

January 14, 2019

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Department of Local Services, Permitting Division file no. **ENFR170478**

MARIA AND GRZEGORZ GOCH

Code Enforcement Appeal

Location: 39233 244th Avenue SE, Enumclaw

Appellant: **Grzegorz Goch**
39233 244th Avenue SE
Enumclaw, WA 98022
Telephone: (360) 462-4914
Email: mariconorth@aol.com

King County: Department of Local Services, Permitting Division
represented by **Nick Stephens**
35030 SE Douglas Street Suite 210
Snoqualmie, WA 98065
Telephone: (206) 477-3950
Email: nick.stephens@kingcounty.gov

SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny appeal, but extend compliance deadlines

EXAMINER PROCEEDINGS:

Hearing Opened:	January 10, 2019
Hearing Closed:	January 10, 2019

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. For many decades, the Goch property contained an approximately 16-by-32-foot storage shed, a three-sided structure with the street-facing side open. Ex. 10. The buffer to a mapped critical area today touches the back left corner of that shed. Ex. 9 at 001–02. Had the situation stayed the same, neither the buffer, nor the fact that at over 500 ft.² the shed would require a permit if constructed today, would have mattered. The shed was placed there long before there was a sensitive areas ordinance or critical areas ordinance and is “grandfathered.”
2. The above facts matter, however, because in approximately 2011, the Goches began building a second storage shed partly in the critical area buffer. Ex. 5 at 002, Ex. 9 at 001. This drew a code enforcement complaint to the Department of Local Services, Permitting Division (Department). The Goches have since removed that second shed. It provides some context and background for today’s case, but is not directly relevant.
3. Around 2016, Appellants started improving the historic shed, eventually enclosing the front, adding a second story, and adding four-to-six feet of depth along the length of the structure.¹ That drew an additional code enforcement complaint. The Department served a violation notice, alleging that this construction triggered the requirement for a building permit and was in the critical areas buffer. Ex. 2.
4. The Goches timely appealed. Ex. 3. 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. Instead, 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. We went to hearing last week.
5. One intending “to construct, **enlarge, alter, repair**, move, demolish, or change the occupancy of a building or structure” must “first make application to the building official and obtain the required permit.” KCC 16.02.110; IBC 105.1. There are some limited exceptions to this blanket permit requirement, the most relevant being that a building permit is not required for:

One-story detached...residential accessory buildings used as tool and storage sheds, playhouses, tree supported structures used for play and similar uses, not including garages or other buildings used for vehicular

¹ The precise point the Goches began this work was not mentioned at hearing, nor is it particularly relevant. From the aerials, we know it was after the 2015 mapping photo and before the 2017 mapping photo. We write “2016,” but that date might be off a year in either direction. *Compare* Ex. 9 at 005 *with* Exs. 6, 7, & 9 at 010.

storage, provided the floor area does not exceed 200 square feet (11.15 m²) provided that the roof overhang does not exceed twenty-four inches measured horizontally from the exterior wall.

KCC 16.02.240.1.

6. The Department asserts that the Goches converted the shed into habitable space. Ex. 1 at 002. The son persuasively explained what the improvement entailed and what the Goches use the building for. That fits well within the residential accessory storage-building concept. Alleged habitation is not an obstacle. Instead, the obstacles are three-fold.
7. First, the exception applies only to one-story buildings, and the Goches added a second story to part of the historic shed. The son acknowledged the second floor would trigger a building permit. He agreed to remove the second floor.
8. Second, even with the structure converted back to one story, the historic building was already over 500 ft.² Adding between four to six feet in depth along the approximately 32-foot length to the rear brought the building to over 700 ft.² The father's theory is that because the footprint of the addition itself was under 200 ft.², it qualified under this exception. This exception could have been written as, "... provided the floor area, or any addition to the pre-existing floor area, does not exceed 200 square feet...." However, it was not written that way, and we do not get to "add words where the legislature has chosen not to include them." *Nelson v. Department of Labor & Industries*, 198 Wn. App. 101, 110, 392 P.3d 1138 (2017). The lateral extension would still require a building permit, even if the Goches removed the second story.²
9. Third, even if the Goches removed the vertical and lateral extensions, the Goches made other alterations to the shed, including walling in the open (street-facing) side. The only other item on the list of exceptions to the requirement for a permit that conceivably has application here would be, "Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work." KCC 16.02.240.7. Some of the improvements may qualify as "finish work," but enclosing the front side of the building with the new wall would not. Thus, to get out of the building permit requirement the Goches will need to undo at least some of the work.
10. On this third item, we have not been too demanding in past cases. The issue comes up most often for something like conversion (without permits) of a shed or garage into habitable space. In such a scenario, we have not required anything close to a perfect match to what was there before. Here, the Goches will need to remove the new wall, but the rest of the work within the original building envelope is fine. Phrased another way, if the Goches remove the lateral expansion, vertical expansion, and new wall, we will treat

² Moreover, the back left portion of the extension intruded into the mapped critical area buffer. Thus, even if the expansion qualified under some exception as a matter of the *building* code—if, for example, the historic shed was only 150 ft.², and only 50 ft.² of improvement was added—the intrusion into the buffer would still trigger regulatory review as a matter of the *zoning* code. *See, e.g.*, KCC 21A.24.045.A.8.

the rest of the work as a *de minimis* violation. In addition, we will give them the dry summer months to complete the work.


11. Today's ruling does not mean the Goches cannot recoup the storage space that reconversion will eliminate, if this is the direction they want to go. There is likely a spot on their lot, well outside the buffer depicted in Exhibit 9, where the Goches could construct a stand-alone storage building of up to 200 ft.². They might even be able to re-use some of the material from the 2016 expansion in such a project.
12. We say "likely," because they would need to stay well clear of the critical areas buffer, have enough building-to-building separation, stay out of any street or other setbacks, and not exceed any impervious surface limitations, etc. The Goches already started two projects (the 2011 shed, and the 2016 expansion of the historic shed) under the assumption that each was legal and without first checking out either assumption with the Department. Both times neighbors complained. Both times this has resulted in the need to undo work. We are not in the advice-giving business, but especially given the apparent propensity of neighbors to file complaints, it would behoove the Goches to come into the Department, bring Exhibit 9 and this decision, speak with somebody at the permit counter, and discuss the potential location for a 200 ft.² (or smaller) shed *before* they start more construction. Yet we observe that adding storage area—without triggering the need for a building or land-use permit—does not seem an unachievable goal.

DECISION:

1. The Goch appeal is DENIED.
2. The Department shall not assess penalties against the Goches or the subject property if the following actions are completed:
 - A. By **June 28, 2019**, apply for a demolition permit to convert the shed back to roughly its initial configuration.
 - B. By **August 30, 2019**, remove the lateral expansion, the vertical expansion, and the new wall, and advise the Department that this is been completed.

If Goches do not take those steps by the deadline, or any deadline extensions the Department reasonably grants, the Department may issue penalties retroactive to today.

ORDERED January 14, 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 JANUARY 10, 2019, HEARING IN THE APPEAL OF MARIA AND GRZEGORZ GOCH, DEPARTMENT OF PERMITTING AND ENVIRONMENTAL REVIEW FILE NO. ENFR170478

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Nick Stephens, Jeri Breazeal, Grzegorz Goch, and Anthony Goch.

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 October 19, 2018
Exhibit no. 3	Appeal, received November 16, 2018
Exhibit no. 4	Codes cited in the notice and order
Exhibit no. 5	Photographs of subject property, dated June 29, 2017
Exhibit no. 6	Photographs of subject property, dated August 14, 2017
Exhibit no. 7	Photographs of subject property, dated July 13, 2018
Exhibit no. 8	Google map photograph of subject property
Exhibit no. 9	Aerial photographs of subject property
Exhibit no. 10	Photograph of subject property, dated 2011

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CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services, Permitting Division file no. **ENFR170478**

MARIA AND GRZEGORZ GOCH

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 14, 2019.



Liz Dop
Legislative Secretary

Breazeal, Jeri

Department of Local Services, Permitting Division

Deraitus, Elizabeth

Department of Local Services, Permitting Division

Goch, Anthony

Hardcopy

Goch, Grzegorz

Hardcopy

Lux, Sheryl

Department of Local Services, Permitting Division

Stephens, Nick

Department of Local Services, Permitting Division

Williams, Toya

Department of Local Services, Permitting Division