



King County

Permitting Division

Department of Local Services

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Regulatory Review Committee - Minutes -

Meeting Date: July 24, 2019

Minutes finalized: November 14, 2019

TO: Jim Chan, Director
Mark Rowe, Deputy Director
Devon Shannon, Prosecuting Attorney's Office
Wally Archuleta, Urban Product Line Manager
Steve Roberge, Residential Product Line Manager
Ty Peterson, Commercial Product Line Manager
Sheryl Lux, Code Enforcement Product Line Manager
Chris Ricketts, Building Official and Fire Marshal

FM: Christine Jensen, Legislative/Policy Analyst and RRC Co-Chair
Kevin LeClair, Principal Subarea Planner and RRC Co-Chair

Present: Wally Archuleta, Laura Casey, Pesha Klein, Colleen Kroe, Steve Roberge, Sheryl Lux, Chris Ricketts, Ty Peterson, Devon Shannon, Kevin LeClair, and Christine Jensen.

1. Concerning K.C.C. 21A.24.045.D and whether a horse stable can be expanded into an aquatic area buffer as an accessory structure.

Background

A property owner expanded an existing, legally established, horse stable by over 1,000 square feet into an existing Type F aquatic area buffer. Aerial photos indicate the expansion occurred between 2007 and 2009, which would have been subject to current critical areas regulations. The primary use of the parcel is residential. The single horse on the parcel is a pet per the property owner. The owners have no intention of pursuing commercial agricultural use on the parcel.

K.C.C. 21A.24.045 allows for the expansion of an accessory structure within aquatic areas, wetlands, and their buffers. Expansion or replacement of nonresidential structures are not allowed within aquatic areas, wetlands, and their buffers. There are no definitions in K.C.C. Title 21A for “nonresidential structure,” “residential structure,” or “accessory structure.”

The question before the Committee is how to differentiate between a “nonresidential structure” and an “accessory structure” as it applies to expansion into an aquatic area critical area buffer of a structure on a residential property.

Discussion

The committee reviewed the applicable code sections. The expansion or replacement of an existing structure is allowed within aquatic areas, wetlands and their buffers under K.C.C. 21A.24.045.C, with conditions in K.C.C. 21A.24.045.D.6 (aquatic areas only), D.7, and D.8 (both aquatic areas and wetlands), which states (*underlining added for emphasis*):

21A.24.045.D

6. Within a severe channel migration hazard area allowed for:
 - a. existing legally established primary structures if:
 - (1) there is not an increase of the footprint of any existing structure; and
 - (2) there is not a substantial improvement as defined in K.C.C. 21A.06.1270; and
 - b. existing legally established accessory structures if:
 - (1) additions to the footprint will not make the total footprint of all existing structures more than one-thousand square feet; and
 - (2) there is not an expansion of the footprint towards any source of channel migration hazard, unless the applicant demonstrates that the location is less subject to risk and has less impact on the critical area.

7. Allowed only in grazed wet meadows or the buffer or building setback outside a severe channel migration hazard area if:
 - a. the expansion or replacement does not increase the footprint of a nonresidential structure;
 - b. (1) for a legally established dwelling unit, the expansion or replacement, including any expansion of a legally established accessory structure allowed under this subsection B.7.b., does not increase the footprint of the dwelling unit and all other structures by more than one thousand square feet, not including any expansion of a drainfield made necessary by the expansion of the dwelling unit. To the maximum extent practical, the replacement or expansion of a drainfield in the buffer should be located within areas of existing lawn or landscaping, unless another location will have a lesser impact on the critical area and its buffer;
 - (2) for a structure accessory to a dwelling unit, the expansion or replacement is located on or adjacent to existing impervious surface areas

- and does not result in a cumulative increase in the footprint of the accessory structure and the dwelling unit by more than one thousand square feet;
 - (3) the location of the expansion has the least adverse impact on the critical area; and
 - (4) a comparable area of degraded buffer area shall be enhanced through removal of nonnative plants and replacement with native vegetation in accordance with an approved landscaping plan;
 - c. the structure was not established as the result of an alteration exception, variance, buffer averaging or reasonable use exception;
 - d. to the maximum extent practical, the expansion or replacement is not located closer to the critical area or within the relic of a channel that can be connected to an aquatic area; and
 - e. The expansion of a residential structure in the buffer of a Type S aquatic area that extends towards the ordinary high water mark requires a shoreline variance if:
 - (1) the expansion is within thirty-five feet of the ordinary high water mark; or
 - (2) the expansion is between thirty-five and fifty feet of the ordinary high water mark and the area of the expansion extending towards the ordinary high water mark is greater than three hundred square feet.
8. Allowed upon another portion of an existing impervious surface outside a severe channel migration hazard area if:
- a. except as otherwise allowed under subsection D.7. of this section, the structure is not located closer to the critical area;
 - b. except as otherwise allowed under subsection D.7. of this section, the existing impervious surface within the critical area or buffer is not expanded; and
 - c. the degraded buffer area is enhanced through removal of nonnative plants and replacement with native vegetation in accordance with an approved landscaping plan.

Regulation for nonresidential structures within aquatic areas, wetlands and their buffers are also included in K.C.C. 21A.24.045.C, which allows construction of, but not expansion or replacement of, nonresidential farm structures, with conditions in 21A.24.045.D.3, which states (*underlining added for emphasis*):

21A.24.045.D

- 3 Limited to nonresidential farm-structures in grazed or tilled wet meadows or buffers of wetlands or aquatic areas where:
 - a. the site is predominantly used for the practice of agriculture; ...

There are no definitions in the zoning code for “nonresidential structure,” “residential structure,” or “accessory structure.” There are definitions for “accessory use,” “accessory use, residential,” and “structure.”

21A.06.013

Accessory use: 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.

21A.06.020

Accessory use, residential: an accessory use to a residential use, including, but not limited to:

- A. Accessory living quarters and dwellings;
- B. Fallout or bomb shelters;
- C. Keeping household pets or operating a hobby cattery or hobby kennel;
- D. On-site rental office;
- E. Pools, private docks or piers;
- F. Antennae for private telecommunication services;
- G. Storage of yard maintenance equipment;
- H. Storage of private vehicles, such as motor vehicles, boats, trailers or planes;
- I. Greenhouses;
- J. Recreation space areas required under K.C.C. 21A.14.180 and play areas required under K.C.C. 21A.14.190; and
- K. Home occupations and home industries under K.C.C. chapter 21A.30.

21A.06.1255

Structure: anything permanently constructed in or on the ground, or over the water; excluding fences six feet or less in height, decks less than 18 inches above grade, paved areas, and structural or non-structural fill.

The committee discussed the differentiation between residential and nonresidential structures and how these distinctions relate to the primary use of the property. It was agreed that a property may have multiple uses. However, the primary use of the property is what would be used to determine whether a structure is either “accessory” or “nonresidential.” Determining the primary use of the property is necessary to make this determination.

In this case, the property owners state that the horse stable is for the keeping of a family pet and not for agricultural use. They also have no interest in pursuing a farm plan nor initiation of commercial agricultural operation on the property. In light of this, the Committee was under the view that the primary use of the property was residential. The question then is whether a horse stable could reasonably be viewed as a structure that is accessory to the residential primary use of the property. Given the aforementioned proposed nature of use of the stable, the Committee determined that the stable is accessory to the primary use and, thus, is considered an “accessory structure.” If the property was being used for commercial agricultural purposes, then the stable would be supportive of that agricultural use and, thus, would be considered a “nonresidential structure.”

Conclusion

The committee concluded that a horse stable may be considered an accessory structure on a property whose primary use is residential. For this reason, the applicant may be able to request expansion of an accessory structure by up to 1,000 square feet in an aquatic area buffer, provided it meets the avoidance and minimization criteria contained within K.C.C. 21A.24.045.D.7.

Indexes

Keywords: accessory structure, nonresidential structure, aquatic area, stable
Code sections: 21A.24.045.D, 21A.06.013, and 21A.06.020

2. Legal Lots

This item was not discussed.

3. Review and approval of Ag Work Products

The Committee discussed a proposed process for the King County Permitting Division of the Department of Local Services to review and approve agriculture permitting-related work products and recommendations that originate from the following bodies:

- Agricultural and Forestry Permit Team
- Agricultural Technical Review Committee
- Farm Fish Flood Regulatory Task Force

Some of these work products are proposed to be referred to the Regulatory Review Committee (RRC) including administrative code Interpretations and findings about, definitions for, and/or clarifications of existing code (requirements, intent, and/or implementation). The proposed process for review and approval of these products by the Committee was discussed. The process generally follows the existing process for other RRC requests, including initial screening by the applicable Product Line Manager prior to submitting a request to RRC.

The Committee concurred with the proposal.