



Notice of Hearing Examiner Decision

02/09/2024

To: Interested Parties and Parties of Record

RE: Project Name: Turk Conditional Use Permit – Accessory Dwelling Unit (CUP-ADU)
 Applicant: Zachary Turk
 PO Box 864
 Manchester, WA 98353
 Application: Conditional Use Permit
 Permit Number: 23-00732

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **Permit # 23-00732 Turk 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://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: Zachary Turk, zachturk@gmail.com
Health District
Public Works
Parks
Navy
DSE
Kitsap Transit
South Kitsap Fire District
South 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
WA State Dept of Transportation

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: Turk Conditional Use Accessory Dwelling Unit (CUP – ADU) File No. 23-00732	FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION.
---	--

INTRODUCTION

The applicant, Zachary Turk requests a Conditional Use Permit for an Accessory Dwelling Unit (ADU) on property located at 6641 Banner Rd. SE, Port Orchard. The application is approved subject to conditions.

ORAL TESTIMONY

A computer-generated transcript of the hearing has been prepared to provide an overview of the hearing testimony. The transcript is provided for informational purposes only as Appendix A.

EXHIBITS

Exhibits 1-19 listed in the Index to the Record prepared by County staff were admitted during the hearing. The following exhibits were also admitted during the hearing:

FINDINGS OF FACT

Procedural:

1. Applicant. Zachary Turk, 1715 E. Main, Apt. T101, Puyallup, WA 98372
2. Hearing. The Hearing Examiner conducted a remote/hybrid hearing on the application at 9:00 am on January 25, 2024.

Substantive:

1 3. Site/Proposal Description. Mr. Turk has applied for a conditional use
2 permit for an accessory dwelling unit on the property located at 6641 Banner Rd. SE,
3 Port Orchard. The site is zoned Rural Residential and meets the minimum lot size
4 requirements.

5 Existing development consists of a 972 square foot, 1-story dwelling built in 1928. a
6 2,536 square foot manufactured home and a 1,440 square foot outbuilding. 884 square
7 feet of the 1928 home will be converted to the ADU and the manufactured home will
8 serve as the primary dwelling. The manufactured home has 2,400 square feet of
9 habitable space. Porches and decks make up the remainder of floor area according to
10 the Assessor's data. The ADU will be located 83 feet from the manufactured home.
11 Staff have found that the ADU meets all required setbacks in the RR zone.

12 A shared driveway from Banner Rd. S.E. provides access to the SFR and ADU. Two
13 existing drainfields are located at the northwest corner and north central portions of the
14 lot.

15 The subject site is approximately 5.23 acres in size. The parcel is relatively flat,
16 rectangular in shape and has a perimeter surrounded by thick vegetation, apart from
17 accesses at the north and west boundaries. The central portion is primarily vegetated
18 with lawn and scattered trees. Hard surfaces from existing structures, driveway and
19 parking are at the northern portion of the site.

20 4. Characteristics of the Area. The subject property is bordered with single-
21 family homes and zoned Rural Residential (RR) to the north, south and east; and
22 vacant/undeveloped publicly owned land zoned Parks (P)/RR and an undeveloped
23 segment of Banner Rd. SE to the west.

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

A. Off-Street Parking. KCC 17.49.030 requires three (3) parking spaces per
single-family residence and one (1) parking space for an ADU. The proposal
includes four parking spaces as required.

B. Stormwater. Approved by engineering staff since the proposed ADU is an
existing structure and being converted into the ADU. Additionally, there is no
proposed site work or addition of new hard surfaces.

C. Critical Areas. No critical areas are mapped on the on the site.

D. Access, Traffic, Roads. The site gains access via the existing driveway from
Banner Rd. SE, a county-maintained collector/arterial right-of-way. The parcel
is permitted to use the existing 16-foot driveway easement since it is running
along the norther perimeter boundary.

E. Fire Safety. The Kitsap County Fire Marshall's staff have review and approved
the proposal.

1 F. Utilities. Sewer is not available on this site therefore no review was done. The
2 building site application was reviewed by the Kitsap Public Health District and
approved for water and on-site septic (OSS).

3 G. Compatibility. The proposal is compatible with surrounding uses. As noted in
4 the staff report, The design, size, and placement of the proposed ADU
5 effectively utilizes the existing features of the property while complementing
6 the surrounding neighborhood characteristics. The conversion will serve as an
aesthetic improvement since the current 1928 home, as pictured in the exhibits,
7 is highly dilapidated. The proposed ADU is also centrally located in a large lot
and likely not very visible to surrounding uses. The aerial photograph on the
first page of the staff report shows the area as heavily forested.

8 CONCLUSIONS OF LAW

9 **Procedural:**

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

12 **Substantive:**

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

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

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

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

21 4. Criterion met. The criterion is met. As noted in the staff report, the proposal brings
22 the project site up to current code requirements, thereby better aligning it with the
23 Comprehensive Plan. The proposed ADU provides the ability to create an affordable
housing unit which is a goal supported by several policies in the Comprehensive Plan
24 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
25 identified in Section 7 and Section 12 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 the Section 10 of the staff report (Exhibit 1). Staff planning and
3 public works staff have reviewed the proposal to ensure conformance to the County's
4 zoning code for this level of review. The results of that work have been implemented
5 in detailed conditions of approval, adopted by this decision. Nothing in the record
6 suggests any outstanding compliance issues. More detailed compliance will be
7 required during building and civil permit review.

8 The primary issue of zoning compliance is adherence to KCC 17.415.015B, which
9 adopts standards tailored to detached ADUs outside urban growth areas. Pursuant to
10 those standards, only one ADU is allowed per lot, the owner of the property must reside
11 in the primary residence or the ADU, the ADU shall not exceed 50% of the habitable
12 area of the primary residence, the ADU shall be located within 150 feet of the primary
13 residence, the ADU shall be designed to maintain the appearance of the primary
14 residence, all setback requirements shall be met, all health district standards shall be
15 met, ADUs may not be mobile homes or recreational vehicles, and the ADU shall use
16 the same access as the primary residence and shall provide an additional parking space.
17 The conditions of approval recommended by staff require conformance to all of these
18 standards. The proposed design and site characteristics further establish conformance
19 as detailed in Findings of Fact No. 3 and 5. As noted in Finding of Fact No. 5, the
20 Applicant has already acquired health district approval for ADU septic.

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

23 6. Criterion met. The criterion is met for the reasons identified in Finding of Fact No.
24 5.

25 **KCC 17.550.030.A.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.*

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

DECISION

Based upon the conclusions of law above, the conditional use permit application is
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
Washington State Office of Archeology and Historic Preservation and affected Indian
tribes.

3 3. The ADU is subject to the payment of impact fees. Impact fees must be paid at
4 time of permit issuance, or if deferred, must be paid prior to final inspection. No
5 certificate of occupancy will be granted until all impact fees are paid.

6 4. Any proposed modification (not including cosmetic work such as painting,
7 papering and similar finish work), remodel or expansion of the ADU building,
8 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.

9 5. Only one ADU shall be permitted on the subject property.

10 6. The owner of the property must reside in either the primary residence or the ADU
11 and only one of the structures may be rented at any one time.

12 7. The ADU's inhabitable area shall not exceed 50% of the primary residence or 900
13 square feet, whichever is smaller. The proposed size of the ADU is 884 square feet.
14 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.

15 8. The ADU shall be located within 150 feet of the primary residence.

16 9. The ADU shall be designed to maintain the appearance of the primary residence.

17 10. This permit shall comply with all Kitsap Public Health District regulations and
18 conditions of approval.

19 11. No mobile home or recreational vehicle shall be allowed as an ADU.

20 12. The ADU shall use the same side street entrance as the primary residence and
21 shall provide one additional off-street parking space.

22 13. An Accessory Living Quarters (ALQ) or Guest House (GH) is not permitted on
23 the same lot unless the ADU is removed and the ALQ or GH complies with all
24 requirements imposed by the KCC.

25 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.

1 15. The ADU cannot be sold separately from the primary residence unless it has
legally been segregated into its own lot.

2 16. The recipient of any CUP shall file a Notice of Land Use Binder with the county
3 auditor prior to any of the following: initiation of any further site work, issuance of
4 any development/construction permits by the county, or occupancy/use of the subject
5 property or buildings thereon for the use or activity authorized. The Notice of Land
6 Use Binder shall serve both as an acknowledgement 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.

7 17. The users of the subject property are limited to the uses proposed by the applicant
8 and any other uses will be subject to further review pursuant to the requirements of the
9 KCC. Unless in conflict with the conditions stated and/or any regulations, all terms
10 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.

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

17 19. The decision set forth herein is based upon representations made and exhibits
18 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.

19 20. 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 Notice of
21 Decision date or the resolution of any appeals.

22 21. Any violation of the conditions of approval shall be grounds to initiate revocation
of the CUP.

23 Dated this 8th day of February 2024.

24 *Phil Olbrechts*

25

Phil Olbrechts,
Kitsap County Hearing Examiner

Appendix A

January 25, 2024 Hearing Transcript

Turk Conditional Use – 23-00732

Note: This is a computer-generated transcript provided for informational purposes only. The reader should not take this document as 100% accurate or take offense at errors created by the limitations of the programming in transcribing speech. For those in need of an accurate rendition of the hearing testimony, a hearing recording can be acquired from Kitsap County.

(27:27):

Okay, and this next hearing is going to be the same format as the last one. It's for the TURP conditional use permit application for an accessory dwelling unit file number 23 dash 0 0 7 3 2. And looks like on this one we just have the applicant, Mr. Turk in attendance. Is that correct Ms. Walston and staff of course. Ms. Schaffer, is this yours again? No, Jennifer. Oh okay. Alright. Okay. So as I mentioned, same form as the last time staff presentation start then applicant, then public if any public shows up and then we go back to staff rebuttal, applicant final word and I have 10 business days to issue that decision. Let me share my screen for the exhibits. I can't tell which is, oh there it is. Alright.

(28:14):

Okay, so I showing the Turk exhibit list, Ms. Walston. Okay, she's shaking her head yes. So on this one we have 19 exhibits at this point, I guess since we just have Mr. Turk here, I just want to ask Mr. Turk, do you have any objections to entry of exhibits one through 19? I'm assuming you got a copy of the staff report and these documents in advance, but if you have any problems with those documents, go ahead and raise your virtual hand and we'll take up your objection see? Okay, no objections. So we'll put that into the record. Exhibits one through 19. Alright and so who's our staff lead on this one?

Speaker 2 (28:52):

Good morning. Thank you Examiner Brooks for the record. My name is Jenny k KLEs.

Speaker 1 (28:57):

Oh, okay. Mr. Fel

Speaker 2 (28:58):

Spelled KR oh

Speaker 1 (29:00):

I got, oh sorry, let me swear again. Do you swear affirm to tell the truth nothing but the truth in this proceeding? I do. Okay, great. Go ahead.

Speaker 2 (29:08):

Okay, so I am a planner with Kitsap County Department of Community Development and today I am presenting a request for approval to a conditional use permit for an accessory dwelling unit. They are pulling up the PowerPoint now and this conditional use permit for the A DU, we'll call it from here on out is to convert the use of an existing structure built in 1928 to come into conformance with current code standards as a detached A DU site development review for utilities and access driveway and parking areas are included in the proposal. Slide two shows the application was deemed complete on April 15th, 2023. A notice of application was distributed pursuant to Title 21, land use and development procedures which provided recipients with project information and an opportunity for public comment. No public comments were received by the department pursuant to Washington Administrative code 19 7 11 3 5 5. The Department of Community Development or DCD used an optional DNS process for this project. That's a determination of non-significant. The CIPA comment period previously occurred concurrent with the notice of application dated May 3rd, 2023.

[\(30:38\)](#):

The Department of Community Development issued the DNS on December 1st, 2023. The CPA appeal period ended December 15th, 2023. No appeals were filed, therefore the CPA determination is final according to the Kitsap County assessor. Subject parcel 1 5 2 3 0 2 2 0 0 5 2 0 0 1 is 5.23 acres in size addressed as 6 6 4 1 Banner Road Southeast in Port Orchard, Washington. This is in South Kitsap and Commissioner District three. The aerial photo here shows single family homes and accessory structures that are consistent with development found in the rural residential zoning. The proposed A DU is consistent with the properties in the vicinity. The parcel labeled subject site is here in red, zoned rural residential and all adjacent properties to the northeast and south surrounding the site are also zoned rural. Residential to the east is a county maintained collector arterial and this road is known as Banner Road Southeast. There is the purple to the west, which is parks zoned and also rural residential. In that square green box you see there, that's beyond banner road zoning. Setbacks for the parcel are established in kits sub county co-owned chapter 17.420 as a 50 foot front setback with which is to the west here and with 20 foot side and rear setbacks. Those are being met in this proposal.

[\(32:26\)](#):

Slide five shows the subject side highlighted in green. It is not mapping any onsite critical areas and no new clearing limits are proposed outside of this existing development.

[\(32:41\)](#):

Here is the site plan and I also needed to orient or the orientation for this is showing the north arrow to the left. It just fit better on the page this way, but it does show the site has proposed access from Banner Road Southeast for the existing driveway to be shared by both dwellings, both the single family resident principal dwelling as well as the A DU. There is a building permit number 2 2 0 3 4 4 2 for this A DU proposal. It was submitted and is under review awaiting approval of a land use application. The site plan shows four spaces will meet the parking standards for both the SFR as well as the A DU Applicant's floor plan is shown here. This is for the existing manufactured home used as the principled dwelling unit, which is 2,536 square feet. Therefore the maximum size allowed for the A-D-U-A-D-U would be 900 square feet. The floor plan also helps to determine that there are no accessory dwelling units within or attached to the primary residence. The upper photo here does show the existing manufactured home. It's used as the principal single family residence and below is the photo showing the structure proposed to be converted to the A DU.

[\(34:15\)](#):

These are the assessor's historical photos. And here's a site plan received by DCD stamped in the year 2000. The application permit 1, 2, 5, 6 7 details and notes that a conversion of the manufactured home

at the north portion of the property was to be the primary residence as shown on the left here in this photo or in this site plan I should say the existing structure originally built in 1928 was to be a special care unit and that is noted at the upper right in this plan. And then there is a 30 by 40 outbuilding in the center which also exists on site today. There was an approved reactivation permit under number 1904735 shown as closed finals on December 23rd, 2019. This was an order for the applicant to complete what we call a title elimination and that was due to eliminating the title for the manufactured home. Okay, here are some conceptual renderings demonstrating elevation and design style of the proposed A DU. At the left is the north elevation and we see the south elevation to the right and here we are seeing the east and west elevations. And here are some current photos facing the north building. I better make sure I get these right. Let's see here. So we have the north building facade. Nope, that's not right. Okay, here are some current photos of the existing structure proposed for the A DU submitted by the applicant. South elevation at the upper left and to the right is looking at the east facade.

(36:20):

Here are current photos facing the north and the west. As you can see on the lower photo. The floor plan for the A DU demonstrates the size proposed is 884 square feet of habitable area on the main floor with 600 square feet for storage use in the attic above. It should be mentioned that CAEP County code 17110319 defines habitable area as the entire area of a dwelling unit or living quarters used for living, sleeping, eating, and or cooking Storage areas and garages are excluded from calculations of habitable area. The proposal is conditioned to comply with the following requirements of kits. Kitsap County Code Title 174150115B as amended June of 2022.

(37:19):

There are no other accessory dwelling units or accessory living quarters on the property. The owner will reside in the A DU 50% of the primary residence is 1,268 square feet. Therefore the maximum allowed habitable area is 900 square feet. Dimensions are determined by interior measuring and the proposed habitable area of the A DU shall not exceed 884 square feet. The A DU is approximately 87 feet from the single family primary residence. The A DU will have similar appearance of the primary residence. It will be conditioned in the approval if approved. The A DU meets all the required setbacks for the rural residential zone. All health standards for water and sewer have been met and approved. The proposed A DU is not a recreational vehicle or considered a mobile home. The A DU will use the existing driveway off Banner Road Southeast and the project will be conditioned for any applicable storm stormwater controls pursuant to Casap County Code. Title 12 staff finds the proposal meets the special use criteria just mentioned in 174150115B and recommends approval as conditioned. And this does conclude staff's presentation. Thank you Examiner. And I of course am available for questions.

Speaker 1 (38:48):

Okay, thanks. Could you go back to, I think you had an aerial of the side right in your Yes. Oh that's it. Oh boy. It's kind of hard to tell, but yeah, I'd just like to confirm with ADUs that the adjoining properties don't notice the increased density if there's a lot of tree buffering, that kind of thing. It does seem like the surrounding parcels are heavily treated actually, so that they probably, I mean just to confirm as Cris, I mean are both the homes visible from the adjoining lots you think or not?

Speaker 2 (39:32):

They are pretty well vegetated around the perimeter of the site and both of these structures have been there since, at least before

Speaker 1 (39:41):

1994.

Speaker 2 ([39:43](#)):

The structure being converted was built in 1928 and then later used as a special care unit. There are, well at least one adjacent directly north of this property that also has two structures. One being a manufactured home at 6 4 5 1 Banner Road Southeast. Yeah, you are correct. They're very vegetated.

Speaker 1 ([40:07](#)):

Yeah. And these are large lots of course. And that kind of thing.

Speaker 2 ([40:10](#)):

5.23 acres.

Speaker 1 ([40:11](#)):

Right. Yeah. Okay, wonderful. Thank you. Alright, well let's move on to applicant. The applicant wants to add anything. I think I did notice that Mr. Turk was attending virtually. So Mr. Turk, did you want to add, did you want to say anything? You don't have to, but now's your chance.

Speaker 4 ([40:27](#)):

Oh sure. No comments at this time. Just thank you for your consideration.

Speaker 1 ([40:31](#)):

Great. Thanks Mr. Turk. Alright. And just to confirm with Ms. Walston, we have no one else in attendance, virtually or in person, is that correct?

Speaker 2 ([40:40](#)):

That is correct.

Speaker 1 ([40:41](#)):

Okay. I guess at this point then I can go ahead and close the hearing and it's very straightforward and easy approval, so we'll get that approval out within the next couple of weeks. Thank you for joining us, Mr. Turk and Ms. Kreele for your great presentation. And we're done for the day. See you next time. Bye.

Speaker 2 ([40:56](#)):

Thank you Examiner. Bye

Speaker 1 ([40:59](#)):

All.