



## Notice of Hearing Examiner Decision

4/25/2017

To: Interested Parties and Parties of Record

RE:           Project Name: DAHMEN – Accessory Dwelling Unit (ADU)  
                  Applicant: DAHMEN NEIL J TRUSTEE  
                                  PO BOX 190  
                                  KINGSTON, WA 98346  
                  Application: CONDITIONAL USE PERMIT (CUP – ADU)  
                  Permit Number: 17 00682

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](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](mailto:Help@Kitsap1.com) or (360) 337-5777.

CC: DAHMEN NEIL J TRUSTEE [hm@gmail.com](mailto:hm@gmail.com)

Owner: Same

Interested Parties:

NYSTROM PEGGY C & ROGER K [peggynys@gmail.com](mailto:peggynys@gmail.com)

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

**Accessory Dwelling Unit Conditional Use Permit  
File No. 17 00682**

**April 24, 2017**

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The Kitsap County Hearing Examiner makes the following findings, conclusions, and decision.

**1. FINDINGS OF FACT**

**1.1 Proposal.** The Applicant requests a Conditional Use Permit (CUP) to convert a 672 square foot storage room located on the second story of an existing garage/shop into a one-bedroom ADU. The Applicant/property owner and site location are as follows.

**Applicant/Property Owner:** Neil J. Dahmen, Trustee, P. O. Box 190, Kingston, WA 98346.

**Site Location:** 20808 President Point Road NE, Kingston, WA 98346 (Assessor No. 4381-000-054-0006).

**1.2 Hearing.** An open record public hearing was held on April 13, 2017. The Department of Community Development (DCD), through Ms. Roberts, addressed how the ADU meets applicable code requirements and recommended approval. No person present indicated a wish to submit oral comment.

**1.3 Administrative Record.** The Hearing Examiner reviewed Exhibits 1-25 before the hearing, which included the Staff Report. At the hearing, DCD proposed adding two Applicant comments as Exhibits 26 and 27. In those comments, the Applicant indicated he had reviewed the Staff Report and had no questions. The Examiner admitted all exhibits.

**1.4 SEPA.** The SEPA comment period occurred concurrent with the Notice of Application,<sup>1</sup> and a Determination of Non-Significance (DNS) was issued on March 14, 2017.<sup>2</sup> 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.<sup>3</sup> No issues on notice were raised.

**1.6 Public Comment.** No public comments were received.

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<sup>1</sup> Exhibit 14.

<sup>2</sup> Exhibit 15.

<sup>3</sup> See e.g., Exhibit 23.

**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 and the Zoning designation is Rural Residential, or RR.<sup>4</sup> RR zoning is designed to promote "low-density residential development and agricultural activities that are consistent with rural character."<sup>5</sup> The surrounding properties are also zoned RR. Parcels in the area are predominantly small, historic, rural lots developed with single family residences.

**1.9 Physical Characteristics.** The 0.91 acre parcel is currently developed with a 1,480 square foot single family residence and 1,030 square foot garage/shop/storage building. The property slopes west to east toward Puget Sound and contains moderate slopes.<sup>6</sup> The proposed ADU is an existing building and no further slope analysis is required. The property is also located approximately 800 feet south of a mapped bald eagle nest but is outside of required buffer management area.<sup>7</sup> The east half of the property lies within a Category II Critical Aquifer Recharge Area.<sup>8</sup> The property is landscaped with a mix of lawn, coniferous and deciduous trees, native and ornamental shrubs, and garden space.

**1.10 Utility and Public Services.**

- **Water:** Public Utility District No. 1
- **Power:** Puget Sound Energy
- **Sewer:** On-site septic system
- **Police:** Kitsap County Sheriff
- **Fire:** North Kitsap Fire and Rescue
- **Schools:** North Kitsap School District No. 400

**1.11 Access.** Site access is off of President Point Road NE, a County maintained, paved road.

**1.12 Aesthetics.** The primary residence and ADU will be similar in appearance, with complementary materials, construction style, and exterior colors.<sup>9</sup>

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<sup>4</sup> Exhibits 19 and 16. *See also* Staff Report.

<sup>5</sup> KCC 17.130.010.

<sup>6</sup> Exhibit 21.

<sup>7</sup> Exhibit 17.

<sup>8</sup> Exhibit 18.

<sup>9</sup> Exhibits 12 and 13.

## 2. CONCLUSIONS OF LAW

### 2.1 Hearing Examiner Review of ADU CUP.

The Hearing Examiner reviews this type of CUP application.<sup>10</sup> The Hearing Examiner may approve, approve with conditions, or deny a CUP.<sup>11</sup> 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 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.<sup>12</sup> 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."<sup>13</sup> 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 lives in the single family residence on the property,<sup>14</sup> 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."<sup>15</sup> The primary residence's habitable area is 1,440 square feet according to the floor plan.<sup>16</sup> Fifty percent of its habitable area (720 square feet) is less than 900 square feet, so the ADU would be limited to 720 square feet as determined by exterior measurements. The entire ADU building is 1,030 square feet according to Assessor's records. The habitable area will be 672 square feet, and the deck is 348 square feet.<sup>17</sup> The garage and shop areas shall be used as garage/shop 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 720 square feet.

The ADU building will be located approximately 15 feet from the primary residence,<sup>18</sup> 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)...."<sup>19</sup>

As for design, the primary residence and ADU will be similar in appearance. Both the primary residence and ADU structures are existing. They are painted the same base and trim color and are similar in appearance. Both buildings have pitched metal roofs and matching trim.<sup>20</sup> As a result, the ADU has been "designed to maintain the appearance of the primary

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<sup>10</sup> KCC Sections 17.410.010(C) and 21.04.100.

<sup>11</sup> KCC 17.550.030(A).

<sup>12</sup> 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).

<sup>13</sup> KCC 17.410.060(B)(3).

<sup>14</sup> Exhibit 2.

<sup>15</sup> KCC 17.410.060(B)(3).

<sup>16</sup> Exhibit 8.

<sup>17</sup> Exhibit 6.

<sup>18</sup> Exhibit 5.

<sup>19</sup> KCC 17.410.060(B)(3).

<sup>20</sup> Exhibits 12 and 13.

residence."<sup>21</sup> Also, the proposed ADU is stick built, so is not a "mobile home or recreational vehicle."<sup>22</sup>

Both structures are existing and meet the required setbacks for the zone. The ADU structure is approximately 360 feet from the west (front) property line, 10 feet from the south property line, 40 feet from the north property line and 95 feet from the east (approximate location of Ordinary High Water Mark).<sup>23</sup> 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"<sup>24</sup> is met.

The Health District recommends approval of this project.<sup>25</sup> Prior to the final building inspection, the Health District will require the proposed septic be installed and approved, and CUP approval is conditioned for this requirement. As such, the proposed ADU will "meet the applicable health district standards for water and sewage disposal."<sup>26</sup>

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."<sup>27</sup> Both the primary residence and the ADU will use the same paved driveway. Two parking spaces are required for the single family residence, which are located on the paved parking apron in front of the garage. One additional parking space is required for the ADU, which will be located on the west side of the ADU structure on the existing gravel parking area.<sup>28</sup>

Based on the single family residence floor plan, the structure does not have accessory living quarters,<sup>29</sup> so the requirement that an "ADU is not permitted on the same lot where an accessory living quarters exists"<sup>30</sup> is met. As a result, all requirements specific to the ADU use are met.

**2.3 Critical and Shoreline Areas.** According to Kitsap County geographic information system data, there are moderate geologic hazard slopes on the site.<sup>31</sup> However, the ADU structure already exists and the Environmental Planner determined no further review or reports would be necessary. The GIS data also indicates that the east half of the site lies within a Category II Critical Aquifer Recharge Area.<sup>32</sup> Single-family development is not a threat and does not require any further analysis or reports within this recharge area designation. With respect to shoreline areas, and the Rural Conservancy designation, the existing structure is an

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<sup>21</sup> KCC 17.410.060(B)(3).

<sup>22</sup> *Id.*

<sup>23</sup> Exhibit 5.

<sup>24</sup> KCC 17.410.060(B)(3).

<sup>25</sup> Exhibit 10.

<sup>26</sup> KCC 17.410.060(B)(3).

<sup>27</sup> *Id.*

<sup>28</sup> Exhibit 5 and Staff Report.

<sup>29</sup> Exhibit 8 and Staff Report.

<sup>30</sup> KCC 17.410.060(B)(3).

<sup>31</sup> Exhibit 17 and Staff Report.

<sup>32</sup> Exhibit 18 and Staff Report.

existing, legal non-conforming structure, so no variance is required to deviate from shoreline setback and buffer requirements.<sup>33</sup>

**2.4. Stormwater.** Development Services and Engineering reviewed the request for CUP approval and accepted the concepts contained in the preliminary submittal. Stormwater conditions are included as Conditions 21-22.

#### **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.<sup>34</sup>

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. As an existing structure, 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 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. As a pre-existing structure set back 85 feet from the shoreline, no buffer or setback variance is required. Also, 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 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

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<sup>33</sup> KCC 22.400.100 and .120.

<sup>34</sup> KCC 17.550.030(A).

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.

## 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. An approved and issued building permit is required to convert the existing storage space into an 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 672 square feet as indicated in Exhibit 6. Any future expansion of the ADU shall 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. This permit shall comply with all Kitsap Public Health District (KPHD) regulations and conditions of approval. An approved Building Site Application is on file at KPHD for the proposed ADU. The building permit for the proposed ADU will not be finalized until the proposed septic is installed and approved.
10. No mobile home or recreational vehicle shall be allowed as an ADU.
11. The ADU shall use the same side street entrance as the primary residence and

shall provide one additional off-street parking space.

12. 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.

13. 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.

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

15. Upon approval of this application, a Land Use Binder will be recorded by DCD. Recording fees are at the Applicant's expense. This Binder will include information directing the public to the land use decision and conditions contained therein. The Binder shall not be removed or extinguished without the written approval of DCD.

16. 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.

17. 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.

18. The decision set forth herein is based upon representations made and exhibits contained in the project application (17 00682). 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.

19. 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.

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

**Development Engineering.**

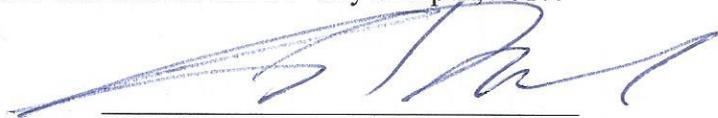
21. Erosion and sedimentation control shall be designed in accordance with KCC Title 12 effective at the time the CUP application was deemed complete, February 22, 2017.

22. If the project proposal is modified from that shown on the submitted site plan dated February 22, 2017, Development Services and Engineering will require additional review and potentially new conditions.

**Traffic and Roads.**

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

THIS DECISION was entered this 24<sup>th</sup> day of April, 2017.



Kitsap County Hearing Examiner  
Susan Elizabeth Drummond