King County
Department of Development and Environmental Services
900 Oakesdale Avenue Southwest
Renton, WA 98057-5212
206-296-6600 TTY 206-296-7217
www.kingcounty.gov

FINAL CODE INTERPRETATION
L07CI002

Background

On October 26, 2007, Mr. William Crittenden filed a code interpretation request on behalf of his client Ms. Laurie Weaver. The request asks for an interpretation of K.C.C. 21A.32.065C.2 relating to conditions under which a non-conforming use may be expanded. The request is raised in the context of Code Enforcement Case E0400741 which is on appeal to the Hearing Examiner. The Code Enforcement case concerns whether a legal non-conforming use – a dog training facility – has been expanded in violation of K.C.C. Title 21A. In the appeal before the Hearing Examiner, the parties have discussed a potential settlement, which would require Ms. Weaver to apply for and obtain a conditional use permit for the dog training facility.

Ms. Weaver's property is zoned RA-5 and is less than five acres in area.

Discussion

Dog training facilities are allowed as a conditional use in the RA zone, subject to conditions. One condition requires a minimum lot size of five acres. K.C.C. 21A.08.050B.34.b. Ms. Weaver's property does not meet the minimum lot size requirement.

K.C.C. Chapter 21A.32 establishes the standards for expansions or modifications of non-conforming uses. K.C.C. 21A.32.065 provides:

> A nonconforming use, structure, or site improvement may be expanded as follows:
>
> A. The department may review and approve, pursuant to the code compliance process of K.C.C. 21A.42.030, an expansion of a nonconformance only if:
>
> 1. The expansion conforms to all other provisions of this title, except that the extent of the project-wide nonconformance in each of the following may be increased up to ten percent:
>
> a. building square footage,
> b. impervious surface,
> c. parking, or

d. building height; and

2. No subsequent expansion of the same nonconformance shall be approved under this subsection if the cumulative amount of such expansion exceeds the percentage prescribed in subsection A.1;

B. A special use permit shall be required for expansions of a nonconformance within a development authorized by an existing special use or unclassified use permit if the expansions are not consistent with subsection A. of this section;

C. A conditional use permit shall be required for expansions of a nonconformance:

1. Within a development authorized by an existing planned unit development approval; or

2. Not consistent with the provisions of subsections A. and B. of this section; and

D. No expansion shall be approved that would allow for urban growth outside the urban growth area, in conflict with King County Comprehensive Plan rural and natural resource policies and constitute impermissible urban growth outside an urban growth area.

In the negotiations on the Code Enforcement case, the question has been asked whether K.C.C. 21A.32.065 requires a non-conforming use to conform to all other provisions of K.C.C. Title 21A. If so, Ms. Weaver would not be able to expand her use since her property does not meet the minimum lot size requirement.

K.C.C. 21A.32.065A contains the requirement that the expansion of a non-conforming use must conform to all other provisions of Title 21A. Mr. Crittenden points out that K.C.C. 21A.32.065C.2 provides an alternative. It states that if a non-conforming use does not meet the requirements of subsection A or B, a conditional use permit is required for the expansion. He suggests reading into K.C.C. 21A.32.065C.2 a requirement that the expansion must comply with all of the provisions of K.C.C. Title 21A would "render the section meaningless."

Mr. Crittenden is correct in his analysis. K.C.C. 21A.32.065 establishes the standards under which a non-conforming use may be expanded. By its very nature, a non-conforming use does not comply with the zoning code. See K.C.C. 21A.06.800. K.C.C. 21A.32.065 provides for two different situations under which a nonconforming use may be expanded. The first situation is if the expansion conforms with all other provisions of the zoning code, except for square footage, height, impervious surface coverage, or parking. K.C.C. 21A.32.065A. In that case, the use may be expanded by up to 10 %. The second situation is when the expansion does not conform with other provisions of the zoning code besides the four listed above. In that case, the expansion requires a conditional use permit.

In the case presented by this case, the proposed expansion of the nonconforming use does not meet the requirements of K.C.C. 21A.32.065A because the property does not meet the minimum site area requirement of K.C.C. 21A.08.050B.34.b. However, through the conditional use permit process, the expansion may be approved if K.C.C. 21A.32.065 and 21A.32.075 are satisfied.

In addition, conditional use permits are subject to the standards set forth in K.C.C. 21A.44.040:

> **21A.44.040 Conditional use permit.** A conditional use permit shall be granted by the county, only if the applicant demonstrates that:
>
> A. The conditional use is designed in a manner which is compatible with the character and appearance of an existing, or proposed development in the vicinity of the subject property;
>
> B. The location, size and height of buildings, structures, walls and fences, and screening vegetation for the conditional use shall not hinder neighborhood circulation or discourage the permitted development or use of neighboring properties;
>
> C. The conditional use is designed in a manner that is compatible with the physical characteristics of the subject property;
>
> D. Requested modifications to standards are limited to those which will mitigate impacts in a manner equal to or greater than the standards of this title;
>
> E. The conditional use is not in conflict with the health and safety of the community;
>
> F. The conditional use is such that pedestrian and vehicular traffic associated with the use will not be hazardous or conflict with existing and anticipated traffic in the neighborhood;
>
> G. The conditional use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding area or conditions can be established to mitigate adverse impacts on such facilities; and
>
> H. The conditional use is not in conflict with the policies of the Comprehensive Plan or the basic purposes of this title.

Decision

A nonconforming use may be expanded if the proposed expansion meets the requirements of K.C.C. 21A.32.065. If the expansion complies with all provisions of the zoning code, except for height, impervious surface coverage, square footage, or parking, an expansion of less than 10% in these factors may be approved through the code compliance process of K.C.C. 21A.42.030. If the expansion does not comply with all provisions of the zoning code or with the 10% limit, the expansion may be approved through a conditional use permit. K.C.C. 21A.44.040 establishes the standards that apply to conditional use permits.

Appeal of Code Interpretations

Although this code interpretation was raised in the context of a code enforcement case, it is not related to whether or not there is a code violation. There is no other permit or code enforcement action before the Department of Development and Environmental Services to which this code interpretation relates. Under K.C.C. 2.100.050, a code interpretation that is not related to permit or code enforcement action that is pending before the Department is final when the Director issues the Code Interpretation. The Director determines that this code interpretation is final on the date it is issued.

Stephanie Warden
Director
Development and Environmental Services

Date 12/24/07