



Kitsap County Hearing Examiner

ADMINISTRATION BUILDING, 619 DIVISION ST, MS-36
http://www.kitsapgov.com/dcd/lu_env/he/

PORT ORCHARD, WA 98366
(360) 337-5777

NOTICE OF HEARING EXAMINER DECISION

September 12, 2016

To: Interested Parties and Parties of Record

RE: Project Name: Johanson – Accessory Dwelling Unit
Applicant: Kathleen Johanson
7953 NE Pegasus Lane
Kingston, WA 98346
Application: Conditional Use Permit
Permit Number: 16 02846

Enclosed is the Decision issued by the Kitsap County Hearing Examiner in the above-referenced matter.

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-%206-23-09.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 Constance Blackburn at cblackburn@co.kitsap.wa.us or (360) 337-5777.

Cc Applicant and/or Rep:

Kathleen Johanson: Twinrosefarm@centurytel.net

Aaron Johanson: Dirklionheart@hotmail.com

Interested Parties:

None

**BEFORE THE HEARING EXAMINER
FOR KITSAP COUNTY**

In the Matter of the Application of)	No. 16 02846
)	
Aaron Johanson, on behalf of)	Johanson Accessory Dwelling Unit CUP
Kathleen A. Johanson)	
)	
)	FINDINGS, CONCLUSIONS,
<u>For Approval of a Conditional Use Permit</u>)	AND DECISION

SUMMARY OF DECISION

The request for a conditional use permit to construct a 900 square foot accessory dwelling unit at 7953 NE Pegasus Lane is **APPROVED**. Conditions are necessary to mitigate project impacts and to ensure the proposal complies with relevant statutes, ordinances, and regulations.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on August 25, 2016.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Katherine Shaffer, County Senior Planner
Aaron Johanson, Applicant Representative

Exhibits:

The following exhibits were admitted into the record:

1. Project Application, received June 27, 2016
2. Supplemental Application, received June 27, 2016
3. Supplemental Application, Concurrency Test, received June 27, 2016
4. SEPA Environmental Checklist, dated June 27, 2016
5. Health District Septic and Water Supply Approval, dated June 9, 2016
6. Existing Residence and ADU Site Plans, received June 27, 2016
7. Notice of Complete Application, dated June 27, 2016
8. Notice of Application, dated July 15, 2016
9. GIS Information:
 - a. Aerial Photograph
 - b. Zoning Map
 - c. Critical Areas Map

Findings, Conclusions, and Decision
Kitsap County Hearing Examiner
Johanson Accessory Dwelling Unit CUP
No. 16 02846

- d. Parcel Survey Map
- e. Plat Map
- 10. Email from Holly Roberts to Aaron Johanson, dated July 26, 2016
- 11. Memorandum from Candy Mursell, Development Services and Engineering, dated July 14, 2016
- 12. Notice of Public Hearing, dated August 11, 2016
- 13. Revised Site Plan, received May 24, 2016
- 14. Determination of Nonsignificance, dated August 5, 2016
- 15. Certification of Public Notice, dated August 17, 2016
- 16. Staff Report, dated August 17, 2016
- 17. Staff PowerPoint presentation (12 Slides), dated August 25, 2016

The Hearing Examiner enters the following Findings and Conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

Application and Notice

1. Aaron Johanson, on behalf of Kathleen Johanson (Applicant), requests a conditional use permit (CUP) to construct a 900 square foot accessory dwelling unit (ADU) on his mother's 5.08-acre property at 7953 NE Pegasus Lane.¹ The ADU would be attached to a 972 square foot garage and accessory to an owner-occupied 1,809 square foot manufactured home on the property. *Exhibit 1; Exhibit 2; Exhibit 6; Exhibit 9; Exhibit 16, Staff Report, page 1; Exhibit 17.*
2. Kitsap County (County) determined that the application was complete on June 27, 2016, and provided notice of the application to applicable agencies that same day. On July 25, 2016, the County published notice of the application in the *Kitsap Sun* and mailed notice of the application to the Applicant, persons owning property within 800 feet of the subject property, and interested parties. On August 10, 2016, the County posted notice of the open record hearing associated with the application at the property. The next day, the County published notice of the open record hearing in the *Kitsap Sun* and mailed notice of the open record hearing to interested parties and persons owning property within 800 feet of the property. *Exhibit 7; Exhibit 8; Exhibit 12; Exhibit 15.*
3. In response to the notice materials, the County's Development Services and Engineering Department commented that, because the project would create greater than 2,000 square feet of new or replaced impervious surface area, the minimum site development requirements of Chapter 12.18 Kitsap County Code (KCC) would need to be addressed at the time the Applicant applies for a building permit. In addition, the Applicant would

¹ The Assessor Tax Parcel Number associated with the parcel is 282802-4-009-2003. *Exhibit 16, Staff Report, page 1.* A legal description is included with the GIS information. *Exhibit 9.*

need to submit an application for transportation concurrency at the time of building permit application. *Exhibit 11.*

State Environmental Policy Act

4. The County acted as lead agency and analyzed the environmental impacts of the project as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The County used the optional Determination of Nonsignificance (DNS) process under Washington Administrative Code (WAC) 197-11-355. Accordingly, on July 25, 2016, the County published notice of the SEPA comment period in the *Kitsap Sun* and mailed notice of the SEPA comment period to the Applicant, property owners within 800 feet, and interested parties. The SEPA comment period occurred concurrently with the notice of application. The County received no comments. The County analyzed the Applicant's SEPA Checklist and other available information and issued a DNS on August 5, 2016. County Planner Katherine Shaffer testified that the DNS was not appealed. *Exhibit 4; Exhibit 8; Exhibit 14; Exhibit 15; Testimony of Ms. Shaffer.*

Comprehensive Plan, Zoning, and Surrounding Property

5. The property is designated Rural Residential under the Kitsap County Comprehensive Plan (Comprehensive Plan) and is zoned Rural Residential. The County uses the Rural Residential designation and the Rural Residential zone to promote low-density residential development consistent with rural character. *Kitsap County Comprehensive Plan (December 2012), page 3-24; Kitsap County Code (KCC) 17.310.010.* Surrounding properties to the north, south, and east are also designated Rural Residential in the County Comprehensive Plan and zoned Rural Residential; these parcels are primarily developed with single-family residences. The property to the west is designated Rural Wooded under the Comprehensive Plan and the County's zoning ordinance and is densely wooded. *Exhibit 9; Exhibit 13; Exhibit 16, Staff Report, pages 3 and 4.*
6. County staff identified as relevant to the proposed project Comprehensive Plan policies that: limit designated rural areas to low residential densities that can be sustained by minimal infrastructure improvements, cause minimal environmental degradation, and will not create the future necessity or expectation of urban levels of service; permit residential uses in rural areas consistent with the existing and planned rural character of the surrounding area; provide road and access standards that permit all-weather access for emergency vehicles while preserving and enhancing rural character; ensure proper installation, use, and maintenance of on-site septic systems; ensure that a broad range of housing types are available through innovative planning; encourage and facilitate development of a variety of housing types; and permit and encourage the development of residential accessory dwelling units.² *Exhibit 16, Staff Report, page 5.*

² Staff specifically identified Comprehensive Plan Policies RL-1, RL-3, RL-14, RL-15, HS-6, HS-8, and HS-11 as relevant to the project. *Exhibit 16, Staff Report, page 5.*

Existing Property

7. The property is approximately 5.08 acres and is rectangular. The property is free of critical areas with the exception of the northeast corner where there are steep slopes of 15 to 30 percent grade. The slopes are further than 35 feet from the ADU, as required by Chapter 19.400 KCC, and, accordingly, a geotechnical report was not required for the proposal. The site has an existing manufactured home, garage, numerous agriculture outbuildings, and associated utilities. The primary residence on the property is 1,809 square feet. The property is accessed from a private road, NE Pegasus Lane, which connects to Hansville Road NE, a County right-of-way. *Exhibit 6; Exhibit 9; Exhibit 13; Exhibit 16, Staff Report, page 3.*

Conditional Use Permit

8. County zoning ordinances make some uses conditional in certain zones. *KCC 17.110.175. A conditional use is an activity specified by Title 17 KCC as a principal or accessory use that may be approved or denied based on consistency with specific criteria. KCC 17.110.175. An ADU is a conditional use outside urban growth area boundaries and permitted only with a CUP. KCC 17.381.060.3.b; KCC Table 17.381.040(E).* The Applicant seeks approval for an ADU on property located outside an Urban Growth Area. *Exhibit 16, Staff Report, page 6.*
9. The KCC permits ADUs where: there are no other ADUs on the lot; the owner resides in the ADU or primary residence; the ADU's footprint does not exceed half of the primary residence's habitable area or 900 square feet, whichever is smaller; the ADU is located within 150 feet of the primary residence or within an existing converted detached structure; the ADU maintains the appearance of the primary residence; the ADU complies with the setback requirements applicable to the zone it would be built in; the ADU meets applicable health district standards for water and sewage disposal; the ADU is not comprised of a mobile home or recreational vehicle; the ADU uses the same side street entrance as the primary residence and is provided with additional off-street parking; and no accessory living quarters are also located on the lot. *KCC 17.381.060.3.c-1.*
10. Ms. Shaffer testified that the Applicant lives in the primary residence; that no other ADUs are proposed for the site; that no accessory living quarters exist on-site; and that the ADU would be attached to a proposed garage, would be approximately 900 square feet, and would match the appearance of the primary residence. She noted that the ADU would meet all required setbacks for the Rural Residential zone and that the Kitsap Public Health District has approved the water system and on-site sewage system plans for the proposal. Ms. Shaffer testified that the property is accessed from an existing driveway off of NE Pegasus Lane and meets all required parking requirements. She also explained that the County would separately address the proposed garage that the ADU would be attached to through its administrative review process. *Testimony of Ms. Shaffer.*

11. Applicant Representative Aaron Johanson testified that he would live in the ADU after it is built to assist the Applicant, his mother, who is disabled. *Testimony of Mr. Johanson.*

Staff Recommendation

12. Ms. Shaffer testified that County staff recommends approval of the application, with 22 conditions. These conditions generally require the Applicant to: obtain all necessary permits and seek all required review before clearing land, building, or beginning occupancy; pay all necessary impact fees; seek additional approvals prior to remodeling or expanding the ADU; refrain from adding any additional ADUs to the property; reside in the ADU or primary residence; comply with all Kitsap Public Health District regulations; refrain from subdividing the lot to separate the ADU and primary residence; refrain from selling the ADU separately from the primary residence; file a Notice of Land Use Binder with the County Auditor; and submit a complete development permit application and an application for Concurrency Test at the time of building permit submittal. Mr. Johanson testified that the Applicant has no issue with the approval conditions proposed by the County. *Exhibit 16, Staff Report, pages 8 to 12; Testimony of Ms. Shaffer; Testimony of Mr. Johanson.*

CONCLUSIONS

Jurisdiction

The Kitsap County Hearing Examiner is authorized to hear and decide conditional use permit requests. *KCC 2.10.070; KCC 17.421.020.A; KCC Table 21.04.100.*

Criteria for Review

The Hearing Examiner may approve, approve with conditions, or deny a conditional use permit. Approval, or approval with conditions, may be granted by the Hearing Examiner only when all the following criteria are met:

1. The proposal is consistent with the Comprehensive Plan;
2. The proposal complies with applicable requirements of this title;
3. The proposal will not be materially detrimental to 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.

KCC 17.421.030.A

If the approval criteria are not met, or if conditions cannot be imposed to ensure compliance with the approval criteria, the conditional use permit shall be denied. *KCC 17.421.030.C.*

*Findings, Conclusions, and Decision
Kitsap County Hearing Examiner
Johanson Accessory Dwelling Unit CUP
No. 16 02846*

An ADU must also meet the requirements of KCC 17.381.060.B.3:

- a. An ADU shall be allowed as a permitted use in those areas contained within an urban growth boundary;
- b. An ADU shall be subject to a conditional use permit in those areas outside an urban growth boundary;
- c. Only one ADU shall be allowed per lot;
- d. Owner of the property must reside in either the primary residence or the ADU;
- e. The ADU shall not exceed fifty percent of the square footage of the habitable area of primary residence or 900 square feet, whichever is smaller;
- f. The ADU shall be located within one hundred fifty feet of the primary residence or shall be the conversion of an existing detached structure (i.e., garage);
- g. The ADU shall be designed to maintain the appearance of the primary residence;
- h. All setback requirements for the zone in which the ADU is located shall apply;
- i. The ADU shall meet the applicable health district standards for water and sewage disposal;
- j. No mobile homes or recreational vehicles shall be allowed as an ADU;
- k. An ADU shall use the same side street entrance as the primary residence and shall provide additional off-street parking; and
- l. An ADU is not permitted on the same lot where accessory living quarters exist.

KCC 17.381.060.B.3.

The criteria for review adopted by the Kitsap County Board of County Commissioners are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with County development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusion Based on Findings

1. **With conditions, the ADU would be consistent with the criteria for approval specified in KCC 17.381.060.B.3.** The ADU would be located within the Rural Residential zoning district, outside the boundary of an Urban Growth Area. Consequently, the ADU is a conditional use. The Applicant would build a single ADU on a lot with no other ADUs or accessory living quarters. The Applicant resides in the primary residence on the property, and her son would live in the ADU. The Applicant

Findings, Conclusions, and Decision
Kitsap County Hearing Examiner
Johanson Accessory Dwelling Unit CUP
No. 16 02846

would build a 900 square-foot ADU, which is smaller than half of the habitable square footage of the primary residence. The ADU would be attached to a proposed garage on-site. The ADU would comply with all setback provisions of the zoning code and maintain the appearance of the primary residence. The health district has approved, without conditions, the water and sewer systems proposed for the project. The ADU would use the same street access as the primary residence and would satisfy all parking requirements of the code.

Conditions are necessary to mitigate project impacts and ensure compliance with relevant statutes, ordinances, and regulations. These conditions generally require the Applicant to: obtain all necessary permits and seek all required review before clearing land, building, or beginning occupancy; pay all necessary impact fees; seek additional approvals prior to remodeling or expanding the ADU; refrain from adding any additional ADUs to the property; reside in the ADU or primary residence; comply with all Kitsap Public Health District regulations; refrain from subdividing the lot to separate the ADU and primary residence; refrain from selling the ADU separately from the primary residence; file a Notice of Land Use Binder with the County Auditor; and submit a complete development permit application and an application for Concurrency Test at the time of building permit submittal. *Findings 1, 5 - 12.*

2. **With conditions, the ADU would be consistent with the CUP approval criteria specified in KCC 17.421.030.A.** The ADU would be consistent with the Comprehensive Plan in relation to encouraging affordable housing in a rural area, increasing land use efficiency, encouraging ADUs, and creating a variety of housing. The property is not within an urban growth boundary, and an ADU requires a CUP. The proposal meets all applicable requirements of Title 17 KCC, and it would not be detrimental to other properties nearby. The County provided an opportunity for comment and testimony on the application. The County reviewed the Applicant's Environmental Checklist and other information on file and issued a Determination of Nonsignificance. The County received no public comments on the application, and the SEPA determination was not appealed.

Conditions are necessary to mitigate project impacts and ensure compliance with relevant statutes, ordinances, and regulations. These conditions generally require the Applicant to: obtain all necessary permits and seek all required review before clearing land, building, or beginning occupancy; pay all necessary impact fees; seek additional approvals prior to remodeling or expanding the ADU; refrain from adding any additional ADUs to the property; reside in the ADU or primary residence; comply with all Kitsap Public Health District regulations; refrain from subdividing the lot to separate the ADU and primary residence; refrain from selling the ADU separately from the primary residence; file a Notice of Land Use Binder with the County Auditor; and submit a complete development permit application and an application for Concurrency Test at the time of building permit submittal. *Findings 1 - 12.*

DECISION

Based on the preceding Findings and Conclusions, the request for a conditional use permit to construct a 900 square foot accessory dwelling unit at 7953 NE Pegasus LN is **APPROVED**. Conditions are necessary to mitigate specific impacts of the proposed development and to ensure compliance with existing County ordinances:³

1. All required development permits shall be obtained prior to construction and/or occupancy.
2. All building permits shall be subject to impact fees pursuant to the Kitsap County Code in effect on the date of a complete building permit application.
3. Any proposed modification (not including cosmetic work such as painting, papering and similar finish work) remodel or expansion of the ADU, regardless of whether a building permit is required, shall be reviewed by the Department of Community of Development 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 size of the ADU must not exceed 50 percent of the square footage of the habitable area of the primary residence or 900 square feet, whichever is smaller. The building permit construction plans must be consistent with above standard prior to issuance of the Building Permit.
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 shall be designed to maintain the appearance of the primary residence.
8. No mobile home or recreational vehicle shall be allowed as an ADU.
9. The ADU shall use the same side street entrance as the primary residence and shall provide additional off-street parking.
10. 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 (KCC).

³ This decision includes conditions designed to mitigate impacts of this proposed project as well as conditions required by County Code.

11. A property with a primary residence and an accessory dwelling unit (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.
12. The accessory dwelling unit (ADU) cannot be sold separately from the primary residence unless it has legally been segregated onto its own lot.
13. Prior to issuance of a Building Permit, the Applicant shall record a Land Use Binder with the Kitsap County Auditor's Office pursuant to KCC Section 17.421.080 Land Use Binder. The Notice of Land Use Binder shall serve both as an acknowledgment of and as 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 by the Department and recorded at the Applicant's expense. The Applicant shall provide recorded copies of the Binder to the Department. The Binder shall be recorded within 30 days of the final land use decision and notification by the Department.
14. 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 above 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.
15. 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.
16. The decision set forth herein is based upon representations made and exhibits contained in the project application No. 16 02846. 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.
17. This Conditional Use Permit approval shall become void if no building permit application to build the ADU is accepted as complete, by the Department of Community Development, within three years of the date of the Hearing Examiner's decisions and resolution of any appeals.

Findings, Conclusions, and Decision
Kitsap County Hearing Examiner
Johanson Accessory Dwelling Unit CUP
No. 16 02846

18. Any violation of the conditions of approval shall be grounds to initiate revocation of this Conditional Use Permit.
19. The Applicant shall adhere to all applicable requirements of the Kitsap Public Health District, including as approved and conditioned by the Building Site Application for the on-site sewage disposal system and potable water supply, dated July 7, 2016.
20. The Applicant shall adhere to all applicable requirements of the Kitsap County Fire Marshal's Office.
21. At the time of building permit, the Applicant shall submit an Application for Concurrency Test (KCPW Form 1601) as required by Chapter 20.04 KCC, Transportation Concurrency.
22. This project creates greater than 2,000 square feet of new or replaced impervious surface area. Therefore at time of building permit submittal, the Applicant shall address the Minimum Site Development Requirements 1-5 of Chapter 12.18 KCC.

DECIDED this 8th day of September 2016.

A handwritten signature in black ink, appearing to read "Andrew M. Reeves", is written over a light gray rectangular background.

Andrew M. Reeves
Hearing Examiner
Sound Law Center