



King County

Permitting Division

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Regulatory Review Committee (RRC) - Minutes -

Meeting Date: March 28, 2019

Minutes finalized: July 18, 2019

TO: Jim Chan, Director
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FM: Christine Jensen, Legislative/Policy Analyst and RRC Co-Chair

1. Concerning effective dates of Critical Area Designations (CADs) in K.C.C.¹ 21A.24.500 and whether a CAD can be amended upon learning of an error in the CAD.

Background

CADs are a written determination of the existence, location, and classification of critical areas and critical area buffers on a site. K.C.C. 21A.24.500.E. states that CADs are effective for five years.

“E.1. The written determination made under this section is effective for five years as to the existence, location, classification of a critical area and critical area buffers on the site, unless:

- a. there is a change in site conditions;

¹ King County Code

- b. a state or federal agency adopts critical area maps that conflict with the department's written determination.
2. As part of its review of a complete application for a permit or approval, the department shall establish whether the written determination is still effective.”

There may be instances where, during subsequent review of development proposals, it becomes apparent that a critical area was misidentified or not identified at all in a CAD.

Can a CAD be amended to address errors that are found prior to the five-year expiration of the CAD?

Discussion

K.C.C. 21A.24.500.E. states that there are two instances when a CAD can be amended prior to the expiration of the CAD: 1) if there is a change in site conditions, or 2) if state or federal agency critical area maps conflict with the CAD. These exceptions to the effective period is an exhaustive list, which does not include an option to address errors in the CAD. However, regardless of whether a CAD accurately documents the existence, location, and classification of critical areas and their buffers, the King County Code still requires development to mitigate associated impacts to any critical areas and their buffers.

Conclusion

CADs cannot be amended if an error is found. If additional critical areas that are not reflected in the CAD become known during permit review, the development would still need to comply with applicable critical areas regulations.

Indexes

Subjects: critical area designations
Code: 21A.24.500

- 2. Concerning the determination of how to classify the use of a property as either a Conference Center (K.C.C. 21A.06.235) or a Specialized Instruction School (K.C.C. 21A.06.1200) and how these uses might be considered as an accessory use (K.C.C. 21A.06.013) in the Rural Area.**

Background

The subject property is zoned RA-5 P² and is 6.47 acres.

² Rural Area, 1 dwelling unit per 5 acres, with a p-suffix condition.

The property is being advertised as “The Wellness Institute Retreat Center” with classes for up to 30 people, having overnight dormitory type accommodations in the dwelling unit as well as serving meals. There is a 5,700-square foot single family dwelling on the property that is being used as a dormitory and meeting room. The single-family structure is permitted to be a single family dwelling unit.

In order to determine what development standards are applicable to this use, clarity is needed regarding how this use would be classified in the development code.

Discussion

A conference center is defined in K.C.C. 21A.06.235 as:

“an establishment developed primarily as a meeting facility, including only facilities for recreation, overnight lodging, and related activities provided for conference participants.”

Per K.C.C. 21A.08.040, conference centers may be permitted or conditionally permitted in the RA zones. They are permitted when accessory to a recreation or multi-use park within or immediately adjacent to the urban growth area. They are permitted with a conditional use permit when established, “accessory to a nonresidential use established through a discretionary permit process, if the scale is limited to ensure compatibility with surrounding neighborhoods” (K.C.C. 21A.08.040.B.12.a).

A specialized instruction school is defined in K.C.C. 21A.06.1200 as:

“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.”

Specialized instruction schools are permitted and conditionally permitted in the RA zones per K.C.C. 21A.08.050, as follows.

1. They are allowed as a permitted use under the following conditions:
 - “Only as accessory to residential use, and:
 - a. Students shall be limited to twelve per one-hour session;
 - b. Except as provided in subsection B.19.c. of this section, all instruction must be within an enclosed structure;
 - c. Outdoor instruction may be allowed on properties at least two and one-half acres in size. Any outdoor activity must comply with the requirements for setbacks in K.C.C. chapter 21A.12; and
 - d. Structures used for the school shall maintain a distance of twenty-five feet from property lines adjoining rural area and residential zones.”

(K.C.C. 21A.08.050.B.19)

2. They are allowed with a conditional use permit under the following conditions:

“Subject to the following:

a. Structures used for the school and accessory uses shall maintain a minimum distance of twenty-five feet from property lines adjoining residential zones;

b. On lots over two and one-half acres:

(1) Retail sale of items related to the instructional courses is permitted, if total floor area for retail sales is limited to two thousand square feet;

(2) Sale of food prepared in the instructional courses is permitted with Seattle-King County department of public health approval, if total floor area for food sales is limited to one thousand square feet and is located in the same structure as the school; and

(3) Other incidental student-supporting uses are allowed, if such uses are found to be both compatible with and incidental to the principal use.”

(K.C.C. 21A.08.050.B.20)

“Subject to review and approval of conditions to comply with trail corridor provisions of K.C.C. chapter 21A.14 when located in an RA zone.”

(K.C.C. 21A.08.050.B.31)

An Accessory Use is defined in K.C.C. 21A.06.013 as:

“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.”

K.C.C. 21A.08.025 states that:

“Any accessory use not expressly permitted by this chapter or by the director shall be prohibited. The director may determine whether any accessory use on a site is incidental or subordinate to a principal use on the same site and whether uses not listed as accessory uses are customarily associated with a principal use. The director shall consider the purpose of the zone in K.C.C. chapter 21A.04 in making these determinations.”

The purpose of the Rural Area zone is outlined in K.C.C. 21A.04.060 as follows:

“ A. The purpose of the rural zone (RA) is to provide for an area-wide long-term rural character and to minimize land use conflicts with nearby agricultural or forest production districts or mineral extraction sites. These purposes are accomplished by:

1. Limiting residential densities and permitted uses to those that are compatible with rural character and nearby resource production districts and sites and are able to be adequately supported by rural service levels;

2. Allowing small scale farming and forestry activities and tourism and recreation uses that can be supported by rural service levels and that are compatible with rural character;

3. Increasing required setbacks to minimize conflicts with adjacent agriculture, forest or mineral zones; and

4. Requiring tracts created through cluster development to be designated as permanent open space or as permanent resource use.

B. Use of this zone is appropriate in rural areas designated by the Comprehensive Plan as follows:

1. RA-2.5 in rural areas where the predominant lot pattern is below five acres in size for lots established prior to the adoption of the 1994 Comprehensive Plan;

2. RA-5 in rural areas where the predominant lot pattern is five acres or greater but less than ten acres in size and the area is generally environmentally unconstrained;

3. RA-10 in rural areas where the predominant lot pattern is ten acres or greater but less than twenty acres in size. RA-10 is also applied on land that is generally environmentally constrained, as defined by county, state or federal law, to protect critical habitat and regionally significant resource areas (RSRAs). The RA-10 zone is also applied to lands within one-quarter mile of a forest or agricultural production district or an approved long-term mineral extraction site. On Vashon-Maury Island RA-10 zoning shall be maintained on areas zoned RA-10 as of 1994 and on areas with a predominant lot size of ten acres or greater that are identified on the Areas Highly Susceptible to Groundwater Contamination map; and

4. RA-20 in Rural Forest Focus Districts designated by the King County Comprehensive Plan.”

Based on the description of the services offered at the Wellness Institute Retreat Center from their marketing materials in the context of these code provisions, the committee agreed that the description of the current use of the property most-closely aligns with the definition of a conference center and does not meet the standards to be considered a specialized instruction school. The primary factor being the broad array of programs offered at the site, size of the groups, and the overnight lodging component for up to 30 participants in the dwelling structure on the property.

The committee further agreed that the operation of the Wellness Institute Retreat Center did not comply with the requirements of for a “permitted” specialized instruction school as an accessory to the residential use of the property because:

- it could not be established that the single-family residential uses was the principal use of the property,
- the group sizes advertised exceed the twelve students allowed,
- the use of the property would not be considered customarily associated with the principal use, and
- the use of the property for a specialized instruction school did not appear subordinate to any other principal use of the property.

Finally, the operation of a retail bookstore as a component of the Wellness Institute Retreat Center would require a conditional use permit.

Conclusion

The use of the property does not comply with the regulations for either a conference center or a permitted specialized instruction school in the Rural Area. A conditional use permit for a specialized instruction school must be obtained to demonstrate compliance with standards and to ensure compatibility with the surrounding neighborhood. Further, a change of use permit under the building code may also be required.

Indexes

Subjects: accessory use, conference center, specialized instruction school
Code: 21A.06.013, 21A.06.235, and 21A.06.1200