



## Notice of Hearing Examiner Decision (corrected)

09/06/2024

To: Interested Parties and Parties of Record

RE:           Project Name: Pernet Conditional Use Permit - Accessory Dwelling Unit (CUP-ADU)  
                  Applicant: Bill W & Sandra E Pernet  
                                  9856 Harland Lane SE  
                                  Port Orchard, WA 98367  
                  Application: Conditional Use Permit  
                  Permit Number: 23-01174

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **Permit #23-01174 Pernet 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](mailto:help@kitsap1.com) or (360) 337-5777.

CC: Owner/Applicant: Bill & Sandra Pernet, [billpernot45@gmail.com](mailto:billpernot45@gmail.com), [sepernot@gmail.com](mailto:sepernot@gmail.com)  
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Health District  
Public Works  
Parks  
Navy  
DSE

Kitsap Transit  
South Kitsap Fire District  
South Kitsap School District  
Puget Sound Energy  
Skokomish Tribe  
Point No Point Treaty Council  
Suquamish Tribe  
Port Gamble S'Klallam Tribe  
Squaxin Island Tribe  
Puyallup Tribe  
WA Dept of Archaeological Historic Preservation  
WA Dept of Natural Resources  
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: Thaddeus & Heather Ryan, [ted@fortryan.com](mailto:ted@fortryan.com); Jonathan & Randall  
Platt, 9418 PHILLIPS RD SE PORT ORCHARD, WA 98367

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**BEFORE THE HEARING EXAMINER FOR KITSAP COUNTY**

Phil Olbrechts, Hearing Examiner

RE: Bill and Sandra Pernot  Accessory Dwelling Unit (CUP – ADU)  File No. 23- 01174	<b>FINDINGS OF FACT, CONCLUSIONS  OF LAW AND DECISION.</b>

**INTRODUCTION**

Bill and Sandra Pernot request a Conditional Use Permit to construct a detached Accessory Dwelling Unit (ADU) at 9856 Harland Ln. S.E. Port Orchard. The application is approved subject to conditions.

Questions were raised by an adjoining neighbor about drain field setbacks extending onto their property. Drain field issues are governed by the Kitsap Public Health District. Those issues are beyond the Examiner’s authority and any concerns should be directed to the Public Health District.

**ORAL TESTIMONY**

Jenny Kreifels, Kitsap County Staff Planner, summarized the staff report. No other testimony was presented.

**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. Applicant. Bill and Sandra Pernot, 9856 Harland Ln. S.E., Port Orchard, WA 98367.

1           2.           Hearing. The Hearing Examiner conducted a remote/hybrid hearing on the  
2 application at 9:00 am on August 22, 2024.

3           **Substantive:**

4           3.           Site/Proposal Description. Bill and Sandra Pernot request a Conditional  
5 Use Permit to construct a detached Accessory Dwelling Unit (ADU) at 9856 Harland  
6 Ln. S.E.Port Orchard. The proposed ADU will be 819 square feet and approximately  
7 30 feet from a 3,096-square-foot existing single-family residence. The proposed ADU  
8 will be the only ADU on subject lot. The owners of the property will reside in the  
9 ADU. The proposed ADU will maintain the appearance of the principal residence by  
10 having the same pitched roof, elevation style and siding as the primary residence. The  
11 Kitsap County Health District approved the site for additional sewage and water supply.  
12 The proposed ADU will use the same driveway entering the property that the primary  
13 residences uses.

14           4.           Characteristics of the Area. The subject property is bordered on all sides by  
15 parcels that are developed with Rural Residential zoned single-family homes on heavily  
16 wooded lots each several acres in size as shown in the aerial photograph of the staff  
17 report and the att. B zoning map.

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

- 20           a.           Off-Street Parking. KCC 17.49.030 requires three (3) parking off-street spaces  
21 per single-family residence and one (1) parking space for an ADU. The  
22 Applicant proposes four off-street parking spaces as required.
- 23           b.           Stormwater. Development Engineering has reviewed the land use proposal and  
24 finds the concept supportable in its approach to civil site development. This  
25 conclusion was based on a review of the Applicant's stormwater plan, Ex. 8 and  
preliminary civil plans. Condition No. 23 requires that stormwater design  
conforming to County regulations be submitted during building permit review.
- c.           Critical Areas. There are no critical areas on-site except for moderate erosion  
hazards in the northwest portion of the site. As far as can be ascertained from  
the record, the proposal does not impact the erosion hazards since it will be on  
the northeast portion of the site on an existing structure.
- d.           Access, Traffic, Roads. The ADU uses the same access as the primary  
residence via an existing driveway that connects to Harland Ln. S.E.
- e.           Fire Safety. Kitsap County Building and Fire Safety Division reviewed the  
proposal and found it to conform to fire standards as proposed and conditioned.
- f.           Water/Septic Water and Septic were approved by the Kitsap County Health  
District.

1 g. Compatibility. The proposal is compatible with surrounding uses. As  
2 identified in Finding of Fact No. 4, surrounding uses are all heavily wooded  
3 residential on large lots. The proposed ADU will also be surrounded by  
4 numerous trees on all sides as shown in the aerial photograph of the staff  
5 PowerPoint, Ex. 29, and will not significantly change the bulk and scale of  
6 existing development since it is an addition to an existing garage. With the  
7 emphasis on similar architectural features, the increase in density is not likely  
8 to make a significant aesthetic difference to surrounding neighbors.

## CONCLUSIONS OF LAW

### Procedural:

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

### Substantive:

11 2. Zoning Designation. The property is currently zoned Rural Residential  
12 (RR).

13 3. Review Criteria. KCC 17.410.042 requires a conditional use permit for  
14 detached ADUs in the RR zone. KCC 17.550.030A governs the criteria for conditional  
15 use permits. Pertinent criteria are quoted below and applied via corresponding  
16 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. The proposed ADU provides the ability to  
22 create an affordable housing unit which is a goal supported by several policies in the  
23 Comprehensive Plan in a manner consistent with the zoning established for the subject  
24 property. The proposal is also found consistent with the Comprehensive Plan for the  
25 reasons identified in Section 7 of the staff report (Exhibit 1).

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

5. Criterion met. The criterion is met. The proposal conforms to the County's zoning  
code as detailed in Section 4 and 10 of the staff report (Exhibit 1). Staff planning and  
public works staff have reviewed the proposal to ensure conformance to the County's  
zoning code for this level of review. The results of that work have been implemented

1 in detailed conditions of approval, adopted by this decision. Nothing in the record  
2 suggests any outstanding compliance issues. More detailed compliance will be  
required during the building and civil permit review.

3 The primary issue of zoning compliance is adherence to KCC 17.415.015B, which  
4 adopts standards tailored to detached ADUs outside urban growth areas. Pursuant to  
5 those standards, only one ADU is allowed per lot, the owner of the property must reside  
6 in the primary residence or the ADU, the ADU shall not exceed 50% of the habitable  
7 area of the primary residence, the ADU shall be located within 150 feet of the primary  
8 residence unless involving a conversion of an existing structure such as that proposed,  
9 the ADU shall be designed to maintain the appearance of the primary residence, all  
10 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.

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

13 6. Criterion met. The criterion is met for the reasons identified in Finding of Fact No.  
14 5.

15 **KCC 17.550.030.A.4:** *The proposal is compatible with and incorporates specific*  
16 *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.*

17 7. Criterion met. The criterion is met for the reasons identified in Finding of Fact No.  
18 5g and via its required conformance to the ADU standards of KCC 17.415.015B.

## 19 DECISION

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

### 22 **Planning/Zoning**

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

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- 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% of the primary residence or 900 square feet, whichever is smaller. The proposed size of the ADU is 819 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.

- 1 14. A property with a primary residence and an ADU cannot be segregated  
2 to create two separate legal lots unless it complies with all subdivision,  
3 zoning and density requirements in place at the time of a complete  
4 subdivision application.
- 5 15. The ADU cannot be sold separately from the primary residence unless it  
6 has legally been segregated onto its own lot.
- 7 16. The recipient of any CUP shall file a Notice of Land Use Binder with the  
8 county auditor prior to any of the following: initiation of any further site  
9 work, issuance of any development/construction permits by the county,  
10 or occupancy/use of the subject property or buildings thereon for the  
11 use or activity authorized. The Notice of Land Use Binder shall serve  
12 both as an acknowledgment of, and agreement to, abide by the terms  
13 and conditions of the CUP and as a notice to prospective purchasers of  
14 the existence of the permit. The Binder shall be prepared and recorded  
15 by the DCD at the applicant's expense.
- 16 17. The uses of the subject property are limited to the uses proposed by the  
17 applicant and any other uses will be subject to further review pursuant  
18 to the requirements of the KCC. Unless in conflict with the conditions  
19 stated and/or any regulations, all terms and specifications of the  
20 application shall be binding conditions of approval. Approval of this  
21 project shall not, and is not, to be construed as approval for more  
22 extensive or other utilization of the subject property.
- 23 18. The authorization granted herein is subject to all applicable federal,  
24 state, and local laws, regulations, and ordinances. Compliance with such  
25 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.



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

3 21. Any violation of the conditions of approval shall be grounds to initiate  
4 revocation of this CUP.

5 **Development Engineering**

6 GENERAL

7 22. Construction plans and profiles for all roads, storm drainage facilities  
8 and appurtenances prepared by the developer's engineer shall be  
submitted to Kitsap County for review and acceptance. No construction  
shall be started prior to said plan acceptance.

9 STORMWATER

10 23. Stormwater quantity control, quality treatment, and erosion and  
11 sedimentation control shall be designed in accordance with Kitsap  
County Code Title 12 effective at the time the SDAP (or Building Permit  
12 if no SDAP required) application is deemed fully complete. The  
13 submittal documents shall be prepared by a civil engineer licensed in  
the State of Washington. The fees and submittal requirements shall be  
14 in accordance with Kitsap County Code in effect at the time of SDAP  
application, or Building Permit if an SDAP is not required.

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

18 **Environmental**

19 25. Per the GeoResource assessment/recon, dated April 13, 2023, the site  
20 does not have any of the above listed erosion hazard indicators.  
Therefore, it is our opinion that if typical erosion and sediment control  
21 Best Management Practices (BMPs) for single-family residential  
22 construction, as outlined in the 2021 Kitsap County Stormwater Design  
Manual, are followed, then the potential for erosion to impact the  
23 project site or adjacent parcel will be minimal. We do not deem the  
slopes to be U, UOS, or URS and the site is not mapped as either a  
24 moderate or high landslide hazard area by the County. Based on the  
above, the site does not have any of the above listed indicators.  
25 Therefore, no buffers should be applied by the County.

**Traffic and Roads**

None at this time.

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**Fire Safety**

None at this time.

**Solid Waste**

None at this time.

**Kitsap Public Health District**

None at this time.

Dated this 4<sup>th</sup> day of September 2024.

*Phil Olbrechts*

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Phil Olbrechts,  
Kitsap County Hearing Examiner

**Appeal Right and Valuation Notices**

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

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