



Notice of Hearing Examiner Decision

04/17/2018

To: Interested Parties and Parties of Record

RE: Project Name: GARETTO – ADU
 Applicant: LAWRENCE GARETTO
 P.O. BOX 202
 BURLEY, WA
 Application: CONDITIONAL USE PERMIT – ACCESSORY
 DWELLING UNIT
 Permit Number: #17-05195

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-%20206-23-09.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: Lawrence Garetto, lgaretto@centurylink.net
 Health District
 Public Works
 Navy
 DSE
 South Kitsap Fire District
 South Kitsap School District
 Puget Sound Energy
 Point No Point Treaty Council
 Suquamish Tribe

Squaxin Island Tribe
WA Dept of Fish & Wildlife, Brittany Gordon
WA State Dept of Ecology-SEPA
Interested Parties: John B & Diane L Hallawell Trustees, drjbh@hotmail.com

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

**Accessory Dwelling Unit Conditional Use Permit
Mr. and Ms. Garetto
File No. 17-05195**

April 12, 2018

1. FINDINGS OF FACT

1.1 Proposal. The Conditional Use Permit (CUP) would allow an accessory dwelling unit (ADU) within an existing residential structure. The proposed ADU is on the second floor of a 2,100-square foot, two-story building. The 1,200-square foot first floor is a shop; the entire second floor will be the ADU. The Applicants/property owners and site location are:

Applicants/Property Owners. Lawrence and Denise Garetto, P.O. Box 202, Burley, WA 98322-0202.

Site Location. 5171 SW Yellow Bloom Court, Port Orchard, WA 98367 (Assessor No. 072201-1-047-2005).

1.2 Administrative Record. The Hearing Examiner reviewed Exhibits 1-30 before the hearing, which included the Staff Report. The Examiner admitted all exhibits.

1.3 SEPA. Kitsap County Department of Community of Development (DCD) issued a Determination of Non-Significance (DNS).¹ No appeal was filed. The DNS included this condition: "The proposal will be conditioned for Stormwater Control per Kitsap County Code Title 12 and for Critical Areas per Kitsap County Code Title 19."

1.4 Hearing. The Hearing Examiner considered the CUP at an open record public hearing on April 9, 2018. DCD, through Ms. Sands, summarized the proposal. Ms. Sands identified code requirements and how the project met them. As DCD found the proposal consistent with requirements, it recommended approval with mitigation. The Applicant, through Mr. Garetto, after being sworn in, agreed with DCD's recommendation. No person present indicated a wish to comment.

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

1.6 Public Comment. Neighbor John Hallawell submitted comment supporting the proposal.²

¹ Exhibit 18.

² Exhibit 17.

1.7 Notice. Hearing notice was provided through posting, publishing, and mailing, and application notice was provided through mailing and publishing.³ No concerns on notice were raised.

1.8 Zoning/Plan Designations. The Comprehensive Plan and zoning designations are Rural Residential (RR).⁴ RR zoning allows one dwelling unit per five acres. The surrounding area is also zoned RR, with parcels predominantly developed with single-family residences. The project exceeds RR setback requirements.

1.9 Site Physical Characteristics. The 4.95-acre rectangular parcel is developed with a single-family residence, with a shop on the first floor. Seventy feet away, a new single-family residence is under construction. A mix of evergreen and deciduous trees grows over most of the site. The property slopes gradually down, northwest to southeast.

1.10 Critical Areas. A Type 5, or seasonal non-fish bearing stream, is on the site's west side. When platted, the parcel was conditioned for a 50-foot wide buffer, 25 feet on each side of the stream's center line, plus a 15-foot building setback. The existing ADU building is outside the buffer and setback. Kitsap County GIS data shows hydric soils on the site's west side, which is an indicator of potential wetlands.⁵ However, no wetlands were documented during platting.

1.11 Stormwater. The proposed ADU is within an existing building; therefore, no stormwater mitigation is required. Any stormwater mitigation required as part of the new single-family residence under construction was reviewed under that building permit.

1.12 Utility and Public Services.

- **Water:** Private two-party well
- **Power:** Puget Sound Energy
- **Sewer:** On-site septic system
- **Police:** Kitsap County Sheriff
- **Fire:** Fire Protection District No. 7
- **Schools:** South Kitsap School District No. 402

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Review Authority. The Hearing Examiner has CUP review authority for this ADU.⁶ The Hearing Examiner may approve, approve with conditions, or deny a CUP. The Hearing Examiner may also continue the hearing to allow for additional information necessary to make the proper decision.⁷ There was no need to continue the hearing, as sufficient

³ Exhibit 28.

⁴ Exhibits 21 and 22.

⁵ Exhibit 23.

⁶ See KCC Sections 17.410.010(C) and 21.04.100 (see permit type #18).

⁷ KCC 17.550.030.

information was provided, and the hearing was properly noticed, consistent with KCC requirements.

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.⁸ Only one ADU is allowed per lot, on which no accessory dwelling quarters are located, and the owner "must reside in either the primary residence or the ADU."⁹ These requirements are met. Only one ADU is being proposed on a lot located outside the urban growth area, no accessory dwelling quarters or other ADU are on the lot, and the property owners will live in the new single-family residence.

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."¹⁰ The primary residence's habitable area is over 2,400 square feet,¹¹ so the ADU is limited to 900 square feet. The existing two-story ADU building is approximately 2,100 square feet. The entire first floor is a 1,200 square foot shop area, with separated interior stairs leading to the second floor ADU. The shop shall be shop space only and not converted to habitable area, so the ADU's habitable area is 900 square feet,¹² which complies with code.

The proposed ADU building is about 70 feet from the primary residence,¹³ so complies with the requirement to be located "within one hundred fifty feet of the primary residence or shall be the conversion of an existing detached structure (i.e., garage)...."¹⁴ The proposal complies with all other setback requirements.¹⁵

As for design, the primary residence and ADU are planned to be similar in appearance.¹⁶ Both buildings will have a pitched composition-shingle roof, lap wood siding, vinyl windows, and the same paint color scheme. The ADU will be repainted to match the single-family residence. The ADU's residential architectural design and building materials are similar to the appearance of the primary residence. The ADU has been "designed to maintain the appearance of the primary residence."¹⁷ Also, the proposed ADU is stick-built, so is not a "mobile home or recreational vehicle."¹⁸

The Health District recommends approval with no conditions.¹⁹ The proposed ADU will "meet the applicable health district standards for water and sewage disposal."²⁰

⁸ 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).

⁹ KCC 17.410.060(B)(3).

¹⁰ KCC 17.410.060(B)(3).

¹¹ Exhibits 4 and 11.

¹² Exhibit 9.

¹³ Exhibit 8.

¹⁴ KCC 17.410.060(B)(3).

¹⁵ Exhibit 8.

¹⁶ Exhibits 9, 12, and 13.

¹⁷ KCC 17.410.060(B)(3).

¹⁸ KCC 17.410.060(B)(3).

¹⁹ Exhibit 7.

²⁰ KCC 17.410.060(B)(3).

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 will use the same existing gravel driveway. Two parking spaces are required for the single-family residence and can be accommodated on the existing concrete driveway in front of the two-car garage. One parking space is required for the ADU. At least one parking space will be available in front of the ADU building on the existing gravel driveway.²² 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.²³

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, and is consistent with the character of the surrounding area. 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 is aesthetically consistent with the existing residence. The ADU's small size and the extensive setbacks provided ensure that it is consistent with the surrounding character, appearance, and

²¹ KCC 17.410.060(B)(3).

²² Exhibit 8.

²³ KCC 17.550.030(A).

quality of development on site and in the immediate vicinity. As conditioned and proposed, the ADU meets all CUP criteria, and the CUP should be approved.

DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested CUP, provided these 21 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 single-family residence into the proposed ADU.
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 size of the existing structure to be converted into the ADU is 900 square feet as indicated in Exhibit 9.
7. The ADU shall be designed to maintain the appearance of the primary residence.
8. The ADU shall meet the applicable health district standards for water and sewage disposal.
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 Kitsap County Code (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 by the Department and recorded 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 application 17-05195. 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 four years of the Notice of Decision date or the resolution of any appeals.

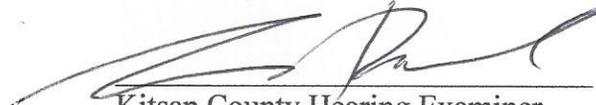
19. Any violation of the conditions of approval shall be grounds to initiate revocation of this CUP.

20. This permit shall comply with all Kitsap Public Health District regulations and conditions of approval.

Development Engineering.

21. 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 and is the mechanism to obtain the Concurrency Certificate.

THIS DECISION is entered this 12th day of April, 2018.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond