July 30, 2008

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0700541**

JAMES McDONOUGH
Code Enforcement Appeal

Location: 21618—220th Avenue Southeast

Appellant: James McDonough
represented by **Ross Radley**
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King County: Department of Development and Environmental Services (DDES)
represented by **Holly Sawin**
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EXAMINER PROCEEDINGS:

Hearing opened: July 29, 2008
Hearing closed: July 29, 2008

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.

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

FINDINGS OF FACT:

1. On March 31, 2008, the King County Department of Development and Environmental Services Code Enforcement Section (DDES) issued a Notice and Order to James McDonough concerning

property located at 21618 220th Avenue Southeast. This five acre parcel within the RA-5 zone was cited for placement of two mobile homes and two cargo containers without required permits; unlawful commercial storage; accumulation of inoperable vehicles and vehicle parts; parking of vehicles on non-impervious surfaces; an accumulation of rubbish, salvage and debris; and the illegal occupancy of two substandard dwellings in the form of travel trailers. Mr. McDonough filed a timely appeal of the Notice and Order.

2. The Appellant and DDES staff appear to have agreed on a process for resolving many of the problems cited within the Notice and Order. With respect to citation no. 1, the two cargo containers are planned to be cut in half to bring them below the permitting minimum area threshold, and the older of the two mobile homes will be removed from the property. Mr. McDonough wants to see whether he can get the newer mobile home approved as a storage building, which will require a change of use approval from the State Department of Labor and Industries (L&I) as well as a County building permit. The parties have agreed that the actions necessary to establish compliance with respect to citation no. 1 will be accomplished within 60 days. With respect to items 3 and 4 within the Notice and Order, within 60 days inoperable vehicles will be removed as well as auto parts, rubbish and debris. In addition, remaining vehicles will be parked on impervious surfaces.

3. The storage of equipment and supplies on the property appears to relate mainly to Mr. McDonough's business of providing high-speed disperser equipment to firms who do paint mixing. Since Mr. McDonough is in the process of moving into a new residence on the property and has obtained a building permit to construct a large storage shed, DDES staff has somewhat generously agreed to treat this onsite commercial storage as a potential home occupation if Mr. McDonough can manage to bring his operation within the limits of applicable Code requirements. Mr. McDonough will be given six months to reduce outside storage by placing business equipment and materials into the new planned storage building and 60 days to consolidate the interim outside storage into a 4,000 square foot area.

4. This leaves the final citation for occupancy of substandard dwellings to be resolved. Mr. McDonough's sister owns and has recently resided in one of the two travel trailers, but has now moved into the new house and at some future point intends to move the trailer to a property in Wenatchee. She wants to leave the trailer parked on her brother's site until she makes this move. So long as she resides within the new house on the property, her desire to keep the unoccupied trailer stored onsite is no problem. Storage of private vehicles such as trailers is a permitted accessory residential use.

5. The second travel trailer on the site remains occupied by a friend of Mr. McDonough who also apparently does some caretaking and gardening work on the property. Mr. McDonough says that this tenant only sleeps in the travel trailer and uses the sanitation facilities at the main house. Mr. McDonough would like to have this arrangement continue and his attorney has argued that the second travel trailer should be regarded as an accessory dwelling unit (ADU) permitted under the Zoning Code.

CONCLUSIONS:

1. There is no dispute that the Zoning Code allows the placement of ADUs on properties within the RA-5 zone. The problem is rather that travel trailers do not qualify for permanent occupancy under applicable health and safety requirements. The Zoning Code itself at KCC 21A.06.345 defines a dwelling unit as designed for occupancy "for living and sleeping purposes, containing kitchen facilities…" A unit that only provides a sleeping facility does not meet the Zoning Code definition of a dwelling unit.

2. More critically, KCC 16.14.170, which replaces Section 108.1.3 of the International Property Maintenance Code (IPMC), defines a structure unfit for human occupancy as one that "lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code…" Section 202 of the IPMC defines a dwelling unit as providing "permanent provisions for living, sleeping, eating, cooking and sanitation." IPMC Section 504.1 requires all plumbing fixtures to be properly installed and maintained in working order and to be "functional." IPMC 505.1 requires all plumbing fixtures to be "properly connected to either a public water system or to an improved private water system." Section 505.3 requires the water supply system to be installed and maintained. Finally, Section 506.1 requires all plumbing fixtures to be "properly connected to either a public sewer system or to an improved private sewage disposal system."

3. At a minimum, the travel trailers on the McDonough property are not served by adequate and functional water and sanitary sewage systems. They are therefore structures unfit for human occupancy under KCC 16.14.170. As such, they cannot be legally approved as ADUs. Occupancy of these travel trailers must be terminated within 60 days of the date of this order.

4. Based on the evidence of record, the Notice and Order issued to James McDonough on March 31, 2008 must be upheld and the appeal denied. No permits have been issued for placement of the two mobile homes on the property and they must either be removed or required permits obtained. No permits have been issued for the two cargo containers and they also either must be removed, permitted or reduced in floor area beneath 200 square feet each. The onsite commercial storage does not presently meet home occupation requirements and either must be terminated or brought into compliance with home occupation standards. The Appellant has stipulated to removal of inoperable vehicles, vehicle parts and rubbish, salvage and debris and to the parking or storage of remaining vehicles on impervious surfaces. Finally, as stated above, the two travel trailers are clearly substandard for use as permanent dwelling units and their occupancy must be terminated.

DECISION:

The appeal is DENIED.

ORDER:

1. No penalties shall be assessed against the Appellant or his property if the following actions are all taken within 60 days from the date of this order:

   A. The two mobile homes on the site are either removed from the property or a building permit application is filed with the County to effect their permanent placement. Filing a complete building permit application will require prior receipt from L&I of permission to change the use of the unit to storage.

   B. The two cargo containers on the site are either removed or reduced in size so that each component has less than 200 square feet of floor area.

   C. Business-related supplies and equipment shall be consolidated within an area not to exceed 4,000 square feet.

   D. All inoperable vehicles, vehicle parts and accumulations of rubbish, salvage and debris shall be removed from the site. All remaining operable vehicles shall be parked on impervious surfaces.

E. Occupancy of the two travel trailers shall be terminated.

2. No penalties shall be assessed against the Appellant or his property if within six months of the date of this order outside storage of business supplies and equipment meet home occupation requirements. For this property the total outdoor area devoted to the home occupation, including storage of equipment and supplies, shall not exceed 2,335 square feet.

3. If the Appellant fails to meet any of the 60 day deadlines stated in condition 1 above, DDES may assess fines and penalties retroactive to the date of this order. Failure to meet the six month deadline stated in condition 2 shall result in the assessment of penalties as of the date of the six month deadline.

ORDERED this 30th day of July, 2008.

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Stafford L. Smith
King County Hearing Examiner *pro tem*

NOTICE OF RIGHT TO APPEAL

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 proceedings for review of the decision are properly commenced in Superior Court within 21 days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE JULY 29, 2008, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0700541.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were Holly Sawin, representing the Department; Ross Radley, representing the Appellant and James McDonough, the Appellant.

The following Exhibits were offered and entered into the record:

Exhibit No. 1	DDES staff report to the Hearing Examiner for July 29, 2008
Exhibit No. 2	Code violation letter from Holly Sawin to Mr. McDonough dated August 15, 2007
Exhibit No. 3	Copy of the Notice & Order issued March 31, 2008
Exhibit No. 4	Copy of the Notice and Statement of Appeal received April 15, 2008
Exhibit No. 5	Copies of codes cited in the Notice & Order
Exhibit No. 6	*Not entered into the record*
Exhibit No. 7A	2007 aerial photograph of subject property from KC GIS
Exhibit No. 7B	2005 aerial photograph of subject property from KC GIS
Exhibit No. 8A	Photographs of the subject property taken by Holly Sawin on July 17, 2008
Exhibit No. 8B	Site plan with showing photograph locations

Exhibit No. 9 Code interpretation
Exhibit No. 10 Photographs taken July 26, 2008

SLS:vsm
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