

**CITY OF KIRKLAND
HEARING EXAMINER FINDINGS,
CONCLUSIONS AND DECISION**

In the Matter of the Appeals of

**MARTIN MORGAN and
SHARON MORGAN**

File Number:
MIS07-00024

From a Notice of Violation and Order to
Correct Issued By the Building Official for
the City of Kirkland

Introduction

The City issued an Amended Notice of Violation and Order to Correct to Martin and Sharon Morgan for erecting two structures on their property, and the Morgans exercised the right to appeal as provided in KCC 21.06.570.

The appeal was heard by the undersigned Hearing Examiner on September 20, 2007, in City Council Chambers, City Hall, 123 Fifth Avenue, Kirkland. Parties represented at the hearing were the Appellant, by Jack A. Borland, attorney-at-law; and the City, by Oskar Rey, Assistant City Attorney. At the request of the Appellant, the record was left open through October 22, 2007, for the parties to file additional materials. The City filed additional materials on October 18, 2007, and the Appellants filed additional materials on October 22, 2007. On October 25, 2007, the City filed a letter stating that the Appellants had raised an issue in their materials that was not included in the Notice of Appeal and asking that the Examiner either disregard the issue or allow the City to respond to it. The Examiner visited the site on September 20, 2007.

For purposes of this decision, all section numbers refer to the Kirkland Municipal Code (KMC or Code) unless otherwise indicated.

The following exhibits were entered into the record in this matter:

- Exhibit 1 City's Memorandum to Hearing Examiner dated 9/19/07 regarding Morgan Building Code Enforcement Appeal, and the following attached exhibits:
- A. GIS photograph of the Morgan properties and vicinity;
 - B. Photographs of two structures erected at 8249 122nd Avenue NE;
 - C. Amended Notice of Violation and Order to Correct dated July 10, 2007
 - D. Excerpts from Ordinance 4099 (Building Code amendments);
 - E. Letter dated July 26, 2007, from Tom Phillips, Building Official, to Martin Morgan;
 - F. Letter dated July 27 2007, from Martin Morgan to Tom Phillips;

- G. Letter dated August 2, 2007, from Tom Phillips to Martin Morgan;
- H. Notice of Appeal from Amended Notice of Violation and Order to Correct, dated July 10, 2007;
- I. Notice of hearing in file number MIS07-00024;
- J. Letter from Neil Goldberg (neighbor) to the Hearing Examiner;

Exhibit 2 Letter dated August 30, 2007, from Oskar Rey to Jack Borland regarding rescheduling of hearing on appeal in File No. MIS07-00024, fax cover sheet and fax report.

Having considered the evidence in the record, and viewed the subject property, the Hearing Examiner enters the following findings of fact, conclusions and decision on this appeal:

Findings of Fact

1. The property that is the subject of this appeal is addressed as 8249 122nd Ave. NE in Kirkland. The Martins also own adjoining properties addressed as 8241 and 8251 122nd Ave. NE. Sharon Morgan is shown as the owner of the properties located at 8241 and 8249 122nd Ave. NE, and Martin Morgan is shown as the owner of the property located at 8251 122nd Ave. NE.
2. Martin Morgan and Sharon Morgan live in the residence at 8251 122nd Ave. NE. Martin Morgan uses the property at 8249 122nd Ave. NE with the permission of Sharon Morgan.
3. The properties are zoned RM 3.6 (multi-family residential with a minimum lot size of 3,600 square feet).
4. On July 10, 2007, the Kirkland Building Official went to 8249 122nd Ave. NE. and spoke with Martin Morgan about two structures that had been erected on the site. The structures were built before July 1, 2007, and each is approximately 200 square feet in size and rectangular in shape.
5. The structures on the subject site are built of 2x4 construction. There is no roof decking or water-proofing material. Instead, the top, one full side, and small parts of other sides of each structure are covered with a polypropylene tarp, which has been damaged by the weather. The structures are open to the elements on several sides.
6. One structure has 2x4 stud walls, with 2x4 cross-bracing at one end and on the side walls, and 2x8 roof framing. At the other end, there is oriented strand board that does not appear to have been treated with preservative. The structure is double plated at the top and bottom and sits on concrete pier blocks that are resting on the ground. The 2x4s that sit directly on the concrete blocks appear to be untreated wood. The blocks are equipped

with saddle brackets that allow the walls to be secured to the blocks. The brackets have adjustable saddles that can be used to offset ground settling.

7. The other structure is constructed of pressure-treated posts with cross-bracing between them and at one end. It sits on 4x4 pressure-treated wood posts sunk four feet into the ground with concrete. The poles are cross-braced with 2x4s, and the roof framing is 2x8s.

8. On July 1, 2007, the City adopted Ordinance 4099, which reduced the floor area for certain accessory structures exempted from building permit requirements from 200 square feet to 120 square feet.

9. On July 10, 2007, the Building Official issued an Amended Notice of Violation and Order to Correct (Notice) to the Morgans.¹ The Notice stated that structures exempt from building permit requirements must still meet the requirements of the International Residential Code (IRC) and other applicable City laws and ordinances, and that Mr. Morgan's structures failed to do so. The Notice also stated that because the structures were not "legally existing" prior to adoption of Ordinance 4099, they now required building permits. The Notice did not state what sections of the IRC had been violated or what violations were noted.

10. The Notice stated that the structures constitute dangerous buildings under the Uniform Code for the Abatement of Dangerous Buildings (Dangerous Building Code), §§ 302(5), 302(8) and 302(13), which were set out in full in the Notice. The Notice also noted a possible Zoning Code violation.

11. The Notice required that within 30 days, the Morgans either disassemble and remove the structures, apply for a building permit for the structures and bring them into compliance with all applicable City codes, or reduce the size of each structure to 120 square feet or less and bring them into compliance with the IRC.

12. After the Notice was issued, Mr. Morgan and the City exchanged correspondence and telephone calls concerning Mr. Morgan's questions on the applicability of various building and zoning regulations to the property.

13. On August 3, 2007, the Morgans filed an appeal of the Notice, asserting that the two structures do not violate the IRC, do not constitute "dangerous buildings" under §302 of the Dangerous Building Code, and do not violate any other applicable City code or ordinance; that the violations alleged lack specificity and should be dismissed; that the building department lacks authority to cite zoning violations; that building codes do not require reduction of the structures to 120 square feet or less in size; and that the corrective action set forth in the Notice is not supported by any violation of the KMC.

¹ The July 10, 2007 Notice of Violation supersedes a Notice of Violation issued on July 6, 2007, which is not at issue in this case.

14. Mr. Martin testified that he asked City building officials for information on what type of building he could construct without a permit, and was told that a structure with a footprint of 200 square feet or less did not require a permit, but that it must meet setback, spacing and height requirements. Mr. Martin believes he has met those requirements and considers the buildings complete; he does not intend to roof them.

15. The Building Official testified that the City's concerns with the structures are structural stability and weather protection. As to safety, the City takes the position that if a person can walk into a structure, it must meet Code requirements.

Applicable Law

16. The City has adopted the 2003 IRC in KMC 21.06.050, which states that the IRC applies to one-and two-family dwellings "and their accessory structures." An accessory structure is defined as, "a building, the use of which is incidental to that of the main building and which is located on the same lot." IRC §R202.

17. KMC 21.06.215 states that "[e]xemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of the technical codes or any other laws or ordinances of this jurisdiction. Permits shall not be required for ... [o]ne-story detached accessory structures used as tool and storage sheds, tree-supported play structures, playhouses and similar uses, provided the floor area does not exceed one hundred and twenty square feet." (Prior to July 1, 2007, the exemption applied to accessory structures that did not exceed 200 square feet of floor area.)

18. The City has adopted the 1997 Dangerous Building Code in its entirety, with certain amendments not applicable here. KMC 21.39.010. Section 302 of the Dangerous Building Code reads as follows:

For the purpose of this code, any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous building, *provided that such conditions or defects exist to the extent that the life, health, property or safety of the public or its occupants are endangered.*

....

5. Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.

....

8. Whenever the building or structure, or any portion thereof, because of (i) dilapidation, deterioration or decay; (ii) faulty construction; (iii) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; (iv) the

deterioration, decay or inadequacy of its foundation; or (v) any other cause, is likely to partially or completely collapse.

....

13. Whenever any building or structure has been constructed, exists, or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this jurisdiction ... or of any law or ordinance of this state or jurisdiction relating to the condition, location or structure of buildings.

(Emphasis added.)

19. Section 401.2 of the Dangerous Building Code provides that a notice and order issued under it “shall contain ... [a] statement that the building official has found the building to be dangerous with a brief and concise description of the conditions found to render the building dangerous under the provisions of Section 302 of this code.”

20. KMC 21.06.590 provides that is it unlawful to “erect, construct, ... any building, structure, or equipment regulated by this code ... in conflict with or in violation any of the provisions of this chapter or the technical codes.”

21. The building official is authorized to serve a notice of violation or order on the person “responsible for the erection, construction ... or occupancy of a building or structure in violation of the provisions of this chapter or the technical codes Such order shall direct the discontinuance of the illegal action or condition at the abatement of the violation.” KMC 21.06.595.

Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to KMC 21.06.570. KMC 21.06.572 provides that an appeal shall be based on a claim “that this code or the technical codes have been incorrectly interpreted, that the provisions of this code or the technical codes do not apply or that an equally good or better form of construction, method of protection or safety is proposed.”

2. Under KMC 21.06.215, the fact that a building permit is not required for a structure, either before or after Ordinance 4099, does not mean the structure is exempt from other applicable Code requirements. Those requirements must be met.

3. Under KMC 21.06.050, the IRC applies to one-and two-family dwellings *and their accessory structures*.” Under IRC § 202, the structures at issue here qualify as accessory structures because they are incidental to the use of the main building located on the lot.²

4. There is very little evidence in the record as to how the structures fail to meet specific IRC requirements. However, even if the record demonstrated specific structural defects

² Any potential Zoning Code violation is not before the Hearing Examiner in this appeal.

under the IRC, the Examiner could not uphold the Notice as to IRC violations. The Notice includes no information on the nature of the alleged violations, cites no specific IRC sections alleged to have been violated, and does not include a copy of applicable sections of the IRC. As a basic requirement of due process, a “Notice of Violation” must give notice to the party to whom it is directed of the specific violations alleged and the actions or conditions that must be discontinued and/or corrected.

5. Again, there is little evidence in this record that the structures are likely to fail or collapse and injure persons or damage property, i.e., that they qualify as dangerous buildings. And again, even if the record demonstrated specific structural defects under the Dangerous Building Code, the Notice served on the Appellants does not meet the requirements of Section 401.2 of that Code, in that it fails to include a “brief and concise description of the conditions found to render the building dangerous under the provisions of Section 302.”

6. In light of the deficiencies of the Notice as to both the alleged IRC and Dangerous Building Code violations, it should be reversed.

Decision and Order

The Amended Notice of Violation and Order to Correct dated July 10, 2007 is **REVERSED**.

Entered this 28th day of October, 2007

Sue A. Tanner
Hearing Examiner

Concerning Further Review

KMC 21.06.588 states that “Any judicial appeal of the hearing examiner’s decision shall be reviewed in King County superior court pursuant to Chapter 36.70C RCW, the Land Use Petition Act (“LUPA”). The land use petition must be filed within twenty-one calendar days of the issuance of the hearing examiner’s decision.”