

November 9, 2023

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

King County Courthouse
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REPORT AND DECISION

SUBJECT: Department of Local Services file no. **ENFR210581**

ZHENGYU AND YE HU
Code Enforcement Appeal

Location: [REDACTED] Issaquah

Appellants: **Zhengyu and Ye Hu**

[REDACTED]
Leawood, KS 66211

Email: [REDACTED]

King County: Department of Local Services
represented by **Greg Kirk**
Department of Local Services
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FINDINGS AND CONCLUSIONS:

Overview

1. Zhengyu and Ye Hu appeal a violation notice declaring their crumbling home a nuisance and requiring it be sealed off and ultimately reconstructed or demolished. After hearing witness testimony and observing demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we deny the appeal, offer some thoughts on legal non-conforming use, and set next-steps and deadlines.

Background

2. In 2021, Local Services received complaints about a home on the Hu property that had become increasingly dilapidated, with portions of the deck and roof caving in.
3. In November 2021, Local Services sent a letter to Mr. Hu requiring that he secure the structure to unauthorized entry and fence off the premises. Ex. D5 at 001. In September 2022, Mr. Hu noted that he had cleared some blackberries and tried to order fencing, but it was difficult to finish the job due to supply chain issues. In July 2023 Local Services served Mr. Hu with a notice and order that Mr. Hu had two weeks (i.e. by August 10) to either secure structures to unauthorized entry and maintain those structures closed to entry “**OR**” (in bold, and with the “OR” on its own line) fence it off. Again, Local Services’ original November 15, 2021, letter had indicated that *both* securing the structures to unauthorized entry *and* securing the premises from entry with a chain-link or similar fence were required. *Compare* D2 at 001 with Ex. D5 at 001.
4. Mr. Hu timely appealed. Ex. D3. We went to hearing on October 27.

Analysis

Unsafe Structure Needing to be Secured?

5. Comparing the June 2021 photos to those in September 2022 to those in June 2023 shows the structure continuing to fall in on itself. Exs. D6, D8. By September 2022 there was a huge hole where plate glass windows had either been smashed in (by trespassers) or compacted and crushed out (by the weight of the sinking structure) and there was free entrance into the ruins. Ex. D6 at 004. That gaping hole was still there in June 2023 and not secured to entry until Local Services’ contractor boarded it up in late September and early October 2023. Exs. D6 at 006 (bottom photo) and 008.
6. Mr. Hu was under the understandable but ultimately incorrect impression that because there were no legal occupants on the property, he did not need to secure its entry. However, it is “unlawful for any person...to...maintain any building or structure...contrary to [the building] code.” KCC 16.14.100. And unsafe structure is one “dangerous to the life, health, property or safety of the public or the occupants.” KCC 16.14.150 (underline added). And even if a structure is not in danger of collapsing (and Mr. Hu’s is already collapsing), Local Services is authorized to order the structure so as not to be an attractive nuisance. KCC 16.14.200.¹
7. A picture is worth a thousand words, and here there were many pictures worth many thousand words. Ex. D6. The structure is a danger to any person setting foot in it. It is also at risk to collapse and slide down the steep slope onto the adjacent property. And even if the structure were not in danger of collapse, Local Services is authorized to order the structure to cease being an attractive nuisance. That there was garbage and fast food

¹ Although typically an owner owes no duty to a trespasser (beyond refraining from causing willful or wanton injury), concern over children’s welfare and safety led to the development of the attractive nuisance doctrine. *Ochampaugh v. Seattle*, 91 Wn.2d 514, 518, 588 P.2d 1351, 1353 (1979).

debris strewn about the place shows it is not some isolated, impossible-to-reach crumbling structure, but one trespassers have frequented. Local Services has proven a violation. Mr. Hu needed to pay to secure the property one way or the other—either paying a contractor directly or reimbursing Local Services for its contractor’s costs. The only question was timing and cost.

Abatement Timing and Cost

8. An appeal of a notice and order pauses enforcement while the appeal plays out “except when a director determines that the violation poses a significant threat of immediate and/or irreparable harm and so states in any notice and order issued.” KCC 23.36.020. It is a scalpel Local Services uses only very sparingly, not a meat cleaver Local Services wields indiscriminately; we can only recall one or perhaps two cases in our thousand-plus code enforcement matters where Local Services made that finding and did not stay a notice and order during an appeal.
9. Local Services appropriately employed that provision here. When Mr. Hu proved unwilling or at least unable to secure the premises in the two-plus years after Local Services had first notified him of the need to do so, Local Services was justified to hire out the work itself. In fact, Local Services probably should have stepped it up earlier; if a child had gotten hurt in the structure, Local Services might have been sued along with Mr. Hu, because Local Services knew of the threat and did not act.
10. We do, however, have one concern. While the July 2023, notice and order itself was clear—Mr. Hu could, within 14 days (i.e., by August 10) *either* secure the structures to unauthorized entry and maintain those structures closed to entry “**OR**” (in bold, and with the “OR” on its own line) fence it off, Local Services’ original November 2021 letter implied that *both* securing the structures to unauthorized entry and securing the premises from entry with a chain-link or similar fence letter had to happen. *Compare* D2 at 001 *with* Ex. D5 at 001. Local Services should change its form letters to match the wording of its corresponding notices and orders, so owners of unsafe structures know they can *either* chain-link fence off the structure *or* board it up to entry.²
11. If Local Services charged Mr. Hu administrative costs *on top of* what Local Services paid the contractor, then an argument could be that if Local Services had been clearer earlier that Mr. Hu could board up the property instead of fencing off, Mr. Hu would have hired his own contractor and completed the work long before Local Services had to, and thus he should not have to pay any Local Services-added fees. That may be a moot point, as Ms. Breazeal thought that the bill Local Services sent to Mr. Hu only charged him what Local Services actually paid the contractor (plus sales tax), with no Local Services fees added.
12. Moreover, it would not seem like a winning argument anyway, because it is far from clear that Mr. Hu would have boarded up the building if only he had known earlier that that was an option instead of fencing. His August 2023 appeal statement still maintained that

² That is not to command what the specific remedy should be, only that Local Services should sync its requested requirements (in a letter) to what its later-mandated requirements (in a notice and order) will be.

there was no functioning entry point and overgrown blackberry bushes surrounded structure and formed a natural barrier, and there was a locked gate and a dead end road—i.e., he seemed defiant that he should not need to secure the house to entry. Ex. D3. Even three days before Local Services’ contractor started the abatement on September 28, he was arguing that the “locked gate prevents unintentionally wandering into the property and overgrowth of shrubs”—again, he was still arguing that sealing off the structure was unnecessary. Ex. A1 at 003. And two days before the abatement he was still “protesting this so called emergency abatement since I failed to see the bases of the claim.” Ex. A1 at 003. Those statements sound less like someone questioning the precise remedy to secure an unsafe attractive nuisance (boarding up the structure v. fencing it off v. boarding it up *plus* fencing it off) and more like someone challenging the need to hire a contractor to secure the property at all. So, if Local Services did charge Mr. Hu administrative overhead in having to coordinate and hire a contractor, that may have been justified.

13. In any event, we have no authority to rule on abatement costs. This section is merely food for thought.

Next Steps

14. Mr. Hu will need to decide whether to rebuild or demolish the structure. And he will need to keep the structure sealed off to entry until it is demolished or rebuilt.
15. If Mr. Hu wants to rebuild on the same footprint, his first step will be applying for a zoning and historical certification letter to see if the footprint qualifies as a legal nonconforming use. The issue under appeal here was an enforcement action related to an unsafe structure, not to legal nonconformance. So, we make no findings. But we do offer some observations.
16. KCC 21A.32.025 states, in part, that “nonconformance status is forfeited if the nonconforming use, structure or improvement is discontinued beyond the provisions of K.C.C. 21A.32.045.” And KCC 21A.32.045.C.2 provides that:

If the use has been discontinued for more than twelve months, the applicant provides documentation that demonstrates to the satisfaction of the department that there was no intent to abandon the use.

Documentation may include, but is not limited to, requests for approvals necessary to reestablish the use or structure submitted to appropriate county, state and federal agencies within twelve months after the use was discontinued. A statement from the property owner that merely states that there is no intent to abandon is not sufficient documentation without a showing of additional actions taken by the property owner to reestablish the use or structure before legal non-conforming use status was forfeited.

17. There seems little dispute that *use* as a home was discontinued decades before Mr. Hu purchased it, with nothing like applications submitted to an agency necessary to reestablish the use or structure within that year and with no showing of additional actions taken by the property owner to reestablish the use or structure within that year.

abandon. And unlike nonconforming use cases like *Rosema v. City of Seattle*, 166 Wn. App. 293, 269 P.3d 393 (2012), or *Tateuchi v. City of Bellevue*, 15 Wn. App. 2d 888, 478 P.3d 142 (2020)—where even though the owners had not employed their properties’ nonconforming uses for years, there was evidence that they had at least maintained the structural capacity to resume using the properties for those nonconforming uses at any time—the home in our case today long ago started collapsing on itself and had, for a long time, no structural capacity to be lived in again by anyone. That would seem dispositive if, for example, the zoning rules had changed and the property were no longer zoned for residential use.

18. But that is not our issue. The allowed uses on the property (i.e., a single-family residence) have apparently not changed. The only potential legal nonconformance in play is the location of the concrete foundation on which to potentially site a new home. As we understand it, a new structure could not be built in the current home’s location because it is within a critical areas buffer. So, ours is more of a footprint issue than, say, a scenario of what exactly Mr. Hu would be allowed to build on top of that footprint, or what use he could put a new structure to.
19. And footprint issues may (or may not) be analyzed differently. The footprint issue typically comes up in the clearing/grading context. If, say, a forested area was legally cleared and converted to a lawn, even if rules change and the lawn area encompasses part of what would now be a wetland buffer in which no new clearing could occur without a permit, the area could be maintained as a lawn indefinitely. But if the lawn is not maintained and the forest starts reclaiming the area, at some point the lawn loses its legal nonconforming use status and the owner needs to meet the current regulations to re-clear the land and reestablish the lawn.
20. Again, we make no ruling on the issue here, other than to note that the concrete footprint of the home might (or might not) be treated differently than the home itself in terms of legal nonconformance.

DECISION:

1. We deny the appeal.
2. Appellants shall continue keeping the structure sealed off to entry, checking at least **every three months** that the structure remains sealed off.
3. If Appellants want to assert a legal nonconforming use to the existing home’s concrete foundation/footprint, then submit a zoning certification letter by **February 6, 2023**. If so, then within 60 days of receiving Local Services’ answer, take one step from the below paragraph 4.
4. If Appellants do not want to assert a legal nonconforming use to the existing home’s concrete foundation/footprint, then by **February 6, 2023**, either:

- A. Apply to Local Services for a critical areas designation (a necessary first step for siting a new septic system);
 - B. Submit a pre-screening meeting request for a new single-family home.
 - C. Submit a demolition permit to remove the existing structure.
5. Thereafter follow all deadlines and timely complete either construction of a new home or demolition of the old one.
 6. No penalties shall be assessed against Zhengyu Hu, Ye Hu, or the subject property if the above actions are completed by the above deadlines, or by any reasonable deadline extension Local Services approves. If not, Local Services may issue penalties retroactive to today. Be sure to keep Local Services informed of progress and ask for any deadline extensions in advance of a deadline expiring.

ORDERED November 9, 2023.



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 OCTOBER 27, 2023, HEARING IN THE APPEAL OF
ZHENGYU AND YE HU, DEPARTMENT OF LOCAL SERVICES
FILE NO. ENFR210581**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Jeri Breazeal, Greg Kirk, and Zane Hu. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

The following exhibits were offered and entered into the record by the department:

Exhibit no. D1	Department of Local Services staff report
Exhibit no. D2	Notice and order, issued July 27, 2023
Exhibit no. D3	Appeal, received August 11, 2023
Exhibit no. D4	Codes cited in the notice and order
Exhibit no. D5	Violation letter
Exhibit no. D6	Photographs of subject property, dated on June 7, 2021, September 15, 2022, June 22, 2023, and abatement photos
Exhibit no. D7	Aerial photographs of subject property with critical areas overlays
Exhibit no. D8	Aerial photographs of subject property, dated May 2019 and April 2023
Exhibit no. D9	Emails, dated September 14, 2022, and September 22, 2023
Exhibit no. D10	Email from Jeri Breazeal, dated October 30, 2023
Exhibit no. D11	Email, September 2022
Exhibit no. D12	Email chain, December 2021 to March 2022
Exhibit no. D13	Critical Areas Designation Handout
Exhibit no. D14	Residential Building Permit Application Checklist
Exhibit no. D15	Email, dated October 31
Exhibit no. D16	Zoning & Historical Certification Letter

The following exhibits were offered and entered into the record by the appellant:

Exhibit no. A1	Emails, dated September 22 to 27, 2023
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CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **ENFR210581**

ZHENGYU AND YE HU
Code Enforcement Appeal

I, Lauren Olson, 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, Quadiant-Impress, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED November 9, 2023.



Lauren Olson
Legislative Secretary

Breazeal, Jeri

Department of Local Services

Campbell, Thomas

Department of Local Services

Hu, Zhengyu and Ye

Hardcopy

Kirk, Greg

Department of Local Services

Whalen, LaDonna

Department of Local Services