March 31, 1999

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
850 Union Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
Telephone (206) 296-4660
Facsimile (206) 296-1654

REPORT AND DECISION ON
APPEAL OF NOTICE AND ORDER

SUBJECT: Department of Development and Environmental Services File No. **E9800878**

FRITZ ANDERSON
Code Enforcement Appeal

Location: 8425 NE 144th Street

Property Owner & Appellant: **Fritz Anderson**
348 – 7th Place SE #3
Puyallup, WA 98372

SUMMARY: Although improper storage of inoperable vehicles is a code violation, in the absence of a development application the enforcement process cannot be used to require parking improvements.

SUMMARY OF DECISION:

Department's Preliminary Recommendation:	Deny the appeal
Department's Final Recommendation:	Deny the appeal
Examiner's Decision:	Grant in part, deny in part

PRELIMINARY MATTERS:

Notice of appeal received by Examiner:	December 22, 1998
Statement of appeal received by Examiner:	December 22, 1998

EXAMINER PROCEEDINGS:

Hearing Opened:	March 22, 1999
Hearing Closed:	March 22, 1999

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- Code violations – Parking requirements
- Junk vehicles

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On December 3, 1998, the King County Department of Development and Environmental Services Code Enforcement Section issued a Notice and Order to Fritz Anderson, citing him for code violations at 8425 NE 144th Street, Bothell. The following conditions on the property were cited:

> "Accumulation and or storage of inoperable junk vehicles: Parking vehicles on unimproved surfaces (i.e. grass or dirt). Accumulation of junk and debris stored on the property which has caused rodents."

The Notice and Order imposes on Mr. Anderson an initial civil penalty in the amount of $700 with additional penalties assessable if Mr. Anderson fails to correct the violations in a timely manner.

2. Mr. Anderson has filed a timely appeal of the Notice and Order. A pre-hearing conference was held by the King County Hearing Examiner's Office on February 19, 1999, at which time issues were defined as including the appropriateness of the $700 penalty assessment, the possible complicity of King County employees in the storage of vehicles on unimproved surfaces on the property, and whether vehicle storage on non-impervious surfaces on the property is a permitted non-conforming use.

3. Photographs introduced at the hearing by code enforcement staff, as supported by Mr. Anderson's own testimony, demonstrate that many of the vehicles on the site in 1998 (when the most recent citation was issued) were also on the property in 1993. A comparison of photographs taken in 1998 with those earlier taken in 1993 show on the back side of the house a cluster of three vehicles parked in the same place and in the same relationship to one another. Their unchanged location over a five year period supports the inference that they are inoperable vehicles within the meaning of the code. In addition, a red commercial delivery van with a white

Chevrolet truck cab also appears in both sets of photographs in front of the house in 1993 and behind the house in 1998. It is conceded by code enforcement staff that the inoperable vehicles were removed by Mr. Anderson from the property prior to January 3rd, 1999, with the exception of an old tractor which is now located on a private easement. It is also agreed that the other junk and debris cited in the Notice and Order has been removed.

4. It is uncontested that the parking surfaces on the subject property are of a non-impervious nature. No credible evidence has been introduced that indicates King County employees directed the appellant to store parked vehicles on unimproved surfaces, and the character of the parking surfaces is immaterial in respect to determining the legality of the storage use. A site inspection report issued by the King County Water and Land Resources Division on February 11, 1999 concluded that no water quality problems have resulted from the storage on the Anderson site of inoperable vehicles.

CONCLUSIONS:

1. KCC 21A.18.110.I provides that "all vehicle parking and storage for single detached dwellings must be in a garage, carport or on an improved, impervious surface". While the parking spaces on the Anderson property do not comply with this provision, the requirements stated in KCC Chapter 21A.18 by their terms apply only to new development and not to existing development. They are development standards which must be met before an occupancy permit can be granted or a change of use approved. Mr. Anderson's residence is an existing development that is not subject to the standards stated in Chapter 21A.18. Under such circumstances, he cannot be required at this point in time to construct an improved on-site parking surface.

2. The evidence of record establishes that Mr. Anderson has violated the provisions of KCC 23.10.040 and 21A.32.230, prohibiting the storage on a residential property of inoperative motor vehicles. The evidence also establishes that these violations have been both ongoing over a period of more than five years, and the subject of prior code enforcement actions. Accordingly, the initial citation of the property for fines in the amount of $700 is consistent with the assessment schedule provided in KCC23.32.010.A.

3. Nonetheless, the purpose of the code enforcement ordinance is to assure compliance with County codes, and discretion is conferred upon county administrators to waive the enforcement of penalty provisions under appropriate circumstances. In view of the history of non-compliance on the property, a complete waiver of the fines is not warranted even though the offending vehicles have been removed. The penalty will be deferred if the appellant brings his property into complete code compliance, and waived altogether if no further citations of this nature are issued within the next two years.

DECISION:

The appeal of Fritz Anderson is GRANTED with respect to the citation of his property for parking on unimproved surfaces, and is DENIED in all other respects.

ORDER:

1. Enforcement of the $700 civil fine contained in the Notice and Order shall be deferred so long as the following two conditions are met:

    a) The tractor is removed from the site and/or abutting easements within 30 days of the date of this order; AND
    b) No citation or Notice and Order for inoperable vehicles or junk and debris is filed against the property within the two years succeeding the date of this order; PROVIDED THAT, if such citation or Notice and Order is filed, this condition shall not be deemed violated until all appeals taken therefrom shall have been exhausted and decided adversely to the property owner.

2. DDES shall waive or dismiss the fine against the property after two years if the above conditions have been met.

ORDERED this 31st day of March, 1999.

_____

Stafford L. Smith, Deputy
King County Hearing Examiner

TRANSMITTED this 31st day of March, 1999, by certified mail and first class mail, to the parties and interested persons named on the attached list.

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless within twenty (20) days from the date of the decision an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of Washington, for the purpose of review of the decision.

MINUTES OF THE MARCH 22, 1999, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES' FILE NO. E9800878 – ANDERSON CODE ENFORCEMENT APPEAL.

Stafford L Smith was the Hearing Examiner in this proceeding. Participating at the hearing were: Darren Wilson, Bijan Parsadmehr and Fritz Anderson.

The following exhibits were offered and entered into the hearing record:

Exhibit No. 1 DDES Staff Report
Exhibit No. 2 Notice of case violation
Exhibit No. 3 Letter from Fritz Anderson to DDES (12/22/98)
Exhibit No. 4 Notice of code violation (case #E92C1505)
Exhibit No. 5 Notice of code violation (case #E9301742)
Exhibit No. 6 Photos of Anderson's property, 5 total (dated 1993)
Exhibit No. 7 Photos of Anderson's property, 6 total (dated 8/98 and 10/98)
Exhibit No. 8 King County codes, Chapter 23.10
Exhibit No. 9 King County codes, re: parking ways
Exhibit No.10 King County codes, Chapter 21
Exhibit No.11 King County codes; Chapter 10
Exhibit No.12 Recorded document of Satisfaction Notice (7/9/93)
Exhibit No.13 Recorded document of Satisfaction Notice (3/25/97)
Exhibit No.14 Written inspection (case #00.0117)
Exhibit No.15 Written statement from Brenda Woods (e-mail) EXCLUDED

SLS:sje
Attachment
E98\E9800878 rpt