



Kitsap County Department of Community Development

Notice of Hearing Examiner Decision

2/22/17

To: Interested Parties and Parties of Record

RE: Project Name: OLMSTED – ACCESSORY DWELLING UNIT (ADU)
 Applicant: MATTHEW OLMSTED
 PO BOX 1005
 SILVERDALE, WA 98383
 Application: CONDITIONAL USE PERMIT (CUP) - ADU
 Permit Number: 16 05318

Enclosed is the Decision issued by the Kitsap County Hearing Examiner for the aforementioned 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: MATTHEW & SERENA OLMSTED serenaungren@centurylink.net
Interested Parties:
STEVE MAXWELL smaxwell8801@gmail.com

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

**In the Matter of Request for
Accessory Dwelling Unit Conditional Use Permit
File No. 16 05318**

February 16, 2017

THIS MATTER came before the Kitsap County Hearing Examiner on February 9, 2017. The Hearing Examiner makes the following Findings of Fact, Conclusions of Law, and Decision:

1. FINDINGS OF FACT

1.1 Proposal. The Applicants request a Conditional Use Permit to construct an 898 square foot accessory dwelling unit (ADU) and attached 528 square foot garage. The Applicants/property owners and site location are as follows:

Applicants/Property Owners: Matthew and Serena Olmsted, P. O. Box 1005, Silverdale, WA 98383.

Site Location: The site is located at 8710 Sesame Street NW, Silverdale, WA 98383 (Assessor No. 232501-4-002-1001).

1.2 Administrative Record. The Hearing Examiner reviewed Exhibits 1-26 before the hearing, which included the Staff Report. At the hearing, the Department of Community Development (DCD) proposed adding a power point to the administrative record as Exhibit 27. The Examiner admitted all exhibits.

1.3 SEPA. The SEPA comment period occurred concurrent with the Notice of Application dated December 9, 2016.¹ A Determination of Non-Significance (DNS) was issued on January 4, 2017.² No comments were received, and no appeal was filed. The DNS included the following condition: "The proposal will be conditioned for Stormwater Control per Kitsap County Code Title 12."

1.4 Hearing. The Hearing Examiner considered the ADU proposal at an open record public hearing on February 9, 2017. DCD, through Ms. Roberts, summarized the proposal. The presentation identified relevant code requirements and how they were met. As DCD found the proposal consistent with applicable requirements, it recommended approval. The Applicant, through Ms. Olmsted, after being sworn in, addressed questions on the proposal. No person present indicated a wish to submit oral comment.

¹ Exhibit 13.

² Exhibit 16.

1.5 Public Comment. A neighbor (Mr. Maxwell) submitted written comment,³ expressing concern with potential development on a lot directly adjacent to his property which contains mapped wetlands. The subject property is to the East, and does not directly abut Mr. Maxwell's property. There are no wetlands on the subject property.⁴

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

1.7 Zoning/Plan Designations. The Comprehensive Plan designation is Rural and the zoning designation is Rural Protection (RP).⁵ RP zoning allows one dwelling unit per ten acres. The immediate surrounding properties are also zoned RP. Parcels in the area are predominantly developed with single family residences or undeveloped.

1.8 Physical Characteristics. The 4.70-acre rectangular parcel is currently being developed with a 2,932 square foot single family residence and 604 square foot attached two-car garage. The County critical areas map shows potential wetlands on the northwest corner of the property; however, a Single Family Wetland Certification submitted with the permit verified that no wetlands are present on-site or on adjacent properties.⁶ The entire property lies within a Category I Critical Aquifer Recharge Area.⁷ Outside the developed area, the property is forested with a mix of coniferous and deciduous trees. The property is relatively flat, with slight rolling topography. Anderson Creek is approximately 580 feet to the east.

1.9 Utility and Public Services.

- **Water:** Private two-party well
- **Power:** Puget Sound Energy
- **Sewer:** On-site septic system
- **Police:** Kitsap County Sheriff
- **Fire:** Central Kitsap Fire and Rescue
- **Schools:** Central Kitsap School District 401

1.10 Access. Site access is from Sesame Street NW, a County maintained, paved road.

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Review of ADU CUP.

The Hearing Examiner reviews this type of Conditional Use Permit application.⁸ The Hearing Examiner may approve, approve with conditions, or deny a Conditional Use Permit.⁹

³ Exhibit 15.

⁴ Exhibit 4.

⁵ Exhibits 19 and 22.

⁶ Exhibit 4.

⁷ Exhibit 21.

⁸ KCC Sections 17.410.010(C) and 21.04.100.

The Hearing Examiner may also continue the hearing to allow for additional information necessary to make the proper decision.

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

An ADU located outside the urban growth area, and within the RP zone, must obtain a Conditional Use Permit and comply with requirements specific to the use.¹⁰ 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."¹¹ 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 owners will live in the single family residence which is currently under construction, these requirements are met.

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."¹² The primary residence's habitable area is approximately 2,932 square feet according to the floor plan.¹³ Fifty percent of its habitable area is over 900 square feet, so the ADU would be limited to 900 square feet. The entire ADU building is proposed at 1,529 square feet according to the floor plans; habitable area is 898 square feet, the front porch is 103 square feet, and the attached two-car garage is 528 square feet.¹⁴ The garage will be used as garage space only and not converted to habitable area unless this CUP is revised through the proper permitting process. In no case shall the habitable area of the ADU be greater than 900 square feet. As such, the proposed ADU complies with this code requirement.

The proposed ADU building is located approximately 60 feet from the primary residence¹⁵, so complies with the requirement to be located "within one hundred fifty feet of the primary residence or ...the conversion of an existing detached structure (i.e., garage)...."¹⁶

As for design, the primary residence and ADU are planned to be similar in appearance. Both buildings will have a pitched composition roof, lap wood siding, and vinyl windows, and will be painted in a similar color scheme. The ADU's planned residential architectural design and building materials are similar and complementary to the appearance of the primary residence.¹⁷ As a result, the ADU has been "designed to maintain the appearance of the primary residence."¹⁸ Also, the proposed ADU will be stick-built, so is not a "mobile home or recreational vehicle."¹⁹

⁹ KCC 17.550.030(A).

¹⁰ 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).

¹¹ KCC 17.410.060(B)(3).

¹² *Id.*

¹³ Exhibit 10.

¹⁴ Exhibits 11 and 25.

¹⁵ Exhibits 9 and 25.

¹⁶ KCC 17.410.060(B)(3).

¹⁷ Exhibits 6 and 25.

¹⁸ KCC 17.410.060(B)(3).

¹⁹ *Id.*

The proposed ADU building will be required to comply with the standard RP setbacks. The subject property has two fronts – Sesame Street NW along the west property line, and Jeffery Lane NW along the north property line – and two sides, the south property line and east property line. The ADU shall be a minimum of 50 feet at the closest point to the west and north property lines. The front yard setback, along the west property line and Sesame Street NW, scales out at 550 feet +/-; the front yard setback along Jeffery Lane NW is delineated at 80 feet. The ADU shall be a minimum of five feet at the closest point to the east and south property lines. The side yard setback, along the south property line, scales out at over 230 feet and the other side yard, along the east property line, is shown at 60 feet.²⁰ All required zoning setbacks as delineated for the ADU are in compliance with the KCC. As a result, the requirement that “[a]ll setback requirements for the zone in which the ADU is located shall apply”²¹ is met.

The Health District recommends approval of this project with no conditions.²² The Building Site Application for the ADU was approved with one condition stating that the existing outhouse must be removed prior to permit approval.²³ This condition is included in this Decision as Condition 9. As such, 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 ADU would use the same proposed driveway. The driveway is gravel. Two parking spaces are required for the single family residence which will be located on the paved parking apron in front of the single family residence garage. One additional parking space is required for the ADU, which will be located in front of the ADU garage.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. As a result, all requirements specific to the ADU use are met.

2.3 Critical Areas. According to Kitsap County geographic information system (GIS) data, there is a potential wetland on the western portion of the subject property;²⁹ however, the Single Family Wetland Certification³⁰ states that no wetlands were identified onsite or adjacent to the site. The GIS data also indicates that the entire site lies within a Category I

²⁰ Exhibits 9 and 25.

²¹ KCC 17.410.060(B)(3).

²² Exhibit 14.

²³ Exhibit 12.

²⁴ KCC 17.410.060(B)(3).

²⁵ *Id.*

²⁶ Exhibits 6 and 25.

²⁷ Exhibit 10.

²⁸ KCC 17.410.060(B)(3).

²⁹ Exhibit 20.

³⁰ Exhibit 4.

Critical Aquifer Recharge Area.³¹ Single-family development does not present a threat and does not require any further analysis within this recharge area designation.

2.4. Stormwater. Development Services and Engineering has reviewed the request for CUP approval and accepts the concepts contained in the preliminary submittal. They require that the Applicants submit an Application for Concurrency Test at the time of building permit application, which is included in this Decision as Condition 24.

2.5 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.³²

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, is consistent with the character of the surrounding area, and meets a need to provide housing for extended family. 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 will be aesthetically consistent with the primary residence. The ADU's small size and the extensive setbacks provided ensure that 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.

³¹ Exhibit 21.

³² KCC 17.550.030(A).

DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested ADU, provided the following 24 conditions are adhered to.

Planning/Zoning.

1. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.
2. An approved and issued building permit is required to construct the proposed ADU.
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 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 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.
7. The ADU's habitable area shall not exceed 50% of the primary residence or 900 square feet, whichever is smaller. The proposed ADU is 898 square feet as indicated in Exhibit 11. Any future expansion of the ADU will require a minor revision to this CUP and a new building permit.
8. The ADU shall be designed to maintain the appearance of the primary residence.
9. The ADU shall meet the applicable health district standards for water and sewage disposal, including removal of the existing outhouse as conditioned in the Building Site Application Re-Design approval, memo number 321324.
10. No mobile home or recreational vehicle shall be allowed as an ADU.
11. The construction entrance at Jeffery Lane NW shall be abandoned prior to occupancy of the ADU.
12. The "existing cabin to be removed" noted on the site plan³³ shall be removed prior

³³ Exhibit 9.

to occupancy of the ADU.

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

14. 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.

15. 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.

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

17. 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 by the Department and recorded at the Applicants' expense. The Applicants 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.

18. The uses of the subject property are limited to the uses proposed by the Applicants 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 be, and is not to be, construed as approval for more extensive or other utilization of the subject property.

19. 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 Applicants represent 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 Applicants agree to promptly bring such development or activities into compliance.

20. The decision set forth herein is based upon representations made and exhibits contained in the project application (16 05318). 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.

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

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

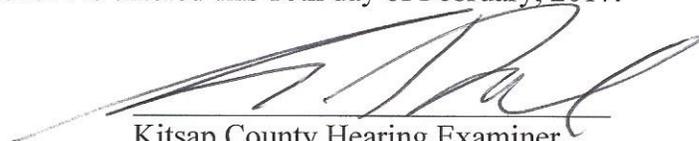
Stormwater.

23. New and/or replaced hard surfaces do not appear to exceed 2,000 square feet. Per KCC Title 12, if the project exceeds the threshold noted above, then additional review for stormwater management will be required at the time of building permit.

Traffic and Roads.

24. At building permit application, submit KCPW Form 1601 for issuance of a concurrency certificate, as required by KCC Section 20.04.030, Transportation Concurrency.

THIS DECISION is entered this 16th day of February, 2017.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond