



Notice of Hearing Examiner Decision

06/24/2024

To: Interested Parties and Parties of Record

RE: Project Name: Harris Accessory Dwelling Unit (ADU) After the Fact
Applicant: Rebecca & Robert Harris
PO BOX 1064
SEABECK, WA 98380-1064
Application: Conditional Use Permit (CUP-ADU)
Permit Number: 23-03241

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **Permit # 23-03241 Harris Accessory Dwelling Unit (ADU) After the Fact – Conditional Use Permit (CUP-ADU)**, **subject to the conditions outlined in this Notice and included Decision.**

THE DECISION OF THE HEARING EXAMINER IS FINAL, UNLESS TIMELY APPEALED, AS PROVIDED UNDER WASHINGTON LAW.

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at:
<https://www.kitsap.gov/dcd/HEDocs/HE-Rules-for-Kitsap-County.pdf>.

Please note affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation. Please contact the Assessor's Office at 360-337-5777 to determine if a change in valuation is applicable due to the issued Decision.

The complete case file is available for review by contacting the Department of Community Development; if you wish to view the case file or have other questions, please contact help@kitsap1.com or (360) 337-5777.

CC: Owner/Applicant: Rebecca & Robert Harris, becca52@aol.com
Authorized Agent: Michael Fortman w/Tom Herstad Building Design,
mike@tomherstad.com
Health District
Public Works
DSE
DCD
Kitsap Transit
Central Kitsap Fire District

Central Kitsap School District
Puget Sound Energy
Point No Point Treaty Council
Suquamish Tribe
Port Gamble S'Klallam Tribe
Skokomish Tribe
Squaxin Island Tribe
Puyallup Tribe
WA Dept of Fish & Wildlife
WA State Dept of Ecology-SEPA
Interested Parties: None

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BEFORE THE HEARING EXAMINER FOR KITSAP COUNTY

Phil Olbrechts, Hearing Examiner

RE: Rebecca and Robert Harris Accessory Dwelling Unit (CUP – ADU) File No. 23-03241	FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION.
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INTRODUCTION

Rebecca and Robert Harris request a Conditional Use Permit in an after-the-fact application to convert an existing accessory home office building into an Accessory Dwelling Unit (ADU) located at 5500 Antler Pl NW Seabeck. The application is approved subject to conditions. Sprinklers are required for the ADU for the reasons identified in Finding of Fact No. 5e below.

ORAL TESTIMONY

A computer generated transcript of the hearing is provided as Exhibit 21 for information purposes only. The transcript is not 100% accurate and is to be used solely for generally information on what was stated at the hearing. It is not admitted into the record as evidence. An accurate recording of the hearing can be acquired from the Kitsap County Hearing Examiner Clerk.

EXHIBITS

Exhibits 1-19 listed in the Index to the Record prepared by County staff were admitted during the hearing. Exhibit 20, a June 17, 2024 memo from Katharine Shaffer regarding sprinkler requirements was admitted post-hearing.

FINDINGS OF FACT

Procedural:

1. Applicant. Rebecca and Robert Harris, 5500 Antler Pl NW Seabeck, WA 98380.

1 2. Hearing. The Hearing Examiner conducted a remote/hybrid hearing on the
2 application at 9:30 am on June 13, 2024. The record was left open through June 18,
3 2024 for comments from the County regarding sprinkler requirements and June 21,
2024 for Applicant response.

4 **Substantive:**

5 3. Site/Proposal Description. Rebecca and Robert Harris request a
6 Conditional Use Permit in an after-the-fact application to convert an existing accessory
7 home office building into an ADU located at 5500 Antler Pl NW Seabeck. The
8 accessory building for the proposed ADU was issued an after-the-fact permit (19-
9 05458) for an “accessory structure home office”. The accessory building was built in
10 2008 and is 520 square feet. The project site is also developed with a one-story
residence (1,776 square feet with an unfinished basement), and a detached garage
(1,296 square feet), both built in 1997. The proposed ADU will be located five feet
from the primary residence.

11 The parcel is rectangular in shape and approximately 80% wooded with the remaining
12 portion as lawn and hard surfaces from existing structures and a driveway including
13 off-street parking. According to the Kitsap County Assessor, the parcel is 4.98 acres.
Existing development is located primarily in the southern half of the property.

14 4. Characteristics of the Area. The subject property is bordered on all sides by
15 parcels that are developed with single-family homes on heavily wooded lots each
several acres in size.

16 5. Adverse Impacts. No significant adverse impacts are anticipated from the
17 proposal. Impacts are more directly addressed as follows:

- 18 a. Off-Street Parking. KCC 17.49.030 requires three (3) parking off-street spaces
19 per single-family residence and one (1) parking space for an ADU. Staff have
20 found that the off-street parking area proposed by the Applicants is sufficient
to accommodate the required 4x9 foot parking spaces.
- 21 b. Stormwater. Development Engineering has reviewed the land use proposal and
22 finds the concept supportable in its approach to civil site development. This
23 conclusion was based on a review of the Preliminary Drainage Report and
Preliminary Engineering Plans accepted for review 07/26/2023, and as revised
24 by additional materials accepted for review to Kitsap County Development
Engineering.
- 25 c. Environmental/Critical Areas. Kitsap Parcel Search shows the parcel as about
50% encumbered by high erosion hazard and high landslide hazard areas. Staff
have found the proposal to conform to the County’s landslide hazard
development standards via submission of a Geotechnical Design Investigation
Report prepared by Envirotech Engineering dated July 3, 2023. The report

1 recommends “a 10 feet footing setback from the vegetation buffer, and a 20 feet
2 setback from the top of the nearby descending slopes exceeding 30%.” The
3 proposed ADU meets this setback requirement (Exhibit 2).

- 4 d. Access, Traffic, Roads. The ADU uses the same access as the primary
5 residence, off Antler PI NW. Development Services and Engineering reviewed
6 the proposal for compliance with traffic and road standards and recommended
7 approval subject to conditions adopted by this decision. The conditions require
8 the Applicants to submit road and driveway plans establishing conformance to
9 City street and driveway standards.
- 10 e. Fire Safety. The Kitsap County Fire Marshall’s Office reviewed and approved
11 the proposal subject to a condition requiring sprinklers for the ADU. The
12 sprinklers are required because the ADU is not served by adequate fire access
13 roads. IFC (2018) 503.2.1 requires access roads to have a width of at least 20
14 feet and IFC (2018) 503.2.5 require dead end roads over 150 feet to have an
15 approved fire turnaround. The project site is served by Antler Place NW and
16 NW Cats Paw LN. The Fire Marshal’s Office has determined that those access
17 roads fail to meet the width requirement, are over 150 feet and don’t have
18 approved turn-arounds. The Applicant doesn’t dispute these findings and for
19 this reason the findings are taken as verities. IFC 503.1.1 (1.1) as amended by
20 KCC 14.04.730A authorizes the fire code official to waive the requirements for
21 fire access roads if the building is equipped with an approved fire sprinkler
22 system. The IFC 503.1.1 also authorizes waiver if other conditions are met but
23 the Applicant has not identified that any such other exceptions apply and they
24 do not appear to apply from the information in the record. Consequently, the
25 sprinklers recommended by County staff are found to be required by the IFC if
the access roads are not improved to meet fire access requirements.
- f. Water/Septic The Kitsap Public Health District has approved the water and on-
site septic. See Ex. 3.
- g. Compatibility. The proposal is compatible with surrounding uses. As
identified in Finding of Fact No. 4, surrounding uses are all heavily wooded
residential on large lots. The proposed ADU will also be surrounded by
numerous trees on all sides as shown in the aerial photograph of the staff report.
The increase in density is not likely to make a significant aesthetic difference
to surrounding neighbors. The ADU provides for similar appearance to the
primary residence – the staff report notes that the ADU is designed to maintain
the appearance of the primary residence, using similar roof pitch, siding and
window hanging

CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. KCC 17.550.030 authorizes the hearing examiner to issue decisions on applications for conditional use permits.

Substantive:

2. Zoning Designation. The property is currently zoned Rural Protection (RP).

3. Review Criteria. KCC 17.410.042 requires a conditional use permit for detached ADUs in the RP zone. KCC 17.550.030A governs the criteria for conditional use permits. Pertinent criteria are quoted below and applied via corresponding conclusions of law.

KCC 17.550.030.A: *The hearing examiner may approve, approve with conditions, or deny a hearing examiner conditional use permit. Approval or approval with conditions may be granted only when all the following criteria are met:*

KCC 17.550.030.A.1: *The proposal is consistent with the Comprehensive Plan;*

4. Criterion met. The criterion is met. The proposed ADU provides the ability to create an affordable housing unit which is a goal supported by several policies in the Comprehensive Plan in a manner consistent with the zoning established for the subject property. The proposal is also found consistent with the Comprehensive Plan for the reasons identified in Section 7 of the staff report (Exhibit 1).

KCC 17.550.030.A.2: *The proposal complies with applicable requirements of this title;*

5. Criterion met. The criterion is met. The proposal conforms to the County's zoning code as detailed in Section 10 of the staff report (Exhibit 1). Staff planning and public works staff have reviewed the proposal to ensure conformance to the County's zoning code for this level of review. The results of that work have been implemented in detailed conditions of approval, adopted by this decision. Nothing in the record suggests any outstanding compliance issues. More detailed compliance will be required during the building and civil permit review.

The primary issue of zoning compliance is adherence to KCC 17.415.015B, which adopts standards tailored to detached ADUs outside urban growth areas. Pursuant to those standards, only one ADU is allowed per lot, the owner of the property must reside in the primary residence or the ADU, the ADU shall not exceed 50% of the habitable area of the primary residence, the ADU shall be located within 150 feet of the primary residence unless involving a conversion of an existing structure such as that proposed, the ADU shall be designed to maintain the appearance of the primary residence, all setback requirements shall be met, all health district standards shall be met, ADUs may not be mobile homes or recreational vehicles, and the ADU shall use the same access as the primary residence and shall provide an additional parking space. The conditions of approval recommended by staff require conformance to all of these standards. The

1 proposed design and site characteristics further establish conformance as detailed in
2 Findings of Fact No. 3 and 5.

3 **KCC 17.550.030.A.3.:** *The proposal will not be materially detrimental to existing or
4 future uses or property in the immediate vicinity; and*

5 6. Criterion met. The criterion is met for the reasons identified in Finding of Fact No.
6 5.

7 **KCC 17.550.030.A.4:** *The proposal is compatible with and incorporates specific
8 features, conditions, or revisions that ensure it responds appropriately to the existing
9 character, appearance, quality or development, and physical characteristics of the
10 subject property and the immediate vicinity.*

11 7. Criterion met. The criterion is met for the reasons identified in Finding of Fact No.
12 5g and via its required conformance to the ADU standards of KCC 17.415.015B.

13 **DECISION**

14 Based upon the conclusions of law above, the conditional use permit application is
15 approved subject to the following conditions:

16 **Planning/Zoning**

- 17 1. All required permits shall be obtained prior to commencement of land
18 clearing, construction and/or occupancy.
- 19 2. The accessory dwelling unit is subject to the payment of impact fees. Impact
20 fees must be paid at time of permit issuance, or if deferred, must be paid prior
21 to final inspection. No certificate of occupancy will be granted until all
22 impact fees are paid.
- 23 3. Any proposed modification (not including cosmetic work such as painting,
24 papering and similar finish work), remodel or expansion of the accessory
25 dwelling unit building, regardless of whether a building permit is required,
shall be reviewed by the Department of Community Development and
granted approval prior to such modification, expansion, construction and/or
issuance of a building permit.
4. Only one accessory dwelling unit shall be permitted on the subject property.
5. The owner of the property must reside in either the primary residence or the
accessory dwelling unit and only one of the structures may be rented at any
one time.

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- 6. The accessory dwelling unit's habitable area shall not exceed 50% of the primary residence or 900 square feet, whichever is smaller. The existing size of the ADU is 520 square feet. Any future expansion of the ADU will require a building permit and would have to comply with all code requirements in place at the time of the new building permit application.
- 7. The accessory dwelling unit shall be located within 150 feet of the primary residence.
- 8. The accessory dwelling unit shall be designed to maintain the appearance of the primary residence.
- 9. No mobile home or recreational vehicle shall be allowed as an accessory dwelling unit.
- 10. The accessory dwelling unit shall use the same side street entrance as the primary residence and shall provide one additional off-street parking space.
- 11. An accessory living quarters (ALQ) or guest house (GH) is not permitted on the same lot unless the accessory dwelling unit is removed and the ALQ or GH complies with all requirements imposed by the Kitsap County Code.
- 12. A property with a primary residence and an accessory dwelling unit cannot be segregated to create two separate legal lots unless it complies with all subdivision, zoning and density requirements in place at the time of a complete subdivision application.
- 13. The accessory dwelling unit cannot be sold separately from the primary residence unless it has legally been segregated into its own lot.
- 14. The recipient of any conditional use permit shall file a Notice of Land Use Binder with the county auditor prior to any of the following: initiation of any further site work, issuance of any development/construction permits by the county, or occupancy/use of the subject property or buildings thereon for the use or activity authorized. The Notice of Land Use Binder shall serve both as an acknowledgment of, and agreement to, abide by the terms and conditions of the Conditional Use Permit and as a notice to prospective purchasers of the existence of the permit. The Binder shall be prepared and recorded by the Department at the applicant's expense.
- 15. The uses of the subject property are limited to the uses proposed by the applicant and any other uses will be subject to further review pursuant to the requirements of the Kitsap County Code. Unless in conflict with the conditions stated and/or any regulations, all terms and specifications of the application shall be binding conditions of approval. Approval of this project

1 shall not, and is not, to be construed as approval for more extensive or other
2 utilization of the subject property.

3 16. The authorization granted herein is subject to all applicable federal, state,
4 and local laws, regulations, and ordinances. Compliance with such laws,
5 regulations, and ordinances is a condition to the approvals granted and is a
6 continuing requirement of such approvals. By accepting this/these approvals,
7 the applicant represents that the development and activities allowed will
8 comply with such laws, regulations, and ordinances. If, during the term of
9 the approval granted, the development and activities permitted do not
10 comply with such laws, regulations, or ordinances, the applicant agrees to
11 promptly bring such development or activities into compliance.

12 17. The decision set forth herein is based upon representations made and exhibits
13 contained in the project application. Any change(s) or deviation(s) in such
14 plans, proposals, or conditions of approval imposed shall be subject to
15 further review and approval of the County and potentially the Hearing
16 Examiner.

17 18. This Conditional Use Permit approval shall automatically become void if no
18 development permit application is accepted as complete by the Department
19 of Community Development within four years of the Notice of Decision date
20 or the resolution of any appeals.

21 19. Any violation of the conditions of approval shall be grounds to initiate
22 revocation of this Conditional Use Permit.

23 **Development Engineering**

24 20. Building permits submitted for this development shall include construction plans
25 and profiles for all roads, driveways, storm drainage facilities and appurtenances. No
construction shall be started prior to said plan acceptance.

21 21. Stormwater quantity control, quality treatment, and erosion and sedimentation
22 control, as required for the development, shall be designed in accordance with Kitsap
23 County Code Title 12 effective at the time the Building Permit is deemed fully
24 complete. If development meets the thresholds for engineered drainage design, the
25 submittal documents shall be prepared by a civil engineer licensed in the State of
Washington. The fees and submittal requirements shall be in accordance with Kitsap
County Ordinances in effect at the time of Building Permit Application.

22. If the project proposal is modified from that shown on the site plan approved for
this permit application, Development Engineering will require additional review and
potentially new conditions.

1 23. At building permit application, submit Kitsap County Public Works Form 1601 for
2 issuance of a concurrency certificate, as required by Kitsap County Code 20.04.030,
Transportation Concurrency.

3 24. Any work within the County right-of-way shall require a Public Works permit and
4 possibly a maintenance or performance bond. This application to perform work in the
5 right-of-way shall be submitted as part of the SDAP process, or Building Permit
process, if a SDAP is not required. The need for and scope of bonding will be
determined at that time.

6 **Environmental**

7 25. Project shall follow the recommendations of the Geotechnical Design Investigation
8 Report prepared by Envirotech Engineering dated July 3, 2023.

9 **Traffic and Roads**

NA

10 **Fire Safety**

11 NA

12 **Solid Waste**

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14 **Kitsap Public Health District**

15 26. This permit shall comply with all Kitsap Public Health District regulations and
conditions of approval.

16 **Hearing Examiner**

17 27. A fire sprinkler system conforming to the IFC shall be installed prior to
18 occupancy in the ADU unless fire access roads are brought up to the standards
19 required by IFC 503.

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21 Dated this 27th day of June 2024.

22 *Phil Olbrechts*

23 _____
24 Phil Olbrechts,
Kitsap County Hearing Examiner

25 **Appeal Right and Valuation Notices**

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Pursuant to KCC 21.04.100 and KCC 21.04.110, this conditional use permit decision is a final land use decision of Kitsap County and may be appealed to superior court within 21 days as governed by the Washington State Land Use Petition Act, Chapter 36.70C RCW.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.