



Notice of Hearing Examiner Decision

05/23/2024

To: Interested Parties and Parties of Record

RE: Project Name: Wintch Conditional Use Permit – Accessory Dwelling Unit (CUP-ADU)
 Applicant: Joni and Jacob Wintch
 1333 Fern Ln W
 Bremerton, WA 98312
 Application: Conditional Use Permit
 Permit Number: 22-05273

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **Permit #22-05273 Wintch Conditional Use Permit – 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://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: Owners: Jacob and Joni Wintch, jacobwintch@gmail.com
Applicant: Joni Wintch, jonihen3@yahoo.com
Skokomish Tribe, apapiez@skokomish.org
Health District
Public Works
Parks
DCD
DSE
Kitsap Transit

Central Kitsap Fire District
Central Kitsap School District
Puget Sound Energy
Water Purveyor
Sewer Purveyor
Point No Point Treaty Council
Suquamish Tribe
Port Gamble S'Klallam Tribe
Squaxin Island Tribe
Puyallup Tribe
WA Dept of Fish & Wildlife
WA Dept of Transportation/Aviation
WA State Dept of Ecology-SEPA
WA State Dept of Ecology-Wetland Review
DCD Staff Planner: Jenny Kreifels

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE HEARING EXAMINER FOR KITSAP COUNTY

Phil Olbrechts, Hearing Examiner

RE: Wintch Conditional Use Accessory Dwelling Unit (CUP – ADU) File No. 22-05273	FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION.
---	--

INTRODUCTION

Joni and Jacob Wintch request a Conditional Use Permit in an after-the-fact application to convert an existing building into detached Accessory Dwelling Unit (ADU) on property located at 1333 Fern Ln. W. Bremerton. The application is approved subject to conditions.

One issue of concern during the hearing was whether the Applicant could be made to remove invasive knotweed as a condition of approval as requested by the Skokomish Tribe in Ex. 16. Since the conversion does not involve any significant exterior alteration or any additional clearing, the proposal has not triggered the need for any mitigation such as removal of invasive species. The removal cannot be legally required, but the Applicant is encouraged to do so as requested by the Tribe.

ORAL TESTIMONY

A computer generated transcript of the hearing is provided as Exhibit 30 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 1-29 listed in the Index to the Record prepared by County staff were admitted during the hearing.

FINDINGS OF FACT

Procedural:

1 1. Applicant. Joni and Jacob Wintch, 1333 Fern Ln. W. Bremerton, WA
2 98312

3 2. Hearing. The Hearing Examiner conducted a remote/hybrid hearing on the
4 application at 9:30 am on May 9, 2024.

5 **Substantive:**

6 3. Site/Proposal Description. Joni and Jacob Wintch request a Conditional
7 Use Permit for a detached ADU on property located at 1333 Fern Ln. W. Bremerton.
8 The project site is 9.06 acres in size. The proposed ADU will be 768 square feet and
9 approximately 255 feet from the 2,828-square-foot existing single-family residence.
10 The ADU will be the only ADU on the parcel. The ADU will use the same driveway
11 as the primary residence. The application is an after-the-fact application for an existing
12 ADU that was converted from a detached structure that was constructed in 1996.

13 4. Characteristics of the Area. The subject property is bordered on all sides by
14 parcels that are developed with single-family homes, forest land or vacant.

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

17 a. Off-Street Parking. KCC 17.49.030 requires three (3) parking off-street spaces
18 per single-family residence and one (1) parking space for an ADU. Staff have
19 found that the off-street parking area proposed by the Applicants is sufficient
20 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.

23 c. Environmental/Critical Areas. Since the proposal involves the conversion of
24 an existing building with no significant exterior alterations or additional
25 clearing, the proposal does not trigger any requirements to mitigate impacts to
26 critical areas. The Skokomish Tribe has requested that the Applicant be
27 required to remove invasive knotweed from the project site as a condition of
28 approval. However, there is nothing in the record to suggest that the conversion
29 has created any impacts to that would be mitigated by the removal of knotweed.

30 d. Access, Traffic, Roads. The proposed ADU will use the same access as the
31 primary residence as shown in the site plan, Ex. 1, p. 17. Development Services
32 and Engineering reviewed the proposal for compliance with traffic and road
33 standards and recommended approval with no conditions at this time.

34 e. Fire Safety. The Kitsap County Fire Marshall's staff reviewed and approved
35 the proposal. Customer has elected to install automatic sprinkler system to
36 mitigate for not having fire department access. Automatic sprinkler system

1 approval will be required on the building permit and is added as a condition at
2 the end of this report.

3 f. Water/Septic Water and septic were approved by the Kitsap County Health
4 District.

5 g. Compatibility. The proposal is compatible with surrounding uses. As
6 identified in Finding of Fact No. 4, surrounding uses are all vacant, forested or
7 residential. The proposed ADU will also be surrounded by numerous trees on
8 all sides as shown in the aerial photograph of Ex. 13, p. 4. The increase in
9 density is not likely to make a significant aesthetic difference to surrounding
10 neighbors. The ADU provides for similar appearance to the primary residence
11 – the is made to look like a barn and the primary residence is a farmhouse.

12 CONCLUSIONS OF LAW

13 Procedural:

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

16 Substantive:

17 2. Zoning Designation. The property is currently zoned Rural Residential.

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

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

25 **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;*

1 5. Criterion met. The criterion is met. The proposal conforms to the County's zoning
2 code as detailed in Section 10 of the staff report (Exhibit 1). Staff planning and public
3 works staff have reviewed the proposal to ensure conformance to the County's zoning
4 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.

5 The primary issue of zoning compliance is adherence to KCC 17.415.015B, which
6 adopts standards tailored to detached ADUs outside urban growth areas. Pursuant to
7 those standards, only one ADU is allowed per lot, the owner of the property must reside
8 in the primary residence or the ADU, the ADU shall not exceed 50% of the habitable
9 area of the primary residence, the ADU shall be located within 150 feet of the primary
10 residence unless involving a conversion of an existing structure such as that proposed,
11 the ADU shall be designed to maintain the appearance of the primary residence, all
12 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
proposed design and site characteristics further establish conformance as detailed in
Findings of Fact No. 3 and 5.

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

15 6. Criterion met. The criterion is met for the reasons identified in Finding of Fact No.
16 5.

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

21 7. Criterion met. The criterion is met for the reasons identified in Finding of Fact No.
22 5g and via its required conformance to KCC 17.415.015B.

23 **DECISION**

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

a. Planning/Zoning

1. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.

- 1 2. If archaeological resources are uncovered during excavation, developers and
2 property owners must immediately stop work and notify Kitsap County, the
3 Office of Archaeology and Historic Preservation and affected Indian tribes.
- 4 3. The ADU is subject to the payment of impact fees. Impact fees must be paid
5 at time of permit issuance, or if deferred, must be paid prior to final inspection.
6 No certificate of occupancy will be granted until all impact fees are paid.
- 7 4. Any proposed modification (not including cosmetic work such as painting,
8 papering and similar finish work), remodel or expansion of the ADU building,
9 regardless of whether a building permit is required, shall be reviewed by the
10 DCD and granted approval prior to such modification, expansion,
11 construction and/or issuance of a building permit.
- 12 5. Only one ADU shall be permitted on the subject property.
- 13 6. The owner of the property must reside in either the primary residence or the
14 ADU and only one of the structures may be rented at any one time.
- 15 7. The ADU's habitable area shall not exceed 50% of the primary residence or
16 900 square feet, whichever is smaller. The proposed size of the ADU is 768
17 square feet. Any future expansion of the ADU will require a building permit
18 and would have to comply with all code requirements in place at the time of
19 the new building permit application.
- 20 8. The ADU shall be designed to maintain the character and appearance or an
21 alternate design to align with the aesthetics of the primary residence.
- 22 9. This permit shall comply with all Kitsap Public Health District regulations
23 and conditions of approval.
- 24 10. No mobile home or recreational vehicle shall be allowed as an ADU.
- 25 11. The ADU shall use the same side street entrance as the primary residence and
shall provide one additional off-street parking space.
12. An Accessory Living Quarters (ALQ) or Guest House (GH) is not permitted
on the same lot unless the ADU is removed, and the GH complies with all
requirements imposed by the KCC.
13. 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.
14. The ADU cannot be sold separately from the primary residence unless it has
legally been segregated onto its own lot.
15. 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.
16. 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

1 requirements of the KCC. Unless in conflict with the conditions stated and/or
2 any regulations, all terms and specifications of the application shall be binding
3 conditions of approval. Approval of this project shall not, and is not, to be
4 construed as approval for more extensive or other utilization of the subject
5 property.

- 6 17. The authorization granted herein is subject to all applicable federal, state, and
7 local laws, regulations, and ordinances. Compliance with such laws,
8 regulations, and ordinances is a condition to the approvals granted and is a
9 continuing requirement of such approvals. By accepting this/these approvals,
10 the applicant represents that the development and activities allowed will
11 comply with such laws, regulations, and ordinances. If, during the term of the
12 approval granted, the development and activities permitted do not comply
13 with such laws, regulations, or ordinances, the applicant agrees to promptly
14 bring such development or activities into compliance.
- 15 18. The decision set forth herein is based upon representations made and exhibits
16 contained in the project application. Any change(s) or deviation(s) in such
17 plans, proposals, or conditions of approval imposed shall be subject to further
18 review and approval of the County and potentially the Hearing Examiner.
- 19 19. This CUP approval shall automatically become void if no development permit
20 application is accepted as complete by the DCD within four years of the
21 Notice of Decision date or the resolution of any appeals.
- 22 20. Any violation of the conditions of approval shall be grounds to initiate
23 revocation of this CUP.

24 **b. Development Engineering**

- 25 21. Building permits submitted for this development shall include construction
plans and profiles for all roads, driveways, storm drainage facilities and
appurtenances. No construction shall be started prior to said plan acceptance.
- 22 22. Stormwater quantity control, quality treatment, and erosion and
23 sedimentation control, as required for the development, shall be designed in
24 accordance with Kitsap County Code Title 12 effective at the time the
25 Building Permit is deemed fully complete. If development meets the
thresholds for engineered drainage design, the 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.
- 26 23. 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.

c. Environmental

d. Traffic and Roads

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

3 **e. Fire Safety**

4 25. Automatic sprinkler system approval is required before signing off on
framing inspection for the building permit.

5 **f. Solid Waste**

6 None at this time.

7 **h. Kitsap Public Health District**

8 None at this time.

9 Dated this 23rd day of May 2024.

10 *Phil Olbrechts*

11

Phil Olbrechts,
Kitsap County Hearing Examiner

12
13 **Appeal Right and Valuation Notices**

14 Pursuant to KCC 21.04.100 and KCC 21.04.110, this conditional use permit decision is
15 a final land use decision of Kitsap County and may be appealed to superior court within
16 21 days as governed by the Washington State Land Use Petition Act, Chapter 36.70C
RCW.

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