



King County

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

REGULATORY REVIEW COMMITTEE

- MINUTES -

MEETING DATE: October 6, 2005

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
Jeri Breazeal
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: Steve Bottheim, Jeri Breazeal, Pam Dhanapal, Lisa Dinsmore, Nancy Jo Perdue, Harry Reinert, Chris Ricketts and Randy Sandin

- 1. Do provisions for swimming pools in K.C.C. Chapter 16.70 supercede those in Title 21A, particularly as they relate to interior lot line setbacks.**

Background

This matter began as a code enforcement action involving construction without required permits.

In 1976, a permit to install a pool was issued by King County. According to King County records, the permit was not finalized. Sometime after the permit for the pool was issued, an enclosure surrounding the pool was built, but DDES has no record of a permit for this structure. The current owner began reconstruction of a pool enclosure in 2004. Based on a complaint, DDES notified the property owner that she would need to obtain a building permit. DDES denied the application she submitted. The property owner continued construction, resulting in the issuance of a stop work order.

Later, a structure was built over the pool without a permit. This structure is attached to the house and includes a roof over the pool. It is open at the opposite end from the house. There is a fence around the open end of the pool area. The project extends into the interior line setback between the pool owner's property and that of the neighbors.

The property is zoned RA-5.

The property owner, through her attorney, has requested a code interpretation concerning the relationship of K.C.C. Ch. 16.70 and K.C.C. Title 21A.

Discussion

K.C.C. Ch. 16.70, adopted by Resolution 21284 in 1960, establishes private pool construction standards.

K.C.C. 16.70.010 prohibits locating a pool in the front yard or having the water surface within five feet of an exterior property line. K.C.C. 16.70.020 requires "a solid structure or a fence not less than five feet in height" that completely surrounds the pool to minimize the risk that unsupervised children will have access to the pool. If the pool is located in a yard with a fence meeting the design requirements, a fence around the pool is not required. Plans must be resubmitted to DDES for approval before construction.

K.C.C. 16.70.030. Pools that were constructed prior to the adoption of the ordinance were required to comply with the fencing requirements within six months of adoption of the ordinance. K.C.C. 16.70.050.

The King County Zoning Code, codified in Title 21A, includes standards for setbacks. In the RA-5 zone, these setbacks are 30 feet from the street and 10 feet from interior lot lines. K.C.C. 21A.12.040. The setback is defined as "the minimum distance between a structure and a specified line, such as a lot, ... that is remain free of structures." K.C.C. 21A.06.1070.

The property owner suggests that K.C.C. Ch. 16.70 and K.C.C. 21A.12.040 are in conflict because each requires setbacks. She also suggests that she cannot comply with the requirements of K.C.C. 16.70 if the setback requirements apply, since the pool is located within the required setback.

The Committee concluded that K.C.C. Ch. 16.70 and K.C.C. 21A.12.040 are not in conflict. The requirement in K.C.C. 16.70.020 is to construct a solid structure or fence at least five feet in height around the pool. A fence less than six feet in height is explicitly excluded from the definition of a structure. K.C.C. 21A.06.1255. In addition, fences less than six feet in height are allowed in any setback. K.C.C. 21A.12.170E. Ms. Bessler proposes to construct a solid structure with a roof to enclose her pool. This is not required by K.C.C. Ch. 16.70.

Conclusion

K.C.C. Ch. 16.70, which includes requirements for setbacks and fencing around private swimming pools, and K.C.C. Ch. 21A.12, which establishes street and interior setbacks, are not in conflict. K.C.C. 21A.12.170 allows fences less than six feet in height within the setback. K.C.C. 16.70.020 requires a fence or other solid structure of at least five feet to surround a private pool. Therefore, it is possible for a property owner to comply with the requirements of K.C.C. 16.70.020 and also comply with the setback requirements of K.C.C. Ch. 21A.12.

In this case, the property owner proposes to construct a covered enclosure. This is not required by K.C.C. 16.70 and, in the particular circumstances of this case, is not allowed by K.C.C. 21A.12.

2. Paint ball facilities.

A. How are paint ball facilities handled by the zoning code?

Background

During the last few years, DDES has received several complaints regarding outdoor paint ball facilities. Most of these complaints have involved RA zoned property.

Discussion

Paintball is not listed as a use in the zoning code or specifically mentioned in the SIC manual. K.C.C. 21A.08.040 does reference a catch-all category: SIC 7999 – Amusement and Recreation Services, Not Elsewhere Classified, however paint ball facilities are not specifically listed in this section. Nor are they listed under SIC 7997 for sports and recreation clubs that charge membership fees.

The Regulatory Review Committee has previously discussed this topic on January 6 and on January 30, 1998. The Committee sought comments from the United States Office of Management and Budget, which suggested that paint ball facilities would be included under SIC 7999.

Conclusion.

Unless the paint ball facility meets the requirements for a sports and recreation club, which is covered by SIC 7997, paint ball facilities fall under SIC 7999. The committee recommended that the code be amended to include paint ball facilities and the conditions under which they would be allowed.

B. In what zones are paint ball facilities allowed and under what conditions?

Background

Amusement and recreation services (SIC 7999) are either a permitted use or a conditional use in all zones, except for agriculture. They are subject to conditions in most zones. The committee specifically addressed the R1- R8 and RA zones as paint ball facilities in these zones have been the focus of code enforcement cases.

Discussion

In the RA zone, amusement and recreation services are a permitted use only as a golf driving range accessory to golf courses or as accessory to some types of parks. K.C.C. Amusement and recreation services are allowed as a conditional use only as a golf driving range. If relevant, the driving range must also comply with the trail corridor and equestrian community provisions. K.C.C. 21A.08.040.

In the R1 - R8 zones, amusement and recreation services are a permitted use, subject to conditions 8, 21, and 22.

K.C.C. 21A.08.040B.8 provides:

8. Limited to a golf driving range only as:
 - a. an accessory to golf courses; or
 - b. an accessory to a large active recreation and multiuse park.

K.C.C. 21A.08.040B.21 provides:

21. Only as an accessory to a park, or a large active recreation and multiuse park in the RA zones, and limited to:
 - a. rentals of sports and recreation equipment; and
 - b. a total floor area of seven hundred and fifty square feet.

K.C.C. 21A.08.040B.22 provides:

22. Only as an accessory to a large active recreation and multiuse park and limited to:
 - a. water slides, wave pools and associated water recreation facilities;and
 - b. rentals of sports and recreation equipment.

Conclusion

Paint ball facilities are not a permitted or a conditional use in either the RA or the R1 - R8 zones.

3. How does the zoning code treat single-family residences that are rented as vacation rentals?

Background

DDES has received several complaints in the Snoqualmie Pass and Stevens Pass areas that single-family residences are being used as vacation rentals and are being used year-round. People express concern that the year-around use will place a hardship on the water and sewage system.

Discussion

Most definitions of the different types of dwelling units do not address ownership or length of occupancy. See, e.g. K.C.C. 21A.06.345, .365, and .370.

K.C.C. 21A.08.030 governs residential land uses. Under the temporary lodging category, Hotel/Motel, not including bed and breakfast guesthouses, are allowed only in the CB, RB, and O zones. SIC Category 7011 defines Hotel/Motels. The SIC manual defines these as "commercial establishments ... primarily engaged in providing lodging ... for the general public." Examples include hotels, motor hotels, cabins and cottages, and tourist cabins.

The rental of a single family residence does not meet the definition of a Hotel/Motel under SIC 7011. They are not commercial establishments and are not primarily engaged in providing lodging. SIC 6514 would be more applicable. This category applies to operators of dwellings other than apartment buildings. As with the Hotel/Motel category, however, this also applies to establishments that are "primarily" engaged in the operation of dwellings. Bed and Breakfast is defined as a dwelling unit within which bedrooms are available of paying guests. K.C.C. 21A.06.090. The rental of an entire residence does not meet this definition either.

Conclusion

For purposes of the permitted use table, a single-family dwelling unit that is rented out as vacation rental is still a single-family dwelling unit. The fact that the unit is rented does not convert it into a Hotel/Motel.

4. What types of structures may be built on rural residential and other rural zoned property that do not have residential structures?

Background

Code Enforcement has had several cases involving people who have built storage buildings in the RA and other rural zones on parcels that do not have a residence.

Discussion

Residential accessory use is defined as follows:

- " **21A.060.020 Accessory use, residential.** Accessory use, residential:
- A. A use, structure, or activity which is subordinate and incidental to a residence including, but not limited to the following uses:
1. Accessory living quarters and dwellings;
 2. Fallout/bomb shelters;
 3. Keeping household pets;
 4. On-site rental office;
 5. Pools, private docks, piers;
 6. Antennae for private telecommunication services;
 7. Storage of yard maintenance equipment; or
 8. Storage of private vehicles, e.g. motor vehicles, boats, trailers or planes;
 9. Greenhouses.

B. Some accessory uses within the scope of this section may be defined separately to enable to code to apply different conditions of approval."

Thus, in order to establish an accessory use, there must be a residence on the property.

Resource accessory use is defined as:

" **21A.06.025 Accessory use, resource.** Accessory use, resource:

A. A use, structure, or part of a structure, which is customarily subordinate and incidental to a resource use including, but not limited to the following uses:

1. Housing of agricultural workers; or
2. Storage of agricultural products or equipment used on site.

B. Some accessory uses within the scope of this section may be defined separately to enable the code to apply different conditions of approval."

In this case, the resource accessory use only requires that the use or structure be one that is "customarily subordinate and incidental to" a resource use. The definition does not require that the use be on the resource use be on the same property, which is a requirement in the case of residential accessory uses.

In RA zones, resource accessory uses are allowed outright, subject to condition 3, which governs accessory dwelling units. This condition does not limit the resource accessory uses to accessory dwelling units. C.f., conditions 5 and 9 , which both begin with the phrase "Limited to".

Conclusion

A structure, such as a barn, that is customarily used to support a resource use, such as forestry or agriculture, is a permitted use on a RA zoned property that does not have a residence. The resource use that the structure supports is not required to be located on that property.