



Notice of Hearing Examiner Decision

08/05/2019

To: Interested Parties and Parties of Record

RE: Project Name: Brazeau Accessory Dwelling Unit
 Applicant: Bernard & Coleen Brazeau
 PO BOX 981
 KINGSTON, WA 98346-0981
 Application: Conditional Use Permit – Accessory Dwelling Unit
 (CUP-ADU)
 Permit Number: 19-00873

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:

<https://spf.kitsapgov.com/dcd/HEDocs/HE-Rules-for-Kitsap-County.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: Applicant: Richard Moore, southshore@q.com
Owner: Bernard & Coleen Brazeau, PO BOX 981 KINGSTON, WA 98346-0981
Project Representative: South Shore Construction, southshore@q.com
Health District
Public Works
Parks
Navy
DSE
Kitsap Transit
North Kitsap Fire District

North Kitsap School District
Puget Sound Energy
Point No Point Treaty Council
Suquamish Tribe
Port Gamble S'Klallam Tribe
Squaxin Island Tribe
Puyallup Tribe
WA Dept of Fish & Wildlife
WA State Dept of Ecology-SEPA
WA State Dept of Transportation
Interested Parties:

svslainte2@gmail.com

KITSAP COUNTY HEARING EXAMINER

DECISION CLARIFICATION

**Accessory Dwelling Unit Conditional Use Permit
Brazeau, File No. 19-00873**

August 5, 2019

This clarification is provided at DCD request.

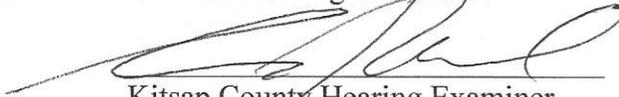
1. Terminology. DCD requested that the term "Owners Agent" be used instead of "Applicant" throughout the Decision. At the hearing, Mr. Kiernan spoke for the applicant and property owners, as authorized, and as is common practice.¹ For Decision purposes, using the term "Applicant" throughout was simplest.

2. Condition 20. The Applicant and DCD agreed to a Condition 20 revision which would spare the Applicant the cost of an added contractor visit. Condition 20 reflects that agreement. DCD wishes to clarify that it would like a state agency permit before the ADU building permit issues. There was no objection, so this clarified language should be followed:

Two existing access points to the property from State Highway 104 shall be removed in compliance with Washington State Department of Transportation (WSDOT) requirements. A no fee General Permit from WSDOT shall be obtained to accomplish that work and shall be submitted to the Department of Community Development (DCD) before ADU Building Permit #19-00770 approval and issuance. Documentation of access removal compliance from WSDOT shall be submitted to DCD before requesting a final inspection and issuance of the Certificate of Occupancy on ADU Building Permit #19-00770.

As a clarification,² the Decision's appeal period has not been tolled.

CLARIFICATION entered August 5, 2019.


Kitsap County Hearing Examiner
Susan Elizabeth Drummond

¹ Mr. Kiernan provided an address update in responding to the clarification request. Mr. and Ms. Kiernan only recently became authorized agents. Ex. 23. The Staff Report refers to them as interested parties. Ex. 27, pg. 16. South Shore Construction is also an authorized agent. Ex. 8. DCD points out that Ms. Brazeau's first name is spelled with one "l", rather than two.

² DCD Request for Hearing Examiner's Clarification (July 30, 2019).

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

**Accessory Dwelling Unit Conditional Use Permit
Brazeau, File No. 19-00873**

July 26, 2019

1. FINDINGS OF FACT

1.1 Proposal. The project adds an 887 square foot accessory dwelling unit ("ADU") to a 4.99 acre lot.

Applicants/Property Owners. The Applicant is Richard Moore, 230 E. Hillside Drive, Belfair, WA 98528. The Property Owners are Bernard and Colleen Brazeau, P.O. Box 981, Kingston, WA 98346.

Location. 6106 NE State Highway 104, Kingston, WA 98346. Assessor Account No. 292702-1-007-2001.

1.2 Administrative Record. The Hearing Examiner admitted Exhibits 1-28, which included the Staff Report, application materials, documentation of agency consultation, public notice documents, and other materials. The Staff Report is incorporated, except as modified.

1.3 SEPA. DCD issued a Determination of Non-Significance.¹ It was not appealed.

1.4 Hearing. An open record public hearing was held July 25, 2019. DCD, through Ms. Sands, described the project. DCD found it consistent with requirements, so recommended approval with mitigation. The Applicant further addressed the ADU. The Applicant had reviewed the Staff Report and did not object to the proposed conditions, except for a deadline requirement in Condition 20. The Applicant asked that confirmation of compliance with Department of Transportation requirements be due before certificate of occupancy issuance, instead of before building permit issuance. DCD did not object. No other person present wished to comment.

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

1.6 Notice. Hearing notice was provided through posting, publishing, and mailing, and application notice through mailing and publishing.² KCC notice requirements were complied with.

¹ Ex. 17.

² Ex. 22 (certificate of notice). *See also* Exs. 12 and 13 (application notice); Ex. 21 (hearing notice).

1.7 Zoning/Plan Designations. Located outside the urban growth area, the Comprehensive Plan and zoning designations are Rural Residential,³ which allows one dwelling unit per five acres. Except to the south, where the zoning is Rural Employment Center, and there are industrial activities, warehouses, and single family homes, surrounding properties have the same zoning and are developed with single-family homes.

1.8 Critical Areas. Other than the critical aquifer recharge area, no critical areas were identified. The ADU does not pose a groundwater threat, so further analysis is not required. A condition addresses the issue.⁴

1.9 Utility and Public Services.

- **Water:** Two-Party Well (on-site)
- **Power:** Puget Sound Energy
- **Sewer:** Septic (on-site)
- **Police:** Kitsap County Sheriff
- **Fire:** North Kitsap Fire & Rescue
- **Schools:** North Kitsap School District No. 400

1.10 Access. NE State Highway 104, a WA State Department of Transportation maintained Rural Principal Arterial, provides access. DCD proposed Condition 20 following consultation with the Applicant and DOT to address access and safety for ingress/egress off a state highway.

1.11 Setbacks/Height. Setback requirements are five feet for the rear and side yards, and 50 feet on the front (south) side.⁵ Setbacks exceed requirements, with 88 feet on the front (south), 35 and over 250 feet for the two side yards, and over 400 feet for the rear (north) side. The 35 foot height limit will be complied with.

1.12 Aesthetics. ADU building materials will be similar to the existing single-family residence, with similar styles and color.⁶ Typical residential landscaping is on the property, particularly in the area of the development. This is coupled with evergreen trees on the site's northern third and along the east side, providing screening and improved aesthetics.⁷

1.13 Conditions. DCD proposed 25 conditions. The Applicant's requested modification to Condition 20 should be made. In all other respects, to ensure code compliance, the conditions should be imposed without substantive revision.

³ Ex. 25; Ex. 27, pg. 2.

⁴ KCC 19.600.620; Condition 24.

⁵ Ex. 27 (Staff Report), p. 3.

⁶ Ex. 27 (Staff Report), pgs. 4 and 8 and Attachments A-D. *See also* Exhibits 9-10.

⁷ Ex. 29 (Power Point); Ex. 27 (Staff Report), p. 4.

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Review Authority. The Hearing Examiner has Conditional Use Permit (“CUP”) review authority for this ADU.⁸ The Hearing Examiner may approve, approve with conditions, or deny a CUP.⁹

2.2 Code Requirements Specific to an ADU in the RR Zone. An ADU outside the urban growth area, and within the RR zone, must obtain a CUP, and comply with requirements specific to the use.¹⁰ 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."¹¹ These requirements are met. Only one ADU is proposed for a lot outside the urban growth area, no accessory dwelling quarters or other ADUs are on the lot, and the property owners will live in the existing 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."¹² The primary residence’s habitable area exceeds 1,800 square feet, so the ADU is limited to 900 square feet. At 887 square feet, the ADU complies.

The ADU complies with the requirement to be "within one hundred fifty feet of the primary residence or shall be the conversion of an existing detached structure (i.e., garage)...."¹³ This will be confirmed during building permit review. The proposal complies with all other setback requirements.

As for design, as addressed in the findings above, the primary residence and ADU will be similar in appearance,¹⁴ as the ADU has been "designed to maintain the appearance of the primary residence."¹⁵ Also, the proposed ADU is a manufactured home, so is not a mobile home or recreational vehicle.¹⁶ A manufactured home is subject to distinct requirements from mobile homes and RV’s, and is allowed.¹⁷

The ADU will be supplied by well water and a septic system, with Health District approval required (*see* Condition 8), so will "meet the applicable health district standards for water and sewage disposal."¹⁸

⁸ KCC 17.410.010(C) and 21.04.100 (*see* permit type No. 18).

⁹ KCC 17.550.030.

¹⁰ KCC Table 17.410.042 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 KCC 17.410.060(B)(3).

¹³ KCC 17.410.060(B)(3).

¹⁴ Ex. 27 (Staff Report), p. 8 and Attachments A - D. *See also* Exs. 1-4 and 9-10.

¹⁵ KCC 17.410.060(B)(3).

¹⁶ KCC 17.410.060(B)(3).

¹⁷ Ex. 27, pg. 8.

¹⁸ KCC 17.410.060(B)(3).

Parking and entry requirements are met. The ADU will use "the same side street entrance as the primary residence" and with sufficient space to meet minimum parking requirements will "provide additional off-street parking,"¹⁹ as Conditions 10 and 20 address. All requirements specific to the ADU use are met.

2.3 Conditional Use Permit Requirements.

A CUP must meet four requirements.

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.²⁰

These criteria are met. The Staff Report provided detail on Comprehensive Plan policies. They 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 code requirements. No 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 through project design, additional 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, existing vegetation, and extensive setbacks all ensure 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 and should be approved.

¹⁹ KCC 17.410.060(B)(3).

²⁰ KCC 17.550.030(A).

DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested CUP for the proposed ADU, provided these 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 accessory dwelling unit (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 accessory dwelling unit (ADU) building, regardless of whether a building permit is required, shall be reviewed by the Department of Community Development and granted approval prior to such modification, expansion, construction and/or issuance of a building permit.
4. Only one accessory dwelling unit (ADU) shall be permitted on the subject property.
5. The owner of the property must reside in either the primary residence or the accessory dwelling unit (ADU) and only one of the structures may be rented at any one time.
6. The accessory dwelling unit's (ADU) habitable area shall not exceed 50% of the primary residence or 900 square feet, whichever is smaller. The proposed size of the ADU is 887 square feet (Exhibit 4).
7. The accessory dwelling unit (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 accessory dwelling unit (ADU).
10. The accessory dwelling unit (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 accessory dwelling unit (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 accessory dwelling unit (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 accessory dwelling unit (ADU) cannot be sold separately from the primary residence unless it has legally been segregated onto its own lot.
14. 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 and recorded by the Department at the applicant's expense.
15. 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 Kitsap County Code (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, 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 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.
17. The decision set forth herein is based upon representations made and exhibits contained in the project application 19-00873 Brazeau ADU CUP. 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 Conditional Use Permit approval shall automatically become void if no development permit application is accepted as complete by the Department of Community Development 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 Conditional Use Permit.

20. Two existing access points to the property from State Highway 104 shall be removed in compliance with Washington State Department of Transportation (WSDOT) requirements. A no fee General Permit from WSDOT shall be obtained to accomplish that work. Documentation of compliance from WSDOT shall be submitted to the Department of Community Development (DCD) prior to approval and issuance of the Certificate of Occupancy on ADU Building Permit #19-00770.

Development Engineering

21. The information provided demonstrates this proposal is a Small Project as defined in Kitsap County Code Title 12, and as such will require the subsequent building permit site plan demonstrate compliance with Minimum Requirement #2, Construction Stormwater Pollution Prevention.
22. Erosion and sedimentation control Best Management Practices (BMPs) shall be installed in accordance with Kitsap County Code Title 12 effective at the time the Conditional Use Permit application was deemed complete, May 3, 2019, and shall remain in place throughout construction.
23. If the project proposal is modified from that shown on the submitted site plan dated April 30, 2019, Development Services and Engineering will require additional review and potentially new conditions.

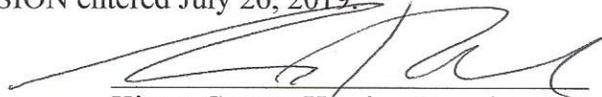
Environmental

24. No uses that are identified as "activities with potential threat to groundwater" at Kitsap County Code 19.600.620 shall occur prior to obtaining the required approval from the Department of Community Development and/or the Hearing Examiner.

Traffic and Roads

25. Submit an Application for Concurrency Test (KCPW Form 1601) as required by Chapter 20.04.030, Transportation Concurrency, of the Kitsap County Code. The KCPW 1601 form reserves road capacity for the project.

DECISION entered July 26, 2019.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond