



King County

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

REGULATORY REVIEW COMMITTEE

- MINUTES -

MEETING DATE: March 8, 2007

TO: Building Services Division Staff
Mike Dykeman, Manager
Chris Ricketts
Jim Chan
Pam Dhanapal

Land Use Services Division Staff
Joe Miles, Manager
Lisa Dinsmore
Randy Sandin
Deidre Andrus
Steve Bottheim

Stephanie Warden, Director
Harry Reinert, Special Projects Manager and RRC Co-Chair
Cass Newell, Prosecuting Attorney's Office

FM: Harry Reinert, Co-Chair

Present: Deidre Andrus, Joe Miles, Randy Sandin, Jim Chan, Pam Dhanapal, Lisa Dinsmore, Cass Newell, Steve Bottheim, Jerri Breazeal, and Harry Reinert

- 1. Is a structure intended for storage of recreational equipment a permitted use on a vacant RA-5 zoned parcel that does not have an allowed primary use? The property owners have stated that they intend to store recreational equipment (i.e. kayaks) in the structure.**

Background:

A code enforcement case concerns the placement of a structure on an otherwise undeveloped parcel located adjacent to the Raging River. The property owners have been informed that the structure is an allowed use as it will be used as an accessory to passive recreation, i.e. kayaking.

Code Enforcement is seeking clarification regarding whether structures under 200 square feet that are intended to be used for recreational purposes are a permitted use on a vacant parcel.

Discussion:

K.C.C. 16.02.240 exempts some residential accessory structures under 200 square feet from the requirement to obtain a building permit:

Work exempt from permit (IBC 105.2). A building permit shall not be required for the following:

One-story detached one and two family residential accessory buildings used as tool and storage sheds, playhouses and similar uses not including garages or other buildings used for vehicular storage, provided the floor area does not exceed 200 square feet (11.15 m²) provided that the roof overhang does not exceed twenty-four inches measured horizontally from the exterior wall.

Passive recreation is not a listed activity on the permitted use table. Recent amendments approved by the King County Council added definitions for passive and active recreation. Passive recreation is defined as:

Recreation, passive. Recreation, passive: recreational activities that do not require prepared facilities like sports fields or pavilions. Passive recreational activities place minimal stress on a site's resources and are highly compatible with natural resource protection. Passive recreation include, but is not limited to, camping, hiking, wildlife viewing, observing and photographing nature, picnicking, walking, bird watching, historic and archaeological exploration, swimming, bicycling, running/jogging, climbing, horseback riding and fishing.

K.C.C. 21A.06.9585.

Although not specifically mentioned, kayaking fits within the definition of a passive recreation use, since it does not require prepared facilities and puts minimal stress on a site's resources. With respect to critical areas, the definition of an alteration excludes "passive recreation" as an alteration. K.C.C. 21A.06.056.

The permitted use tables do not make specific provision for passive recreational uses. K.C.C. 21A.02.070D authorizes the Director to determine that a proposed land use that is not listed on a permitted use table should be allowed in a zone if the proposed use is compatible with the purposes of the zone. Passive recreation has minimal impact on RA zoned property and would not be incompatible with the purposes of the RA zone.

Although the King County Code does not define "recreational accessory use," the definition of "use" states that an accessory use is "any use subordinate or incidental to the primary use" K.C.C. 21A.06.1345. Title 21A has definitions for three different kinds of accessory uses: commercial/industrial, residential, and resource. See, K.C.C. 21A.06.015 through 21A.06.025. In order to have the accessory use, a primary use must also be established. For example, storage of private vehicles is an accessory residential use. Therefore, a garage for vehicle storage cannot be established on a lot that does not have a residence.

There is no definition for a recreation accessory use. Relying on the definition of "use" and the examples for defined accessory uses, a recreational accessory use would be a use that is incidental and subordinate to a recreational use.

In the circumstances described here, a storage shed used to store recreational equipment, such as a kayak, would be considered subordinate to the primary use of the property for recreational purposes and should be considered a permitted use.

The size of the structure and its features would be factors in determining whether or not the structure is truly subordinate to a permitted use of the property. For example, a proposal to build a 3,000 square foot "storage building," with bathrooms and kitchen facilities, i.e., a dwelling unit, would not be subordinate to the recreational use of the property. By contrast, a 250 square foot storage shed, which does require a building permit, but which has no electricity, water, or separate rooms, would appear to be a structure intended for storage and not some other use.

Although passive recreation is not considered to be an alteration of a critical area, the same is not necessarily true for an accessory structure to support that use. For example, construction of a structure in the buffer of a critical area, whether or not it is exempt for the requirement to obtain a building permit, would in most cases be an alteration of the critical area. Whether it is an allowed alteration would be determined under K.C.C. 21A.24.045.

Conclusion

A shed to store recreational equipment on an unoccupied property under appropriate circumstances may be considered an accessory use to the primary recreational use of the property. If the structure is under 200 square feet, it may be exempt from the requirement to obtain a building permit. If it is proposed to be constructed in the buffer of a critical area, it may be an alteration to the critical area, subject to the provisions of K.C.C. 21A.24.045.

2. Does the limitation in K.C.C. 21A.24.070A.2.e relating to alteration exceptions include existing disturbance or refer only to new disturbance associated with the project proposal?

Background

K.C.C. 21A.24.070A.2.e allows a non-linear alteration of a critical area buffer for dwelling units if "no more than 3,000 SF or ten percent of the site, which ever is greater, *may* be disturbed by structures or other land alteration including grading, utility installations and landscaping but not including the area used for an on-site sewage disposal system."

Discussion

The provision of the non-linear alteration exception that states that up to 3,000 square feet or ten percent of the site "may" be disturbed by land disturbing activities must be read in the overall context of K.C.C. Chapter 21A.24.

K.C.C. 21A.24.010 establishes the purposes of K.C.C. Chapter 21A.24. These include protecting the functions and values of critical areas and protecting unique and fragile elements of the environment.

K.C.C. 21A.24.045 establishes standards for allowed alterations and the conditions under which these are permitted. For several types of critical areas, including aquatic areas and wetlands, if the alteration is not on the list of allowed alterations or if it cannot meet the conditions that apply to the allowed alteration, the alternative is an alteration exception.

K.C.C. 21A.24.070A establishes the standards for approving alteration exceptions. Alteration exceptions fall into two categories. One category applies to proposals for a linear alteration, such as a road or a sewer line. K.C.C. 21A.24.070A.1. The other applies to a proposal for a non-linear alteration, such as a single family residence. K.C.C. 21A.24.070A.2.

Both categories require the project proponent to demonstrate that there is no other feasible alternative to the proposal with less impact on the critical area. The significant difference between the two is that a linear alteration exception allows the alteration of aquatic areas and wetlands. Only the buffers of these two critical areas may be altered with an alteration exception.

In light of these provisions, particularly the purpose of K.C.C. Chapter 21A.24 in protecting the functions and values of critical areas, the requirement of K.C.C. 21A.24.070A.2.e should be interpreted to apply to both existing and proposed disturbance on the site. To interpret the provision otherwise would create the opportunity for additional land disturbance in a critical area buffer that may have already be disturbed.

Conclusion

Disturbance limits required under K.C.C. 21A.24.070A.2.e include both existing and proposed disturbed areas.