

July 1, 2011

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

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0900753**

RONALD AND LISA JACKSON
Code Enforcement Appeal

Location: Parcel no. 5581700120

Appellant: **Ronald and Lisa Jackson**
1306 Skywall Drive
Sultan, Washington 98294
Telephone: (206) 618-1670

King County: Department of Development and Environmental Services (DDES)
represented by Jeri Breazeal
900 Oakesdale Avenue SW
Renton, Washington 98055
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SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny appeal/sustain Notice and Order; with revised compliance schedule
Department's Final Recommendation:	Dismiss violation no. 2, deny appeal/sustain Notice and Order on violation no. 1; with revised compliance schedule
Examiner's Decision:	Dismiss violation no. 2; deny appeal/sustain Notice and Order on violation no. 1; with revised compliance schedule limiting use of structures

EXAMINER PROCEEDINGS:

Hearing opened:	July 15, 2010
Hearing closed:	July 15, 2010

Hearing continued administratively:
Hearing record closed:

August 24, 2010
January 19, 2011

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 office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. This matter involves the appeal of a code enforcement Notice and Order issued April 5, 2010 to Ronald A. and Lisa M. Jackson for property identified as parcel no. 5581700120, which is an unaddressed property.
2. The Notice and Order found two code violations existing on the property:
 - A. Construction of an accessory structure with no legal primary use on the property and within an environmentally critical area (FEMA floodway) without required permits, inspections and approvals.
 - B. Accumulation of vehicles and boats on the external premises of the site with no established legal primary use and within the environmentally critical area as described above.

The Notice and Order required removal of the structures and vehicles, boats and vehicle parts by June 14, 2010.

3. The Jacksons appealed the Notice and Order, making the following claims:
 - A. Mr. Jackson claims to have been advised by the county building department long ago that the property's zoning at the time allowed agricultural accessory structures which if kept below a minimum threshold of size were exempt from building permits. Mr. Jackson also claims that the building department also advised him that the lot was not located in the floodway.
 - B. Mr. Jackson contends that similar accessory structures have been permitted and constructed on nearby lots since the time of the placement of the subject structures on the Jackson property, with the resultant implication of unequal enforcement.
 - C. An elevation survey has been certified and benchmarked across the street from the subject property, the implication of that being that the property does not lie within the floodplain much less the floodway.
 - D. Appellant Jackson declared a commitment to move the cited vehicles, boats, car parts and trailer from the property by June 14, 2010.
4. DDES has stipulated to resolution of violation no. 2 by removal of the aforementioned vehicles, boats, etc.

5. At the time of construction of the subject structures on the property, the property was not formally designated as floodway and therefore the structures were not within a critical area (or the predecessor regulatory terminology, “sensitive area”).
6. The structures have been occupied on a recreational residential basis at times.
7. The floor area of the structures in question are 120 and 200 square feet. Structures of that size are exempt from building permits if they are residential accessory structures. [KCC 16.02.240]
8. It is not clear in the record or on review of the building code whether such structures used as accessories to agricultural use as opposed to residential use would similarly be exempt from permit requirements.
9. As found above in finding no. 5, DDES has confirmed that at the time the structures were placed on the property in 1994, the regulatory floodway did not encumber the area within which the properties are placed. Accordingly, DDES has stipulated to the nonconforming nature of the structures with respect to critical area limitations.
10. There is no residential structure on the property. The accessory structures therefore cannot be considered as residential accessory structures and permissible therefor. They therefore must be utilized as accessory to a permitted use on the property in order to be allowed to remain. Appellant Jackson states that he intends to utilize the property as a primary agricultural use and that the structures would therefore be utilized as secondary components of such use, as agricultural accessory buildings. DDES has examined the issue in depth and indicates that the property may be used primarily to grow and harvest crops under the existing zoning and that the structures would be allowed to store materials to be used on the property related to such use. DDES notes that because of the size of the property, livestock is not permitted to be raised on the property, a subcomponent of which is that small animal husbandry, aside from such livestock use permitted on minimum 20,000-square foot sites (the subject property is 13,125 square feet), would be restricted to being conducted as an accessory to a residence. Since there is no residence on the property, small animal husbandry is not permitted on the property. DDES also notes that the property could be used as a forest use other than a forest research facility and that the accessory structures could be utilized to store materials used on the site related to such uses. In conclusion, DDES interprets the code to allow the structures to remain on the property as accessories to a resource use such as harvesting and growing of crops, or forestry, and that they may be used only for storage of materials used onsite for such purposes. No residential occupancy of the structures is allowed.
11. The Appellants responded to DDES's interpretation by stating that they intend that the property and structures will be used primarily for storage of materials used onsite for purposes of harvesting and growing of crops or forestry.

CONCLUSIONS:

1. The Examiner has no authority to grant equitable relief based on assertedly unequal, selective, improper or unfair administration of the code enforcement and permit processes. The Examiner is generally limited to applying law duly enacted by statute, ordinance and rule, or set forth in case law, and has no authority to adjudicate claims in equity. Equity claims would instead have to be brought in a court of general jurisdiction, the Superior Court. [*Chaussee v. Snohomish County*, 38 Wn. App. 630, 689 P.2d 1084 (1984)]

2. As the issue of storage of vehicles, boats, etc. onsite has been resolved by their removal as DDES has stipulated, violation no. 2 of the Notice and Order shall be dismissed.
3. The use of the onsite structures for residential occupancy, whether merely recreational in nature on a temporary basis or permanently, is not allowed under the zoning code.
4. In order to be permitted to remain onsite, the accessory structures must be utilized as solely accessory to a permitted use; as residential use is not feasible on the property due to sanitation limitations, they are not able to be utilized as residential accessory structures since no primary residence is feasible on the property. As a result, as noted the Appellants have acknowledged that they may only use the structures in conjunction with a primary agricultural or forestry production use for storage of materials used onsite, and state that they intend to use the property in such manner. Such intended use would resolve the code violations on the property so long as the structural size is exempt from building permit requirements.
5. Accordingly, the appeal shall be granted in part and denied in part, with dismissal of violation no. 2 and a requirement that violation no. 1 be resolved by the obtainment of any necessary building permits.

DECISION:

The appeal is GRANTED IN PART by resolution of violation no. 2, which is hereby DISMISSED from the Notice and Order, and DENIED IN PART with the Notice and Order SUSTAINED with respect to the accessory structures, with the exception that the compliance schedule for correction is revised as set forth in the order below. Essentially, the compliance schedule shall require that the accessory structures be utilized in conformity with zoning code requirements as set forth above and as the Appellants have agreed by stating their intent to do so, and that any building permit requirements be met.

ORDER:

1. *By no later than August 15, 2011*, the Appellants and/or their designated agent shall have received from DDES a building code interpretation regarding the necessity of building permits for the accessory structures onsite, based on their intended usage as structures accessory to resource use of the property consisting of agricultural or forestry use in conformity with the zoning code.
2. If DDES's building code interpretation is such that one or more building permits is required for such accessory structures, a complete application shall be submitted for such permit(s) *by no later than 60 days* from the date of receiving the DDES interpretation that such permit(s) is required. If no such permits are required, no building permit application need be submitted.
3. The use of the accessory structures shall be conducted in conformity with the zoning code, as accessory to a primary use on the property consisting of agricultural or forestry use and utilized for storage of materials used in such endeavors.
4. DDES is authorized to grant extensions of the above deadlines, if warranted in DDES's sole judgment, by circumstances beyond the property owner's diligent effort and control. DDES is also authorized to grant extensions of work completion requirements for seasonal, adverse weather and/or environmental impact reasons.

5. No civil fines or penalties shall be assessed by DDES against the charged parties, Ronald and Lisa Jackson, and/or the property if the above compliance requirements and deadlines are complied with in full (noting the possibility of deadline extension pursuant to the above allowances). However, if the above compliance requirements and deadlines are not complied with in full, DDES may impose penalties as authorized by county code retroactive to the date of this decision.

ORDERED July 1, 2011.



Peter T. Donahue
King County Hearing Examiner

NOTICE OF RIGHT TO APPEAL

The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within 21 days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE JULY 15, 2010, PUBLIC HEARING ON THE CODE ENFORCEMENT APPEAL OF RONALD AND LISA JACKSON, DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0900753

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing was Jeri Breazeal representing the Department.

The following Exhibits were offered and entered into the record:

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| Exhibit No. 1 | Department of Development and Environmental Services (DDES) staff report to the Hearing Examiner for E0900753 |
| Exhibit No. 2 | Copy of the Notice & Order issued April 5, 2010 |
| Exhibit No. 3 | Copy of the Notice and Statement of Appeal received April 22, 2010 |
| Exhibit No. 4 | Copies of codes cited in the Notice & Order |
| Exhibit No. 5 | Copy of GIS map of subject parcel, with FEMA floodway overlay |
| Exhibit No. 6 | Copy of 2009 aerial photograph of subject parcel, inaccurate property lines noted |
| Exhibit No. 7 | King County Assessor data on the subject property |
| Exhibit No. 8 | King County Assessor photographs of structures on subject property |
| Exhibit No. 9 | Photographs of subject property taken on September 22, 2009 |

MINUTES OF THE AUGUST 24, 2010, PUBLIC HEARING ON THE CODE ENFORCEMENT APPEAL OF RONALD AND LISA JACKSON, DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0900753

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Jeri Breazeal representing the Department and Ronald Jackson the Appellant.

Exhibit No. 10 Appellant Ron Jackson's summary of pertinent historical facts pertaining to the subject code enforcement action, description of current use and condition of the property and response to alleged violations. Photographs of subject property taken June 15, 2010 attached.

The following Exhibit was entered into the record on November 30, 2010:

Exhibit No. 11 Report of Jeri Breazeal on allowed accessory uses to Resource uses in the RA zone

The following Exhibit was entered into the record on January 19, 2011:

Exhibit No. 12 Appellants' response to Exhibit No. 11

PTD:gao
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