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Regulatory Review Committee (RRC) Minutes

Meeting Date: August 2, 2022

Minutes finalized: August 15, 2022

TO: Jim Chan, Division Director
Mark Rowe, Deputy Division Director
Jina Kim, Senior Deputy Prosecuting Attorney
Doug Dobkins, Single Family Residential Product Line Manager
Sheryl Lux, Code Enforcement Product Line Manager
Ty Peterson, Commercial Product Line Manager
Chris Ricketts, Building Official and Fire Marshal
Scott Smith, Development Engineer

FM: Robin Proebsting, Legislative/Policy Analyst and RRC Co-Chair
Nancy Hopkins Goreé, Senior Planner and RRC Co-Chair

Attendees: Jeri Breazeal, Doug Dobkins, Nancy Hopkins, Jina Kim, Ty Peterson, and Robin Proebsting.

1. Concerning Temporary Use Permits (TUPs) and when the need for one is triggered.

Indexes

Subjects: Temporary Use Permits

Code: 21A.06.830, 21A.08.040, 21A.32.100, 21A.32.110, 21A.32.120

Background

There have been two recent complaints to code enforcement about instances where people gathered together for what could be termed an "event". *K.C.C. 21A.32.120 Temporary use permits - duration and frequency* describes limitations on the duration and frequency of "events" when a TUP is issued, but neither *K.C.C. 21A.32.100 Temporary use permits - uses requiring permits* nor *21A.06 Technical terms and land use definitions* define what an event is.

In one case that prompted a recent complaint, a property owner in the R-4 zone hosted live music in his backyard, advertised by flyers posted on utility poles in the community and on Facebook. He states that the music is acoustic (no amplifiers) and that King County Sheriff's Office deputies have been there and determined he was not above allowed noise levels. However, the video clip he sent from June 25th shows a microphone. The access to the property is a dead-end right of way. He stated there were about 20 people in attendance. It also appears there was a small, covered stage.

In another case, tenants of a property in the A-35 zone hosted people to serve drinks; it also appeared they were selling food, based on photos of a whiteboard listing foods and prices.

Discussion

K.C.C. 21A.32.100 describes the uses that require a temporary use permit; this includes subsection (A), "A **use not otherwise permitted in the zone** that can be made compatible for a period of up to sixty days a year." In the first example above, the live music gathering appears to fall under the code definition of Outdoor Performance Center in K.C.C. 21A.06.830 ("an establishment for the performing arts with open-air seating for audiences. Such establishments may include related services such as food and beverage sales and other concessions"). Outdoor Performance Centers are only permitted in the R1-8 zones when they are an accessory to a recreation or multiuse park of at least twenty acres located within the urban growth area or on a site immediately adjacent to the urban growth area (K.C.C. 21A.08.040.B.20), which the subject site is not—therefore Outdoor Performance Center is not a use permitted in the zone, and a TUP is triggered.

In the second example, the use falls under the code definition of "Eating and Drinking Places" (SIC code 58) which "includes retail establishments selling prepared foods and drinks for consumption on the premises; and also lunch counters and refreshment stands selling prepared foods and drinks for immediate consumption." Again, as a use not permitted in the agricultural zone, a TUP would be triggered by K.C.C. 21A.32.100.A, assuming the use could be made compatible.

Conclusion

Since in both of the cases above, people were engaging in uses that were not permitted in the zone, this would trigger a TUP. However, the lack of a definition or criteria around what an event is makes it difficult to enforce K.C.C. 21A.32.120.B.1 ("The temporary use shall not exceed a total of sixty days in any three-hundred-sixty-five-day period. **This subsection B.1. applies only to the days that the event or events actually take place.**")

Aside from the question of whether a TUP is triggered, RRC members agreed that public educational materials designed to help people better understand when a TUP might be needed would be helpful.

Further, code criteria to help staff determine whether a gathering constituted an "event" would help clarify interpretation of K.C.C. 21A.32.120.

2. Concerning Specialized Instruction Schools as accessory uses to residences.

Indexes

Subjects: Specialized instruction schools

Code: 21A.06.013, 21A.06.610, and 21A.06.1200

Background

Parcel 0525069070 is 4.8 acres and located in the RA-5 zone.

Research shows a second driveway and parking area installed on the property within a wetland buffer. Also found are several businesses. There is a detached building that was permitted in 2009 as an unheated storage building. That structure is now being used as a dance/yoga studio and is heated. There are 3 dance instructors and 4 yoga instructors listed on the web site, none of which is the owner of the property owner. Code Enforcement staff would consider this a specialized instruction school.

There is another structure on the property that was built by a prior owner as a garage. It has a partial second story. The building permit for the structure described it only as a garage. The garage doors are no longer on the structure. On the website there appears to be an acupuncture/massage/salon business in this structure. One of the acupuncturists is the owner of the property. There is a single-family dwelling unit on site and a couple of other out buildings. There are 9 other people listed on the web site for this part of the business.

1. Can one operate both a specialized instruction school and a home occupation on the same site?
2. Since the specialized instruction school is required to be accessory to the residence in the RA zone, does the owner/occupant have to be one of the instructors or can they lease the space out to separate instructors?
3. Is the parking added together and required to meet the home occupation requirements?
4. Home occupations have a restriction of 3 on-site employees. Independent of the specialized instruction school instructors, there are 9 “practitioners” listed on the web site. Do the 7 dance/yoga instructors count in this number also?
5. Home occupation restrictions limit traffic increase of no more than 4 vehicles at one time. Does the traffic for the classes figure into this at all?

Discussion

Relevant code standards include:

- 21A.06.013 Accessory use. Accessory use: a use, structure or activity that is: A. Customarily associated with a principal use; B. Located on the same site as the principal use; and C. Subordinate and incidental to the principal use.
- 21A.06.610 Home occupation: a limited-scale service or fabrication activity undertaken for financial gain, which occurs in a dwelling unit or accessory building and is subordinate to the primary use of the site as a residence.
- 21A.06.1200 Specialized instruction school: establishments engaged in providing specialized instruction in a designated field of study, rather than a full range of courses

in unrelated areas; including, but not limited to: A. Art; B. Dance; C. Music; D. Cooking; and E. Driving.

The committee noted that nothing in the K.C.C. limits primary uses to having no more than one accessory use; further, Code Enforcement investigation found that the businesses on the subject property had different websites for the acupuncture business and the dance/yoga studio business. Therefore, the acupuncture business falls under the Home Occupation use, and the dance/yoga studio falls under the Specialized Instruction School use. Each business would be subject to the code standards of these respective land uses.

Conclusion

1. Can one operate both a specialized instruction school and a home occupation on the same site?

Answer: Yes, nothing in the code prohibits more than one accessory use per primary use.

2. Since the specialized instruction school is required to be accessory to the residence in the RA zone, does the owner/occupant have to be one of the instructors or can she lease the space out to separate instructors?

Answer: The definitions of "accessory use" and "specialized instruction school" do not require the owner/occupant to be an instructor, but the definition of "accessory use" does include the standard that the use be "Customarily associated with a principal use", which the committee understood to mean that the owner of the principal use would at least need to own the business. (In a contrasting example, a property owner that leased out property for a specialized instruction school and who had no involvement in either ownership or instruction would not meet the standard of having an accessory use customarily associated with the principal use.)

3. Is the parking added together and required to meet the home occupation requirements?

Answer: No. Parking requirements for specialized instruction school should be counted separately from home occupation requirements. Pursuant to KCC 21A.18.030, "specialized instruction school" requires 1 parking space per classroom, plus 1 per two students.

4. Home occupations have a restriction of 3 on site employees. Independent of the specialized instruction school instructors, there are 9 "practitioners" listed on the web site. It would appear this would not be allowed since it exceeds the 3 on-site employees allowed by code. Do the 7 dance/yoga instructors count in this number also?

Answer: Yes, the number of nonresident employees associated with the home occupation "acupuncture/massage/salon business" is limited to no more than three who work on-site at the same time. However, dance/yoga business does not count in this number because the specialized instruction school is a separate land use from the home occupation.

5. Home occupation restrictions limit traffic increase of no more than 4 vehicles at one time. Does the traffic for the classes figure into this at all?

Answer: Because the specialized instruction school is a separate land use, the traffic limit from home occupation requirements do not apply to the dance/yoga classes.