



Notice of Hearing Examiner Decision

01/09/2018

To: Interested Parties and Parties of Record

RE: Project Name: HARRIS - ADU
 Applicant: Mary Harris
 21611 Port Gamble Rd
 Poulsbo, WA
 Application: Conditional Use Permit – Accessory Dwelling Unit
 Permit Number: 17-04103

Enclosed is the Decision issued by the Kitsap County Hearing Examiner for the above project.

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at:
http://www.kitsapgov.com/dcd/lu_env/he/HE%20Rules%20for%20Kitsap%20County%20-%2006-23-09.pdf

The Decision of the Hearing Examiner is final, unless appealed, as provided under Washington law.

Please note affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation. Please contact the Assessor's Office at 360-337-5777 to determine if a change in valuation is applicable due to the issued Decision.

The complete case file is available for review at the Department of Community Development, Monday through Thursday, 8:00 AM to 4:00 PM and Friday 9:00 AM to 1:00 PM, except holidays. If you wish to view the case file or have other questions, please contact Help@Kitsap1.com or (360) 337-5777.

CC: Applicant/Owner: Mary Harris, jwhash@yahoo.com
 Project Representative: Your Permit Professional Attn: Kimberly Johnson,
 yourpermitprofessional@gmail.com
 Kitsap County DCD
 Kitsap County Prosecutor's Office
 Kitsap County Assessor's Office
 Kitsap County Public Works
 Kitsap County Parks
 Kitsap Sun
 Health District

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
Interested Parties: None

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

**Accessory Dwelling Unit Conditional Use Permit
File No. 17 04103**

January 2, 2018

1. FINDINGS OF FACT

1.1 Proposal. The Applicant requests a Conditional Use Permit (CUP) to construct an 897-square foot accessory dwelling unit (ADU). The Applicant/property owner and site location are as follows.

Applicant/Property Owner: Mary C. Harris and Jefferson W. Harris, 21611 Port Gamble Road NE, Poulsbo, WA 98370.

Applicant Representative: Kimberly Johnson, P.O. Box 731588, Puyallup, WA 98373.

Site Location: 21611 Port Gamble Road NE, Poulsbo, WA 98370 (Assessor No. 082602-2-027-2001).

1.2 Hearing. An open record public hearing was held on December 28, 2017. The Department of Community Development (DCD), through Ms. Shaffer, addressed how the ADU meets applicable code requirements and recommended approval. The Applicant, through Ms. Harris, concurred with DCD's presentation. No other person present indicated a wish to submit oral comment.

1.3 Administrative Record. The Hearing Examiner reviewed Exhibits 1-22 before the hearing, which included the Staff Report and DCD power point presentation. At the hearing, DCD submitted Exhibit 23 (plat alteration document). The Examiner admitted all exhibits.

1.4 SEPA. The SEPA comment period occurred concurrent with the Notice of Application,¹ and DCD issued a Determination of Non-Significance (DNS) on October 31, 2017.² The DNS included the following condition: "The proposal will be conditioned for Stormwater Control per Kitsap County Code Title 12." The DNS was not appealed.

1.5 Public Notice. The CUP was properly noticed, with both mailing and publication occurring for the notice of application and public hearing.³ No issues on notice were raised.

1.6 Public Comment. No public comments were received.

¹ Exhibit 11.

² Exhibit 12.

³ Exhibits 11 and 22.

1.7 Agency Comment. The proposal was circulated within the County, and comment was received regarding regulatory compliance. As long as applicable requirements are met, there were no objections to approval.

1.8 Zoning/Plan Designations. The Comprehensive Plan designation is Rural Residential and the Zoning designation is Rural Residential, or RR.⁴ RR zoning is designed to promote "low-density residential development and agricultural activities that are consistent with rural character."⁵ The immediate surrounding properties are also zoned RR. Approximately 0.7 mile to the northeast the zoning changes to Rural Protection, which allows for one dwelling unit per ten acres. To the south, the zoning remains RR until about one mile away, when it changes to tribal lands. Parcels in the area are developed with uses and densities similar to the subject site.

1.9 Physical Characteristics. The 2.41-acre parcel is flat and square shaped. The east side of the property is heavily vegetated providing natural screening to Port Gamble Road NE. There are no critical areas on site.

1.10 Utility and Public Services.

- **Water:** On-site well
- **Power:** Puget Sound Energy
- **Sewer:** On-site septic system
- **Police:** Kitsap County Sheriff
- **Fire:** North Kitsap Fire and Rescue
- **Schools:** North Kitsap School District

1.11 Access. Site access is off of an existing easement off Port Gamble Road NE, a County maintained, paved road. The easement serves four properties.

1.12 Aesthetics. The primary residence and ADU will be similar in appearance, with complementary materials, construction style, and exterior colors.⁶

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Review of ADU CUP.

The Hearing Examiner reviews this type of CUP application.⁷ The Hearing Examiner may approve, approve with conditions, or deny a CUP.⁸ The Hearing Examiner may also continue the hearing to allow for additional information necessary to make the proper decision.

⁴ Exhibits 16 and 13. *See also* Staff Report.

⁵ KCC 17.130.010.

⁶ *See* Staff Report.

⁷ KCC Sections 17.410.010(C) and 21.04.100.

⁸ KCC 17.550.030(A).

2.2 Code Requirements Specific to an ADU in the RR Zone.

An ADU located outside the urban growth area, and within the RR zone, must obtain a CUP and comply with requirements specific to the use.⁹ Only one ADU is allowed per lot, on which no accessory living quarters are located, and the owner "must reside in either the primary residence or the ADU."¹⁰ As only one ADU is being proposed on a lot located outside the urban growth area, no accessory living quarters or other ADU are located on the lot, and the property owner will live in the single-family residence on the property,¹¹ these requirements are met.

The ADU cannot "exceed fifty percent of the square footage of the habitable area of the primary residence or nine hundred square feet, whichever is smaller."¹² The primary residence's habitable area is 1,836 square feet.¹³ Fifty percent of its habitable area (918 square feet) is more than 900 square feet, so the ADU will be limited to 900 square feet. The ADU building is 897 square feet according to the floor plan.¹⁴ In no case shall the habitable area of the ADU be greater than 900 square feet. Consequently, code size requirements are met.

The ADU building will be located approximately 130 feet from the proposed primary residence,¹⁵ so complies with the requirement to be located "within one hundred fifty feet of the primary residence or ... be the conversion of an existing detached structure (i.e., garage)...."¹⁶

As for design, the primary residence and ADU will be similar in appearance. They will have similar architectural style, materials, and exterior paint color.¹⁷ As a result, the ADU has been "designed to maintain the appearance of the primary residence."¹⁸ Also, the proposed ADU is stick built, so is not a "mobile home or recreational vehicle."¹⁹

The ADU will comply with the standard RR setbacks. The code requires a 50 foot front yard setback; and, 20 foot rear and side setbacks, or five feet for accessory structures. The ADU building is 78 feet from the front property line,²⁰ 214 feet from the east side property line, 81 feet from the west side property line, and 208 feet from the rear property line.²¹ As a result, the requirement that "[a]ll setback requirements for the zone in which the ADU is located shall apply"²² is met.

⁹ KCC Table 17.410.040(A) Rural, Resource, and Urban Residential Zones, and Footnote 1, requiring ADU compliance with KCC 17.410.060. *See* KCC 17.410.060(B)(3).

¹⁰ KCC 17.410.060(B)(3).

¹¹ Exhibit 2.

¹² KCC 17.410.060(B)(3).

¹³ Exhibits 2 and 7.

¹⁴ Exhibit 8.

¹⁵ Exhibit 2 and Staff Report.

¹⁶ KCC 17.410.060(B)(3).

¹⁷ Staff Report; Condition 7.

¹⁸ KCC 17.410.060(B)(3).

¹⁹ *Id.*

²⁰ Staff Report, DCD testimony, and Exhibit 23.

²¹ Exhibit 2 and Staff Report.

²² KCC 17.410.060(B)(3).

The Health District had no concerns with project approval, if conditioned to comply with all Kitsap Public Health District regulations and conditions of approval (Condition 8).²³ Based on this review, the proposed ADU will "meet the applicable health district standards for water and sewage disposal."²⁴

Parking and entry requirements are met. The proposed ADU uses "the same side street entrance as the primary residence and shall provide additional off-street parking."²⁵ Both the primary residence and the proposed ADU will use the same existing driveway, which is off an existing easement off Port Gamble Road NE. Two parking spaces are required for the single-family residence and one additional parking space is required for the ADU, which could be accommodated on the existing driveway. There is adequate parking available on-site.²⁶

Based on the single family residence floor plan, the structure does not have accessory living quarters,²⁷ so the requirement that an "ADU is not permitted on the same lot where an accessory living quarters exists"²⁸ is met.

Thus, all requirements specific to the ADU use are met.

2.3 Conditional Use Permit Requirements.

A CUP must comply with the following:

1. The proposal is consistent with the Comprehensive Plan;
2. The proposal complies with applicable requirements of [Title 17];
3. The proposal will not be materially detrimental to existing or future uses or property in the immediate vicinity; and
4. The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing character, appearance, quality or development, and physical characteristics of the subject property and the immediate vicinity.²⁹

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

²³ Exhibit 19.

²⁴ KCC 17.410.060(B)(3).

²⁵ *Id.*

²⁶ Staff Report and DCD testimony.

²⁷ Exhibit 7 and Staff Report.

²⁸ KCC 17.410.060(B)(3).

²⁹ KCC 17.550.030(A).

urban infrastructure, is consistent with the character of the surrounding area, and meets a need for supplemental housing. The ADU and residence are both attractively designed and laid out, with landscaping which will maintain present aesthetics. As such, the proposal is consistent with the comprehensive plan.

The proposal is conditioned to ensure compliance with Title 17 and other applicable code requirements. No relevant zoning code provision was identified which would not be complied with. Also, there are no critical areas on site and stormwater management is fully addressed through Conditions 21-23. Given KCC consistency, the 23 conditions, and the ADU's limited size and scope of use, the proposal will not be materially detrimental to existing or future uses of property in the immediate vicinity. All impacts identified have been addressed and mitigated with appropriate mitigation and/or code requirements.

The proposal is fully compatible with surrounding existing and planned rural uses. It will be aesthetically consistent with the primary residence. The ADU's small size and setbacks provided ensure ADU consistency with the surrounding character, appearance, and quality of development on site and in the immediate vicinity. Based on DCD's analysis and the administrative record, overall property aesthetics will be maintained through both architectural design and landscaping. As conditioned and proposed, the ADU meets all CUP criteria and should be approved.

DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested ADU, provided the following 23 conditions are adhered to.

Planning/Zoning.

1. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.
2. The ADU is subject to the payment of impact fees. Impact fees must be paid at time of permit issuance, or if deferred, must be paid prior to final inspection. No certificate of occupancy will be granted until all impact fees are paid.
3. Any proposed modification (not including cosmetic work such as painting, papering and similar finish work), remodel or expansion of the ADU building, regardless of whether a building permit is required, shall be reviewed by DCD and granted approval prior to such modification, expansion, construction and/or issuance of a building permit.
4. Only one ADU shall be permitted on the subject property.
5. The property owner must reside in either the primary residence or the ADU and only one of the structures may be rented at any one time.
6. The ADU's habitable area shall not exceed 50% of the primary residence or 900

square feet, whichever is smaller. The ADU is 897 square feet as indicated in Exhibit 8. Any future expansion of the ADU shall require a building permit and would have to comply with all code requirements in place at the time of the new building permit application.

7. The ADU shall be designed to maintain the appearance of the primary residence.
8. This permit shall comply with all Kitsap Public Health District regulations and conditions of approval including all outstanding paperwork for the well approval.
9. No mobile home or recreational vehicle shall be allowed as an ADU.
10. The ADU shall use the same side street entrance as the primary residence and shall provide one additional off-street parking space.
11. An accessory living quarters (ALQ) or guest house (GH) is not permitted on the same lot unless the ADU is removed and the ALQ or GH complies with all requirements imposed by the Kitsap County Code (KCC).
12. A property with a primary residence and an ADU cannot be segregated to create two separate legal lots unless it complies with all subdivision, zoning and density requirements in place at the time of a complete subdivision application.
13. The ADU cannot be sold separately from the primary residence unless it has legally been segregated onto its own lot.
14. The recipient of any CUP shall file a Notice of Land Use Binder with the county auditor prior to any of the following: initiation of any further site work, issuance of any development/construction permits by the county, or occupancy/use of the subject property or buildings thereon for the use or activity authorized. The Notice of Land Use Binder shall serve both as an acknowledgment of and agreement to abide by the terms and conditions of the CUP and as a notice to prospective purchasers of the existence of the permit. The Binder shall be prepared by the Department and recorded at the Applicant's expense. The Applicant shall provide recorded copies of the Binder to the Department immediately after recording. The Binder shall be recorded within 30 days of notification from the Department that the Binder is ready to be recorded.
15. The uses of the subject property are limited to the uses proposed by the Applicant and any other uses will be subject to further review pursuant to the requirements of the KCC. Unless in conflict with the conditions stated and/or any regulations, all terms and specifications of the application shall be binding conditions of approval. Approval of this project shall not be, and is not to be, construed as approval for more extensive or other utilization of the subject property.
16. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition to the approvals granted and is a continuing requirement of such approvals. By

accepting this/these approvals, the Applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the Applicant agrees to promptly bring such development or activities into compliance.

17. The decision set forth herein is based upon representations made and exhibits contained in the project application (17 04103). Any change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to further review and approval of the County and potentially the Hearing Examiner.

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

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

Traffic and Roads.

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

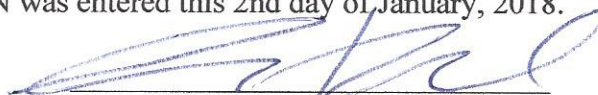
Stormwater.

21. The information provided demonstrates this proposal is a Small Project as defined in KCC Title 12, and as such will require a stormwater drainage design as an element of the required Building Permit.

22. Stormwater drainage design and erosion and sedimentation control shall be designed in accordance with KCC Title 12 effective at the time the CUP application was deemed complete, October 2, 2017.

23. If the project proposal is modified from that shown on the submitted site plan dated October 2, 2017, Development Services and Engineering will require additional review and potentially new conditions.

THIS DECISION was entered this 2nd day of January, 2018.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond