



Notice of Hearing Examiner Decision

05/08/2020

To: Interested Parties and Parties of Record

RE: Project Name: Henderson Accessory Dwelling Unit
 Applicant: LEVI JAMES & IVY LEE HENDERSON
 4457 SE SALMONBERRY RD
 PORT ORCHARD, WA 98366
 Application: Conditional Use Permit – Accessory Dwelling Unit
 (CUP-ADU)
 Permit Number: 19-02197

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **19-02197 Henderson Accessory Dwelling Unit – 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://spf.kitsapgov.com/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 at the Department of Community Development, Monday through Thursday, 8:00 AM to 4:00 PM and Friday 9:00 AM to 1:00 PM, except holidays. If you wish to view the case file or have other questions, please contact Help@Kitsap1.com or (360) 337-5777.

CC: Applicant/Owner: HENDERSON LEVI JAMES & IVY LEE
lhenderson@bjcgroup.com
Project Representative: Levi Henderson, lhenderson@bjcgroup.com
Health District
Public Works
Parks
Navy
DSE
Kitsap Transit

South Kitsap Fire District
South Kitsap School District
Puget Sound Energy
Water Purveyor - N/A
Point No Point Treaty Council
Suquamish Tribe
Port Gamble S'Klallam Tribe
Squaxin Island Tribe
Puyallup Tribe
WA Dept of Fish & Wildlife
WA State Dept of Ecology-SEPA
WA State Dept of Ecology-Wetland Review
Interested Parties:
None

**KITSAP COUNTY HEARING EXAMINER
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

**Accessory Dwelling Unit Conditional Use Permit
Henderson, File No. 19-02197**

May 5, 2020

1. FINDINGS OF FACT

1.1 Proposal. Construction of a 900 square foot accessory dwelling unit (“ADU”) on a 5.08 acre lot.

Applicant/Property Owner. Levi James and Ivy Lee Henderson, 4457 SE Salmonberry Road, Port Orchard, WA 98366.

Location. 4457 SE Salmonberry Road, Port Orchard, WA 98366. Assessor Parcel No. 062302-1-002-2007.

1.2 Hearing. An open record public hearing was held April 23, 2020. Due to COVID-19 restrictions, the hearing was conducted remotely, with the Examiner, Kitsap County Department of Community Development (“DCD”), and Applicant calling in. Access information was provided to the public to allow citizens to join via either a video link or telephone call-in. There were no reported technical difficulties during the call or afterwards. However, in case any citizens who wished to comment had difficulty calling in, the record was kept open for a week, through April 30.¹ No additional written comments were received. At the hearing, DCD, through Ms. Santos, described the project. DCD found it consistent with requirements, and recommended approval with conditions. The Applicant, through Mr. Henderson, confirmed there were no concerns with DCD’s proposed conditions. No member of the public indicated a wish to speak.

1.3 Administrative Record. The Hearing Examiner admitted Exhibits 1-31, which included the Staff Report, application materials, documentation of agency consultation, public notice documents, and a DCD Power Point presentation.

1.4 SEPA. DCD issued an unappealed Determination of Non-Significance,² with conditions requiring compliance with Title 12 to address stormwater control, Title 19 to address critical areas, and Title 17 to address zoning.

1.5 Agency Comment. The proposal was circulated within the County. As long as requirements are met, there were no objections to approval.

1.6 Notice. Hearing and application notice was provided consistent with KCC requirements.³ No objections to notice or opportunity to provide input were raised.

¹ Temporary Emergency Rule to Address COVID-19 Situation (April 1, 2020).

² Exhibit 14; Exhibit 30 (Staff Report), pp. 1-2.

1.7 Zoning/Plan Designations and Critical Areas. Outside the urban growth area, the site's Comprehensive Plan and zoning designations are Rural Protection (RP),⁴ allowing one dwelling unit per ten ac res. An ADU is authorized by CUP, with requirements specific to the use. Surrounding properties are also zoned Rural Protection, and are developed with single-family residences to the north, east and west; and, undeveloped land and a public facility to the south.⁵ There is a Category IV wetland on the northwest portion of the site.⁶

1.8 Utility and Public Services.

- **Water:** On-site well
- **Power:** Puget Sound Energy
- **Sewer:** Septic
- **Police:** Kitsap County Sheriff
- **Fire:** South Kitsap Fire & Rescue
- **Schools:** South Kitsap School District #402

1.9 Access. SE Salmonberry Road, a County maintained right-of-way. The access has existed prior to the realignment of SE Salmonberry Road and was again reviewed and approved when the replacement single-family residence was constructed under building permit 17-01123.

1.10 Dimensions and Setbacks. The site includes a 2,190 square foot residence and an accessory building/shop.⁷ The ADU will be 149 feet from the primary residence.⁸ Setbacks exceed requirements, ranging from 101 to over 300 feet. The ADU complies with the 35 foot height limit.⁹

1.11 Building and Site Aesthetics. The primary residence and ADU will be similar in appearance. Both will have pitched composition shingle roofs and lap horizontal wood siding.¹⁰ The extensive setbacks provide visual mitigation.¹¹

1.12 Environmental. Soundview Consultants provided a wetland certification consistent with KCC 19.200.¹² A 7,432 square-foot Category IV wetland is on the site's northwest portion. Less than 7,500 square feet, it is exempt from buffer requirements.¹³ There are two off-site wetlands. One is a Category II depressional wetland with a habitat score of 7, and a 110-foot buffer.¹⁴ The ADU is outside the buffer area. The second is a Category III wetland, with

³ Exhibits 12, 22 and 23; *see* KCC 21.04.080.

⁴ Exhibits 24 and 27; Exhibit 30 (Staff Report), p. 2.

⁵ Exhibit 30 (Staff Report), p. 3.

⁶ Exhibits 21 and 25; Exhibit 30 (Staff Report), pp. 2, 9.

⁷ Exhibit 10; Exhibit 30 (Staff Report), pp. 3, 7.

⁸ Exhibit 10; Exhibit 30 (Staff Report), p. 7.

⁹ Exhibit 30 (Staff Report), pp. 2-3.

¹⁰ Exhibits 1, 2, 9, 17 and 18; Exhibit 30 (Staff Report), p. 7.

¹¹ Exhibit 30 (Staff Report), p. 3.

¹² Exhibit 21.

¹³ KCC 19.200.210(C).

¹⁴ KCC 19.200.220.

a buffer that Salmonberry Road functionally interrupts. No other mapped critical areas exist in the project area.¹⁵

1.13 Conditions/Staff Report. The Applicant accepted the proposed conditions, which are incorporated without revision. Except as the Decision revises it, the Staff Report is incorporated by reference.

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Review Authority. The Hearing Examiner has CUP review authority for this ADU.¹⁶ The Examiner may approve, approve with conditions, or deny a CUP.¹⁷

2.2 Code Requirements Specific to an ADU in the RP Zone. An ADU outside the urban growth area, and within the RP zone, must obtain a CUP and comply with requirements specific to the use.¹⁸ Only one ADU is allowed per lot, on which no accessory dwelling quarters are located, and the owner "must reside in either the primary residence or the ADU."¹⁹ These requirements are met. Only one ADU is proposed for a lot outside the urban growth area, no accessory dwelling quarters or other ADUs are on the lot, and the property owners live in the single-family residence.

The ADU cannot "exceed fifty percent of the square footage of the habitable area of primary residence or nine hundred square feet, whichever is smaller."²⁰ The primary residence's habitable area is 2,190 square feet.²¹ Regardless, the ADU is limited to 900 square feet; at 900 square feet, the ADU complies.

The ADU, proposed to be 149 feet from the primary residence,²² complies with the requirement to be "within one hundred fifty feet of the primary residence or shall be the conversion of an existing detached structure (e.g, garage)..."²³ The proposal complies with all other setback requirements.

As for design, as the findings address, the primary residence and ADU will be similar in appearance,²⁴ as the ADU has been "designed to maintain the appearance of the primary residence."²⁵ Also, the proposed ADU is stick-built, so is not a mobile home or recreational vehicle.²⁶

¹⁵ Exhibits 21 and 25; Exhibit 30 (Staff Report), p. 9.

¹⁶ KCC 17.410.010, 21.04.100 (permit type #18), and 17.410.042 (use #100).

¹⁷ KCC 17.550.030.

¹⁸ KCC Table 17.410.042, FN 1, requiring KCC 17.410.060 compliance. See KCC 17.410.060(B)(3).

¹⁹ KCC 17.410.060(B)(3).

²⁰ KCC 17.410.060(B)(3).

²¹ Exhibit 6; Exhibit 30 (Staff Report), p. 7.

²² Exhibit 10; Exhibit 30 (Staff Report), p. 7.

²³ KCC 17.410.060(B)(3).

²⁴ Exhibits 1, 2, 9, 17 and 18; Exhibit 30 (Staff Report), p. 7.

²⁵ KCC 17.410.060(B)(3).

²⁶ KCC 17.410.060(B)(3).

The ADU will be supplied by well water and a septic system. Kitsap Public Health approved the ADU with conditions.²⁷ The ADU will "meet the applicable health district standards for water and sewage disposal."²⁸

Parking and entry requirements are met. The ADU will use "the same side street entrance as the primary residence."²⁹ The driveway will provide an additional parking space for the ADU.³⁰ With sufficient space to meet minimum parking requirements and with the "additional off-street parking,"³¹ parking requirements are met. All requirements specific to the ADU use are met.

2.3 Conditional Use Permit Requirements.

A CUP must meet four requirements.

1. The proposal is consistent with the Comprehensive Plan;
2. The proposal complies with applicable requirements of [Title 17];
3. The proposal will not be materially detrimental to existing or future uses or property in the immediate vicinity; and
4. The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing character, appearance, quality or development, and physical characteristics of the subject property and the immediate vicinity.³²

These criteria are met. The Staff Report provided detail on Comprehensive Plan policies. They provide for development at low residential densities that can be sustained without urban levels of service, and will cause minimal environmental degradation. The Plan supports residential uses consistent with the existing and planned rural character of the surrounding rural area, while minimizing housing costs and providing for a range of housing types. The ADU does not have significant environmental impacts, does not require urban infrastructure, and is consistent with the surrounding area's rural character. The proposal is consistent with the Comprehensive Plan.

The proposal is conditioned to ensure compliance with Titles 12, 17, and 19, and other code requirements. No code provision was identified which would not be complied with. Also, the proposal will not be materially detrimental to existing or future uses or property in the immediate vicinity. All impacts identified have been addressed through project design, additional mitigation, and/or code requirements.

²⁷ Exhibit 4; Exhibit 30 (Staff Report), pp. 8, 10.

²⁸ KCC 17.410.060(B)(3).

²⁹ KCC 17.410.060(B)(3).

³⁰ Exhibit 10; Exhibit 30 (Staff Report), p. 8; KCC 17.490.030.

³¹ KCC 17.410.060(B)(3).

³² KCC 17.550.030(A).

The proposal is compatible with surrounding existing uses. It is aesthetically consistent with the existing residence. The ADU's small size, existing vegetation, and extensive setbacks which exceed code requirements all ensure it is consistent with the surrounding character, appearance, and quality of development on site and in the immediate vicinity. As conditioned and proposed, the ADU meets all CUP criteria and should be approved.

DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested CUP for the proposed ADU, provided these conditions are adhered to:

Planning/Zoning

1. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.
2. The ADU is subject to the payment of impact fees. Impact fees must be paid at time of permit issuance, or if deferred, must be paid prior to final inspection. No certificate of occupancy will be granted until all impact fees are paid.
3. Any proposed modification (not including cosmetic work such as painting, papering and similar finish work), remodel or expansion of the ADU building, regardless of whether a building permit is required, shall be reviewed by DCD and granted approval prior to such modification, expansion, construction and/or issuance of a building permit.
4. Only one ADU shall be permitted on the subject property.
5. The owner of the property must reside in either the primary residence or the ADU and only one of the structures may be rented at any one time. The ADU's habitable area shall not exceed 50% of the primary residence or 900 square feet, whichever is smaller. The proposed size of the ADU is 900 square feet (Exhibit 3). 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.
6. The ADU shall be located within 150 feet of the primary residence.
7. The ADU shall be designed to maintain the appearance of the primary residence.
8. This permit shall comply with all Kitsap Public Health District regulations and conditions of approval.
9. No mobile home or recreational vehicle shall be allowed as an ADU.
10. The ADU 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 ADU is removed and the ALQ or GH complies with all requirements imposed by the KCC.

12. A property with a primary residence and an ADU 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 ADU cannot be sold separately from the primary residence unless it has legally been segregated onto its own lot.

14. The recipient of any CUP 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 CUP 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 KCC. 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 shall not be, and is not to be, construed as approval for more extensive or other utilization of the subject property.

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

17. The decision set forth herein is based upon representations made and exhibits contained in the project application Permit 19-02197. Any change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to further review and approval of the County and potentially the Hearing Examiner.

18. This CUP approval shall automatically become void if no development permit application is accepted as complete by DCD within four years of the Notice of Decision date or the resolution of any appeals.

19. Any violation of the conditions of approval shall be grounds to initiate revocation of this CUP.

Development Engineering

20. Construction plans and profiles for all roads, storm drainage facilities and appurtenances shall be submitted to Kitsap County for review and acceptance.

21. The information provided demonstrates this proposal is a Small Project as defined in KCC Title 12, and as such will require a Stormwater Site Plan and a Construction Stormwater Pollution Prevention Plan be submitted with the required building permit.

22. At the time of submittal of a building permit, soil amendment is required for all disturbed areas not covered by hard surface.

23. New and/or replaced hard surfaces do not exceed the 2,000 square foot threshold; nor does the project exceed 7,000 square feet of disturbed areas. While a formal plan is not required, the Applicant must consider all elements required of a stormwater pollution prevention plan and make allowances for managing erosion and sediment discharge on site. Per KCC Title 12, if the project exceeds either of the thresholds noted above, then additional review for stormwater management will be required.

24. If the project proposal is modified from that shown on the site plan submitted December 20, 2019, Development Services and Engineering will require additional review and potentially new conditions.

Environmental

25. The project is subject to the recommendations provided in the wetland certification prepared by Soundview Consultants, dated August 19, 2020 and site plan dated August 26, 2020.

Traffic and Roads

26. Submit an Application for Concurrency Test (KCPW Form 1601) as required by Chapter 20.04.030, Transportation Concurrency, of the KCC. The KCPW 1601 form reserves road capacity for the project.

27. The property owners shall be responsible for maintenance of all landscaping within the existing and proposed right-of-way including any structures other than roadway, storm drainage facilities, and traffic signage. Maintenance shall include, but not be limited to, mowing of lawn areas.

28. Submit plans for construction of the road approach between the edge of existing pavement and the right-of-way line at all intersections with County rights-of-way. Approaches shall be designed in accordance with the Kitsap County Road Standards as established in Chapter 11.22 of the KCC. Existing approaches may need to be improved to meet current standards.

29. Any work within the County right-of-way shall require a Public Works permit and possibly a maintenance or performance bond. This application to perform work in the right-of-way shall be submitted as part of the SDAP process (or building permit if no SDAP is required). The need for and scope of bonding will be determined at that time.

Kitsap Public Health District

30. The septic/waterline crossing must be sleeved in accordance with KPHD policy #26.

31. The upper terminal of the well does not meet minimum construction standards. The well casing does not extend at least 6 inches above surrounding grade. Positive drainage away from the wellhead must be maintained. The building permit for the ADU (19-02196) cannot be approved until these conditions are met.

Absent a timely appeal, this Decision is final.³³

DECISION entered May 5, 2020.


Kitsap County Hearing Examiner
Susan Elizabeth Drummond

³³ See Ch. 36.70C RCW (any appeal to be filed within 21 days to superior court).