



King County

Department of Development and Environmental Services

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REGULATORY REVIEW COMMITTEE

- MINUTES -

MEETING DATE: September 10, 2010

TO: Building Services Division Staff
Jim Chan, Manager
Chris Ricketts
Jarrod Lewis
Sheryl Lux
Lisa Dinsmore

Land Use Services Division Staff
Randy Sandin, Manager
Steve Bottheim
Molly Johnson

Fire Marshal Division Staff
Gay Johnson, Assistant Fire Marshal

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

FM: Harry Reinert, Chair

Present: Steve Bottheim, Devon Shannon, Jarrod Lewis, Sheryl Lux, Laura Casey, Lisa Dinsmore, and Harry Reinert

1. Under the county's shoreline regulations, what types of modifications of a non-conforming use or structure are allowed?

Background

An applicant with a non-conforming boat house on Lake Washington wishes to raise and modify the roof to make it easier for people using the dock and climbing into boats will be less likely to hit their heads against the roof of the boat house.

Discussion

K.C.C. 25.32.060 establishes standards for alteration to a non-conforming use in the shoreline jurisdiction. That section provides in part

A. Applications for substantial development or building permits to modify a nonconforming use or development may be approved only if:

1. The modifications will make the use or development less nonconforming; or
2. The modifications will not make the use or development more nonconforming.

...
C. The review of applications for the modification of a nonconforming use or development shall be subject to the guidelines enumerated in K.C.C. 21A.32 (General Provisions-Nonconformance, Temporary Uses, and Re-Use of Facilities).

In the circumstances presented by the current request, the first question is whether the proposed modifications will not make the use more nonconforming.

K.C.C. Title 25 does not generally allow covered overwater structures. The one exception is for a canopy that covers a boat lift. Since the current shoreline regulations do not specifically allow boat houses, a change to the roof that increases the area covered by the roof would make the structure more nonconforming and would not be allowed under K.C.C. 25.32.060B. On the other hand, changes to the roof that do not increase the area covered by the roof would not make the use more nonconforming and may be approved.

Examples of changes to the boat house that would not make the structure more nonconforming would be changes to the location of windows or doors or removing a wall.

K.C.C. 25.32.060 makes reference to the guidelines in K.C.C. Chapter 21A.32. The relevant provision is K.C.C. 21A.32.055, which governs modifications of an existing nonconforming use. That section provides:

Modifications to a nonconforming use, structure or site improvement may be reviewed and approved by the department pursuant to the code compliance review process of K.C.C. 21A.42.030 provided that:

- A. The modification does not expand any existing nonconformance; and
- B. The modification does not create a new type of nonconformance.

In the case of a proposal to modify the roof of the boat house, as long as the area covered by the roof of the boat house is not increased, the modification would not expand the existing nonconformance and would not be creating a new type of nonconformance.

Summary

A proposal to modify the roof of a nonconforming boat house on Lake Washington may be approved if the proposal does not increase the area covered by the roof. Other changes to the structure, such as relocating windows or doors or removing a wall, would not increase the nonconformance of the structure and would be allowed.

2. Is a hydropower facility connected to the electrical transmission and distribution system a "linear facility" under K.C.C. 21A.24.070?

Background

Snohomish Public Utility District (SnoPUD) proposes to construct two small hydropower projects ("the Projects"). The Projects are relatively small (5.4 and 6.3 megawatt) run-of-the-river hydroelectric projects. Run-of-the-river means that there is a very small reservoir (approximately 0.25-acres) so the hydroelectric plant operates following natural streamflow. The Projects are upstream of Snoqualmie Falls so there are no anadromous fish impacts.

Discussion

K.C.C. 21A.24.045 includes an allowed alteration for instream work, but the conditions would not apply to the proposed hydropower facility because they are located on a type S or F stream.

K.C.C. 21A.24.070 establishes standards for alteration exceptions. Alteration exceptions fall into two basic categories: linear and non-linear. Non-linear alterations are generally not allowed to alter aquatic areas, wetlands, and wildlife habitat conservation areas, but may alter the buffers of those critical areas and other critical areas and their buffers. K.C.C. 21A.24.070A.2. Since the proposal would require altering an aquatic area, the non-linear alteration exception would not apply.

Linear alterations are allowed to alter all critical areas and critical area buffers. K.C.C. 21A.24.070A.1. Linear alterations are defined as "infrastructure that supports development that is linear in nature and includes public and private roadways, public trails, private driveways, railroads, utility corridors and utility facilities." K.C.C. 21A.24.070C. A utility facility is defined as "a facility for the distribution or transmission of services, including: ... J. Communication cables, electrical wires and associated structural supports." K.C.C. 21A.06.1350. Electrical transmission and distribution lines are a type of utility facility.

Similarly, a hydropower facility that connects to the electrical distribution and transmission system should be considered a linear facility for purposes of K.C.C. 21A.24.070A if it is "linear in nature." Here, the dam and structures necessary to generate electricity are not in themselves linear in nature and it does not support linear development. The structures proposed for the Projects are located apart from and perpendicular to the existing linear infrastructure. Therefore, allowing the use as a linear alteration is not appropriate.

If application of the CAO would deny all reasonable use of the property, a reasonable use exception may be granted. K.C.C. 21A.24.070B. In this case, the property is zoned forestry and there are other reasonable uses. Therefore, a reasonable use exception is not appropriate.

Recommendation

Under the existing critical areas regulations in K.C.C. Chapter 21A.24, hydroelectric generating facilities that require installation of non-linear structures in a Type S or F aquatic area are not

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allowed either as an allowed alteration under K.C.C. 21A.24.045 or as an alteration exception under K.C.C. 21A.24.070. The Regulatory Review Committee believes this is an oversight and recommends that the Department propose a change to K.C.C. Chapter 21A.24 to allow these facilities under appropriate circumstances.