



## Notice of Hearing Examiner Decision

12/28/2017

To: Interested Parties and Parties of Record

RE:           Project Name: Gilman Accessory Dwelling Unit  
              Applicant: Kevin Gilman  
                          4077 NE Azure Lane  
                          Poulsbo, WA  
              Application: Conditional Use Permit – Accessory Dwelling Unit  
              Permit Number: 17 03646

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](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: Owner/Applicant: Kevin L Gilman [kgdry67@gmail.com](mailto:kgdry67@gmail.com)  
Kitsap County Health District  
Kitsap County Public Works  
Kitsap County DCD  
Navy  
North Kitsap Fire District  
South Kitsap Fire District  
Puget Sound Energy  
Point No Point Treaty Council  
Suquamish Tribe

WA State Dept of Ecology – SEPA  
Interested Parties:

Leroy & Regina Lamar, Trustees [2lamrs@gmail.com](mailto:2lamrs@gmail.com)

James & Jill Campy [jillc@johnlscott.com](mailto:jillc@johnlscott.com)

Craig & Laura Wesley [craigwesley@gmail.com](mailto:craigwesley@gmail.com)

Rodney & Maggie Hitchcock [mhitchcock@bisd303.org](mailto:mhitchcock@bisd303.org)

**KITSAP COUNTY HEARING EXAMINER  
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION  
WITH CORRECTED CONDITION<sup>1</sup>**

**Accessory Dwelling Unit Conditional Use Permit  
File No. 17 03646**

**December 27, 2017**

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**1. FINDINGS OF FACT**

**1.1 Proposal.** The Applicant requests a Conditional Use Permit (CUP) to convert an existing 885-square foot single-family residence into an accessory dwelling unit (ADU). This would then allow for a 2,040-square foot single-family residence to be constructed. The Applicant/property owner and site location are as follows.

**Applicant/Property Owner:** Kevin Gilman, 4077 NE Azure Lane, Poulsbo, WA 98370.

**Site Location:** 4077 NE Azure Lane, Poulsbo, WA 98370, Assessor No. 182602-1-042-2002. (The primary residence is on the same tax parcel, but will be assigned a separate address of 4083 NE Azure Lane, Poulsbo, WA 98370.)

**1.2 Hearing.** An open record public hearing was held on December 14, 2017. The Department of Community Development (DCD), through Ms. Roberts, addressed how the ADU meets applicable code requirements and that DCD recommends approval. The Applicant also provided sworn testimony, noting concurrence with the Staff Report and DCD's presentation. No other person present indicated a desire to provide comment.

**1.3 Administrative Record.** The Hearing Examiner reviewed Exhibits 1-31 before the hearing, which included the Staff Report. At the hearing, DCD proposed adding a power point as Exhibit 32. The Examiner admitted all exhibits.

**1.4 SEPA.** The SEPA comment period occurred concurrent with the Notice of Application,<sup>2</sup> and DCD issued a Determination of Non-Significance (DNS) on November 14, 2017.<sup>3</sup> The DNS included the following condition: "The proposal will be conditioned for Stormwater Control per Kitsap County Code Title 12." Four comments addressed concerns with an increase in traffic on the private access road. The DNS noted DCD's Staff Report would address same. 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>4</sup> No issues on notice were raised.

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<sup>1</sup> Condition 19 was corrected to provide for CUP expiration in four, rather than three years.

<sup>2</sup> Exhibit 13.

<sup>3</sup> Exhibit 21.

<sup>4</sup> Exhibits 13, 29, and 30.

**1.6 Public Comment.** Public comments were received from several neighbors regarding the ADU.<sup>5</sup> Most of the concerns were about increased traffic on the private road as well as road maintenance. Additionally, there were concerns over the ADU being used as a rental, and that there may already be a rental unit on the property. During the hearing, DCD explained that while there is not presently a private agreement on road maintenance, the Applicant had reached out to the neighbors and committed to coordinating with them on this issue.

**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. With respect to stormwater, Development Services and Engineering reviewed the proposal and as County stormwater management requirements are met, accepted the concepts contained in the preliminary submittal.

**1.8 Zoning/Plan Designations.** The Comprehensive Plan designation is Rural Residential and the Zoning designation is Rural Residential, or RR.<sup>6</sup> RR zoning is designed to promote "low-density residential development and agricultural activities that are consistent with rural character."<sup>7</sup> The surrounding properties are also zoned RR. They are predominantly either vacant or developed with single-family residences.

**1.9 Physical Characteristics.** The 2.27-acre square parcel currently has an 1,880-square foot garage with office and an 885-square foot single-family residence above, constructed under building permit 15 00151R1. There are no critical areas on-site; however, areas of potential wetlands are located off-site to the west. Any environmental concerns were addressed through building permit review. The new single-family residence will be located more than 250 feet away from any potential wetlands and therefore meets or exceeds any buffer requirement. The site is relatively flat, and outside of the developed areas is a mix of coniferous and deciduous trees and other native vegetation.

**1.10 Utility and Public Services.**

- **Water:** Individual well
- **Power:** Puget Sound Energy
- **Sewer:** On-site septic system
- **Police:** Kitsap County Sheriff
- **Fire:** Kitsap County Fire District No. 18
- **Schools:** North Kitsap School District No. 400

**1.11 Access.** Site access is off of NE Azure Lane, a private road.

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<sup>5</sup> See Exhibits 14, 15, 16, 17, 18, and 19.

<sup>6</sup> Exhibits 23 and 26. See also Staff Report.

<sup>7</sup> KCC 17.130.010.

**1.12 Aesthetics.** The primary residence and ADU will be similar in appearance, with complementary materials, construction style, and exterior colors.<sup>8</sup> They are part of a single, coherent development project.<sup>9</sup>

## **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 will live in the new single-family residence on the property,<sup>14</sup> these requirements are met. Neighbor concerns were raised about whether the ADU would allow for an additional residential rental on the property. The Applicant has indicated that the ADU's purpose is to allow his parents "from the Midwest and my grown kids" a place to stay when they visit.<sup>15</sup> However, even if used as a rental, the KCC does not prohibit same, as long as the property owner uses either the primary residence or ADU as his primary residence.

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>16</sup> The primary residence's habitable area will be 2,040 square feet according to the floor plan.<sup>17</sup> Fifty percent of its habitable area (1,020 square feet) is more than 900 square feet, so the ADU will be limited to 900 square feet. The entire ADU building is 3,045 square feet according to the floor plan. The habitable area is 885 square feet, the office on the first floor is 115 square feet, and the garage/shop is 2,045 square feet.<sup>18</sup> The garage shall be used as garage space only and not converted to habitable area unless this CUP is revised through the proper permitting process. In

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<sup>8</sup> Exhibit 2, Staff Report, and hearing testimony.

<sup>9</sup> Exhibit 15 ("I am going to build my home as originally planned from the start. I had to build the current building first due to the cost of construction I couldn't afford to build both buildings at the same time.").

<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> Exhibit 14.

<sup>16</sup> KCC 17.410.060(B)(3).

<sup>17</sup> Staff Report; Exhibit 9.

<sup>18</sup> Staff Report; Exhibit 10.

no case shall the habitable area of the ADU be greater than 900 square feet. Consequently, code size requirements are met.

The ADU building will be located approximately 80 feet from the proposed primary residence,<sup>19</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>20</sup>

As for design, the primary residence and ADU will be similar in appearance. They will have similar architectural style, materials, and exterior paint color.<sup>21</sup> As a result, the ADU has been "designed to maintain the appearance of the primary residence."<sup>22</sup> Also, the proposed ADU is stick built, so is not a "mobile home or recreational vehicle."<sup>23</sup>

The existing ADU building must comply with the standard Rural Residential setbacks at the time of the building permit approval. The front yard setback requirement is 50 feet. The ADU building is 205 feet from the north property line (front). On the side and rear property lines, the code requires five foot setbacks. The ADU is 116 feet from the east property line (side), 155 feet from the west property line (side), and, 62 feet from the south property line (rear).<sup>24</sup> As a result, the requirement that "[a]ll setback requirements for the zone in which the ADU is located shall apply"<sup>25</sup> is met.

The Health District had no concerns with the project.<sup>26</sup> A final approved Building Clearance from the Health District will be required prior to building permit approval and issuance for the conversion of the existing single-family residence to an ADU (Building Permit 17 03649). Based on this review, the proposed ADU will "meet the applicable health district standards for water and sewage disposal."<sup>27</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>28</sup> Both the primary residence and the ADU will use the same proposed gravel driveway. Three parking spaces are required for the single-family residence and one additional parking space is required for the ADU for a total of four spaces. There are two paved parking aprons associated with the garage/ADU structure, as well as a parking apron in front of the proposed single-family residence garage. There is adequate parking available on-site.<sup>29</sup>

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<sup>19</sup> Exhibit 20.

<sup>20</sup> KCC 17.410.060(B)(3).

<sup>21</sup> Exhibit 2.

<sup>22</sup> KCC 17.410.060(B)(3).

<sup>23</sup> *Id.*

<sup>24</sup> Exhibit 20.

<sup>25</sup> KCC 17.410.060(B)(3).

<sup>26</sup> Exhibit 11.

<sup>27</sup> KCC 17.410.060(B)(3).

<sup>28</sup> *Id.*

<sup>29</sup> Exhibit 20 and Staff Report.

Based on the single-family residence floor plan, the structure does not have accessory living quarters,<sup>30</sup> so the requirement that an “ADU is not permitted on the same lot where an accessory living quarters exists”<sup>31</sup> is met.

As a result, 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];
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>32</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. As detailed above, no relevant zoning code provision was identified which would not be complied with. Impacts identified have been addressed and mitigated with appropriate mitigation and/or code requirements.

With respect to critical areas, according to Kitsap County geographic information system data, there is a potential wetland to the west, but it is more than 250 feet from the structures.<sup>33</sup> Environmental review staff has evaluated the requested CUP and have determined that no additional reports or studies are required. The GIS data also indicates that the entire site lies

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<sup>30</sup> Exhibit 9 and Staff Report.

<sup>31</sup> KCC 17.410.060(B)(3).

<sup>32</sup> KCC 17.550.030(A).

<sup>33</sup> Staff Report and Exhibit 24.

within a Category II Critical Aquifer Recharge Area.<sup>34</sup> Single-family development is not a threat and does not require any further analysis or reports within this recharge area designation.

Adding an additional residence may increase traffic, but not in any significant way.<sup>35</sup> The Applicant is required to apply for Concurrency Test at the time of building permit application (Condition 24). No KCC transportation requirements were identified that are not met. Public comment identified concerns about private road maintenance and road safety. The private access route is less than ideal, but it is already providing access to the existing structure, and the Applicant has committed to further coordinating with his neighbors to resolve these issues.<sup>36</sup> These are pre-existing issues which all residents along the road face. Thus, while the situation could be improved upon, the evidence does show site access is adequate, and the single ADU will not cause material adverse impact to existing road conditions. As such, the proposal will not be materially detrimental to existing or future uses of property in the immediate vicinity.

The proposal is compatible with surrounding existing and planned rural uses. It will be aesthetically consistent with the primary residence. The ADU setbacks far exceed KCC requirements and help to ensure ADU consistency with the surrounding character, appearance, and quality of development 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 and should be approved.

## 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. A building permit is required for the conversion of the existing single-family residence 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.

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<sup>34</sup> Exhibit 25.

<sup>35</sup> Exhibit 14 ("My planned usage for the two buildings will not increase traffic flow as I'm going to be the only resident here, same as now.").

<sup>36</sup> See e.g., Exhibit 14 ("I'm more than willing to continue maintaining the road as I have been during the last year so I've ordered some more rock to maintain the road again this upcoming rainy season."); Exhibit 15 ("As far as an increase in traffic, there will be none. I will simply be moving from one building to the other. I haven't had any close calls on the corner of which you are referring to in your letter, but I'd be happy to talk with Mike and remove those trees or trim branches on that corner.").

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 existing size of the ADU is 885 square feet as indicated in Exhibit 10. Any future expansion of the ADU shall require a building permit and would have to comply with all code requirements in place at the time of the new building permit application.

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 regulations and conditions of approval.

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 Kitsap County Code (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. 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 Applicant's expense.

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 03646). 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 four 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. The information provided demonstrates this proposal is a Small Project as defined in KCC Title 12, and meets the criteria for a Simplified Drainage Review. This level of drainage review is reviewed as part of the building permit and does not require plan preparation to be done by a professional engineer. In this instance, since the ADU building already exists, review of additional hard surface area (extension of the driveway to the new single-family residence) takes place with that building permit.

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 application was deemed complete, September 7, 2017.

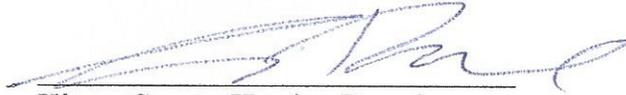
**Survey.**

23. Prior to final building permit approval for the new single-family residence or the conversion building permit for the ADU, the Final Short Plat Alteration Permit (17 04199) shall be approved and recorded with the Kitsap County Auditor's office.

**Traffic and Roads.**

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

THIS DECISION was entered this 27th day of December, 2017.



Kitsap County Hearing Examiner  
Susan Elizabeth Drummond