



King County

Department of Development and Environmental Services

900 Oakesdale Avenue Southwest
Renton, WA 98057-5212

206-296-6600 TTY 206-296-7217

www.kingcounty.gov

FINAL CODE INTERPRETATION L08CI003

Background

On April 23, 2008, Mr. Todd Lawson requested a Code Interpretation of K.C.C. 21A.38.100C.8 relating to building heights in the special district overlay. Mr. Lawson posed two questions relating to this section:

1. Is it required to lower the height within 50 feet of the SO-100 boundary edge if the project does not use the incentive to increase height?
2. Is the height setback of 50 feet from the perimeter measured from the far side of the alley or from the subject parcel's property line?

The request identifies four specific parcels that are affected by the proposal. These are 721140-1355, 630340-0250, 630340-0260, and 630340-065. Parcel 630340-0250 is related to permit B06C0179. Parcel 721140-1355 is related to permit A07P0307.

Discussion

1. Is it required to lower the height within 50 feet of the SO-100 boundary edge if the project does not use the incentive to increase height?

K.C.C. 21A.38.100 states the purpose of the special district overlay as follows:

A. The purpose of the commercial/industrial special district overlay is to accommodate and support existing commercial/industrial areas outside of activity centers by providing incentives for the redevelopment of underutilized commercial or industrial lands and by permitting a range of appropriate uses consistent with maintaining the quality of nearby residential areas.

K.C.C. 21A.38.100C.8 provides:

C. The standards of this title and other county codes shall be applicable to development within the commercial/industrial special district overlay except as follows:

...

8. The building height limits of this title shall be waived, provided that the height limit within 50 feet of the perimeter of the overlay district shall be 30 feet.

The base height in NB, RB, and CB zones is 35 feet. K.C.C. 21A.12.040A. Mr. Lawson asks whether the provisions of K.C.C. 21A.38.100C.8 apply if a development proposal does not propose to exceed the base height limits of the zone.

Mr. Lawson argues that the lower height limit is only applicable if a development proposal takes advantage of the flexibility offered by the special district overlay. He suggests that the phrase "provided that" in C.8. makes this clear.

Mr. Lawson's argument fails to take into account the entire section of code. The introductory clause states that the standards of K.C.C. 21A apply "except as follows," making clear that each of the subsections under C. are exceptions to the general standards of Title 21A.

Thus, each of the subsections establishes an alternative development standard that applies to developments in the overlay zone. The "provided that" language that Mr. Lawson refers to does not mean that the 30 foot height limit applies only if a development proposal chooses to exceed the maximum heights established in K.C.C. 21A.12.040A. Rather, it limits heights in the fifty feet adjacent to the perimeter of the overlay zone because there are no height limits in the remainder of the zone.

It is also significant that K.C.C. 21A.38.100C.8 states that the height limits "shall be waived." K.C.C. 1.02.030B. notes that for purposes of interpreting the King County Code "'May' is permissive. 'Shall' and 'will' are mandatory." If the King County Council had intended to make the waiver of building heights optional, the Council would have stated that the height limits "may be waived."

Mr. Lawson also describes correspondence with Department of Development and Environmental Services staff in which he believes he was told that the 30 foot height limit in K.C.C. 21A.38.100C.8. applies to an entire parcel, even to those portions of the parcel that are more than 50 feet from the perimeter. This is not a correct reading of the code provision. This section clearly provides that there are no building height limits, except "that the height limit within 50 feet of the perimeter of the overlay district shall be 30 feet."

2. Is the height setback of 50 feet from the perimeter measured from the far side of the alley or from the subject parcel's property line?

Mr. Lawson suggests that if there is an alley, or presumably a street, that the measurement should be taken from the opposite side of that alley. He argues that this would provide the "same quality of transition" as when two properties are immediately adjacent to each other but in different zones."

Although Mr. Lawson may be correct in his reasoning from a design standpoint, the code provision clearly states that the measurement should be made from "the perimeter of the overlay district." In this instances, the overlay district follows the property lines, not the alley. Therefore, the 30 foot limit on building height is measured from the edge of the overlay district, not the far edge of the alley.

Decision

K.C.C. 21A.38.100 establishes development standards for a special district in order to encourage redevelopment of commercial and industrial areas. K.C.C. 21A.38.100C.8. waives building heights in the overlay district "provided that the height limit within 50 feet of the perimeter of the overlay district shall be 30 feet."

Mr. Todd Lawson has posed two questions relative to interpretation of this provision:

1. Is it required to lower the height within 50 feet of the SO-100 boundary edge if the project does not use the incentive to increase height?

The answer to this question is yes. K.C.C. 21A.38.100C.8. establishes a development standard for building heights in the overlay district. In the overlay district, there are no building heights, except within 50 feet of the overlay district perimeter, where building heights are limited to 30 feet.


2. Is the height setback of 50 feet from the perimeter measured from the far side of the alley or from the subject parcel's property line?

K.C.C. 21A.38.100C.8 provides that building heights are limited to 30 feet "within 50 feet of the perimeter of the overlay district." In this case, the overlay district coincides with the parcel boundaries. Therefore, the measurement is made from the parcel boundary, not from the far side of the alley as suggested by Mr. Lawson.

Finality of Code Interpretations

Under K.C.C. 2.100.040, "If the code interpretation request relates to a specific development proposal that is pending before the department of development and environmental services ..., the code interpretation shall become final when the department of development and environmental service issues its final decision on the underlying development proposal for a type 1 or 2 decision" The director determines that this code interpretation relates to B06C0179, a

Type 1 decision, and A07P0307, a Type 2 decision. Therefore, this code interpretation shall become final when the department issues its final decision on B06C0179 or A07P0307, whichever occurs first.



Stephanie Warden
Director
Development and Environmental Services

6/19/08
Date