April 5, 2019

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON

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REPORT AND DECISION

SUBJECT: Department of Local Services file no. **E0600690**

SONJA WILLANGER
Code Enforcement Appeal

Location: 14733 442nd Avenue SE, North Bend

Appellant: Sonja Willanger
represented by **Dean Williams**
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Bellevue, WA 98004
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King County: Department of Local Services
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SUMMARY OF RECOMMENDATIONS/DECISION:

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

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.

After hearing the witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, the examiner hereby makes the following findings, conclusions, and decision.

FINDINGS AND CONCLUSIONS:

1. In November 2018, the Department of Local Services (Department) served a notice and order, alleging conversion of an attached garage into habitable space and construction of a detached garage. Ex. 2. Sonja Willanger (Appellant) filed a timely challenge in December. Ex. 3. Appellant has since agreed that the circa-2003 garage requires a permit, but asserts that 1995 conversion had received substantially all the necessary permit approvals before the Department canceled the permit application in 1999.

2. We went to hearing last week. Unless directed to by law—and no special directive applies to today's case—the examiner does not grant substantial weight or otherwise accord deference to agency determinations. Exam. R. XV.F.3. Ours is a true de novo hearing. For those matters or issues raised in an appeal statement to an enforcement action, the Department bears the burden of proof. KCC 20.22.080.G; Exam. R. XV.E.2.

3. In 1995, Sonja Willanger and her then-husband, Jeff Parks, converted an existing garage into recreational space on the first floor, with a new second floor. Ex. 6 at 001. Someone filed a code enforcement complaint, and the Department opened a file.[1] Following a trip to the Hearing Examiner, Mr. Parks submitted a permit application in 1996. Exs. 6 & 14. The Department determined that the property was in the floodplain, and thus Federal Emergency Management Agency (FEMA) regulations required any human-occupied space to be elevated a minimum of four feet. Ex. 7 at 002; Ex. 9 at 005.

4. At the time the Department reviewed the application, the official Flood Insurance Rate Map delineated the subject property in Zone X, meaning it was not in a flood hazard area. Exs. A & B. In 1996, first in May and again in December, a County department produced a "King County Flood Boundary Work Map: Preliminary [month] 1996," showing the subject property in an AO Zone. Exs. 16, 8. The AO designation means a property is within the 100-year flood zone, with flood depths of one–three feet. Exs. 16, 17.

5. There is no question that this floodplain designation became official by 2001. So at least by 2001, the subject property was in a flood hazard area. Our question is whether that was true as of 1996. If the preliminary work maps were controlling, the subject property was legally in a floodplain at the time of permit application, and Mr. Parks' and Ms. Willanger's failure to comply with FEMA's requirement was on them. If it was not, then the Department incorrectly placed a huge impediment in their path to compliance.

6. The answer to that question turns on KCC 21A.24.230, which was and is the applicable code on what qualifies as a flood hazard area. Subsection A lists which area categories qualify as a flood hazards. Subsection B describes how these are determined. Both subsections A and B have significantly expanded since the 1993 version in place during the late nineties permit review here.

[1] The Department has gone through several name changes—Building and Land, Development and Environment Services, Permitting and Environmental Review, and now Local Services. We will simply use "the Department" for continuity sake.

7. The current version of subsection B is expansive on what goes into a flood hazard determination. No definitive, final version of any map is required. Instead:

> Proof that a land use or development activity is occurring within the area mapped on the Flood Hazard Area Study for King County and Incorporated Areas shall be sufficient, but not required, to prove that the area of concern is subject to inundation by the base flood in any action to enforce code compliance under K.C.C. Title 23. When there are multiple sources of flood hazard data for flood plain boundaries, regulatory floodway boundaries, base flood elevations, or flood cross sections, the department may determine which data most accurately classifies and delineates the flood hazard area. The department may utilize the following sources of flood hazard data for floodplain boundaries, regulatory floodway boundaries, base flood elevations or cross sections when determining a flood hazard area:

8. Among the dozen sources listed as appropriate bases for designating a flood hazard area are: "3. *Preliminary* Flood Insurance Rate Maps; 4. *Preliminary* Flood Insurance Studies; [and] 5. *Draft* flood boundary work maps and associated technical reports" (emphasis added). Had the current version of section .230 been in place in 1996, the preliminary work map depicting the subject property in a sheet flow area (and thus in a floodplain) presumably would have been sufficient, absent contrary evidence.

9. The 1993 version of section .230, however, was far more bare-bones. It had no equivalent to the block-quoted language, above. It did not designate preliminary maps or drafts as potentially appropriate sources for regulatory decisions. We know in hindsight that the Department's preliminary work was correct—the subject property turned out to be in an area designated as floodplain when the map was finalized. That does not mean, however, that the construction, as of 1996, triggered FEMA requirements. A preliminary version of a work map was not, under the then-controlling law, sufficient.

10. The process codified today—where drafts and preliminary maps can be a sufficient basis for regulatory decisions—makes sense. Flood hazards are inherently somewhat in flux, especially as the climate changes. Waiting for something truly "final" would be like *Waiting for Godot*.[2] Yet we agree with Appellant that, under the more limited section .230 in place during permit review, the subject property was not legally in a flood hazard. Common-sense as it might have been, the Department should not have required FEMA compliance in 1996.

11. Appellant asserts that (other than landscaping), FEMA review was the only portion of the 1996 application not finaled in the late nineties. Given that we have now determined that there were no FEMA-related requirements on this property in 1996, she requests us to order the Department to issue the original permit.

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[2] The primary definition of final is "not to be altered or undone." https://www.merriam-webster.com/dictionary/final. *Waiting for Godot* is a Samuel Beckett play where the characters wait in vain for someone who never arrives.

12. We agree with Appellant that the zoning (as opposed to building code) reviews were mostly completed. The field notes from that November 13 visit list some outstanding items relating to controls *during* construction, with the bulk relating to floodplain/FEMA issues we decide today were inapplicable. The storm water drainage was approved, provided conditions such as properly installing downspouts, properly conveying and discharging drainage, and avoiding erosion, were complied with. Ex. 8 at 009–010. That does not mean that things like splash blocks were inspected and approved, but the conceptual parameters were acceptable.

13. In support of the claim that the building *itself* had been thoroughly reviewed and approved, Appellant points to the Accela electronic work sheet for the cancelled B96A2732 application. Ex. D. The sheet shows everything but landscaping with an "approved" checkmark.

14. Something initially struck us as odd about that Accela document. In addition to being inconsistent with the contemporaneous log notes from the nineties (discussed below), the Accela document is not even internally consistent. Even "floodplain review" had a check mark, when everyone agrees the floodplain issues were most definitely *not* resolved. Indeed, we concur with Appellant that the outstanding floodplain issue was the main driver of the permit process petering out.

15. The Department explained at hearing that when it switched to the Accela system in 2012, it needed a way to migrate old records, including old cancelled permits. The checked boxes meant closed out, not approved. That explanation is consistent with the record from the late nineties.

16. On August 22, 1996, the Department sent Mr. Parks a letter explaining various concerns with the construction. Ex. G at 009. On October 22, 1996, Mr. Parks wrote the Department that they were reviewing the Department's assessment of design. As to the identified inadequate collar tie, he observed that they were looking into alternative designs but their expert was unavailable, and they were looking for a replacement. He explained that he was not including a lateral design, pending a later Department conversation. Ex. G at 008.

17. The Accela note says "field check review" was "approved" on November 14, 1996, by Department staff. Ex. D at 002. That date matches up to the November 22, 1996, entry that Department staff "visited site on 11/13/96 & completed review & approved with conditions," conditions which included, in addition to FEMA, "multiple problems on the plan that is dated 7/30/96 and signed by the architect Alex Rolluda. To date we have not received the requested details and structural revision to the plans. We received a letter on 10/21/96 stating that they are in the process of obtaining a new [entry cuts off]." Ex. 7 at 001-2.

18. The January 8, 1997, entry discusses the FEMA issue, but goes on to say the Department informed Ms. Willanger that "her that plans were still on hold. We have not received any additional info from architect." Ex. 7 at 002. The lack of architectural follow-up is not surprising. In that same note, the Department explained that FEMA rules would not

allow the project unless the structure was raised four feet. Ex. 7 at 004. An architect working on as-built items would be like re-arranging the deck chairs on the Titanic, if the entire structure would need to be re-engineered to start four feet off the ground.

19. The basic fact remains that even though the building is allowed to remain at ground level, the building design itself was never approved. Moreover, even if—contrary to the overwhelming weight of the evidence—all but the FEMA issue had been satisfactorily resolved in the nineties, what the Department was reviewing in 1996, was in Mr. Parks' own words, second floor space intended for use "as storage only," with a retractable ladder for access. Ex. G at 008. The redlined plans clearly show the second floor as "ATTIC SPACE." Ex. I at 002. The second floor is actually being used a bedroom, with a newer separate entry. Storage space is not (and was not) reviewed under the same standards as a bedroom. The additional work would need a new permit application anyway. KCC 16.02.240. Phrased another way, even if review of the attic space had been finaled in the nineties, the shift to a bedroom with a separate entry would trigger its own permit review.

20. So how best to bring the ship into shore? For already-built construction, the Department's policy is to allow an applicant to apply under the codes in place at the time of construction or under the current code. Allowing review under the old code is especially appropriate here because department erroneously required Appellant to comply with FEMA requirements during the original application's review.

21. Appellant needs to come in for a permit anyway. There is no question that in the mid-aughts, Appellant added a garage (presumably to replace the garage converted to residential space in the nineties). This second building was part of the current notice and order. Ex. 2. Appellant agreed, before the hearing, that a permit was required for this. It would (presumably) be more economical to submit a single application to legalize the converted space and the new garage.

22. The new garage was built after the property's designation in a flood hazard zone became official in 2001. Thus the garage needs to be FEMA compliant, or Appellant needs to apply for and obtain from FEMA some sort of exception or amendment. However, the Department helpfully noted at hearing that FEMA treats garages differently than residential space.[3] While residential space in a flood hazard zone must be elevated (absent a FEMA modification), if the garage were reconfigured with gates to sufficiently allow floodwaters to pass through, that might be compliant, without any additional FEMA involvement. A code enforcement appeal hearing is not the equivalent of a formal plans review, but this seems a promising avenue to explore. On the other hand, Appellant might have reasons (such as insurance, or not wanting to cut vents in the garage) for wanting to pursue a FEMA modification.

23. Public Health review will be necessary at some point, but it would appear the next step would either be a preapplication meeting with the Department (to review both the

[3] This was also true at the time of permit review, as the Department noted in 1996 that FEMA regulations would not allow un-elevated "human occupied space." Ex. 7 at 004. Garages storing cars or other items are not considered "human occupied space."

conversion and the new garage) or applying for a FEMA modification. We will write the decision to allow both avenues, although it is difficult now to be very specific past the first step. We note that the submittal for a preapplication meeting does not require as detailed specifications as other submittals. The lead time between request and meeting is typically on the order of six weeks to two months, meaning there is time to supplement the initial meeting request materials before the substantive review starts.

DECISION:

1. We GRANT the appeal as it relates to the need for floodplain-related compliance on the conversion project. We DENY the appeal as it relates to the converted building itself being previously approved. And we DENY the appeal as it relates to the newer-constructed garage.

2. By **June 5, 2019**, Appellant shall either:

   A. Submit a complete preapplication meeting request covering both buildings to the Department. Thereafter, meet all reasonable requests and deadlines for information and further applications; OR

   B. Copy the Department on an application to FEMA for some sort of map amendment or exception. Thereafter, meet all reasonable FEMA requests and deadlines. Within 60 days of FEMA's decision, follow step (A), above.

3. No penalties shall be assessed against the Appellant or the subject property if the above deadlines, reasonable extensions to those deadlines, and any reasonable future deadlines, are met. If not, penalties may be assessed, retroactive to today.

ORDERED April 5, 2019.

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 MARCH 28, 2019, HEARING IN THE APPEAL OF SONJA WILLANGER, DEPARTMENT OF LOCAL SERVICES FILE NO. E0600690

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were LaDonna Whalen, Jeri Breazeal, Ken Zweig, Dean Williams, Sonja Willanger, and Bill Moffet.

The following exhibits were offered and entered into the record:

Department-Offered Exhibits

Exhibit no. 1	Department of Local Services staff report to the Hearing Examiner
Exhibit no. 2	Notice and order, issued November 27, 2018
Exhibit no. 3	Appeal, received December 21, 2018
Exhibit no. 4	Codes cited in the notice and order
Exhibit no. 5	Permitting record no. E9501128 comments
Exhibit no. 6	Permitting case no. E9501128 complaint, notice and order, issued April 18, 1996, appeal, and Hearing Examiner notice of pre-hearing conference, issued May 13, 1996
Exhibit no. 7	Permitting record no. B96A2732 comments
Exhibit no. 8	Expired activity no. B98A2732 fee invoice, dated March 11, 1999
Exhibit no. 9	Permitting record no. E0600690 compilation of all comments
Exhibit no. 10	Aerial photographs of subject property, dated 2002, 2005, and 2017
Exhibit no. 11	Photographs of subject property, dated November 5, 2009
Exhibit no. 12	Permitting record no. B96A2732 inspection list
Exhibit no. 13	Codes effective in 1995
Exhibit no. 14	Permitting case no. E9501228 Hearing Examiner pre-hearing order and interlocutory order, dated June 19, 1996
Exhibit no. 15	Photographs of subject property, dated March 7, 2019
Exhibit no. 16	Preliminary flood boundary work map, dated December 1996
Exhibit no. 17	Map Legend

Appellant-Offered Exhibits

Exhibit no. A	Flood insurance rate map, dated May 18, 2995
Exhibit no. B	Letter from Eastside Consultants with flood/zone information, dated January 23, 2019
Exhibit no. C	Permitting record no. B96A2732 compilation of all comments
Exhibit no. D	Permitting record no. B96A2732 status information
Exhibit no. E	Permitting record no. E0600690 comments
Exhibit no. F	Email from Bill Moffet with flood/zone information, dated January 22, 2019
Exhibit no. G	Response to King County's August 22, 1996 letter
Exhibit no. H	Parks Residence structural calculations by KIACO, dated May 14, 1996
Exhibit no. I	Site plans by Rolluda + Scott Architects, dated July 30, 1996

DS/ld

April 5, 2019

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CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **E0600690**

SONJA WILLANGER
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.

☒ 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 April 5, 2019.

Vonetta Mangaoang

Vonetta Mangaoang
Senior Administrator

Breazeal, Jeri
Department of Local Services

Deraitus, Elizabeth
Department of Local Services

Lux, Sheryl
Department of Local Services

Moffet, Bill
Hardcopy

Whalen, LaDonna
Department of Local Services

Willanger, Sonja
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Williams, Dean
Johns Monroe Mitsunaga Kolousková
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Williams, Toya
Department of Local Services

Zweig, Ken
Department of Natural Resources and Parks