February 2, 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. **ENFR160755**

ANNIE OI FUN LEE
Code Enforcement Appeal

Location: 4426 S 318th Street, Auburn

Appellant: **Annie Oi Fun Lee**
2856 21st Street
San Francisco, CA 94110
Telephone: (415) 218-1883
Email: alee143@yahoo.com

King County: Department of Permitting and Environmental Review
represented by **LaDonna Whalen**
35030 SE Douglas Street Suite 210
Snoqualmie, WA 98065
Telephone: (206) 477-5567
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SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny appeal in part, grant in part

EXAMINER PROCEEDINGS:

Hearing Opened:	February 1, 2017
Hearing Closed:	February 1, 2017

FINDINGS AND CONCLUSIONS:

1. The basic facts here are not in dispute. The previous owner of the subject property undertook extensive construction without the necessary permits, including making changes to the main house and adding a second floor to the garage. In February 2016, while the property was for sale, someone read the real estate listing, recognized that what was being advertised did not match what was there before, and complained to the Department of Permitting and Environmental Review (DPER). The code enforcement officer assigned to the case left DPER service without taking action.

2. In May 2016, Annie Oi Fun Lee purchased the property, unaware that the previous owner had not legalized the construction she was buying. A new DPER officer, LaDonna Whalen, came aboard in June, and in July visited the property. Ms. Whalen picked up the enforcement proceedings against the person who was (in the enforcement file) listed as the owner, but was (by that time) in reality the previous owner. Upon discovering the property's sale, Ms. Whalen closed the original file and opened one against Ms. Lee.

3. There is some dispute as to precisely *what* changes the previous owner made to either building. For example, has the main house been converted into two dwelling units, and is there an additional, accessory dwelling unit (ADU) above the garage? Those issues are unnecessary for us to decide, for there is no question that the previous owner completed work necessitating a permit; the threshold for what work is exempt from the requirements to obtain a building permit is far lower than the work undertaken here. *See* KCC 16.02.240. A building permit was required under *either* party's understanding of the extent of construction.

4. Instead, Ms. Lee's appeal is about *who* is responsible for the past owner's misdeeds. Although Ms. Lee has been conscientious—submitting pre-application materials to DPER and scheduling a pre-application meeting for February 13, 2017—she thinks she should not ultimately be responsible for curing the violation. That is a reasonable sentiment, one KCC 23.36.030(B) handles like this:

> If an owner of property where a violation has occurred has affirmatively demonstrated that the violation was caused by another person or entity not the agent of the property owner and without the property owner's knowledge or consent, the property owner shall be responsible only for abatement of the violation. Strict compliance with permit requirements may be waived regarding the performance of such an abatement in order to avoid doing substantial injustice to a non-culpable property owner.

5. That term "abatement" is itself defined by KCC 23.02.010(A) to mean:

> to take whatever steps are deemed necessary by the director to return a property to the condition in which it existed before a civil code violation occurred or to assure that the property complies with applicable code requirements. Abatement may include, but is not limited to, rehabilitation, demolition, removal, replacement or repair.

6. As the code notes, an examiner has discretion to waive "strict" compliance with permit requirements. But the operative word is "strict" compliance, not "any" compliance. For example, in our past case most similar to today's, *Larson–ENFR 120330,* involved a parcel size requirement and maximum square footage limitations on detached ADUs that prevented the current owner from legally permitting an ADU constructed by a previous owner. In our decision, we ordered DPER to waive the parcel and square footage restrictions (the "strict" compliance part), but still required the current owner to submit an already-built-construction (ABC) pre-screening meeting request, apply to Public Health to legalize the water and septic, and apply for (and obtain) a building permit.

7. In today's case, DPER did not take action soon enough for Ms. Lee to catch wind of the violation in time to either invest in a different property or to negotiate a price with the seller that reflected the expenses a buyer would likely incur to legalize the construction. That is beyond unfortunate. But in the end this is not a blame game. DPER cannot require a previous owner, however blameworthy, to go through the involved permit process and do work on property he or she has no right to control. It is up to Ms. Lee, as unfair as that may seem. We noted at hearing that Ms. Lee might want to explore whether *she* has any recourse against the previous owner, but that would be a civil matter separate from this code compliance case.

8. One difference between this case and *Larson* is that in *Larson* it was clear by the time of hearing exactly what work had been done, and the Larsons had already advanced through the permit process enough to know what the specific requirements and impediments were. Here it is not clear exactly what was done (for example, Ms. Lee asserts that the newly-created space above the garage is *not* a dwelling unit) or what rules apply or might prevent Ms. Lee from legalizing what the previous owner constructed.

9. Certainly Ms. Lee will need to follow through on her building permit application. And because building permit applications to DPER require Public Health approval, she will need to apply to Public Health. And because the Sewage Review Committee (SRC)—not the examiner—is the designated county appeal body for Public Health decisions concerning onsite septic system-related applications, if Public Health says "no," only the SRC (and not the examiner) could override that. Additionally, because an ADU is allowed only where an owner occupies either the primary dwelling unit or the ADU, that particular restriction would be based on Ms. Lee's current living situation, and thus attributable to Ms. Lee and not to the previous owner. KCC 21A.08.030(B) (condition 7.a.3).

10. Therefore, it is not clear if there is *any* restriction we could waive. If DPER is correct that the space above the garage is a second ADU (in addition to an ADU in the basement of the main house), then Ms. Lee could not normally legalize that (even if she lived on the property), because the property can have only one ADU. KCC 21A.08.030(B) (condition 7.a.1). *That* would be a restriction (as in *Larson*) we could waive. But Ms. Lee testified that the space above the garage has no kitchen or plumbing or anything to make it a separate dwelling unit. There is nothing obvious we could waive.

11. The specifics will need to be discussed at the February 13 meeting with DPER. By code, we have jurisdiction over this case until **February 27, 2017**. KCC 20.22.220(A)(2). So if

at the February 13 meeting a particular barrier arises, one that would prevent Ms. Lee from legalizing the previous owner's construction, either party may request that we reconsider today's decision in light of such new information.

12. Moreover, Ms. Lee had not had a chance to review most of the exhibits DPER submitted at yesterday's hearing, and as it was a *telephonic* hearing, she could not review them yesterday. So we only provisionally admitted those exhibits. We are emailing a copy of those exhibits to Ms. Lee today. If she has an objection to any of those exhibits, or if anything in those exhibits causes her to rethink something that was said or not said at yesterday's hearing, she may bring that to our attention by **February 27, 2017**.

DECISION:

1. Ms. Lee's appeal is GRANTED to the extent that we are not upholding the portion of DPER's November 22, 2016, Notice and Order that defined exactly what the previous owner constructed. Her appeal is DENIED to the extent that that the previous owner's construction requires a permit(s), and it is Ms. Lee's responsibility to bring the property into compliance.

2. The steps and deadlines for Ms. Lee's compliance contained in that Notice and Order are REPLACED with the following. No penalties shall be assessed against her or the subject property if the following actions and deadlines are met:

    A. By **March 15, 2017** (which is 30 days after the February 13, 2017, building permit pre-screening meeting), submit a complete application to Public Health for approval, and provide a copy of that application to Code Enforcement.

    B. NOTE: A Critical Areas Designation (CAD) from DPER may be required prior to Public Health submittal if a new septic design is required. If required, submit a complete CAD application to DPER within 30 days of notification, and submit to Public Health within 30 days of DPER issuing a CAD.

    C. Submit a complete building permit application to DPER within 30 days of Public Health's approval.

    D. 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 building permit issuance, make any required corrections, and obtain final occupancy approval within 60 days of permit issuance.

    E. If Ms. Lee decides not to submit an application to permit the improvements to the main house or detached garage, apply for and obtain a demolition permit to remove that new construction by **March 15, 2017**. Demolition must be completed within 60 days of permit issuance even though a demolition permit is good for one year.

ORDERED February 2, 2017.

David Spohr
Hearing Examiner

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 FEBRUARY 1, 2017, HEARING IN THE APPEAL OF ANNIE OI FUN LEE, DEPARTMENT OF PERMITTING AND ENVIRONMENTAL REVIEW FILE NO. ENFR160755.

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Jeri Breazeal, LaDonna Whalen, and Annie Oi Fun Lee.

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. ENFR160755
Exhibit no. 2	Notice and order, issued November 22, 2016
Exhibit no. 3	Notice and statement of appeal, received December 13, 2016
Exhibit no. 4	Codes cited in the notice and order
Exhibit no. 5	Photographs of subject property, dated July 7, 2016
Exhibit no. 6	Aerial photographs of subject property, dated 2015
Exhibit no. 7	Residential property record, dated August 19, 1976
Exhibit no. 8	Zillow posting of subject property, dated August 22, 2016
Exhibit no. 9	Complete notice and statement of appeal, received December 12, 2016
Exhibit no. 10	Additional appeal statement, dated January 11, 2017

DS/ed

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CERTIFICATE OF SERVICE

SUBJECT: Department of Permitting and Environmental Review file no. **ENFR160755**

ANNIE OI FUN LEE
Code Enforcement Appeal

I, Vonetta Mangaoang, 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 February 2, 2017.

Vonetta Mangaoang

Vonetta Mangaoang
Clerk/Manager

All Parties of Record

Breazeal, Jeri
Department of Permitting and Environmental Review

Deraitus, Elizabeth
Department of Permitting and Environmental Review

Lee, Annie Oi Fun mailed paper copy

Lux, Sheryl
Department of Permitting and Environmental Review

Whalen, LaDonna
Department of Permitting and Environmental Review

Williams, Toya
Department of Permitting and Environmental Review