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REGULATORY REVIEW COMMITTEE

- MINUTES -

MEETING DATE: October 2, 2014
Minutes finalized November 3, 2014

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Present: Lisa Verner, Devon Shannon, Sheryl Lux, Randy Sandin, Steve Roberge, Ty Peterson, and Molly Johnson

1. Is a retaining wall structure allowed within a critical area setback?

Background

A recent set of engineering plans proposed six foot high walls within the rear property line setback. The rear property line abuts a steep slope hazard tract. The walls are proposed for location within the 15 foot critical areas setback required adjacent to the steep slope tract.

KCC 21A.06.1070 defines "Setback" as

"the minimum required distance between a structure and a specified line such as a lot, easement or buffer line that is required to remain free of structures."

KCC 21A.06.1255 defines "Structure" as

"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."

KCC 21A.12.170 Setbacks - projections and structures allowed. Provided that the required setbacks from regional utility corridors of K.C.C. 21A.12.140, the adjoining half-street or designated arterial setbacks of K.C.C. 21A.12.160 and the sight distance requirements of K.C.C. 21A.12.210 are maintained, structures may extend into or be located in required setbacks, including setbacks as required by K.C.C. 21A.12.220.B, as follows:

...

F. Rockeries, retaining walls and curbs may project into or be located in any setback. Except for structures that cross the setback perpendicularly to property lines or that abut a critical area, these structures:

1. Shall not exceed a height of six feet in the R-1 through R-18, UR, RA and resource zones;
2. Shall not exceed a height of eight feet in the R-24 and R-48 zones; and
3. Shall not exceed the building height for the zone in commercial/industrial zones, measured in accordance with the standards established in the King County Building Code, Title 16.

KCC 21A.24.200 Building setbacks. Unless otherwise provided, an applicant shall set buildings and other structures back a distance of fifteen feet from the edges of all critical area buffers or from the edges of all critical areas, if no buffers are required. The following are allowed in the building setback area:

- A. Landscaping;
- B. Uncovered decks;
- C. Building overhangs if the overhangs do not extend more than eighteen inches into the setback area;
- D. Impervious ground surfaces, such as driveways and patios, but the improvements are required to meet any special drainage provisions specified in public rules adopted for the various critical areas;
- E. Utility service connections as long as the excavation for installation avoids impacts to the buffer; and
- F. Minor encroachments if adequate protection of the buffer will be maintained.

Discussion

Under the general setback section (KCC 21A.12.170.F), retaining walls are permitted structures within required setback areas. In this case, the retaining walls are proposed to be located in the rear yard setback.

Under the Critical Areas Ordinance (KCC Chapter 21A.24), "buildings and other structures" must be setback at least 15 feet from either the edge of a critical area (if a buffer is not required) or from the edge of a critical area buffer.

Conclusion

A retaining wall is a structure and, as such, is not permitted within a critical area setback. When a critical area setback overlaps a rear yard setback (or other non-critical area setback), the retaining wall is not permitted in the "overlapped" portion of the rear yard setback area. The critical area setback regulations take precedence.

2. Is "deteriorated" the same as "destroyed"? Do the provisions of KCC 21A.32.045.D regarding replacement of damaged or destroyed nonconforming structures located within shorelines apply to repair or replacement of portions of nonconforming structures that have deteriorated over time?

Background

An owner of property on Vashon Island asked for an RRC interpretation regarding an existing nonconforming boathouse earlier this year; that review found that the boathouse is a legal nonconforming structure and not an accessory residential structure (RRC January 2014).

A follow-up question has been raised. Due to rot, the existing nonconforming boathouse is in need of more repair than originally proposed. The property owner would like to replace the wall boards (wood, exterior), rafters and roof deck; the back wall retains dirt as do parts of the side walls. The original pilings supporting the walls and roof will remain.

The owners characterize the work as maintenance. The owners' contractor recommends replacing "all the wall boards because most of the boards are nearing the end of their life, as is the plastic barrier between the earth and the wall boards. The way the boathouse was built will require him (the contractor) to dig out the dirt from around the boathouse and make repairs from the outside (pilings are in the inside, boards on the outside)."

The owners said they could do the wall and rafters repair this year and the roof repair next year, if that would be better for the building's nonconforming status.

KCC 21A.32 is titled "general provisions - nonconformance, temporary uses, and re-use of facilities" and governs rehabilitating a nonconforming structure.

KCC 21A.32.045.D. Nonconformance - reestablishment of discontinued nonconforming use, or damaged or destroyed nonconforming structure or site improvement. A nonconforming use that has been discontinued or a nonconforming structure or site improvement that has been damaged or destroyed, may be reestablished or reconstructed if:

D. A nonconforming use, structure or site improvement located within the shoreline jurisdiction that is damaged or destroyed more than fifty percent of its fair market value at present or at the time of its destruction may be reconstructed only insofar as it is consistent with existing regulations.

Discussion

Neither "damaged" or "destroyed" are defined in the zoning code but the common dictionary definitions for both suggest that the damage or destruction was the result of a natural or purposeful event that ruins, harms or results in loss of a structure, organic existence or condition.

Damage – to cause injury to; loss or harm resulting from injury to person, property or reputation;

Destroy – to ruin the structure, organic substance or condition, to put out of existence;

Other terms appear to more closely define the condition that results when a structure nears the end of its useful life.

Deteriorate – to become impaired in quality, functioning or condition.

Run-down – being in poor repair, dilapidated.

The boathouse has not been "damaged" or "destroyed" through injury, harm or ruin by fire, earthquake, land slide, or other purposeful event. Rather, it appears it has been weathered and, as such, has become "run-down" and "deteriorated."

Conclusion

The boathouse appears to be at the end of its useful life and needs repair and replacement, rather than damaged or destroyed as meant in KCC 21A.32.045.D. Repair and maintenance are permitted in shorelines areas if the structure itself is safe, which it appears it is (pilings are intact). The owners do not propose to enlarge the structure and are therefore complying with the nonconformance provisions. The owners should apply for a permit and disclose the full extent of the work needed.

3. New DOE wetland classifications vs existing County regulations. Can the current regulations be interpreted to allow the use of the revised, updated DOE manual prior to changes to the KCC?

Background

The definition of wetland in KCC 21A.06.1391 was amended in 2010 to specifically address an issue raised during a protracted and controversial code enforcement hearing. The issue the code amendment was addressing was what manual was to be used to perform wetland delineations. The revised definition of wetland reads as follows:

KCC 21.06.1391. Wetland. Wetland: an area that is not an aquatic area and that is inundated or saturated by ground or surface water at a frequency and duration sufficient to support, and under normal circumstances supports, a prevalence of vegetation typically adapted for life in saturated soil conditions. For purposes of this definition:

- A. Wetlands shall be delineated using the wetland delineation manual required by RCW 36.70.175.

RCW 36.70A.175 then directs the reader to RCW 90.58.380, which reads as follows:

The department by rule shall adopt a manual for the delineation of wetlands that implements and is consistent with the 1987 manual in use by the COE (*US Army Corps of Engineers*) and EPA (*US Environmental Protection Agency*) on 1/1/1995. If COE/EPA adopt changes or a new manual, the department shall consider those changes and may adopt rules implementing those changes.

In short, KCC 21A.06.1391 requires, by extension, that wetlands be delineated using the most current manual DOE has adopted.

However, KCC 21A.24.318.A states that wetlands are classified based upon the 2004 Manual.

21A.24.318 Wetlands — categories.

A. Wetlands are classified into category I, category II, category III and category IV based on the adopted Washington State Wetland Rating System for Western Washington, Washington state department of ecology publication number 04-06-025, published August 2004.

B. Wetland rating categories shall not recognize illegal modifications.

Discussion

DOE's Manual changes that will go into effect on 1/1/2015 change the way the different categories are classified but do not change the way wetlands are delineated. The net effect for King County is that wetland delineations will be the same regardless of which manual is used (because County regulations allow use of whatever manual is currently adopted by DOE) but there are going to be cases where our classifications will differ from the State's or the Feds'.

Under the County's SAO (pre-2005), wetland classifications were included in the definition of wetlands. Under the County's current CAO (beginning in 2005), wetland classifications were purposely removed from the definition of wetland and addressed separately in KCC 21A.24.318. At this time, they were specifically tied to the 2004 Manual.

DOE estimated that in 80 percent of the cases, the wetland classification will either not change or be lower from what it would be under the 2004 manual. This is more of a customer service issue than a regulatory issue but it may be an issue in those cases where the classification is higher under the 2015 manual and a DOE or Corps permit or approval is required.

Conclusion

KCC 21A.24.318 clearly states the County is to classify wetlands based on DOE's 2004 Manual. After DOE's changes go into effect on 1/1/2015, the County may not utilize them until it amends KCC 21A.24.318 to refer to "the latest adopted manual" or similar language and deletes reference to DOE's 2004 Manual.

4. Is an "overnight internet addiction treatment facility" considered a "bed and breakfast," a "family, utilizing a group living arrangement," or a "community residential facility?"

Background

This question arises from code enforcement case ENFR14-0797. A complaint was received concerning an overnight facility for the treatment of internet addiction at a residential location (zoning of RA-5, 5 acre parcel, single family residence) involving an allegation of 16 employees coming and going. The owner claims she is running a bed and breakfast and that people choose to disconnect while they are there; classes and/or therapy sessions with onsite therapists are offered. She understood they met the definition of "family."

21A.06.090 Bed and breakfast guesthouse. Bed and breakfast guesthouse: a dwelling unit or accessory building within which bedrooms are available for paying guests.

21A.06.220 Community residential facility ("CRF"). Community residential facility ("CRF"): living quarters meeting applicable federal and state standards that function as a single housekeeping unit and provide supportive services, including but not limited to counseling,

rehabilitation and medical supervision, excluding drug and alcohol detoxification which is classified in K.C.C. 21A.08.050 as health services, and excluding a secure community transition facility as defined in R.C.W. 71.09.020 and in this chapter. For purposes of domestic violence shelters, minors living with a parent shall not be counted as part of the maximum number of residents. CRFs are further classified as follows:

- A. CRF-I -- Nine to ten residents and staff;
- B. CRF-II -- Eleven or more residents and staff.

If staffed by nonresident staff, each twenty-four staff hours per day equals one full-time residing staff member for purposes of subclassifying CRFs.

21A.06.450 Family. Family: an individual; two or more persons related by blood, marriage or state registered domestic partnership under chapter 26.60 RCW; a group of two or more disabled residents protected under the Federal Housing Act Amendments, who are not related by blood, marriage or state registered domestic partnership under chapter 26.60 RCW, living together as a single housekeeping unit; a group of eight or fewer residents, who are not related by blood, marriage or state registered domestic partnership under chapter 26.60 RCW, living together as a single housekeeping unit; or a group living arrangement where eight or fewer residents receive supportive services such as counseling, foster care, or medical supervision at the dwelling unit by resident or non-resident staff. For purposes of this definition, minors living with parent shall not be counted as part of the maximum number of residents.

Discussion

A bed and breakfast (B&B) may have an employee (cook?) and may offer classes. It may not act as a treatment center. A B&B is only allowed in RA zones as "accessory" to the permanent residence of the operator. A B&B is limited to five overnight guests, unless it is considered an R-1 occupancy (then it may have up to 10 persons per night).

A family group living arrangement may offer classes and counseling for guests. It is limited to eight residents; it is not clear if resident or non-resident staff are counted in the number of residents.

A community residential facility does count each 24 hour period of non-resident staffing as one resident. A CRF may provide treatment and counseling services with resident or non-resident staff. Long-term duration of supportive services is implied.

The primary function of the use drives the determination of what it is. It appears from discussions with the property owner and a review of the facility's website that the primary purpose is the treatment of persons addicted to internet use. Guests stay for a 45-day treatment period. Guests prepare their own meals. Trained therapists are employed by the facility and available for classes and therapy sessions on a regular basis. The owner recently purchased a second home in the neighborhood for family use only.

Conclusion

Based on its primary function, this "overnight internet addiction treatment facility" is a Community Residential Facility. Based on the claim of seven residents plus staff at any one time, it is classified as a CRF-1.