



King County

Department of Development and Environmental Services

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REGULATORY REVIEW COMMITTEE

- MINUTES -

MEETING DATE: October 9, 2008

TO: Building Services Division Staff
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Chris Ricketts
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Jarrod Lewis
Joelyn Higgins

Land Use Services Division Staff
Randy Sandin, Manager
Lisa Dinsmore
Deidre Andrus
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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, Lisa Dinsmore, Mark Steinkamp, Holly Sawin, Joelyn Higgins, Deidre Andrus, Steve Bottheim, Jarrod Lewis, Joe Miles, Cristy Craig, Cass Newell, and Harry Reinert

- 1. Does a kennel on a RA zoned property originally permitted in 1968 and that was expanded in 2004 to include a "kennel free dog boarding and daycare facility" need to comply with the setback requirements of K.C.C. 21A.08.050B.36 in order to qualify as a permitted use? Does the kennel have to comply with the sign requirements in K.C.C. 21A.20 if a pre-existing sign was relocated to the roof of a barn because of the widening of a state highway? (Code Interpretation Request L08CI005.)**

Background

On August 25, 2008, Mr. Rhys Sterling filed a code interpretation request on behalf of his client, Centennial Kennels. Centennial Kennels is located on Parcel 102206-9112, a RA-5 zoned parcel located adjacent to State Route 18.

Centennial Kennels and its predecessors have operated under a conditional use permit issued in 1968. The site was originally triangular shaped and approximately 11.48 acres. Since that time, the property has been subdivided and is now approximately 5.87 acres. In addition, SR 18 has recently been expanded. This resulted in making a sign advertising Centennial Kennels that was located on the end of a barn on the site less visible to passing motorists. Centennial Kennels constructed two signs on the roof of a barn that is visible to passing motorists driving in both directions on SR 18.

There is a pending code enforcement complaint against Centennial Kennels. See E0600136. Mr. Sterling requests an interpretation of two code sections related to Centennial Kennels operation: K.C.C. 21A.08.050B.36, which establishes standards for a kennel free dog day care facility and K.C.C. 21A.20.060C relating to signs for commercial uses located in residential zones.

Discussion

Kennel-Free Dog Boarding and Day Care Facility Requirements. K.C.C. 21A.08.050 was amended by the King County Council in 2007 to add animal specialty services as a permitted use. Ord. 15816, Sec. 1. Animal specialty services are defined in SIC 0752 and include activities such as animal shelters, dog grooming, and showing of pets. In the RA zones, animal specialty services are a conditional use. Under two specific circumstances, animal specialty services are an outright permitted use. One is for animal rescue shelters that meet certain conditions, including a minimum site area and building setbacks. K.C.C. 21A.08.050B.35. The other is for "kennel-free dog boarding and daycare facilities" which also is subject to specific requirements related to lot size, building setbacks, and hours of operation. K.C.C. 21A.08.050B.36. As an outright permitted use, new kennel-free dog boarding facilities were allowed for only one year.

A kennel-free dog boarding and daycare facility is defined in K.C.C. 21A.06.661 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."

A building used by Centennial Kennels for kennel-free dog boarding is located approximately 30 feet from a neighboring residential parcel. That parcel was part of the Centennial Kennel property in 1968 when the kennel was originally permitted. K.C.C. 21A.08.050B.36 requires that buildings "housing dogs" at the kennel-free dog boarding and daycare facility must be at least 75 feet from neighboring properties.

Mr. Sterling argues that the building used for the daycare operation does not house or board dogs and that the 75 foot requirement does not apply. The verb "house" is not defined in K.C.C. Title

21A. The American Heritage College Dictionary defines the term to include "2. to shelter, keep, or store in or as if in a house. 3. To contain; harbor." This clearly covers the use of a building for daycare, where animals are sheltered, kept, or harbored. Mr. Sterling suggests that there is no need for a setback for a building being used for daycare as opposed to for housing overnight or for feeding. If the King County Council had intended to limit this provision to buildings used as a kennel or for overnight boarding, it could have made that intent clear. Instead, it used a more general term that encompasses both daycare and boarding activities.

Mr. Sterling suggests that if the setback is measured from the original property boundary, before the lot segregations that reduced it from over 11 acres to less than 5 acres, the setback requirement would be satisfied. He also suggests that King County somehow was complicit in creating a non-conforming use by approving the lot segregation in 1970. There is nothing in the King County Code to support this interpretation. At the time the lot segregation was approved, the building at issue here had not yet been constructed. K.C.C. 21A.08.050B.36 requires that a building housing dogs must be 75 feet from property lines. This calculation is determined at the time the use is established.

Finally, although Mr. Sterling does not state this explicitly, his request appears to be based on an assumption that if the building cannot be approved under K.C.C. 21A.08.050B.36, it would not be permitted at all. Kennel-free dog boarding and day care facilities, along with other animal specialty services, are allowed as a conditional use in the RA zone. As a conditional use, they are not subject to the requirements in Subsection B.36. The standards for review and approval of conditional uses are set forth in K.C.C. 21A.44.040. Therefore, although the building at issue here does not meet the requirements of K.C.C. 21A.08.050B.36 as an outright permitted use, it may be considered as a conditional use under 21A.44.040.

In conclusion, the building at issue does not satisfy the requirements for an outright permitted use under K.C.C. 21A.08.050B.36 because the building does not meet the 75-foot setback requirement. However, those setback requirements would not prohibit use of the building for a kennel-free dog boarding and day care facility as a conditional use. The provisions of K.C.C. 21A.08.050B.36 will be considered in evaluating a conditional use application, but they are not mandatory.

Sign mounted on roof. When SR 18 was expanded, an existing sign mounted on the side of a barn on the Centennial Kennel's property was no longer readily visible to passing motorists on SR 18. Centennial Kennels constructed new signs mounted on the roof of the barn that face both directions.

K.C.C. 21A.20.060 establishes general sign requirements. K.C.C. 21A.20.060C prohibits signs mounted on the sloping portion of a roof in the residential zones. K.C.C. 21A.20.060J provides that "Any sign attached to the sloping surface of a roof shall be installed or erected in such a manner that there are no visible support structures, shall appear to be part of the building itself, and shall not extend above the roof ridge line of the portion of the roof upon which the sign is attached."

K.C.C. 21A.20.080 establishes additional standards for signs in residential zones. Centennial Kennels is located in the RA zone, which is a residential zone. K.C.C. 21A.20.080A.1. provides that for non-residential uses in the residential zones "One sign identifying nonresidential uses, not exceeding twenty-five square feet and not exceeding six feet in height is permitted."

The signs constructed by Centennial Kennels violates several of these provisions. The structure supporting the signs are clearly visible. In addition, there are two signs, one facing each direction, and each sign is more than twenty-five square feet.

Mr. Sterling argues that the sign does not exceed the maximum size because each letter can be considered an incidental sign, which, under K.C.C. 21A.20.030, is exempt from limitations as long as the sign is less than two square feet. K.C.C. 21A.06.1120 defines an incidental sign as "a sign, emblem or decal designed to inform the public of goods, facilities, or services available on the premises." Examples of incidental signs include signs designating restrooms, hours of operation, property ownership, and recycling containers. The Centennial Kennel sign does not qualify as an incidental sign.

Mr. Sterling also suggests that the new sign should be considered as nothing more than the relocation of an existing sign to a new location. The flaw in this suggestion is that one sign has been replaced by two and that the new sign is on the roof in a manner that violates K.C.C. 21A.20.060J.

Mr. Sterling argues that signs that are painted on the roof are different from signs that are mounted and that the prohibition in K.C.C. 21A.20.060C does not apply to a sign painted on the roof. This is a correct reading of the code. In fact, DDES has suggested to Centennial Kennels that a sign painted on the roof of the barn as a resolution to the code enforcement issue with respect to the sign.

Mr. Sterling then argues that the number and size limitations in K.C.C. 21A.20.080A do not apply to Centennial Kennels because this would amount to a "taking of a valuable business property subject to just compensation." If there was a taking, it was due to the fact that the State of Washington expanded SR 18 which resulted in making the prior sign less visible. Centennial Kennels will need to take this issue up with the State of Washington. If Centennial Kennels believes that King County's sign codes result in a taking of a valuable business property, that is an issue that should be addressed through a different mechanism than a code interpretation.

In conclusion on the sign issue, the current sign violates provisions of K.C.C. 21A.20.060 that prohibit signs mounted on the sloping portion of a roof in the RA zone. However, K.C.C. 21A.24.060C does not prohibit painting a sign on the sloping portion of a barn roof. K.C.C. 21A.24.080A.1 does limit non-residential uses in the RA zone to one sign that is no larger than 25 square feet.

Conclusion

Kennel-Free Dog Boarding and Day Care Facility. K.C.C. 21A.08.050B.36 requires that a building housing dogs in a kennel-free dog boarding and day care facility must be at least 75 feet

from property lines in order to allow the facility as a permitted use. A building housing dogs includes buildings used in a day care operation as well as buildings used for boarding and overnight stays. The Centennial Kennels' building is less than 75 feet from a property line and therefore cannot be permitted as an outright permitted use. However, Centennial Kennels may apply for approval of the kennel free dog boarding and day care facility as a conditional use. The 75 foot setback requirement is not mandatory on a conditional use.

Sign mounted on roof. K.C.C. 21A.20.060C prohibits signs mounted on the sloping portion of roof in a residential zone. K.C.C. 21A.20.060J requires that signs that are mounted on a sloping portion of a roof, when allowed, cannot extend above the roof line and that the supporting structure cannot be visible. Because the Centennial Kennels site is in a residential zone, a sign mounted on the sloping portion of the roof is not allowed. In addition, the Centennial Kennel signs have a visible supporting structure. A sign painted on the roof is not mounted and, therefore, is not prohibited by K.C.C. 21A.20.060C.

K.C.C. 21A.20.090A.1. limits non-residential uses in the residential zones to one sign not more than 25 square feet. Therefore, if Centennial Kennels decides to paint a sign on the roof, only one sign is permitted and the sign is limited to 25 square feet.

The individual letters of the sign are not incidental signs that are exempt under K.C.C. 21A.20.030.

2. May a bed and breakfast that uses tree house structures be permitted within a conservancy shoreline environment?

Background

TreeHouse Point is a bed and breakfast located on the Raging River on a property zoned RA-10. Portions of the property are located in mapped severe and moderate channel migration hazard areas. The Raging River is a shoreline of the state. The area upland from the ordinary highwater mark of the river is designated as conservancy under the King County Shoreline Master Program.

According to the TreeHouse Point website, it has two rooms in the main house, two overflow rooms, two treehouses, and a cabin tent. See, <http://www.treehousepoint.com/lodging.html> (visited October 31, 2008).

Discussion

A bed and breakfast guesthouse is a permitted use in the RA zones, subject to the following condition:

10. Only as an accessory to the permanent residence of the operator, and:
 - a. Serving meals to paying guests shall be limited to breakfast; and
 - b. The number of persons accommodated per night shall not exceed five, except that a structure that satisfies the standards of the Uniform Building Code as adopted by King County for R-1 occupancies may accommodate up to ten persons per night.

K.C.C. 21A.08.030B.10.

In the Conservancy shoreline environment, commercial development is not allowed, K.C.C. 25.24.070, and multi-family residential development is generally prohibited, except when clustering is necessary to avoid development in critical areas, K.C.C. 25.24.090A.

K.C.C. 25.08.420 defines "Residential development" for purposes of the shoreline master program as:

A. Residential Development, Single-family. "Single-family residential development" or "single-family development" means development consisting of one or more one-family dwellings.

B. Residential Development, Multifamily. "Multifamily residential development" or "multifamily development" means development consisting of one or more two-family dwellings and/or multiple dwellings.

K.C.C. Title 25 does not define commercial development, but does describe commercial development as a commercial activity. See, e.g. K.C.C. 25.16.070.

The King County Shoreline Master Program Policies do include a discussion of commercial development.

Commercial development pertains generally to the use or construction of facilities for transaction and sale of goods and services as opposed to industrial development (treatment together with ports) which pertains to the design and fabrication of products.

Commercial uses which are not shoreline dependent or water oriented are encouraged to site on upland plateaus.

Commercial developments in King County shorelines range from small businesses within residences to high-rise office buildings. In general shoreline dependent and water-oriented commerce are one or a combination of two types: commercial nonsales and commercial sales.

Commercial non-sales consist primarily of commercial moorage and boat launching. Terminal transfer facilities which are a form of non-sales commerce, are addressed in the "Ports and Industry" Use Activity. Commercial sales include storage, rental and sales of water vehicles and equipment, access, shoreline artifacts, food and services.

The principal impact factors upon the shoreline from commercial development are pollutants (e.g., erosion, sedimentary, chemical and microbial) and aesthetic destruction. Erosive pollutants from commercial development are generated from

surface runoff and both surface and sub-surface subsidence. Chemical pollution is derived from fuel spillage. Microbial loading arises from poor containment of organic wastes associated with human habitation and recreational activities.

King County Shoreline Master Program, *Ordinance 3692 (1978)*.

This discussion recognizes that commercial development can vary widely, including even a small business within a residence. The policies for commercial development, however, focus on the types of commercial development that are likely to have significant impacts on the shoreline, such as boat moorage and launching facilities.

A strict reading of this discussion together with K.C.C. 25.24.070, would lead to the conclusion that a book keeper could not operate a bookkeeping business as a home occupation from a residence that is located in the conservancy environment.

The policies that accompany the discussion of commercial development shed some additional guidance. Those policies are largely focused on activities that have potential impacts on the shoreline environment, particularly pollution and visual. These are the impacts identified as the primary impact factors in the discussion of commercial development. A commercial activity that does not create these impacts is not the type of activity that the policies concerning commercial development address. Thus, a home occupation that has no impact on the shoreline jurisdiction would not appear to be the type of commercial development that is contemplated.

This same approach would apply in to a bed and breakfast guesthouse that that makes use of an existing single family residence. In this case, the guesthouse would not result in significant environmental or visual impacts beyond those normally associated with a single family residence. However, if the bed and breakfast guesthouse expands its operations beyond the residence, such as by constructing additional detached accessory structures as guest rooms, the environmental and visual impacts will increase, bringing it closer to the types of activities that the Shoreline Master Program considers to be commercial development and which K.C.C. 25.24.070 prohibit in the conservancy shoreline.

The treehouses also be considered to be accessory living quarters, which are defined by K.C.C. 21A.06.010 as "living quarters in an accessory building for the use of the occupant or persons employed on the premises, or for temporary use of guests of the occupant. Such quarters have no kitchen and are not otherwise used as a separate dwelling unit." Accessory living quarters are a residential accessory use under K.C.C. 21A.08.030. Although a single family residence is allowed only one accessory dwelling unit, see K.C.C. 21A.08.030B.7.a.(1), there is no similar limit on the number of accessory living quarters that are allowed for a single family residence in the RA zone.

However, to the extent that the treehouses used in the bed and breakfast are used as rooms for paying guests of the bed and breakfast, they do not qualify as "accessory living quarters." Accessory living quarters are intended either for a caretaker or similar employee of the owner or for the owner's guests. In this context, a guest is a non-paying guest, not the paying guest of a

bed and breakfast guesthouse. This conclusion is consistent with the rule of statutory construction that where there is a potential conflict between two statutory or code provisions, the more specific controls over the more general. Here, the more specific provisions are those that govern the bed and breakfast guesthouse.

This particular property presents that additional issue of the interaction between two different regulatory schemes – the Shoreline Management Act and Shoreline Master Program as implemented through K.C.C. Title 25 and the Growth Management Act and the Critical Area Regulations codified in K.C.C. Chapter 21A.24. Both programs recognize that the most protective regulations should apply. K.C.C. 21A.24.020D provides that “When any other chapter of the King County Code conflicts with this chapter or when the provisions of this chapter are in conflict, the provision that provides more protection to environmentally critical areas apply unless specifically provided otherwise in this chapter or unless the provision conflicts with federal or state laws or regulations.” In a similar manner, K.C.C. Title 25 includes provisions that direct that development in the shorelines "shall be done in accordance with regulations and procedures set forth in K.C.C. 21A.24."

The bed and breakfast at issue here is located adjacent to the Raging River, which is classified as Type S water under K.C.C. Chapter 21A.24. In the rural area, Type S waters have a 165 foot buffer. New residential structures and residential accessory structures are not generally allowed within an aquatic area buffer as an allowed alteration, but they may be permitted as an alteration exception if the requirements of K.C.C. 21A.24.070 are satisfied.

In addition, portions of the property are located within a mapped channel migration hazard area and are subject to additional limitations. In the severe channel migration hazard area, new residential structures are not allowed and only farm related non-residential structures are allowed. K.C.C. 21A.24.045D.2 and D.3. Therefore, any structures associated with the bed and breakfast are not allowed within the severe channel migration hazard area.

In the moderate channel migration hazard area:

C. The following standards apply to development proposals and alterations within the moderate channel migration hazard area:

1. Maintenance, repair or expansion of any use or structure is allowed if the existing structure's footprint is not expanded towards any source of channel migration hazard, unless the applicant can demonstrate that the location is the least subject to risk;

2. New primary dwelling units, accessory dwelling units or accessory living quarters, and required infrastructure, are allowed if:

a. the structure is located on a separate lot in existence on or before February 16, 1995;

b. a feasible alternative location outside of the channel migration hazard area is not available on-site; and

c. to the maximum extent practical, the structure and supporting infrastructure is located the farthest distance from any source of channel

migration hazard, unless the applicant can demonstrate that an alternative location is:

- (1) the least subject to risk; or
- (2) within the outer third of the moderate channel migration hazard area as measured perpendicular to the channel;
3. New accessory structures are allowed if:
 - a. a feasible alternative location is not available on-site; and
 - b. to the maximum extent practical, the structure is located the farthest distance from the migrating channel;

K.C.C. 21A.24.275C. In order to locate the treehouses or other structures in the moderate channel migration hazard area, an applicant must demonstrate that there is not another feasible location on the property and must also locate the structures as far away from the migrating channel as possible.

K.C.C. Title 25 also establishes standards for structures located within the shoreline jurisdiction that are in some cases more restrictive than the standards in K.C.C. Chapter 21A.24. K.C.C. 25.24.030B limits non-agricultural structures to a maximum height of 35 feet above grade level. In addition, K.C.C. 25.16.110, which under K.C.C. 25.24.090B applies to the conservancy environment, provides:

Accessory structures to the residence may be placed within the required shoreline setback, provided:

- A. No accessory structure, except swimming pools, shall cover more than one hundred fifty square feet;
- B. No accessory structure shall obstruct the view of the neighboring properties;
- C. No accessory structure shall exceed eight feet in height.

Under K.C.C. Title 25, "'Height' shall be measured from average grade level to the highest point of a structure; provided, that appurtenances such as television antennas and chimneys shall not be used in calculating height." K.C.C. 25.08.240. Therefore, if any of the treehouses are located within the shoreline setback, which is 50 feet in the conservancy environment, they would be limited to eight feet in height as measured from the ground and would be limited to 150 square feet floor area. Outside of the shoreline setback, the treehouse structures could not be more than 35 feet in height above grade level.

Conclusion

A bed and breakfast guesthouse operated from a single detached residential structure is a residential accessory use for purposes of K.C.C. Title 25, the Shoreline Master Program. If the guesthouse uses accessory structures as part of the bed and breakfast, the guesthouse may be considered to be a commercial activity rather than a residential accessory use.

K.C.C. 21A.08.030B.10 limits the bed and breakfast to serving breakfasts and generally only allows 5 guests per night.

New residences and residential accessory structures are not allowed in the severe channel migration hazard area. They may be allowed in the moderate channel migration hazard area if there is no other feasible alternative on site and if to the maximum extent practical the structures are located away from the migrating channel.

In a conservancy shoreline environment, a residence may not exceed 35 feet in height as measured from grade level. Accessory residential structures located within the shoreline setback are limited to eight feet in height and may not exceed 150 square feet floor area. Outside the shoreline setback, the accessory structures are subject to the 35 foot height limit.