June 8, 2017

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON

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REPORT AND DECISION

SUBJECT: Department of Permitting and Environmental Review file no. **ENFR150364**

DENISE LOVIN (HARTMAN)
Code Enforcement Appeal

Location: 19806 196th Avenue SE, Renton

Appellants: Denise and John Lovin
represented by **Joseph Harper**
8310 S Park Avenue
Tacoma, WA 98408
Telephone: (253) 212-2450
Email: harperlawoffices@comcast.net

King County: Department of Permitting and Environmental Review
represented by **Holly Sawin**
35030 SE Douglas Street Suite 210
Snoqualmie, WA 98065
Telephone: (206) 477-0291
Email: holly.sawin@kingcounty.gov

SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny appeal

EXAMINER PROCEEDINGS:

Hearing Opened:	June 1, 2017
Hearing Closed:	June 1, 2017

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 Hearing Examiner's Office.

FINDINGS:

1. Denise Lovin is record owner of parcel 0622069105, the address of which is 19806 196th Avenue SE, Renton, WA (the Property). The Property is zoned RA-5. Exhibit 2.

2. The Property is 100,188 square feet in size or 2.3 acres. Exhibit 10. It is, thus, less than the 3.75 acre minimum lot size in the RA-5 zone. KCC 21A.12.030.

3. In response to a complaint alleging construction of a large garage with an apartment without the required permits, Officer Holly Sawin met Ms. Lovin on June 26, 2015 at the Property. Officer Sawin observed a 2-story 3-bay garage/shop with an accessory dwelling unit (ADU) on the upper level (Garage Addition). The Garage Addition is attached to a single level 2-bay garage. The ADU contains a bathroom, bedroom, and kitchenette. Exhibits 1 and 5.

4. The Department of Permitting and Environmental Review (DPER) sent Ms. Lovin a compliance letter requiring a building permit for the ABC structure. Exhibit 1.

5. Ms. Lovin's attorney, Joseph Harper, attended an ABC permit pre-screening meeting (PREA16–0028) at DPER on March 31, 2016. Exhibit 1. Nearly a year later on March 20, 2017, when Ms. Lovin had not submitted a permit application, DPER issued a Notice and Order alleging construction of a detached garage with second-story ADU on a parcel that does not meet the minimum lot size for an ADU and without the required permits. Exhibits 1 and 2.

6. Ms. Lovin (Appellant) submitted a timely appeal on April 11, 2017 contending that the structure is a pre-existing non-conforming use. She also argues that the structure had been in existence "since at least 1974." Exhibit 3. In her Hearing Brief, Exhibit 12, she argues that the large garage and ADU were in existence at the time she purchased the property and that she is, therefore, an innocent purchaser.

7. The record indicates that a residence and 2-bay detached garage existed in 1977. King County issued a building permit for an addition to a residence on the Property on October 3, 1977. Exhibit 1. An October 4, 1977 aerial photograph shows the presence of a 2-bay detached garage. There is no record of a building permit having been issued for the residence or the detached garage.

8. Appellant testified at the hearing in this matter that she and her former husband had enclosed the lower story of the Garage Addition without obtaining a building permit. DPER testified that such an enclosure requires a building permit.

CONCLUSIONS:

1. DPER has made a *prima facie* showing of the alleged violation.

2. KCC 23.02.010.K defines "person responsible for code compliance" as:

> "[E]ither the person who caused the violation, if that can be determined, or the owner, lessor, tenant or other person entitled to control, use or occupy, or any combination of control, use or occupy, property where a civil code violation occurs, or both."

Appellant, as the owner of the Property, is a person responsible for code compliance.

3. The King County Code defines "nonconformance" as:

> "A use, improvement or structure *established in conformance* with King County's rules and regulations and other applicable and local state rules and regulations in effect at the time the use, improvement or structure was established that no longer conforms to King County's rules and regulations or to other applicable local and state rules and regulations due to changes in the rules and regulations or their application to the subject property." (Emphasis added).

4. "The landowner bears the burden of establishing that a valid nonconforming use exists. The landowner 'asserting a prior legal, nonconforming use bears the initial burden to prove that (1) the use existed before the county enacted the contrary zoning ordinance; (2) the use was lawful at that time; and (3) the [landowner] did not abandon or discontinue the use for over a period of one year.'" *McMilian v. King County*, 161 Wn.App. 581 (2001), cited with favor by the Supreme Court in *King County Dep't of Dev. & Envtl. Servs. v. King County*, 177 Wn.2d 636, 643, 305 P.3d 240 (2013).

5. A landowner fails to establish that its use was lawful when, among other things, it failed to obtain building permits or site development review. *First Pioneer Trading Co. v. Pierce County*, 146 Wn.App. 606, 611-12, 617, 193 P.3d 928 (2008). When a landowner utilizes unlawful methods to establish a nonconforming use, that unlawfulness precludes a subsequent finding of a lawful nonconforming use. *King County Dep't of Dev. & Envtl. Servs.*, 177 Wn.2d at 648.

6. Appellant made no showing that King County issued a building permit for the Garage Addition or for the subsequent enclosure of its lower level. Thus, the structure is not a legal nonconforming structure. Nor did Appellant demonstrate that the King County Code has changed such the structure is no longer conforming.

7. The Garage Addition, including the ADU, are subject to the current version of the King County Code; not the version of the code that existed at the time the Garage Addition was constructed or its upper floor converted to an ADU.

8. The ADU does not satisfy the current standards for an ADU, which require that the ADU be in the same building as the primary dwelling unit on a rural lot that is less than the minimum lot size. KCC 21A.08.030.B.7.a(2)(b).

9. Appellant cites *Nagle v. Snohomish County*, 129 Wn.App. 703 (2005) in support of her argument that she should be excused from code compliance as an innocent purchaser.

However, that case is not on point. It concerned RCW 58.17.210 which generally prohibits a local government from issuing a building permit, septic tank permit, or other development permit for any parcel of land divided in violation of the state subdivision statute or local subdivision regulations, but provides an express exemption to this prohibition for innocent purchasers. The King County code implements this exemption in Title 19A KCC. KCC 19A.04.190 defines innocent purchaser as one who purchase real property for value with no knowledge at any time prior to or during the sale that the lot had been or is being created in violation of Title 19A, Land Segregation. KCC 19A.08.090.A expressly provides that nothing in Title 19 is intended to exempt development on innocent purchaser lots from compliance with development standards of the County's zoning code.

10. The Examiner is aware of no parallel exemption in state law or the King County Code for other violations of the County code. Nor has Appellant provided a citation to any such provision.

DECISION:

1. The appeal is **DENIED.**

2. An accessory dwelling unit is not permitted because the Property does not meet the minimum lot size requirement. The area of the existing accessory dwelling unit may be permitted as accessory living quarters or unheated storage space.

3. No penalties shall be assessed against the Appellant or the subject property if the following actions are completed by the schedule set forth below.

   Apply for and obtain the required permits, inspections, and approvals with complete application to be submitted by the following schedule:

   A. If the option for accessory living quarters is pursued:

      i. Submit an application to the Health Department for approval by **July 10, 2017** and provide a copy of the Health Department application to DPER.

         Note: A Critical Areas Designation (CAD) from DPER may be required prior to Health Department submittal if a new septic design is required. If required, submit a CAD application **within 30 days of notification** and resubmittal to the Health Department **within 30 days of CAD issuance**.

      ii. Submit a building permit application for the entire ABC structure **within 30 days of the Health Department's approval**.

         Note: Application for a permit does not ensure that a permit will be issued. An application should also be aware that permit fees and/or site conditions and/or repair expenses may make the application cost prohibitive. The only alternative may be to demolish the non-permitted construction.

iii. Meet all deadlines for requested information associated with the permit(s) and pick up the permit(s) within the required deadlines. Request a building inspection **at the time of permit issuance**, make any required corrections, and obtain final approval for occupancy **within one year of permit issuance**.

iv. If the permit application of any required approvals including but not limited to the Health Department approval is denied, apply for and obtain a demolition permit to remove the new construction **within 30 days of final denial of any of the permit approvals.** I will yeah will you guys eat and action is on a testimony a but there is risk and is just I was Demolition must be completed **within 60 days of per issuance** even though a demolition permit is good for one year.

B. If the option unheated storage space is pursued:

i. Submit a building permit application for the entire ABC structure **by July 10, 2017**.

Note: Application for a permit does not ensure that a permit will be issued. An application should also be aware that permit fees and/or site conditions and/or repair expenses may make the application cost prohibitive. The only alternative may be to demolish the non-permitted construction.

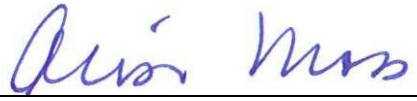
ii. Meet all deadlines for requested information associated with the permit(s) and pick up the permit(s) within the required deadlines. Request a building inspection **at the time of permit issuance**, make any required corrections, and obtain final approval for occupancy **within one year of permit issuance**.

iii. If the permit application of any required approvals is denied, apply for and obtain a demolition permit to remove the new construction **within 30 days of final denial of any of the permit approvals.** Demolition must be completed **within 60 days of per issuance** even though a demolition permit is good for one year.

OR

C. Apply for a demolition permit to remove the new construction **by July 7, 2017** and obtain the permit. Demolition must be completed **within 60 days of permit issuance** even though a demolition permit is good for one year.

ORDERED June 8, 2017.



Alison Moss
Hearing Examiner pro tem

NOTICE OF RIGHT TO APPEAL

King County Code 20.22.040 directs the Examiner to make the County's final decision for this type of case. This decision shall be final and conclusive unless proceedings for review of the decision are timely and properly commenced in superior court. Appeals are governed by the Land Use Petition Act, Chapter 36.70C RCW.

MINUTES OF THE JUNE 1, 2017, HEARING IN THE APPEAL OF DENISE LOVIN (HARTMAN), DEPARTMENT OF PERMITTING AND ENVIRONMENTAL REVIEW FILE NO. ENFR150364

Alison Moss was the Hearing Examiner in this matter. Participating in the hearing were Holly Sawin, Joseph Harper, and Denise and John Lovin.

The following exhibits were offered and entered into the record:

Exhibit no. 1	Department of Permitting and Environmental Review staff report to the Hearing Examiner for file no. ENFR150364	
Exhibit no. 2	Notice and order, issued March 20, 2017	
Exhibit no. 3	Notice and statement of appeal, received April 11, 2017	
Exhibit no. 4	Codes cited in the notice and order	
Exhibit no. 5	A.	Pre-screening documents from Appellant to DPER, received February 9, 2016
	B.	Appellant's site plan
	C.	Appellant's floor plans
	D.	Appellant's photographs of property
Exhibit no. 6	A.	Google Map photograph of subject property, dated 2015
	B.	Aerial photograph of subject property, dated 2015
	C.	Aerial photograph of subject property, dated 2005
	D.	Aerial photograph of subject property, dated 2002
	E.	Aerial photograph of subject property, dated 2000
Exhibit no. 7	Residential property record for parcel no. 0622069105	
Exhibit no. 8	Permit record no. 16045, dated October 3, 1977	
Exhibit no. 9	Warranty deed of Paul and Denise Hartman purchase, dated August 3, 1989	
Exhibit no. 10	Department of Assessments record for parcel no. 0622069105	
Exhibit no. 11	King County Code 21A.08.030, dated September 1993	
Exhibit no. 12	Appellant's hearing brief, dated May 26, 2017	
Exhibit no. 13	Additional comments for file no. 98SJR141	

AM/ed

June 8, 2017

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CERTIFICATE OF SERVICE

SUBJECT: Department of Permitting and Environmental Review file no. **ENFR150364**

DENISE LOVIN (HARTMAN)
Code Enforcement Appeal

I, Elizabeth Dop, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND DECISION** to those listed on the attached page as follows:

☒ EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.

☒ caused to be placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED June 8, 2017.

Elizabeth Dop
Legislative Secretary

Deraitus, Elizabeth
Department of Permitting and Environmental Review

Harper, Joseph
Harper Law Offices, Inc. P.S.
Hardcopy

Lovin, Denise and John
Hardcopy

Lux, Sheryl
Department of Permitting and Environmental Review

Sawin, Holly
Department of Permitting and Environmental Review

Williams, Toya
Department of Permitting and Environmental Review