



Notice of Hearing Examiner Decision

09/05/2017

To: Interested Parties and Parties of Record

RE: Project Name: DiGiovanni ADU SSDP and CUP
 Applicant: Dale & Tracy DiGiovanni
 5823 Clover Valley Rd SE
 Port Orchard, WA 98367
 Application: Accessory Dwelling Unit, Conditional Use Permit and
 Shoreline Substantial Development Permit
 Permit Number: 17 02112 and 17 02110

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: Owner/Applicant: Dale & Tracy DiGiovanni, digiovanni@shierslaw.com
Kshaffer@co.kitsap.wa.us
eric.evans@kitsappublichealth.org
kerrie.yanda@kitsappublichealth.org
cdegeus@co.kitsap.wa.us
jdean@co.kitsap.wa.us
DForte@co.kitsap.wa.us
rcatron@co.kitsap.wa.us
salire@co.kitsap.wa.us
s.diener@co.kitsap.wa.us

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

**In the Matter of Request for
Accessory Dwelling Unit Conditional Use Permit and
Shoreline Substantial Development Permit
File Nos. 17 02112 and 17 02110**

September 5, 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 Shoreline Substantial Development Permit (SSDP) and Conditional Use Permit (CUP) to construct a 900 square foot accessory dwelling unit (ADU) within 200 feet of the Long Lake shoreline. The Applicants/property owners and site location are as follows:

Applicants/Property Owners: Dale and Tracy DiGiovanni, 5823 Clover Valley Road SE, Port Orchard, WA 98367.

Site Location: 5823 Clover Valley Road SE, Port Orchard, WA 98367 (Assessor No. 072302-4-048-2006).

1.2 Administrative Record. The Hearing Examiner reviewed Exhibits 1-32 before the hearing, which included the Staff Report. At the hearing, the Kitsap County Department of Community Development (DCD) proposed adding a power point to the administrative record as Exhibit 33. The Examiner admitted all exhibits.

1.3 SEPA. The SEPA comment period occurred concurrent with the Notice of Application,¹ and DCD issued a Determination of Non-Significance, with the following condition, "The proposal will be conditioned for Stormwater Control per Kitsap County Code Title 12."² No comments were received, and no appeal was filed.

1.4 Hearing. The Hearing Examiner considered the ADU proposal at an open record public hearing on August 24, 2017. DCD, through Ms. Shaffer, 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. After being sworn in, the Applicant also addressed the proposal. No person present indicated a wish to submit oral comment.

¹ Exhibit 29.

² Exhibit 31.

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

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 and zoning designation is Rural Protection (RP).⁴ RP zoning allows one dwelling unit per ten acres. The immediate surrounding properties are also zoned RP. The RP zoning continues east for approximately one mile until the zoning becomes Urban Low. The subject property is lake front, and the other side of the lake is also zoned RP. The shoreline designation is Shoreline Residential.

1.8 Physical Characteristics. The .97 rectangular acre parcel is on Long Lake's west side, and is about 530 feet long and 81 feet wide.

1.9 Utility and Public Services.

- **Water:** West Sound Utility District
- **Power:** Puget Sound Energy
- **Sewer:** Private septic system
- **Police:** Kitsap County Sheriff
- **Fire:** South Kitsap Fire District
- **Schools:** South Kitsap School District

1.10 Access. Clover Valley Road SE provides access. The ADU will use the same driveway as the existing single-family residence.

1.11 Critical Areas and Environmental Issues. No construction will occur within critical areas. The ADU is outside floodplain areas, is not located on a steep slope requiring further geo-technical review (as verified by a site visit), and as it is set back from the ordinary high water mark approximately 130 feet, so complies with the County's shoreline buffer and building setbacks. County staff have reviewed the proposal for stormwater and health issues (*i.e.*, septic and water supply), and conditions are proposed to mitigate impacts on the surrounding environmental resources.

³ See *e.g.*, Exhibit 29 and 30.

⁴ Exhibits 21, 24, and 32, p. 2.

2. CONCLUSIONS OF LAW

2.1 ADU CUP.

The Hearing Examiner reviews this type of CUP application.⁵ The Hearing Examiner may approve, approve with conditions, or deny a CUP.⁶ The Hearing Examiner may also continue the hearing to allow for additional information necessary to make the proper decision.

2.1.1 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 CUP and comply with requirements specific to the use.⁷ 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."⁸ 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 live in the primary residence, 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."⁹ The primary residence's habitable area is approximately 3,532 square feet.¹⁰ Fifty percent of its habitable area is over 900 square feet, so the ADU would be limited to 900 square feet. According to the floor plans, the ADU building is proposed at 900 square feet of living area.¹¹ As such, the proposed ADU complies with this code requirement.

The proposed ADU building is located approximately 140 feet from the primary residence,¹² 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)..."¹³

As for design, the primary residence and ADU are planned to be similar in appearance. Both buildings 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.¹⁴ As a result, the ADU has been "designed to maintain the appearance of the primary residence."¹⁵ Also, the proposed ADU will be stick-built, so is not a "mobile home or recreational vehicle."¹⁶

⁵ KCC Sections 17.410.010(C) and 21.04.100.

⁶ KCC 17.550.030(A).

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 Exhibit 3.

¹¹ Exhibits 3 and 14. See also Ex. 32, p. 6, along with hearing testimony.

¹² Exhibits 3 and 8.

¹³ KCC 17.410.060(B)(3).

¹⁴ Exhibit 3.

¹⁵ KCC 17.410.060(B)(3).

¹⁶ KCC 17.410.060(B)(3).

The proposed ADU building will be required to comply with the RP setbacks. All required zoning setbacks as delineated for the ADU are in compliance with the KCC.¹⁷ As a result, the requirement that “[a]ll setback requirements for the zone in which the ADU is located shall apply”¹⁸ is met.

The Health District reviewed the project for water and sewage disposal.¹⁹ As this review documents, the proposed ADU will "meet the applicable health district standards for water and sewage disposal."²⁰

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."²¹ Both the primary residence and the ADU would be accessed off of Clover Valley Road SE. The proposed ADU has a driveway in front which satisfies the requirement for off-street parking.²² Two parking spaces are required for the single family residence. One additional parking space is required for the ADU. These requirements are met.

Based on the single family residence floor plan, the structure does not have accessory living quarters,²³ so the requirement that an “ADU is not permitted on the same lot where an accessory living quarters exists”²⁴ is met. As a result, all requirements specific to the ADU use are met.

2.1.2 Conditional Use Permit.

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.²⁵

¹⁷ Note, Urban Restrictive setbacks apply. See KCC 17.420.060, FN A.4; Ex. 32, p. 2.

¹⁸ KCC 17.410.060(B)(3).

¹⁹ Exhibits 19 and 20; Ex. 32, p. 6.

²⁰ KCC 17.410.060(B)(3).

²¹ KCC 17.410.060(B)(3).

²² Exhibit 8.

²³ Exhibits 12-14.

²⁴ KCC 17.410.060(B)(3).

²⁵ KCC 17.550.030(A).

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.²⁶ 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. 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 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.

2.2 Shoreline Substantial Development Permit.

The Hearing Examiner reviews SSDP applications.²⁷ With this review, an assessment of consistency with applicable shoreline policies and regulations is required. A SSDP is only granted if "the applicant can demonstrate that the proposed development is consistent with the policies and procedures," of Ch. 90.58 RCW, the Shoreline Management Act, or SMA, and the County's Shoreline Master Program.²⁸

DCD recommended approval, with 30 conditions to ensure consistency with the SMA and local master program. For the reasons set forth below, the Hearing Examiner concurs with this recommendation. The Examiner concludes that the proposal is consistent with the County's shoreline regulations and policies, with the SMA, and with WAC 173-27-150, which outlines SSDP review criteria. These criteria include consistency with the SMA, implementing shoreline regulations, and the local Shoreline Master Program. As consistency is achieved, the SSDP should be approved.

The site is designated Shoreline Residential, which is designed to accommodate residential development and appurtenant structures, as set forth at KCC 22.200.115. The proposed ADU is allowed within this designation. Also, as the ADU is about 130 feet from the ordinary high water mark, it complies with the 85 foot standard shoreline buffer and 15 foot additional building setback. The ADU is not being constructed on steep slopes or floodplains.

²⁶ See Land Use Policies 50, 51, and 53; and, Housing, Human Services Goals and Policies 5, 7, and 11-14.

²⁷ See e.g., KCC 21.04.080, .100 and KCC 22.500.105(E).

²⁸ KCC 22.500.100(B).

And, with the 30 conditions below, there will be no net loss of shoreline ecological functions. The proposal is consistent with the County's shoreline policies on environmental protection.

Specifically, the proposal is consistent with shoreline critical area and ecological protection policies set forth in KCC 22.300.100. As noted above, the ADU is about 130 feet from the ordinary high water mark and complies with shoreline buffers and setbacks. It is located on a previously cleared area. The project is conditioned to keep refuse out of the buffer area (*see e.g.*, Condition 30), and the buffer area will remain in native vegetation to protect habitat water quality consistent with KCC 22.300.105. The proposal as conditioned and setback protects current ecological conditions and is being constructed to avoid adverse impacts.

The ADU will not adversely affect water quality and shoreline habitat conditions, as outlined in KCC 22.300.110. As detailed in the Staff Report, the ADU is consistent with allowing ecologically sound residential development along the shoreline. The property is located on a freshwater lake and will not adversely impact shellfish harvest. Also, DCD stormwater staff reviewed the proposal were satisfied that with the proposed conditions, stormwater was properly dealt with and impacts adequately mitigated.

The ADU, as conditioned, is consistent with the orderly balancing of uses County shoreline policies call for at KCC 22.300.125, and with the residential development policies at KCC 22.600.170. The proposal complies with all code requirements, is not a threat to shoreline ecological functions and the public health, and provides additional residential capacity while meeting setback/buffer requirements, and all other code requirements. Kitsap County Public Health reviewed the proposal and approved it (Ex. 20), with the condition of a non-binding water availability, which was provided (Ex. 19). Hard armoring (including the existing rock bulkhead) is not being expanded with this proposal, as the conditions below address (*see* Condition 29).

The ADU is consistent with the applicable shoreline policies and regulations. The proposal will not cause a net loss to shoreline functioning and will not have significant environmental impacts on the shoreline, either on its own, or cumulatively. As such, the proposal is consistent with the policies and procedures of the SMA, Ch. 90.58, and the County's SMP, and should be approved consistent with WAC 173-27-150.

DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested ADU CUP and SSDP, provided the following 30 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 proposed ADU is 900 square feet as indicated in Exhibit 14.

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.

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 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 and recorded by the Department at the Applicants' expense.

15. 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 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 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.

17. The decision set forth herein is based upon representations made and exhibits contained in the project applications 17 02110 and 17 02112. 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 three 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.

Development Engineering.

GENERAL

20. Construction plans and profiles for all roads, storm drainage facilities and appurtenances prepared by the developer's engineer shall be submitted to Kitsap County for review and acceptance. No construction shall be started prior to said plan acceptance.

STORMWATER

21. The information provided demonstrates this proposal is a Small Project as defined in KCC Title 12 and due to property location²⁹ will require a Simplified Drainage Review-Engineered Site Development Activity Permit (SDAP) from Development Services and Engineering.

²⁹ The words "within a critical area" were removed from the condition as proposed. See Ex. 32 (Staff Report), p. 9 ("no critical areas on the subject property"); Ex. 10 (Stormwater Worksheet), p. 4 ("Simplified Drainage Review" to occur as the small residential project is outside of critical areas/buffers). The condition is otherwise unchanged.

22. Stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with KCC Title 12 effective at the time the CUP and SSDP applications were deemed complete, May 31, 2017. The submittal documents shall be prepared by a civil engineer licensed in the State of Washington. The fees and submittal requirements shall be in accordance with Kitsap County Ordinances in effect at the time of SDAP application.

23. The design of the infiltration facilities will be accordance with Volume II, Section 5.3.2 of the Kitsap County Stormwater Design Manual.

24. The infiltration facilities shall remain off line until the drainage areas are stabilized and the water quality treatment facility is adequately established. Temporary erosion and sedimentation ponds shall not be located over infiltration facilities.

25. During the construction of the proposed infiltration facilities, the Project Engineer shall provide an inspection to verify that the facilities are installed in accordance with the design documents and that actual soil conditions encountered meet the design assumptions. The Project Engineer shall submit the inspection report properly stamped and sealed with a professional engineer's stamp to Development Services and Engineering.

26. If the project proposal is modified from that shown on the submitted site plan dated May 31, 2017, Development Services and Engineering will require additional review and potentially new conditions.

TRAFFIC AND ROADS

27. The Applicants 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.

28. The Applicants shall submit plans for construction of the road approach between the edge of existing pavement and the right-of-way line at all intersections with county rights-of-way. Approaches shall be designed in accordance with the Kitsap County Road Standards as established in Chapter 11.22 of the KCC. Existing approaches may need to be improved to meet current standards.

Environmental.

29. The SSDP shall be allowed provided that development of the ADU will not require additional shoreline armoring. The shoreline shall remain in its natural condition, with the exception of the existing bulkhead.

30. Permit approval requires that refuse shall not be placed in buffers.

THIS DECISION is entered this 5th day of September, 2017.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond