



King County

**Department of Permitting
and Environmental Review**

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REGULATORY REVIEW COMMITTEE

- MINUTES -

MEETING DATE: March 5, 2015

TO: Jim Chan Molly Johnson
Wally Archuleta Chris Ricketts
Sheryl Lux
Ty Peterson
Steve Roberge

John Starbard, Director
Lisa Verner, Special Projects Manager and RRC Chair
Devon Shannon, Prosecuting Attorney's Office

FM: Randy Sandin, Product Line Manager, Resource

Present: Devon Shannon, Sheryl Lux, Randy Sandin, Ty Peterson, Steve Roberge, Wally Archuleta

1. Can a concession operate as an accessory use to a park located in the A zone.

Background

The Fall City Park is located just north of Fall City and consists of a baseball field, uncovered equestrian arena and associated parking, trails and open fields. It was purchased with Forward Thrust Funds in 1977. The field and arena are open for general use or can be rented for events. The Fall City Shakespeare Society rents the park several times a year for events and the park is a stopping point for periodic community walks, runs and bicycle events. In the summer, rafters and tubers park here to off-load after rafting from a WDFW boat launch located about four miles upstream. King County Parks was approached by Fall City Floating LLC who would like to set up an operation that would rent, tubes, life-jackets, and paddles to tubers, and to shuttle customers upstream to the WDFW boat launch. They would also operate a concession to sell products such as sun screen and sun glasses. About 26,000 rafters float this section of the lower

Snoqualmie River annually. Parks supports this proposal and is willing to enter into a concession agreement since it will better manage an existing use at the park and reduce traffic.

Discussion

Parks are included as a recreational land use in 21A.08.040. Parks are allowed in the A zone but limited to trails and trailheads, including parking and sanitary facilities. The limitation on parks goes back to the conversion from Title 21 to Title 21A in the mid-1990's. Between approximately 1985 and the adoption of Title 21A, parks were only allowed as an unclassified use within the A zone with a conditional use permit. Prior to approximately 1985, the zoning code was silent on recreation. It is not clear when the park was established but the property was purchased with Forward Thrust Funds in 1977 specifically for public recreation purposes. Based on discussions with KCDNRP staff, the outdoor arena and ballfields were constructed between 1985 and the early 1990's.

Concessions are considered an Amusement and Recreation Service in SIC code 7999 except when they are classified elsewhere in the zoning code. Concessions, as a stand-alone activity are not permitted in the A zone. Unless concessions are considered an accessory to a park use, they would not be not allowed within the A zone.

Park is defined in K.C.C 21A.06.835 as a site owned by the public for recreational, exercise or amusement purposes. The definition includes a list of indoor and outdoor facilities for a variety of recreational activities. K.C.C. 21A.06.835 does not include any indication of what accessory uses may be associated with a park.

The King County Code does not define "recreational accessory uses." Prior to 2014, accessory use was not defined but the definition of "use" stated that an accessory use is "any use subordinate or incidental to the primary use..." K.C.C 21A.06.1345. This definition was amended in 2014 and K.C.C. 21A.06.013 was added that defined accessory use as "a use, structure or activity that is customarily associated with a principal use; located on the same site as the principal use; and subordinate and incidental to the principal use".

The question of whether a concession could be an accessory to a public park was taken up by the RRC in March 13, 2002. The conclusion was that a park may include, as an accessory use, a snack bar and sales counter with items for sale or rent to the park's patrons. The accessory use must be incidental to the primary use as a park and should be designed to facilitate and support the primary recreational use.

Conclusion

Revisiting this issue on March 5, 2015, the committee agreed that the proposed concession at the Fall City Community Park met the subordinate and incidental test and that the items intended to be rented or sold would only be used by park patrons to facilitate primary recreational park uses. Other than a slight change to the definition of accessory use, there have been no substantive code amendments that would have affected the March 13, 2002 RRC decision. Accordingly, the Fall City Floating LLC concession proposal would be an allowed park accessory use.

- 2. A councilmember had a constituent ask about permitting for a “free library”, like those at <http://littlefreelibrary.org/>, but not necessarily through this group. This constituent could like to set up a small structure on their property that would allow neighbors to borrow books. Is this use allowed under King County’s zoning code?**

Background

Library is not defined in the zoning code. Prior to 1993, under the original zoning code, libraries were understood to be public facilities and were allowed in all urban and rural residential zones. Currently, libraries are only allowed within the RA zone as an accessory to a park or in an historic building. Within the UR, R-1 through R-8 zones they can be permitted as a conditional use and in all other zones urban residential and business/office zones they are permitted outright.

Discussion

These “Little Free Libraries” and similar community book exchanges have been popping up everywhere. These facilities operate as a “take a book, return a book” gathering place where neighbors share their favorite literature and stories. These book exchanges are generally not much bigger than a large mailbox and are typically mounted on a post near the sidewalk or road.

After a brief discussion, the committee concluded that these community book exchanges were not a library as that term is used in K.C.C. 21A.08.040 and would be considered a residential accessory use. The committee also took up the question of whether these book exchanges could be located within the required front or side yard setbacks. As noted above, these structures are about comparable in size, construction and use to a large mailbox. Because of their similarity to a mailbox, the committee concluded that they could be located within a setback area under K.C.C 21A.12.170.K.

Conclusion

Community book exchanges are not a “library” as that term is used in the zoning and would be an allowed residential accessory use or structure. They can be located within required setback areas as long as they do not interfere with sight distance along public roadways or create a public safety issue.

- 3. The department is reviewing several proposals that involve new hardscaping within existing landscaping that is located within critical area buffers. These include, but are not limited to rock walls, patios, terraces and decks. K.C.C. 21A.24.045 allows maintenance of lawn, landscaping or garden for personal consumption within existing landscaped areas or other previously disturbed areas. Would placement of new hardscaping within an existing, legally-landscaped critical area or buffer be allowed?**

Background

Maintenance of existing lawns and landscaping within a critical area or buffer is exempt from permitting requirements under K.C.C. 16.82.05.C.13 provided the activities being undertaken are

normal and routine maintenance activities, the landscaping was lawfully established and the landscaped area is not expanded.

Maintenance is defined in K.C.C. 21A.06.731 as “the usual acts to prevent a decline, lapse or cessation from a lawfully established condition without any expansion of or significant change from that originally established condition. Activities within landscaped areas within areas subject to native vegetation retention requirements may be considered "maintenance" only if they maintain or enhance the canopy and understory cover. "Maintenance" includes repair work but does not include replacement work.”

Most new residential accessory structures are not allowed within wetlands, aquatic areas, steep slopes and their buffers. (K.C.C. 21A.24.045) K.C.C.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.” A rock wall would be considered a structure, a concrete patio or ground-level deck would not.

Discussion

Prior to adoption of the definition of “maintenance” in 2004, the RRC had established some guidelines on what was contemplated by “normal” and “routine”¹. This discussion and analyses are still instructive.

Neither “normal” or “repair” are defined in King County Code. The Unabridged Random House Dictionary defines the words "maintenance," normal," and "routine;" as follows:

Maintenance is “upkeep, support, or subsistence.”

Normal is “conforming to standards or common type, usual, regular, or natural”.

Routine is “customary or regular course of procedure, commonplace tasks, chores, or duties done at regular intervals.”

These definitions lead one to consider normal and routine maintenance as commonplace activities carried out at regular intervals to provide upkeep or support. A lawn would not become overgrown because the grass would be regularly cut. Vegetable gardens would be weeded, trees and shrubs trimmed. Repair and maintenance are generally intended to keep a structure or site alteration in its lawfully established condition.

In subsequent discussions, the concept of normal and routine maintenance and repair of residential landscaping was expanded to include certain modifications to landscaped areas. For example, converting a lawn to vegetable garden or vegetable garden to lawn are commonplace activities, especially in rural areas, and are highly dependent on the personal preferences of the property owner. It was also recognized that these preferences change over time as ownership changes or as individual circumstances change. The informal position of the department was that

¹ Administrative Interpretation Number 12, Normal and Routine Maintenance, August 30, 1994

as long as the work was not expanding the landscaped area, the commonplace activities that were occurring would not require permits as long as they were generally in-kind activities and were not creating additional impacts on critical areas. Pervious surfaces, such as lawns, could be swapped out for other types of pervious surfaces, such as a vegetable garden. Shrubs, trees and other forms of landscaping could be replanted with different types of landscaping. Landscaped areas could not be enlarged and pervious surfaces or landscaped areas could not be replaced with impervious surfaces.

Conclusion

Constructing rock walls, patios, walkways or similar impervious surfaces would not be considered normal and routine landscape maintenance unless they were replacing existing walls, patios, walkways or similar impervious surfaces and there was no change in the amount of impervious surface within the landscaped area.