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3 **BEFORE THE HEARING EXAMINER FOR KING COUNTY**

4 In re the matter of the Appeal by
5 CEDAR RIVER MONTESSORI SCHOOL

6 Appellant,

7 RE Preliminary Determination,
8

PREA20-0123

NOTICE AND STATEMENT OF
APPEAL OF PRELIMINARY
DETERMINATION

9 **A. Appellant and Appellant’s Interest and Standing.**

10 This appeal is brought by:

11 CEDAR RIVER MONTESSORI SCHOOL
12 15828 SE Jones Road
13 Renton, WA 98058

14 CEDAR RIVER MONTESSORI SCHOOL, (“Cedar River”) brings this appeal to
15 challenge the Preliminary Determination entitled Zoning Review Comments for PREA20-
16 0123 (the “Determination”) for Cedar River. This appeal sets forth the Notice of Appeal and
17 the Appeal Statement of Cedar River.

18 Cedar River has legal interest and standing to bring this appeal as the property owner
19 and applicant.

20 **B. Jurisdiction.**

21 This appeal is filed to the King County Hearing Examiner consistent with the Right to
22 Appeal instructions in the Determination and consistent with KCC 20.20.030(D) and
23 20.22.080.
24
25

1 **C. Decision Appealed.**

2 King County Department of Local Services, Permitting Division Preliminary
3 Determination entitled Zoning Review Comments for PREA20-0123 for Cedar River dated
4 June 16, 2020, attached hereto as Exhibit A.

5 **D. Appeal Issues and Errors in Determination**

6 Whether the Department erred in concluding King County Code requires another
7 conditional use permit for the proposed modification, namely enclosure of an existing
8 pavilion to serve as an enclosed, flexible use space to continue to serve the existing student
9 body.

10 Whether the Department erred in finding that the 1977 CUP operates to strictly limit
11 student enrollment and school size in light of changes to King County Code procedural and
12 permitting requirements in subsequent decades.

13 Whether the Department erred in concluding Cedar River's proposal to enclose the
14 pavilion is an expansion rather than a modification under KCC 21A.42.210.A.

15 Whether the Department erred in its conclusion that IBC Chapter 3 determines
16 whether the use is an expansion or modification.

17 Whether Cedar River may continue to serve its current enrollment for Pre-
18 Kindergarten through grade 8.

19 Whether the County erred in finding the 1983 portable classroom was not permitted.

20 **E. Factual Background and Summary.**

21 In 1977, Cedar River Montessori was formally established under a Conditional Use
22 Permit. At that time, the site was zoned a combination of SR and RS 15,000. As reviewed,
23 the school disclosed its plans for multiple phases, including preschool, grade school and even
24 dormitory and conference facilities, although the School has not pursued the latter facilities.
25

1 Since the CUP, the County rezoned the property to RA. Cedar River is not served by public
2 sewer.

3 At the time of the CUP, the property was privately owned by an unrelated owner.
4 Based on Cedar River's best information and believe, the Farrell family purchase the
5 property in 1982 and added a portable in 1983. The Cedar River Montessori School became a
6 separate 501(c)3 non-profit corporation in 1986. The portable was used as part of the set of
7 classrooms for the school consistently over the decades.

8 In 2006, the County approved an expansion of Cedar River by allowing the placement
9 of a double classroom modular building that increased the school's student capacity. As part
10 of that expansion, the evidence will show that the County concluded that no additional CUP
11 was required for the expansion of the existing school. On October 30, 2006, Nancy Hopkins
12 emailed Cedar River's representative, Bruce Johnson of Concept Engineering, that no CUP
13 was required under King County Code: "Dave Baugh and I visited the revisited the issue and
14 after some research and discussion agree existing schools (including middle/high schools) are
15 allowed to be modified without CUP."

16 Since 2006, the County further amended its code to address modifications and
17 expansions of existing schools in the RA zone. Ordinance 17485. Those amendments were
18 consistent with Ms. Hopkins determination, i.e. that an existing elementary school like Cedar
19 River does not require a CUP for an expansion or modification. For purposes of Cedar
20 River's operations, Code provides "**the department may review and approve an**
21 **expansion or modification** of an elementary school authorized by an existing land use
22 permit even if the use is not permitted outright in the RA zone." KCC 21A.42.210.A
23 (emphasis added). Beyond this, modifying that last clause regarding zoning, the school
24 expansion or modification "shall conform to all other provisions of this title." *Id.*
25

1 Cedar River’s proposal is simply to enclose a covered pavilion to continue to use as a
2 flexible space. This proposal is a modification of developed space which the school is
3 currently using – there is no expansion or creation of new facilities. Code defines the term
4 “expansion” as “the act or process of increasing the size, quantity or scope.” KCC
5 21A.06.427. Because the space is already being used for school functions, Cedar River’s
6 proposal is not an expansion as defined by Code. Instead, it is better categorized as a
7 ‘modification’, which is, again, expressly allowed without requirement for a CUP under
8 KCC 21A.42.210.A.

9 Neither King County Code nor Washington State limit the range of service that an
10 elementary school may provide to anything less than the commonly recognized pre-K or
11 kindergarten through 8th grade. Cedar River serves children between pre-K through 8th
12 grades, which, as the evidence will show, is well-established elementary school model
13 throughout Washington State. For example in the Seattle School District alone, there are ten
14 elementary schools that serve pre-K or K through 8th grade. This elementary school system
15 provides a strong community for mentorship, consistency of the teaching environment,
16 personal growth and learning into adolescence, and strong ties between the various students.
17 Cedar River plans to continue providing these vital services to its study body for years to
18 come. This system is highly regulated under Washington State law and the Department of
19 Health and again, the preK-8 model is common and a strongly supported educational model.

20 The County has previously recognized the same range of grades that Cedar River’s
21 elementary schools serves. The County also looked at this question in 2006 and recognized
22 the range of grades that elementary schools serve. As the evidence will show, Ms. Hopkins
23 noted elementary schools range from kindergarten through 8th grade. The critical cut-off for
24 purposes of regulation is between 8th and 9th grade. A school may be limited to ‘middle’ or
25 ‘junior high’, however an elementary school may serve the larger range, up through 8th grade,

1 if that makes sense for its student body and certified instructors. Cedar River has asked the
2 County to continue to recognize this flexible range of elementary school services as the
3 County recognized in 2006.

4 Cedar River intends to review the proposed record to be provided by the County in
5 this appeal, supplement as may be appropriate and provide argument in support of its
6 position.

7 **F. Harm and Relief Requested.**

8 Cedar River will be harmed by the Determination, unless reversed and revised,
9 because of increased costs and risks associated with the requirement to undergo a subjective,
10 Conditional Use Permit process, rather than the outright permitting process to which it is
11 entitled under current Code.

12 For the reasons explained above, Cedar River respectfully requests the Hearing
13 Examiner to review the evidence, legal arguments regarding the Determination and issues
14 listed herein, and reverse and remand the Determination to the Department for further
15 processing consistent with his final decision. Specifically, Cedar River requests the Examiner
16 conclude that Code does not require an additional CUP under Cedar River's circumstances
17 and that Cedar River may continue to operate in its current format and enrollment.

18 DATED this 6th day of July, 2020.

19 JOHNS MONROE MITSUNAGA
20 KOLOUŠKOVÁ, PLLC

21 
22 By _____
23 Duana T. Koloušková, WSBA #27532
24 Attorneys for Cedar River Montessori
25 School

01-302-1 Notice and Statement of Appeal 7-6-20



King County

Permitting Division

Department of Local Services

35030 SE Douglas Street, Suite 210
Snoqualmie, WA 98065-9266

206-296-6600 | Relay: 711

<https://kingcounty.gov/permits>

Pre-application Meeting June 16, 2020
PREA20-0123 Cedar River Montessori School Expansion
Zoning Review Comments

Sherie Sabour, Permitting Division 206-477-0367/ sherie.sabour@kingcounty.gov

Proposal:

Expansion of an existing Montessori School by conversion of existing outdoor pavilion to classroom space to be used by different groups of students. Applicant stated that at this time, school has 121 students enrolled, with capacity for 130 and this addition would not increase student enrollment capacity.

History and Background:

Subject parcel is approximately 12 acres in size, zoned Rural Area with a residential base density of one dwelling unit per five acres (RA-5) and developed with an existing Montessori School established in 1977 through a Conditional Use Permit (CUP) file no. 77-22-C. CUP was to legalize the existing daycare up to 50 children and allow an elementary school for grades one through five, for up to 40 children. Hearing examiner decision condition of approval required the School to obtain all required permits to establish the use by November 9, 1978.

Hearing examiner decision also stated that any future expansion beyond phase one would require an additional CUP application, notice, review and hearing.

Since establishment, school has gone through several expansions by addition of two portable classrooms (single & double) and expansion of the existing building by enclosing covered deck areas without any CUP.

Findings:

1. In 2006 when the school applied for the building permit (B06C0099) for a double portable classroom addition, the question came up about how and when the school was established. On June 29, 2006, in response to questions about legality of the existing building, Bruce Johnson with Concept Engineering provided a copy of the CUP decision and the State approvals from Department of Labor and Industries (dated 9/23/1983) and the Fire Marshal (dated 9/7/1983) for the modular classroom. According to King County record, no building permit has been issued for the single portable classroom that was added in 1983.
2. The 2006 building permit for the double modular classroom was approved under an earlier, different zoning code. Since then the Code and King County Comprehensive Plan (KCCP) have been changed to not allow new schools in the Rural Area zone unless consistent with KCCP policies.

3. Per KCC 21A.08.050, Elementary and Middle Schools may be located outside the urban growth area only if allowed by KCCP policies and only as a reuse of an existing public school. Based on KCCP policy R-327, an existing elementary and middle school may be modified or expanded but should not be converted to a high school. In this case the school could be expanded if consistent with KCC 21A.42.210.
4. KCC 21A.42.210 states that the Department may review and approve an expansion of a school authorized by a land use permit if the use is not permitted outright in the RA zone as long as expansion conforms to all other provisions of this title and not to exceed 10% allowed in building square footage, impervious surface, parking and building height. In this case, the school has exceeded the allowed 10% square footage by addition of two modular classrooms and other expansions. Therefore, a CUP is required to allow additional square footage to the School facility.
5. The 2006 building permit plan showed 19 parking stalls on the site; however, recent aerial is showing a parking lot that could accommodate up to 40 parking stalls. This is an expansion of parking lot and possibly impervious surface by more than 10%.
6. Original CUP limited number of students to 90, building permit in 2006 stated that school has 100 students and with the pre-application meeting request, school stated that they have 121 students enrolled. This is also exceeding the original CUP requirement by more than 10%.

Conclusion:

As determined by the building official conversion and change of occupancy of the pavilion from a R occupancy for residential use to an E occupancy classification for school use (as defined by IBC Chapter 3) is considered increase of square footage for educational use, therefore it is an expansion of school facility. Requiring a new CUP for any expansion is consistent with KCC21A.42.210 and the Hearing examiner's decision, which meant to limit size of school and number of enrollments.

Right to Appeal:

This action may be appealed in writing to the King County Hearing Examiner, with a fee of \$250 (check payable to King County Office of Finance).

Filing an **appeal by mail only** requires actual delivery of an appeal statement and an appeal fee to the King County Department of Local Services, Permitting Division prior to the close of business 4:00 p.m. on **July 10, 2020**.

The appeal statement shall: 1) Include a copy of, or clearly identify, the decision being appealed; 2) Identify the location of the property subject to the appeal, if any; 3) Identify the legal interest of the appellant; 4) Identify the alleged errors in the decision; 5) State specific reasons why the decision should be reversed or modified; 6) State the harm suffered or anticipated by the appellant; and 7) Identify the relief sought.

Failure to submit a timely and complete appeal statement and the appeal fee deprives the Examiner of jurisdiction to consider the appeal. Appeals **must be mailed** to the Permitting Division addressed as follows:

LAND USE APPEAL
Department of Local Services - Permitting Division
35030 SE Douglas St., Suite 210
Snoqualmie, WA 98065-9266

A request for a pre-hearing conference may be made by any party. For more information regarding appeal proceedings and pre-hearing conferences, please contact the Office of the Examiner at 206-477-0860 for a Citizens' Guide to the Examiner hearings and/or read K.C.C. 20.22. The Web address is:

http://metrokc.gov/council/HearingExaminer/guide_hearings.htm.