King County
Department of Development and Environmental Services
900 Oakesdale Avenue Southwest
Renton, WA 98055-1219

REGULATORY REVIEW COMMITTEE

- MINUTES -

MEETING DATE: JULY 14, 2004

TO: Building Services Division Staff
Mike Dykeman, Interim Manager
Chris Ricketts
Jim Chan
Kenneth Dinsmore
Pam Dhanapal
Stephanie Warden, Director
Harry Reinert, Special Projects Manager
Paul Reitenbach, Senior Policy Analyst
Tim Barnes, Prosecuting Attorney's Office

Land Use Services Division Staff
Joe Miles, Manager
Lisa Dinsmore
Beth Deraitus
Steve Bottheim

FM: Harry Reinert, Co-Chair

Present: Steve Bottheim, Jim Chan, Beth Deraitus, Pam Dhanapal, Kenneth Dinsmore, Lisa Dinsmore, Nancy Jo Perdue, Harry Reinert, Paul Reitenbach and Chris Ricketts

1. How should custom slaughterhouses be handled in the zoning code?

Background
A property owner is operating a custom slaughter house. Goats and sheep are brought in from another location. Customers select which animals they want, and the livestock is slaughtered on the property.

Discussion

The Standard Industrial Classification Manual (SIC) has different classifications for slaughter houses and custom slaughtering. Custom slaughtering is classified under SIC 0751, Livestock Services, Except Veterinary. Regular slaughtering plants classified under SIC 2001, Meat Packing Plants.

The Zoning Code includes slaughtering plants in 21A.08.080 as Food and Kindred Products. This includes SIC Major Industry 20. In the A, F, and RA zones, these activities are allowed only for products grown on site. In the RB and I zones, slaughtering is allowed as a conditional use. The Zoning Code contains no provisions that apply to SIC 0751, which includes custom slaughtering. K.C.C. 21A.02.070D allows the Director to determine how to classify a land use that is not included in a land use table.

The Committee concluded that custom slaughtering under SIC 0751 is similar to slaughtering under SIC 2001 and that it should therefore be allowed in the same zones and on the same conditions as slaughtering.

Conclusion
Custom slaughtering is not specifically addressed in the zoning code. It is included in SIC category 0751. The Committee recommends the custom slaughtering be allowed in the same zones under the same conditions as slaughter houses.

2a. What constitutes "area devoted to" a home occupation as addressed in 21A.30.080A?

Background
K.C.C. 21A.30.080 governs home occupations and includes limitations on the total "area devoted to" the home occupation. Not more than twenty percent of the floor area of the dwelling unit can be devoted to the home occupation. The Zoning Code does not define the phrase. K.C.C. 21A.30.080A does not allow attached garages and storage buildings to be included in the area used for calculating the floor area of the dwelling unit. However, these areas can be used for storage of goods related to the home occupation.

Discussion
The answer to the question depends on whether any use of an area as part of the home occupation means that the area "is devoted to" the home occupation.

The second meaning of "devoted" in the dictionary is "to give over or direct (as time, money, or effort) to a cause, enterprise, or activity." This implies that something more than casual or occasional use is required to make an area "devoted to" the home occupation.

Examples.

- A home bathroom would not be counted as being devoted to the home occupation, even if it is used during business as part of the business. However, a separate bathroom used mostly by customers and the proprietor as part of the business would be considered to be "devoted to" the home occupation.

- If customers must go through a door and down a hallway that also serves as a hallway between the rooms of the residence, those common areas would not be considered to be "devoted to" the business. However, if the entrance to the business is through a separate door and hallway, even though there might access from the residence, that area would be considered to be “devoted to” the home occupation.

- A laundry room that is used to wash the clothes for the business owner and the residents would not be considered to be "devoted to" the home occupation.

Conclusion
Areas predominately or exclusively used for the business should be considered as "area devoted to" a home occupation. Casual or occasional use of areas by the home occupation that are predominately used as part of the residence are not areas “devoted to” the home occupation.

2b. Are incidental sales allowed in a home occupation as addressed in 21A.30.080.F?

Background
An osteopathic physician, who operates his practice from his home, wants to sell incidental items such as splints, braces, casts, and vitamins. A hairdresser, with a home occupation, wants to sell shampoo, conditioner, combs and brushes to their clients.

Discussion:
K.C.C. 21A.30.080.F reads:

> F. Sales [for home occupations] shall be limited to:
> 1. Mail order sales; and
> 2. Telephone sales with off-site delivery;

Sales of items that are part of the service provided by the home occupation are allowed. This would include sales of shampoo, conditioner, brushes, etc. sold to a customer at the time of providing the service. Similarly, selling medicines, splints, braces, or vitamins is part of the medical service if provided at the same time as the office visit. Sales should not be a predominate part of the business. In addition, on-site sales to patrons or customers at times when the service is not provided or to persons who are not receiving services would not included.

Conclusion:
Incidental on-site sales are allowed for home occupations if the sales are part of the service being provided at the time of the sale. Splints, braces, and casts can be considered as apparatuses needed to properly treat the patient.

2c. Who qualifies as an "employee" in home occupations as addressed in 21A.30.080.C?

Background
Owners or operators of home occupations often hire a handyman or a cleaning person to help maintain the facility. Sometimes the proprietor also hires a bookkeeper or receptionist. K.C.C. 21A.30.080 allows one non-resident to be employed by the home occupation. There is no definition of an employee.

Discussion
The determination of whether a person is an employee should be based on whether the home occupation is required to treat the person as an employee for workers compensation and similar purposes and whether the individual is providing a service to the business or to the business's customers.

A receptionist would generally be considered an employee because he or she is likely to be paid either a salary or on an hourly basis and would be covered by relevant state requirements for employees.

The status of a bookkeeper would depend on the relationship between the bookkeeper and the business. This would also be true for others who provide services to the business, such as a handyman or cleaning person.

Conclusion
The determination of whether an individual is an employee of a home occupation depends on whether the individual would be considered an employee under relevant state and federal statutes, such as worker's compensation, and whether the individual is providing a service to the business or is providing services to the business's customers.

2d. Does an occasional drop-by customer violate the "arranged by appointment" requirements in K.C.C. 21A.30.080.G?

Background
K.C.C. 21A.30.080G states that "Services to patrons shall be arranged by appointment or provided off-site;"

Discussion
The purpose of the limitation is to minimize business traffic in residential zones. Occasional drop-in customers who are able to obtain appointments at the time of the visit would not violate K.C.C. 21A.30.080G.

Conclusion
If a drop-in customer makes an appointment at the time he or she walks into the business, there is no violation of "arranged by appointment" provisions of K.C.C. 21A.30.080G.

2e. With a franchise business, does parking of a vehicle weighing more than a ton, such as a Mac Tools truck or Snap-on Tools truck violate 21A.30.080.H?

Background
A Mac Tool truck is going off and on site of a home occupation, which is a franchise business. It is believed the truck is being used for pickup and delivery service. K.C.C. 21A.30.080.H provides

"H. The home occupation(s) may use or store a vehicle for pickup of materials used by the home occupation(s) or the distribution of products from the site, provided:

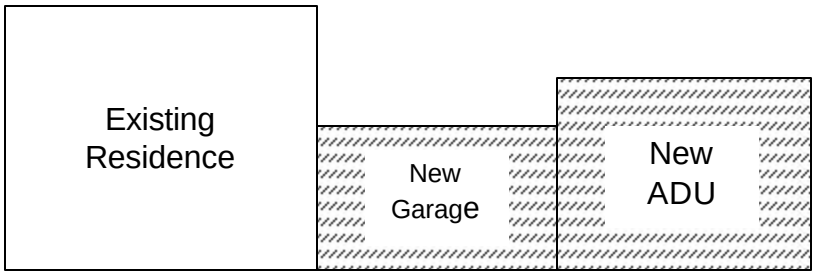
1. No more than one such vehicle shall be allowed;
2. Such vehicle shall not park within any required setback areas of the lot or on adjacent streets; and
3. Such vehicle shall not exceed a weight capacity of one ton; . . ."

Discussion
The Executive has proposed amendments to these provisions that would allow up to 2 1/2-ton trucks. This amendment may go to a hearing in the next couple of weeks, so it may be premature to discuss the issue at this time. Meanwhile, if it is the same truck going to and from the property, there may not be a problem, but if several trucks are making pickups and deliveries, then the business owner may be violating, K.C.C. 21A.30.080H.

Conclusion
Discussion of this item will be delayed pending Council action on the Executive's proposed amendments to this provision.

3a. When is an accessory dwelling unit in the "same building" as required by K.C.C. 21A.08.030?

Background
In one application, an applicant proposed to leave the existing residence unchanged and add a garage and an ADU. A schematic is provided for reference.



K.C.C. 21A.08.030B.7.a(2) states that an accessory dwelling unit is allowed:

> "only in the same building as the primary dwelling unit on an urban lot that is less than ten thousand square feet in area, on a rural lot that is less than the minimum lot size, or on a lot containing more than one primary dwelling;"

There is no guidance in the code on how to determine whether something is in "the same building."

Discussion
At a minimum, to be in the same building the accessory dwelling unit and the primary dwelling unit must have a structural connection, such as through walls or a roof.

If the accessory dwelling unit is and the primary residence share a common wall, they are considered to be the same structure.

Where there is an intervening use, such as a garage, between the primary and accessory dwelling units, the connection between the two units must be such that taken as a whole, the structure appears to be a single building. For example a contiguous roof projection would allow the dwelling units to be physically separated by intervening spaces or uses, but still appear to be a single building.

Conclusion
If an accessory dwelling unit and a primary residence share a common wall, they are considered to be the same building. If there is an intervening space or use between the two units, there must be a contiguous roof projection so that the structure as a whole appears to be a single building. The contiguous room may be of different elevations.

This is an area that would benefit from clarification in the zoning code.

3b. What areas are included in determining the floor area of an accessory dwelling unit?

Background
K.C.C. 21A.08.030B.7.a(4)(a) imposes the following limits on the size of an accessory dwelling unit:

> one of the dwelling units shall not exceed a floor area of one thousand square feet except when one of the dwelling units is wholly contained within a basement or attic …

The zoning code does not define floor area. This has led to uncertainty about what areas are included in the determination of the floor area of a dwelling unit.

Discussion
The Building Code does define floor area, but it is based on fire safety concerns and is not applicable in the land use context. A dwelling unit is "one or more rooms

designed for occupancy by a person or family for living and sleeping purposes, containing kitchen facilities and rooms with internal accessibility, for use solely by the dwelling's occupants …." K.C.C. 21A.06.345.

Taking the definition of "dwelling unit" into consideration, covered porches, decks, garages, shops, and unfinished attics or basements would not be considered to be part of the floor space of the dwelling unit.

Conclusion
For purposes of determining the floor area of a dwelling unit under K.C.C. 21A.080.30B.7, decks, garages, covered porches, unfinished and unheated attics and basements are not counted as part of the floor space of the dwelling unit. An unheated area requires a physical separation such as insulated walls from the main portion of the building.

4. In the RA zone, may a campground include buildings for children attending the camp to eat and sleep?

Background
A property owner is proposing to establish a soccer camp adjacent to a practice field. The camp would include facilities for those attending the camp to eat and sleep. At its October 22, 2003, meeting, the Regulatory Review Committee concluded that the property owner could build a soccer practice field on his property for children attending a soccer camp at a different location. The committee concluded that the practice field was allowed under the same conditions as a park under K.C.C. 21A.08.040.

Discussion
Campgrounds are a permitted use in the RA zone under two conditions: the length of stay is limited and the campground must be in a proposed or existing county park. A campground is allowed as a conditional use in the RA zone, subject only to the limits on stay. K.C.C. 21A.08.040B.16.

K.C.C. 21A.06.160 defines a campground as "an area of land developed for recreational use in temporary occupancy, such as: tents or recreational vehicles without hook-up facilities."

The proposed use does not fit within the definition of a campground, or other categories covered by the permitted uses tables, such as instructional schools. K.C.C. 21A.04.070D gives the Director discretion to determine the appropriate treatment of a proposed land use that is not listed in the permitted uses tables.

In these circumstances, the proposed use seems closest to a campground and should be allowed under the same conditions. In the RA zone, this would mean that it would be allowed in a county park as a permitted use or as a conditional use on other properties

in the RA zone. The conditional use property provides an opportunity to ensure the nature of the proposed use is compatible with the surrounding residential uses and gives the neighboring property owners an opportunity to comment on the proposed development.

Conclusion

A soccer summer camp at which participants would sleep and eat in buildings on site is not specifically covered by the permitted use tables. The proposed activity is similar in nature to a campground. Under K.C.C. 21A.04.070D, the Director may determine the appropriate treatment for a land use that is not covered by the permitted use tables. A sports instructional camp should be subject to the same conditions as a campground. In the RA zone, a conditional use permit is required unless the proposed camp is located in an existing or proposed county park.