



Notice of Hearing Examiner Decision

10/09/2018

To: Interested Parties and Parties of Record

RE: Project Name: Green-Shire Accessory Dwelling Unit (ADU)
 Applicant: Leah Green
 P.O. Box 17
 Indianola, WA
 Application: Conditional Use Permit – Accessory Dwelling Unit
 (CUP-ADU)
 Permit Number: 18-02432

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:

<https://spf.kitsapgov.com/dcd/HEDocs/HE-Rules-for-Kitsap-County.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: Leah Green, leah@compassionatelistening.org
Project Representative: Mikail Dash Green, mikail@mikailkiva.com
Architect: Brandon Hogg, thefemwoodstudio@gmail.com
Interested Parties: None
Health District
Public Works
North Kitsap Fire District
Water Purveyor
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

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

**Accessory Dwelling Unit Conditional Use Permit
Green-Shire, File No. 18-02432**

October 8, 2018

1. FINDINGS OF FACT

1.1 Proposal. The requested Conditional Use Permit would allow an 876 square foot accessory dwelling unit ("ADU"). The property has an existing 2,164 square foot single-family residence and 416 square foot art studio without plumbing. The Applicants/property owners and location are:

Applicants/Property Owners. Leah Green, P.O. Box 17, Indianola, WA 98342

Location. 20940 Jack Davis Place NE, Indianola, WA 98342, 112602-3-027-2004

1.2 Administrative Record. The Hearing Examiner reviewed Exhibits 1-24 before the hearing. Kitsap County Department of Community of Development's ("DCD") power point, Exhibit 25, was submitted at the hearing. The Examiner admitted all exhibits.

1.3 SEPA. DCD issued a Determination of Non-Significance,¹ with this condition: "The proposal will be conditioned for Stormwater Control per Kitsap County Code Title 12." The DNS was not appealed.

1.4 Hearing. The open record public hearing was held on September 27, 2018. DCD, through Ms. Shaffer, summarized the proposal and how it meets code requirements. As DCD found the proposal consistent with requirements, it recommended approval with mitigation. The Applicant, after being sworn in, agreed with DCD's recommendation. No person present indicated a wish to comment.

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

1.6 Notice. Hearing notice was provided through posting, publishing, and mailing, and application notice was provided through mailing and publishing.² No concerns on notice were raised.

1.7 Zoning/Plan Designations. Located outside the urban growth area, the Comprehensive Plan and zoning designations are Rural Residential,³ which allows one dwelling

¹ Exhibit 15,

² Exhibits 22 and 23.

unit per five acres. Surrounding properties have the same zoning and are either developed with a single-family residence or are vacant, except for the east side, which consists of forested Tribal lands.

1.8 Critical Areas. Slopes do not exceed 12%, which is below the moderate geologic threshold. No other critical areas issues were identified.

1.9 Utility and Public Services.

- **Water:** Onsite Well
- **Power:** Puget Sound Energy
- **Sewer:** Septic
- **Police:** Kitsap County Sheriff
- **Fire:** North Kitsap Fire & Rescue
- **Schools:** North Kitsap School District No. 400

1.10 Access. Access is off Jack Davis Place NE, a private road. Two access points now exist; one will be closed. The ADU is about 105 feet from the primary residence, and both will share the existing driveway. Four parking spots are proposed, two in front of the ADU, two in front of the primary residence.

1.11 Setbacks/Height. With setback requirements ranging from 5 to 50 feet, and the ADU setback ranging from 116 to 178 feet on all sides, setbacks requirements are exceeded. The 35 foot height limit will be complied with.

1.12 Aesthetics. The ADU will share the same general design as the main house, with a similar roof pitch, upstairs dormers, cedar siding, and metal roof. The site itself is heavily vegetated, which provides screening and improved aesthetics.⁴

1.13 Conditions. DCD proposed 23 conditions. No concerns were raised. To ensure code compliance, the conditions should be imposed without substantive revision.

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Review Authority. The Hearing Examiner has CUP review authority for this ADU.⁵ The Hearing Examiner may approve, approve with conditions, or deny a CUP. The Hearing Examiner may also continue the hearing to allow for additional information necessary to make the proper decision.⁶ There was no need for hearing continuance, as sufficient information was provided, and it was properly noticed, consistent with KCC requirements.

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

³ Exhibits 16 and 19.

⁴ Exhibit 25 (power point, with aerial photos of the site)

⁵ See KCC Sections 17.410.010(C) and 21.04.100 (see permit type #18).

⁶ KCC 17.550.030.

requirements specific to the use.⁷ Only one ADU is allowed per lot, on which no accessory dwelling quarters are located, and the owner "must reside in either the primary residence or the ADU."⁸ These requirements are met. Only one ADU is being proposed on a lot located outside the urban growth area, no accessory dwelling quarters or other ADU are on the lot, and the property owners will live in the new single-family residence.

The ADU cannot "exceed fifty percent of the square footage of the habitable area of primary residence or nine hundred square feet, whichever is smaller."⁹ The primary residence's habitable area is 2,164 square feet, so the ADU is limited to 900 square feet. At 876 square feet, the ADU complies.

The proposed ADU building is about 106 feet from the primary residence, so complies with the requirement to be located "within one hundred fifty feet of the primary residence or shall be the conversion of an existing detached structure (i.e., garage)...."¹⁰ The proposal complies with all other setback requirements.

As for design, as addressed in the findings above, the primary residence and ADU will be similar in appearance,¹¹ as the ADU has been "designed to maintain the appearance of the primary residence."¹² Also, the proposed ADU is stick-built, so is not a "mobile home or recreational vehicle."¹³

The ADU will be supplied by a well and septic system, with Health District approval required,¹⁴ and so will "meet the applicable health district standards for water and sewage disposal."¹⁵

Parking and entry requirements are met. The ADU is conditioned to ensure it will use "the same side street entrance as the primary residence" and with a total of four parking spaces "provide[s] additional off-street parking."¹⁶ 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];

⁷ 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).

⁸ KCC 17.410.060(B)(3).

⁹ KCC 17.410.060(B)(3).

¹⁰ KCC 17.410.060(B)(3).

¹¹ Exhibit 9.

¹² KCC 17.410.060(B)(3).

¹³ KCC 17.410.060(B)(3).

¹⁴ Exhibits 2 and 3.

¹⁵ KCC 17.410.060(B)(3).

¹⁶ KCC 17.410.060(B)(3).

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.¹⁷

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 ADU does not have significant environmental impacts, does not require urban infrastructure, and is consistent with the character of the surrounding area. 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 code provision was identified which would not be complied with. Also, the proposal will not be materially detrimental to existing or future uses or property in the immediate vicinity. All impacts identified have been addressed and mitigated with appropriate mitigation and/or code requirements.

The proposal is compatible with surrounding existing and planned rural uses. It is aesthetically consistent with the existing residence. The ADU's small size, existing vegetation, and the extensive property line setbacks ensure it is consistent with the surrounding character, appearance, and quality of development on site and in the immediate vicinity. 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 CUP for the proposed ADU, provided these 23 conditions are adhered to.

a. Planning/Zoning

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

¹⁷ KCC 17.550.030(A)

3. Any proposed modification (not including cosmetic work such as painting, papering and similar finish work), remodel or expansion of the accessory dwelling unit building, regardless of whether a building permit is required, shall be reviewed by the Department of Community Development and granted approval prior to such modification, expansion, construction and/or issuance of a building permit.

4. Only one accessory dwelling unit shall be permitted on the subject property.

5. The owner of the property must reside in either the primary residence or the accessory dwelling unit and only one of the structures may be rented at any one time.

6. The accessory dwelling unit's habitable area shall not exceed 50% of the primary residence or 900 square feet, whichever is smaller. The proposed size of the ADU is 876 feet (Exhibit 12). 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.

7. The accessory dwelling unit 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.

9. No mobile home or recreational vehicle shall be allowed as an accessory dwelling unit.

10. The accessory dwelling unit 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 accessory dwelling unit (ADU) is removed and the ALQ or GH complies with all requirements imposed by the Kitsap County Code.

12. A property with a primary residence and an accessory dwelling unit 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 accessory dwelling unit cannot be sold separately from the primary residence unless it has legally been segregated onto its own lot.

14. The recipient of any conditional use permit 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 conditional use permit and as a notice to prospective purchasers

of the existence of the permit. The Binder shall be prepared and recorded by the Department at the applicant's expense.

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 Kitsap County Code. 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.

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 (18-02432). 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 Conditional Use Permit approval shall automatically become void if no development permit application is accepted as complete by the Department of Community Development 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 Conditional Use Permit.

b. Development Engineering

20. The information provided demonstrates this proposal is a Small Project as defined in Kitsap County Code Title 12, and as such will require on-site stormwater management review and approval, through review of the required building permit.

21. If the project proposal is modified from that shown on the submitted site plan dated June 3, 2018, Development Services and Engineering will require additional review and potentially new conditions.

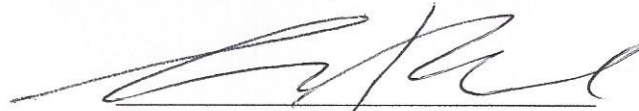
c. Traffic and Roads

22. At the time of submittal of the required building permit, submit an Application for Concurrency Test (KCPW Form 1601) as required by Chapter 20.04.030, Transportation

Concurrency, of the Kitsap County Code. The KCPW 1601 form reserves road capacity for the project.

23. One access/entrance point shall be closed as required by Kitsap County Code 17.410.060.B.3.k . Prior to requesting the final building permit inspection, a road approach shall be removed, and the ditch restored to original condition. This shall include removal of the ditch culvert, if any, and restoration of the ditch to achieve positive flow. If current conditions do not include a ditch, removal of the road approach shall include scarification of the road approach surface within the right-of- way. An inspection to verify removal of the road approach is required prior to performing the final building permit inspection.

THIS DECISION is entered this 8th day of October, 2018.

A handwritten signature in black ink, appearing to read 'Susan Drummond', written over a horizontal line.

Kitsap County Hearing Examiner
Susan Elizabeth Drummond