



Notice of Hearing Examiner Decision

06/01/2023

To: Interested Parties and Parties of Record

RE: Project Name: Gray Accessory Dwelling Unit (ADU)
 Applicant: Lauren Gray
 23072 Indianola Rd NE
 Poulsbo, WA 98370
 Application: Conditional Use Permit (CUP-ADU)
 Permit Number: #22-05101

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **Permit #22-05101 Gray Accessory Dwelling Unit – 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://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 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: Applicant/Owner: Lauren Gray, laurenpatternsongray@gmail.com
Health District
Public Works
Parks
Navy
DSE
Kitsap Transit
North Kitsap Fire District
North Kitsap School District
Puget Sound Energy

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
WA State Dept of Transportation
Interested Parties: Jon & Donna Kott, djkott@hotmail.com

**BEFORE THE HEARING EXAMINER
FOR KITSAP COUNTY**

In the Matter of the Application of)	No. 22-05101
)	
Lauren and Nathan Gray)	Gray Accessory Dwelling Unit
)	
)	
<u>For Approval of a Conditional Use Permit</u>)	FINDINGS, CONCLUSIONS, AND DECISION

SUMMARY OF DECISION

The request for a conditional use permit to convert an existing 1,610 square foot, two-story single-family residence into an 884 square foot accessory dwelling unit with non-habitable storage on the lower level, on a 7.45-acre property, located at 23072 Indianola Road NE, is **APPROVED**. Conditions are necessary to address specific impacts of the proposal.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on April 13, 2023. The record was left open until April 20, 2023, to allow any member of the public having difficulty participating at the hearing through remote access to provide written comments in lieu of live testimony. No additional comments were submitted and, accordingly, the record closed on April 20, 2023.

Testimony:

The following individual presented testimony under oath at the open record hearing:

Jenny Kreifels, County Planner
Lauren Gray, Applicant
Jon Kott

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated April 6, 2023
2. Historic Property Records and Photographs (1963 – 1990), received October 31, 2022
3. Health Officer Decision for Onsite Sewage System and Water Supply, dated July 11, 2022; Building Site Application, dated March 15, 2022, with Site Plan; Notice of Pending Building Site Application, dated March 28, 2022; Notice of Pending Building Site Application with a Private 2-Party Water Supply, dated April 12, 2022; Pump and Well Service Samples, Spectra Labs – Kitsap, LLC, received April 20, 2022

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4. ADU Photographs
5. ADU Floor Plan
6. Single-Family Residence Approved Building Plans, dated August 9, 2022
7. Habitat Management Plan, Peninsula Environmental Group, Inc., dated March 21, 2022
8. Approved Building Site Plan, dated April 22, 2022
9. SEPA Environmental Checklist, dated November 17, 2022
10. Well Site Inspection Application, dated July 7, 2011
11. Limited Geological Site Assessment, Resolve Environmental and Geotechnical, Inc., dated February 23, 2022
12. Notice of Application, dated December 2, 2022
13. Revised Determination of Nonsignificance, dated March 7, 2023
14. Assessor Data, received March 13, 2023
15. Comment from the Suquamish Tribe, dated March 15, 2023
16. Notice of Public Hearing, dated March 29, 2023
17. Certification of Public Notice, dated March 31, 2023
18. Staff Presentation, dated April 13, 2023
19. Hearing Sign-In
20. Email Thread between Lauren Gray and Jennifer Kreifels, dated April 11, 2023
21. Comment from Jon Kott, dated December 15, 2022
22. Email Thread between Carla Lundgren, Lauren Gray, and Scott Shelton, dated July 28, 2022, to August 15, 2022
23. Applicant Response to Staff Report, received April 16, 2023
24. Biologist Letter, Peninsula Environmental Group, Inc., dated April 13, 2023

The Hearing Examiner enters the following findings and conclusions based upon the admitted testimony and exhibits:

FINDINGS

Background

1. Lauren and Nathan Gray (Applicant) own a 7.45-acre property located at 23072 Indianola Road NE. In 1950, a 456 square foot single-family residence or “cabin” was built on the property. In 1963, an additional 1,610 square foot single-family residence was built on the property, prior to the County adopting prohibitions against siting multiple single-family residences on the same lot. Accordingly, both residences have been considered legal, nonconforming structures. On December 1, 2022, Kitsap County issued Building Permit No. 22-02501, permitting the Applicant to remove the 456 square foot cabin and construct a new 2,697 square foot single-family residence. The Applicant now requests a conditional use permit (CUP) to convert the remaining 1,610 square foot residence into an accessory dwelling unit (ADU). Doing so would, ultimately, bring the property into compliance with current municipal code requirements related to the allowed number of primary residences on a single lot. *Exhibit 1, Staff Report, pages 1 and 2; Exhibit 23.*

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Application and Notice

2. The Applicant requests a CUP to allow conversion of a legal nonconforming two-story 1,610 square foot single-family residence into an 884 square foot ADU with non-habitable storage on the lower level. As noted above, the Applicant has received a building permit to demolish the existing cabin and construct the new single-family residence. The property is also developed with a 924 square foot detached garage, a 200 square foot carport, paved driveway, and septic system. As noted above the 7.45-acre property is located at 23072 Indianola Road NE.¹ *Exhibit 1, Staff Report, pages 1 and 2; Exhibits 2 through 5; Exhibit 8.*
3. Kitsap County (County) determined that the application was complete on November 21, 2022. On December 2, 2022, the County provided notice of the application consistent with the requirements of Kitsap County Code (KCC) 21.04.210 by publishing notice in the County's publishing newspaper of record and by mailing or emailing notice to property owners within 800 feet of the site and to reviewing departments and agencies. The County's notice materials stated that written comments on the proposal could be submitted up until seven days before the date of the open record hearing associated with the application. On March 29, 2023, the County mailed notice of the open record hearing associated with the application to interested parties and property owners within 800 feet of the site, published notice in the County's publishing newspaper of record, and posted notice on the property. The County received one comment on the proposal in response to its notice materials. Specifically, area resident Jon Kott expressed support for the proposal and noted that he had no environmental concerns about it. *Exhibit 1, Staff Report, pages 1 and 7; Exhibit 12; Exhibit 16; Exhibit 17; Exhibit 21.*

State Environmental Policy Act

4. The County acted as lead agency and analyzed the environmental impacts of the project as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The County consolidated notice of the SEPA review and application comment periods under the optional process provided for by Washington Administrative Code (WAC) 197-11-355. The Suquamish Tribe expressed concerns that the Applicant would not be mitigating impacts to the on-site stream that flows to the Suquamish Tribe's Grovers Creek Hatchery, and also noted concern about increased impervious surfaces on-site and the density of the proposed development. The County reviewed the Applicant's environmental checklist and other information on file and determined that the proposal would not have a probable significant adverse impact on the environment. Accordingly, the County issued a Determination of Nonsignificance (DNS) on March 7, 2023, with an appeal deadline of March 13, 2023. The DNS was not appealed. *Exhibit 1, Staff Report, page 2; Exhibit 9; Exhibit 13; Exhibit 15.*

¹ The property is identified by Kitsap County Assessor's Tax Account No. 042602-3-003-2001. *Exhibit 1, Staff Report, page 1.*

Comprehensive Plan and Zoning

5. The property is designated “Rural Protection” by the County Comprehensive Plan. County staff identified the following Comprehensive Plan policies as relevant to the proposal:

- Limit the designated rural area to low residential densities that can be sustained by minimal infrastructure improvements, that cause minimal environmental degradation, and that will not cumulatively create the future necessity or expectation of urban levels of service. [Land Use Policy 50]
- Permit residential uses in rural areas consistent with the planned rural character of the surrounding area. [Land Use Policy 51]
- Outside of the Type III Limited Area of More Intensive Rural Development (LAMIRD), limit development only to that which serves rural residential or resource needs and does not draw population from Urban Growth Areas. This policy is implemented through Comprehensive Plan Land Use designations, zoning designations, and zoning code provisions. [Land Use Policy 53]
- Use regulatory strategies to incentivize and provide flexibility for development of affordable and special needs housing. [Housing, Human Services Policy 5]
- Adopt regulatory changes to allow non-traditional housing types. [Housing, Human Services Policy 7]
- Promote fair housing to ensure that all residents of Kitsap County have an equal and fair opportunity to obtain safe and sanitary housing suitable to their needs and financial resources, regardless of race, religion, gender, sexual orientation, age, national origin, family status, income, disability, or other protected class. [Housing, Human Services Policy 11]
- Identify and remove regulatory barriers and limits access to or the provision of a diverse affordable housing supply. [Housing, Human Services Policy 12]
- Identify and remove impediments to creating housing for harder to house populations. [Housing, Human Services Policy 13]
- Disperse affordable housing opportunities throughout the County. [Housing, Human Services Policy 14]

Exhibit 1, Staff Report, pages 3 through 6.

6. The subject property is zoned “Rural Protection” (RP). Properties to the south, east, and west are also zoned RP. Properties to the west also contain Tribal Lands. Properties to the north are zoned Rural Wooded (RW) and include an area that incorporates a Mineral Resource Overlay (MRO). The RP zone “promotes low-density rural development and agricultural activities that are consistent with rural character and protects environmental features such as significant visual, historical and natural features, wildlife corridors, steep slopes, wetlands, streams and adjacent critical areas.” *KCC 17.140.010*. Detached ADUs

are allowed in the RP zone with a conditional use permit. *KCC 17.410.042*. ADUs in the RP zone are required to have front yard setbacks of 50 feet, and side and rear yard setbacks of 5 feet. *KCC 17.420.052*. Properties abutting RW-zoned properties require a 100-foot building setback from the RW-zoned property. *KCC 17.420.052*. Accordingly, a 100-foot setback is required from the northern property line. In accord with these requirements, the proposed ADU structure would be set back 180 feet from the front property line to the west, 190 feet from the side property line to the north, 255 feet from the side property line to the south, and 425 feet from the rear property line to the east. Additionally, detached ADUs located outside an urban growth area (UGA) are subject to the special use provisions of *KCC 17.415.015*. The proposed ADU's compliance with these special use provisions is discussed in detail below. *Exhibit 1, Staff Report, pages 1, 3, and 4*.

Existing Property, Critical Areas, and Proposed Development

7. As noted above, the property is currently developed with two existing, legally nonconforming single-family residences—the 456 square foot cabin and the 1,610 square foot single-family residence proposed for conversion into an ADU—along with a 924 square foot detached garage, a 200 square foot carport, paved driveway, and septic system. The cabin also has a covered porch, for a total impervious surface area of 528 square feet. The parcel is roughly square shaped and approximately 75 percent of the property is wooded, with the remaining area consisting of lawn and hard surfaces from the existing structures and driveway. Existing development is primarily located in the center of the parcel. A 20-foot easement is located at the southern property boundary to benefit the parcel to the east. Properties to the south and east are developed with single-family residences. The property to the north is designated as resource mining/forest land. Directly west of the property is Indianola Road NE, a collector road. West of Indianola Road NE is Tribal Land. *Exhibit 1, Staff Report, pages 2 through 4*.
8. Peninsula Environmental Group, Inc., prepared a habitat management plan (HMP) on behalf of the Applicant on March 21, 2022. The HMP identified a depressionnal freshwater, forested/emergent wetland located on the western portion of the parcel. The HMP did not complete a rating for the wetland but noted that the proposed development would be located more than 250 feet from the wetland. The largest buffer associated with moderate uses, which include single-family residential development, is 225 feet and, accordingly, all development would occur outside required wetland buffers. *KCC 19.200.220*. The HMP notes that the property is located in a Critical Aquifer Recharge Area (CARA). The HMP also identifies a Type F (fish bearing) stream that enters in the northeast corner of the parcel and runs southwest to the wetland before exiting the property through a culvert near the driveway on the western property line. Type F streams require a standard 150-foot buffer with a 15-foot minimum building setback. *KCC 19.300.315*. The proposed development would utilize an existing building and would not create additional impacts to the stream buffer. The HMP explains that the

construction of the new single-family residence, which is not the subject of this application, would result in a 1,430 square foot net increase in impervious surfaces on-site, and 199 square foot net increase in impervious surfaces within the reduced stream buffer. The Applicant would mitigate impacts to the buffer by removing noxious weeds, rehabilitating soil, and planting native vegetation within two mitigation zones totaling 3,700 square feet. All stormwater would infiltrate directly on the property. The HMP determined that both the proposed development and the associated single-family residence construction would result in no net loss of habitat function. *Exhibit 7; Exhibit 23; Testimony of Lauren Gray.*

9. Resolve Environmental and Geotechnical, Inc., provided a limited geological assessment (Geological Report) for the Applicant, dated February 23, 2022. The Geological Report indicates that the property contains a very small potential area for a Shallow Landslide Hazard and a potential High Erosion Hazard in the southeastern portion of the site. The report states that slopes are relatively low around the building area and that no cracking or settling of soils and slopes was observed. As noted above, the proposed ADU conversion being reviewed here would utilize an existing building and would not increase impervious surfaces. Furthermore, the geological assessment concluded that the proposed new single-family residence associated with site development appears to be at a significant and safe setback distance from local slopes. *Exhibit 7; Exhibit 23; Testimony of Lauren Gray.*
10. The proposed ADU would be located approximately 100 feet west of the primary residence. Access to the proposed development would be provided by the existing driveway, which connects to Indianola Road NE, a collector arterial road and County-maintained right-of-way. One additional parking space would be provided for the ADU. City staff approved the stormwater system, noting that no proposed construction to the existing structure or proposed disturbance is associated with this permit application. However, the Applicant did note that the property contains sandy soil and all stormwater would be infiltrated on-site. Sewer services would be provided by the existing on-site septic system. Drinking water would be provided by a two-party well. The County Health Officer approved the onsite sewage system and water supply for the proposed development on April 12, 2022, and July 11, 2022, respectively. *Exhibit 1, Staff Report, page 1, 2, 4, 10, and 12; Exhibit 3.*

Conditional Use Permit

11. The County zoning code makes some uses conditional in certain zoning districts. A *conditional use* is an activity specified by the zoning code “as a principal or accessory use that may be approved or denied based on consistency with specific criteria.” *KCC 17.110.175*. As noted above, the Applicant requests a CUP to construct an ADU, which is listed as a conditional use in the RP zoning district. *KCC 17.410.042*. County staff reviewed the proposal and determined that it would satisfy the criteria for a CUP under

KCC 17.550.030.A. The criteria are listed below, together with County staff's analysis (in italics):

- The proposal is consistent with the Comprehensive Plan. *The proposal supports the intent to increase affordable housing options in the County while limiting the density in rural areas to ensure the preservation of those areas.*
- The proposal complies or will comply with requirements of KCC Title 17 and complies with or will comply with all of the other applicable provisions of Kitsap County Code and all other applicable regulations, including all applicable development standards and design guidelines, through the imposed conditions. *The Applicant is bringing the ADU into compliance with today's county code and will no longer be considered legally nonconforming. There would be two dwelling units rather than three as discussed in the Applicant's submission. This proposal meets all the required regulations applicable per KCC.*
- The proposal is not materially detrimental to existing or future uses or property in the immediate vicinity. *The proposed development is consistent with the existing residential use of the property and surrounding properties.*
- 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. *The design, size, and placement of the proposed ADU effectively utilizes the existing features of the property while complementing the surrounding neighborhood characteristics.*

Exhibit 1, Staff Report, pages 11 and 12.

12. ADUs in the RP zone are required to satisfy the ADU special use provisions of KCC 17.415.015.B. This code was recently adopted, effective June 28, 2022. While County staff inadvertently analyzed the proposal under the former code (KCC 17.410.060, which was repealed by Ordinance No. 611-2002). However, the applicable criteria are nearly identical. Accordingly, County staff's analysis is still applicable. The ADU special use provisions are listed below, together with County staff's analysis (in italics):
 1. Only one ADU shall be allowed per lot. *The Applicant proposes only one ADU. There are no other ADUs present or proposed on the property.*
 2. Owner of the property must reside in either the primary residence or the ADU. *The owner currently resides in the existing ADU.*
 3. The ADU shall not exceed 50 percent of the square footage of the habitable area of the primary residence or 900 square feet, whichever is smaller. Dimensions are determined by exterior measurements. *The proposed ADU is 884 square feet of conditioned area. The new proposed primary residence is 2,697 square feet. Fifty percent of the proposed primary residence is 1,348.5 square feet. The County rounds up to 1,349 square feet. The ADU is limited to 900 square feet (the smaller value). The Applicant provided documentation supporting the primary SFR as 2,697 square per original building permit (Building Permit No.*

- 22-02501), not 1,810 square feet as listed on Assessor's webpage. County staff accepts the documentation provided by applicant, for allowable ADU size limits.
4. The ADU shall be located within 150 feet of the primary residence or shall be the conversion of an existing detached structure. *The existing single-family residence and proposed ADU would be located approximately 100 feet apart, satisfying this requirement.*
 5. The ADU shall be designed to maintain the appearance of the primary residence. *The new proposed SFR and the proposed 884 square foot second story ADU with unconditioned storage area below shall be similar in appearance.*
 6. All setback requirements for the zone in which the ADU would be located shall apply. *The proposed ADU would comply with all setback requirements applicable to the RP zone.*
 7. The ADU shall meet applicable health district standards for water and sewage disposal. *Kitsap County Health District reviewed and approved the proposed ADU.*
 8. No mobile homes or recreational vehicles shall be allowed as an ADU. *There are no mobile homes or recreational vehicles present on the subject property or proposed in the application.*
 9. An ADU shall use the same side street entrance as the primary residence and shall provide additional off-street parking. *The submitted site plan shows that the proposed ADU would use an existing driveway utilized by the single-family residence.*
 10. An ADU is not permitted on the same lot where accessory living quarters exist. *There are no present or proposed accessory living quarters.*
- Exhibit 1, Staff Report, pages 8 and 9.*

Testimony

13. County Planner Jenny Kreifels testified generally about the proposal and how, with conditions, it would meet the specific requirements for approval of a conditional use permit. She explained that the property was developed, historically, with two single-family residences (as detailed above), and that the County determined that the two residences both constitute legally nonconforming structures. Ms. Kreifels noted that the Applicant provided documentation stating that the new single-family residence would be 2,697 square feet and that County staff accepted this documentation. Ms. Kreifels explained that the Applicant proposes to convert the upper level of the existing single-family residence into an ADU, and would convert the lower level to non-conditioned (i.e., non-habitable) space. She noted that covered porches do not count toward conditioned space. Ms. Kreifels stated that the ADU and the new single-family residence would be built in the same architectural style. Ms. Kreifels explained that the County recently adopted KCC 17.415.015 and that the County had reviewed the proposal under that code, despite the staff report referencing the former code provision KCC 17.410.060, which was recently repealed. She stated that County staff determined that the proposal

would comply with the special provisions for detached ADUs outside of UGA under KCC 17.415.015.B, including KCC 17.415.015.B.11. She noted that the property was already developed with the two single-family residences when the Applicant bought the property. She explained that the expansion of the legal existing non-conforming single-family residence requires all uses to conform with current code standards and the County would ensure such conformance with review of the new residence through its administrative review process. *Testimony of Ms. Kreifels.*

14. Applicant Lauren Gray explained how the property was historically developed with two single-family residences. She noted that the onsite wetland is a manmade feature and there is active pasture space between the critical area and the proposed area of impact. She noted that this area between the critical areas and development area is a degraded riparian zone. She also explained that the HMP provided by Peninsula Environmental Group, Inc., and the Washington State Department of Fish and Wildlife (WDFW) fish passage and diversion screening website indicate that the onsite Type F stream is currently not fish-bearing. Ms. Gray noted that there is a hatchery located on the other side of Indianola Road NE. Ms. Gray explained that north of the subject property is a property zoned Rural Wooded with a Mineral Resource Overlay, so a 100-foot setback was required from the northern property line. She noted that there is an open and active sandpit north of the property and an operating sawmill south of the property.

Ms. Gray testified that stormwater would infiltrate directly on the property. Ms. Gray stressed that review materials associated with the building permit for the new residence indicate that new impervious surfaces resulting from development would constitute an increase of less than 1 percent of the total parcel. She also stressed that 3,700 square feet of pasture would be planted with native vegetation to enhance the riparian zone along the wetland. Ms. Gray commented that the proposed development would not increase density on the property and that similar proposals had been approved in the County. *Testimony of Ms. Gray.*

15. Jon Kott expressed support for the proposal, stating that the proposed development is the type of development envisioned by the Growth Management Act. He echoed that the area around the property is primarily underlain with sandy soils and that stormwater would be able to infiltrate on-site. *Testimony of Mr. Kott.*

Staff Recommendation

16. Ms. Kreifels testified that County staff recommend approval of the conditional use permit application, with conditions. Ms. Kreifels testified that she understands and would comply with County staff's recommended conditions. *Exhibit 1, Staff Report, pages 12 through 14; Testimony of Ms. Kreifels; Testimony of Ms. Gray.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide requests for a conditional use permit.
KCC 2.10.070; 17.550.020.

Criteria for Review

The Hearing Examiner may approve, approve with conditions, or deny a conditional use permit. Approval or approval with conditions may be granted by the Hearing Examiner only when all the following criteria are met:

1. The proposal is consistent with the Comprehensive Plan;
2. The proposal complies with applicable requirements of [the zoning code];
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.

KCC 17.550.030.A.

As a condition of CUP approval, the Hearing Examiner may:

1. Increase requirements in the standards, criteria, or policies established by [the zoning code];
2. Stipulate the exact location as a means of minimizing hazards to life, limb, property damage, erosion, landslides, or traffic;
3. Require structural features or equipment essential to serve the same purpose set forth in Chapter 17.420;
4. Include requirements to improve compatibility with other uses permitted in the same zone, protecting them from nuisance generating features in matters of noise, odors, air pollution, wastes, vibration, traffic, physical hazards, and similar matters. The hearing examiner may not, in connection with action on a conditional use permit, reduce the requirements specified by [the zoning code] as pertaining to any use nor otherwise reduce the requirements of [the zoning code] in matters for which a variance is the remedy provided;
5. Assure that the degree of compatibility with the purpose of [the zoning code] shall be maintained with respect to the particular use on the particular site and in consideration of other existing and potential uses, within the general area in which the use is proposed to be located;

6. Recognize and compensate for variations and degree of technological processes and equipment as related to the factors of noise, smoke, dust, fumes, vibration, odors, and hazard or public need;
7. Require the posting of construction and maintenance bonds or other security sufficient to secure to the county the estimated cost of construction and/or installation and maintenance of required improvements; and
8. Impose any requirement that will protect the public health, safety, and welfare.

KCC 17.550.030.B.

“If the approval criteria are not met or conditions cannot be imposed to ensure compliance with the approval criteria, the conditional use permit shall be denied.” *KCC 17.550.030.C.*

In addition to the criteria listed above, ADUs are subject to the following special use provisions of KCC 17.415.015.B:

1. Only one ADU shall be allowed per lot;
2. Owner of the property must reside in either the primary residence or the ADU;
3. The ADU shall not exceed fifty percent of the square footage of the habitable area of the primary residence or nine hundred square feet, whichever is smaller. Dimensions are determined by interior measurements;
4. The ADU shall be located within one hundred fifty feet of the primary residence or shall be the conversion of an existing detached structure (e.g., garage);
5. The ADU shall be designed to maintain the appearance of the primary residence;
6. All setback requirements for the zone in which the ADU is located shall apply;
7. The ADU shall meet the applicable health district standards for water and sewage disposal;
8. No mobile homes or recreational vehicles shall be allowed as an ADU;
9. An ADU shall use the same side-street entrance as the primary residence and shall provide additional off-street parking; and
10. An ADU is not permitted on the same lot where an accessory dwelling unit, attached (ADU-A), exists.
11. Existing, Unpermitted Accessory Dwelling Units, Attached or Detached, located Outside an Urban Growth Area.
 - a. Applicability. The provisions of this subsection shall only apply to property and property owners who can establish all of the following criteria:
 - i. The parcel is within the unincorporated area of Kitsap County;
 - ii. An accessory dwelling unit (ADU), attached or detached, or similar dwelling previously defined as an accessory living quarters (ALQ) or an accessory rental unit (ARU) is located on the parcel;

- iii. The accessory dwelling has not received any prior review and/or approval by Kitsap County;
- iv. The property owner did not construct or cause to have the accessory dwelling constructed;
- v. The property owner did not own the property when the accessory dwelling was constructed;
- vi. The property owner exercised due diligence when purchasing the property with the existing accessory dwelling to discover whether or not the accessory dwelling was approved when purchasing the property. Due diligence is presumed to have occurred if the property owner can document the following conditions:
 - (a) That county tax records or parcel records contain no inquiry or other notice that the ADU was unpermitted; and
 - (b) That the current owner requested and obtained a title report with no exceptions, restrictions, enforcement actions, permitting or similar issues pertinent to the ADU; and
 - (c) That the prior owner's property and improvement disclosures at the time of sale did not indicate any permitting, compliance or similar issues pertinent to the ADU; and
 - (d) That any third party involved in the sale or inspection of the ADU did not disclose any permitting, compliance or other issues pertinent to the ADU;
- vii. The parcel has a history of property tax assessment and a history of continuous tax payments on the principal and the accessory dwelling;
- viii. Acceptable documentation for subsection (B)(11)(a)(i) of this section may include but is not limited to current or previous county assessment records, real estate disclosure forms, listing agreements, records of sale, title reports and aerial photography establishing compliance with the required conditions.
- c. Approval. The director, or his designee, is authorized to approve submitted applications that satisfy all of the following criteria. When approved, the use shall be considered a legal nonconforming use.
 - i. All the requirements of this section;
 - ii. All the applicable zoning, health, fire safety and building construction requirements:
 - (a) The applicable requirements shall be those in effect when the accessory dwelling was constructed. The burden of proof of when the accessory dwelling was constructed shall be upon the applicant and may consist of dated aerial photography, tax assessments, surveys or similar documents.

- (b) If the applicant cannot prove a date of construction, the applicable requirements shall be those currently in effect on the date of application.
- (c) If the applicant can only show a date range for construction, the applicable requirements shall be the latest requirements of the range;
- iii. Proof of adequate potable water;
- iv. Proof of adequate sewage disposal systems for both the principal and the accessory dwelling. Proof shall be shown by Kitsap County health district approval; and
- v. Verification by Kitsap County inspection staff that the accessory dwelling is habitable.

The criteria for review adopted by the Kitsap County Board of Commissioners are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with County development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusion Based on Findings

1. **With conditions, the proposed ADU would be consistent with the special use provisions of KCC 17.415.015.B.** The proposed ADU would be located within the Rural Protection (RP) zoning district, outside the boundary of an urban growth area, and would therefore be allowed with a conditional use permit. The Applicant proposes to construct only one ADU, and there are no other ADUs, accessory living quarters, mobile homes, or recreational vehicles currently located or proposed to be located on the property. The Applicant would reside in the ADU or the primary residence. The proposed ADU would measure 884 square feet, which is below the maximum permitted for an ADU associated with a 2,697 square foot primary residence. The proposed ADU would be sited approximately 100 feet from the single-family residence and would be designed to maintain the appearance of the single-family residence by incorporating the same siding. The proposed ADU would meet all applicable setback requirements for the RP zone and would be accessed by the existing driveway serving the single-family residence, which would provide the additional parking space required for the ADU. The proposed ADU would be served by an on-site septic system, and potable water would be provided by municipal water. The Kitsap County Health District has approved the water and septic systems proposed for the project, with conditions that have been incorporated with County staff's recommended conditions of CUP approval. Conditions, as detailed below, are necessary to mitigate project impacts and to ensure compliance with applicable statutes, ordinances, and regulations. *Findings 1, 6 – 16.*

2. **With conditions, the proposed project would be meet the criteria for CUP approval under KCC 17.550.030.A.** The County provided reasonable notice and opportunity to comment on the proposal. The County received two comments on the proposal in response to its notice materials. A comment from a member of the public expressed support for the proposal. The Suquamish Tribe raised concerns about impervious surfaces and mitigation measures for impacted critical area buffers. The Applicant would be converting an existing building, however, so the proposed development under review with this CUP would not result in additional impervious surfaces. The County analyzed the environmental impacts of the proposal, determined that the proposed use would not have a probable significant adverse impact on the environment, and issued a Determination of Nonsignificance on March 7, 2023. The DNS was not appealed. The proposed ADU would be consistent with the County Comprehensive Plan policies that permit low-density residential uses in rural areas and generally encourage diverse, affordable housing options suitable to meet the needs of county residents. The Kitsap County Health District approved the proposed water and septic systems, with conditions that have been incorporated with County staff’s recommended conditions of CUP approval. As conditioned, the proposed ADU would comply with all applicable provisions of the County zoning code, including setback requirements for the RP zone and the specific ADU special use provisions of KCC 17.415.015.B. The project’s compliance with these special use provisions would ensure that the project would not be materially detrimental to other uses or property in the vicinity and would be compatible with the existing character of the subject property and property in the vicinity. Conditions, as detailed below, are necessary to mitigate project impacts and to ensure compliance with relevant federal, state, and local statutes, ordinances, and regulations. *Findings 1 – 16.*

DECISION

Based on the preceding findings and conclusions, the request for a conditional use permit to convert an existing 1,610 square foot, legally nonconforming residence into an 884 square foot accessory dwelling unit, with non-habitable storage on the lower level, on a 7.45-acre property at 23072 Indianola Road NE, is **APPROVED**, subject to the following conditions:

1. All required permits shall be obtained prior to commencement of land clearing, construction, and/or occupancy.
2. If archaeological resources are uncovered during excavation, developers and property owners must immediately stop work and notify Kitsap County, the Office of Archaeology and Historic Preservation and affected Indian tribes.
3. 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.

4. 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 the DCD and granted approval prior to such modification, expansion, construction and/or issuance of a building permit.
5. Only one ADU shall be permitted on the subject property.
6. 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.
7. The ADU's conditioned area shall not exceed 50 percent of the primary residence or 900 square feet, whichever is smaller. The proposed size of the ADU is 884 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.
8. The ADU shall be located within 150 feet of the primary residence.
9. The ADU shall be designed to maintain the appearance of the primary residence.
10. This permit shall comply with all Kitsap Public Health District regulations and conditions of approval.
11. No mobile home or recreational vehicle shall be allowed as an ADU.
12. The ADU shall use the same side street entrance as the primary residence and shall provide one additional off-street parking space.
13. 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.
14. 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.
15. The ADU cannot be sold separately from the primary residence unless it has legally been segregated onto its own lot.
16. 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 DCD at the Applicant's expense.

17. 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, and is not, to be construed as approval for more extensive or other utilization of the subject property.
18. 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.
19. The decision set forth herein is based upon representations made and exhibits contained in the project application. 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.
20. This CUP approval shall automatically become void if no development permit application is accepted as complete by the DCD within four years of the Notice of Decision date or the resolution of any appeals.
21. Any violation of the conditions of approval shall be grounds to initiate revocation of this CUP.
22. 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 process, if a SDAP is not required. The need for and scope of bonding will be determined at that time.
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 area. 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 approved for this permit application, Development Services and Engineering will require additional review and potentially new conditions.
25. Subject to the conditions and mitigation of the Habitat Management Plan (HMP) Report provided by Peninsula Environmental Group Inc., dated March 21, 2022.

DECIDED this 1st day of June 2023.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center