

January 7, 2019

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Permitting and Environmental Review file no. **ENFR141012**

RICHARD AND CYNTHIA HOLM

Code Enforcement Appeal

Location: 23105 Lower Dorre Don Way, Maple Valley

Appellants: **Richard and Cynthia Holm**
23115 Lower Dorre Done Way SE
Maple Valley, WA 98038
Telephone: (425) 413-0167
Email: holmric@gmail.com

King County: Department of Permitting and Environmental Review
represented by **Jeri Breazeal**
35030 SE Douglas Street Suite 210
Snoqualmie, WA 98065
Telephone: (206) 477-0294
Email: jeri.breazeal@kingcounty.gov

SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny appeal in part; retain jurisdiction

EXAMINER PROCEEDINGS:

Hearing Opened:	December 13, 2018
Hearing Closed:	December 14, 2018

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. King County Department of Permitting and Environmental Review issued a code violation notice, which the property owners, Richard and Cynthia Holm, appealed to the Hearing Examiner. The Department contends four improvements were made in 2012 without required permits: (1) additions to a pre-existing cabin; (2) a garage addition (3) construction of a car port; and a (4) 9' x 12' storage building. The single family home from the 1930s is not at issue.
2. The Hearing Examiner held an open record hearing on December 13, 2018, with sworn testimony from the property owner, Mr. Holm. Ms. Holm was present, but did not testify. Jeri Breazeal represented the Department. She testified, along with the County wetlands biologist, Laura Casey, and County engineer, Doug Dobkins, who addressed flood protection concerns. The record was kept open until December 20, 2018, to allow for record supplementation with the shoreline code provisions in place when the structures were built. All proposed exhibits were admitted, as identified in the attached minutes.
3. The structures are on the Cedar River, so are governed by County shoreline regulations,¹ flood plain regulations,² and channel migration zone requirements.³ As a result, permitting is complex. A further complicating factor is that shoreline regulations and channel migration mapping were revised after 2012, when the improvements were made.
4. The Department position is that Mr. and Ms. Holm may utilize the substantive codes in effect when the structures were permitted or in effect during permit application. However, they cannot use both. The Holms did not object to this approach.
5. **Cabin Expansion.**

5.1 The original cabin was built in 1927 with a 310 square foot footprint. In 2012, the footprint was expanded by 108 square feet. This included a main floor footprint addition of 48 square feet on the south side, and a second story deck footprint expansion of 60 square feet on the west side.⁴

¹ See Exhibit 10A (shoreline area mapping), as addressed in Ms. Breazeal's testimony.

² See Exhibit 10B (flood overlay mapping), as addressed in Ms. Breazeal's testimony.

³ See Exhibit 10C (channel migration mapping), as addressed in Ms. Breazeal's testimony.

⁴ Exhibit 1 (Staff Report).

5.2 When expanded, the site had a shoreline Conservancy designation, requiring a 50 foot setback from the Cedar River's ordinary high water mark. The cabin is set back about 42 feet, so would require a variance, with Department of Ecology approval, or possibly a buffer modification and/or buffer averaging.⁵

5.3 Under the current shoreline and critical areas provisions, despite increased buffer requirements, the Department stated that the accessory use expansions may remain, due to an exemption allowing such structures, up to 1,000 square feet with no shoreline variance.⁶ New severe channel migration hazard zone mapping became effective June 18, 2015.⁷ The Department identified this as an impassible hurdle, but given the code references in footnotes six and seven, the property owners may have greater flexibility than originally thought.

5.4 The cabin is also within the flood way.⁸ According to the Department, there are two permitting options for the 2012 improvements. (1) elevate the improvements outside the original footprint to three feet above the 100 year flood plain, and meet certain design requirements; or (2) move the improvements from the flood way to the flood plain, and meet various code requirements. Mr. Dobkins explained there may be exceptions or other permitting options, if the improvements cannot be moved back due to septic issues. The other option is to apply for a Letter of Map Amendment from FEMA. However, flood way compliance may not be an issue. The second floor deck is elevated, and Mr. Holm indicated the decking was pass through, so there should not be flood way compliance issues. However, the parties did not dispute that the cabin does require a remodel permit.⁹

6. **Garage Addition.** The property owners obtained a demolition permit on October 11, 2018, to demolish the addition built within property line setbacks. Setbacks are five feet, and the addition is six inches from the property line.¹⁰ The Department stated that under the permit, a year is allowed for demolition. Mr. Holm explained that demolition is planned, but a date has not been scheduled yet. Mr. Holm is concerned with completing demolition now, as the roof is metal, and removal is hazardous due to wet winter conditions. Testimony from Ms. Breazeal indicated that (other than setbacks) the structure was probably allowed under the old code, and if elevated it may be permissible

⁵ Testimony, Ms. Casey, with respect to the variance approach. The Examiner notes that current regulations provide for buffer modification, which is distinct from a variance. Not all the original code provisions were provided with Exhibit 15, but if such provisions were in place, they could be utilized instead of a variance. Buffer modification would typically be the simpler approach. The Examiner makes no determination on whether that is an option.

⁶ The area is now designated Aquatic, with a 165-foot buffer. Exhibit 4, KCC 21A.24.358(C)(1). Under shoreline requirements, residential accessory structures are limited to a 150-square foot footprint. Exhibit 4, KCC 21A.25.100(C)(24)(b). Within the severe channel migration zone, residential accessory structures may be expanded, but the total footprint may not exceed 1,000 square feet, and if expanded toward the source of the hazard, the applicant must demonstrate less risk and critical area impact. Exhibit 4, KCC 21A.24.045(D)(6)(b). Presumably, this can be achieved through mitigation.

⁷ *Id.* Only the severe channel migration mapping changed, not the code language. Testimony, Ms. Casey.

⁸ Testimony, Ms. Breazeal and Mr. Dobkins; *see* Exhibit 4, KCC 21A.24.230-260 for requirements.

⁹ There may be setback issues, although there are exceptions for limited additions to legal non-conforming structures and possibly other avenues for addressing these concerns. Testimony, Ms. Breazeal. These were newly identified issues, so not determination is made here.

¹⁰ KCC 21A.12.030.

if located within the flood plain. But, with the Holms electing to demolish the structure, these questions have been mooted.

7. **Car Port.** The Department's position is that the car port requires a building permit.¹¹ This was not contested. The Staff Report noted that that the structure is within the property line setback and FEMA flood plain, and possibly floodway. According to Mr. Holm, the car port is a flow through structure, so compliance should not be an issue. The Department did not contest this statement at the hearing, and the property owners did not contest car port location with respect to the setback. To comply, if not removed, the car port could be permitted through a building permit and moved.
8. **9 x 12 Foot Shed, Elevated.** The shed is too small to require a building permit.¹² The shed is within the flood way so would need to be elevated.¹³ Based on hearing testimony, and site plan notes, the shed may be sufficiently elevated. When constructed, the shoreline code allowed a residential accessory structure within the 50-foot shoreline setback, if limited to 150 square feet; the shed is less than that.¹⁴ But, according to the Department, the shed is within the critical areas buffer in effect at construction and presently, which presents a hurdle. Also, under current channel migration mapping, the shed is within the severe channel migration area. However, according to the Department, the shed does appear to be portable, and has flow through, so it would not cause water to back up, and thus if re-located probably can be permitted.¹⁵ Compliance can likely be readily achieved.
9. The property owners did not contest most facts the Department presented. Mr. Holm expressed a desire to complete any permitting required to fit within the code framework. However, Mr. Holm's understanding is that certain structures should already be in compliance with flood requirements due to their height, such as the second floor deck, and that the car port and decks are flow through structures. He will work with the Department on these issues, but did not want to move forward without being certain on the requirements. He indicated that the Health Department has issued an approval, but the scope of the approval is unclear. Both Mr. Holm and the Department expressed uncertainty on the permitting approach, and both expressed concern that despite the small nature of the improvements, the permitting process is complicated due to the site's location along the Cedar River and the code and channel migration map revisions which occurred following construction.
10. The Hearing Examiner has jurisdiction over this code enforcement appeal.¹⁶ The Department has the burden of proof, which requires that it establish a code violation by a preponderance of the evidence.¹⁷

¹¹ Exhibit 1, Staff Report, pg. 2, citing to 2015 IRC, § R105.1.

¹² Exhibit 4, KCC 16.02.240 (exempting non-garage, residential accessory structure, if less than 200 square feet). The Examiner makes no finding on clearing and grading permit necessity, as this was newly raised at the hearing.

¹³ Testimony, Mr. Dobkins.

¹⁴ Exhibit 15, KCC 25.16.110, pre-2013 shoreline code; Testimony, Ms. Casey, with clarifications from Mr. Holm.

¹⁵ Testimony, Ms. Breazeal.

¹⁶ KCC 20.22.040; Ch. 23.36 KCC.

¹⁷ HE Rules XI-C and XV-E and F.

11. The Department has substantiated that the four structures were built without meeting all requirements. The car port issues are moot, as the property owners are proceeding with demolition. The cabin and garage improvements require building permits, and although the shed requires no building permit, it must meet other code requirements. However, complicating this, is that both parties agree it is not clear what permitting path should be used for the structures.
12. As this is not a straightforward permitting matter, the Examiner makes no findings or conclusions on the types of permits/approvals which must be obtained to achieve compliance. While it was not contested that building permits were required for all structures but the shed, a range of pathways were identified for securing those permits. It is not at all clear that the cabin improvements cannot readily achieve compliance, or that through the permitting process and determining appropriate location, the other structures the property owners intend to keep cannot be readily permitted and if needed, moved.
13. The Department requested an order requiring permit applications be made within 60 days from septic approval. However, the permitting issues are complicated, or at least have become so. There may be exemptions or alternative approaches, such as buffer averaging, which were not addressed at the hearing. This is coupled with the fact that the structures are quite small, and environmental impacts are negligible. Given the permitting complexities, lack of impact, and the importance of taking the time to determine the best approach, and to allow the Department and property owners to work together to resolve these issues, 90 days is reasonable.

DECISION:

1. Three structures were developed without required building permits, and one requires code compliance review as part of that process. The property owners have agreed to demolish one structure (the garage addition). Regarding the remaining structures, there are multiple pathways to achieving compliance. The Examiner expects the Department will assist with this process, but it will be up to the property owners to determine the best permitting pathway for each structural improvement.
2. Building permit applications for the cabin and car port shall be submitted **within ninety (90) days of receiving health approval, or 90 days of this decision** if same has been issued. As part of the building permit review process, the shed will be moved or demolished. These deadlines are stayed if a Letter of Map Amendment or LOMA is requested from FEMA within ninety (90) days and/or a shoreline variance is requested. The ninety days shall then start to run once the final decisions are obtained through these permitting processes. If an alternative permitting pathway is available, the building permit application deadlines may be similarly stayed while that process is completed.

3. No penalties shall be assessed against the Appellants or the property if the above deadlines are complied with. The Examiner retains limited jurisdiction to address compliance questions regarding these deadlines.

ORDERED January 7, 2019.



Susan Drummond
King County 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 DECEMBER 13, 2018, HEARING IN THE APPEAL OF RICHARD AND CYNTHIA HOLM, DEPARTMENT OF PERMITTING AND ENVIRONMENTAL REVIEW FILE NO. ENFR141012

Susan Drummond was the Hearing Examiner in this matter. Participating in the hearing were Richard and Cynthia Holm, Jeri Breazeal, Laura Casey, and Doug Dobkins.

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 |
| Exhibit no. 2 | Notice and order, issued September 21, 2018 |
| Exhibit no. 3 | Appeal, received October 11, 2018 |
| Exhibit no. 4 | Codes cited in the notice and order |
| Exhibit no. 5 | Photographs of subject property <ul style="list-style-type: none"> A. January 6, 2015 B. January 6, 2015 C. Photograph of subject property |
| Exhibit no. 6 | Record no. PREA150026 compilation of comments |
| Exhibit no. 7 | Record no. PREA150026 revised critical areas information |
| Exhibit no. 8 | Site plans <ul style="list-style-type: none"> A. Survey map of subject property B. Site plan |
| Exhibit no. 9 | Aerial photographs of the subject property, dated May 22 and 17, 2009 |
| Exhibit no. 10 | iMaps <ul style="list-style-type: none"> A. iMap of subject property |

- B. iMap of subject property
- C. iMap of subject property
- Exhibit no. 11 Record no. PREA150023 already built construction submittal requirements, dated March 10, 2015
- Exhibit no. 12 Historical photograph of subject property, dated January 23, 1940
- Exhibit no. 13 Four aerial photographs of subject property
 - A. April 21, 2009
 - B. May 17, 2009
 - C. May 20, 2017
 - D. May 22, 2017
- Exhibit no. 14 Curriculum vitae of Laura Casey
- Exhibit no. 15 Excerpts from the pre-2013 Shorelines regulations
- Exhibit no. 16 iMap with shoreline overlay

SD/vsm

January 7, 2019

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CERTIFICATE OF SERVICE

SUBJECT: Department of Permitting and Environmental Review file no. **ENFR141012**

RICHARD AND CYNTHIA HOLM
Code Enforcement Appeal

I, Liz 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.
- 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 January 7, 2019.



Liz Dop
Legislative Secretary

Breazeal, Jeri

Department of Permitting and Environmental Review

Deraitus, Elizabeth

Department of Permitting and Environmental Review

Holm, Richard/Cynthia

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