres is done "so as not to disturb environmentally sensitive portions of the site."

The required native growth protection buffer is adjacent to the Forster Woods development. There are two roads through the subdivision that dead end at Ms. Zemp's parcel. In order to access these roads from her property, the roads would need to traverse the native growth protection buffer.

The King County Code contains no definition of a native growth protection buffer. The closest comparable term is the native growth protection easement that is referenced in K.C.C. 21A.24.325 and in the King County Surface Water Design Manual (SWDM). The SWDM defines the native growth protection easement as "an easement granted to the County for the protection of native vegetation within a sensitive area or its associated buffer." The definition goes on to note that this meaning of the term was replaced by "critical area" and "critical area buffer." Another related term used in the SWDM is "native growth retention area." This is defined as "the area of native vegetated surface set aside by a covenant, easement, or tract for purposes of implementing a flow control BMP."

Under any of these potential meanings, there is nothing to indicate that alterations of the native growth protection buffer are prohibited. In fact, with respect to critical areas, King County's Critical Area Regulations specifically allow road crossings in critical areas, either as an allowed alteration or as an alteration exception. See K.C.C. 21A.24.045 and 21A.24.070. In these circumstances, appropriate mitigation is required.

With respect to Native Growth Protection Easements, the form for the easement required by DDES does not preclude alterations to the easement area. The vegetation in area may not be cut or otherwise disturbed "without approval in writing from ... [DDES]."

In the particular circumstances of this property, there would be significant environmental impacts that would result from not allowing the road to cross the native growth protection buffer. Ms. Zemp's Code Interpretation Request included a Wetland and Stream Delineation Study prepared by the Watershed Company. A preliminary lot sketch shows that one stream crossing would be required to provide road access through the Forster Woods development. If the road crossing is not allowed, there would be five stream crossings and a significantly larger amount of impervious surface and loss of vegetation.

As noted above, a stated purpose of the clustering provisions of SV-P36 was to avoid disturbing environmentally sensitive portions of the site. If road access through the native growth protection buffer is not allowed, the result would be construction of a road that would disturb those areas that the P-Suffix condition explicitly directs to be set aside as permanent open space and remain in a natural state.

Conclusion

A road crossing is allowed through the native growth protection buffer required by P-Suffix Condition SV-P36. There is nothing in the legislative history of this P-Suffix condition to

indicate otherwise. With appropriate mitigation, road crossings are allowed through stream and wetland buffers, which are similar in purpose to the native growth protection buffer. Areas protected by Native Growth Protection Easements may also be disturbed upon approval by DDES. In addition, the alternative here would be to require a much longer road that would traverse several streams and cross portions of the property that SV-P36 requires to remain in a natural state. This would be more likely to result in greater overall environmental impact and would conflict with the purpose of SV-P36 to leave large portions of the property undisturbed.