



Notice of Hearing Examiner Decision

12/20/2019

To: Interested Parties and Parties of Record

RE: Project Name: PAUL - CUP for New Accessory Dwelling Unit
 Applicant: Darcy Paul
 3828 River Ridge Dr E
 Eatonville, WA 98328
 Application: CUP-ADU
 Permit Number: # 19-03245

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 timely 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: Darcy Paul, darcyjpaul@hotmail.com
Owner: PAUL MARK A & DARCY J, darcyjpaul@hotmail.com

Interested Parties:

Project Lead, Jeff Smith
Project Representative: Kathy Cloninger, kcloni9999@msn.com
Engineer: Mike Wnek, mike@wnekeng.com
Kitsap County Prosecutor's Office
Kitsap County Assessor's Office
DCD
Kitsap Sun
Surveyor

Health District
Public Works
Navy
DSE
South Kitsap Fire District
Bremerton School District
Puget Sound Energy
Water Purveyor
Point No Point Treaty Council
Suquamish Tribe
Port Gamble S'klallam Tribe
WA Dept of Fish & Wildlife
WA State Dept of Ecology- SEPA

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

**Accessory Dwelling Unit Conditional Use Permit
Paul, File No. 19-03245**

December 13, 2019

1. FINDINGS OF FACT

1.1 Proposal. The project adds an accessory dwelling unit and attached garage to a 19.95 acre lot.

Applicant/Property Owner. Mark A. and Darcy J. Paul, 7520 SW Ridgeline Drive, Port Orchard, WA 98367.

Location. 7522 SW Ridgeline Drive, Port Orchard, WA 98367. Assessor Parcel No. 122201-2-006-1007.

1.2 Hearing. An open record public hearing was held December 12, 2019. Kitsap County Department of Community Development (“DCD”), through Mr. Smith, described the project. DCD found it consistent with requirements, and recommended approval with mitigation. Ms. Paul confirmed the Applicant had no concerns with DCD’s proposed conditions. No member of the public indicated a wish to speak.

1.3 Administrative Record. The Hearing Examiner admitted Exhibits 1-24, which included the Staff Report, application materials, documentation of agency consultation, public notice documents, and a DCD Power Point presentation.

1.4 SEPA. DCD issued a Determination of Non-Significance,¹ with a condition requiring compliance with Title 12 to address stormwater control, Title 19 to address critical areas, and Title 17 to address land use impacts. The DNS was not appealed.

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.

1.7 Zoning/Plan Designations. Located outside the urban growth area, the Comprehensive Plan and zoning designations are Rural Wooded,³ which allows one dwelling

¹ Exhibit 14; Exhibit 23 (Staff Report), p. 2.

² Exhibits 13, 16, and 17; *see* KCC 21.04.080.

³ Exhibits 18 and 21; Exhibit 23 (Staff Report), p. 3.

unit per twenty acres. The zone allows an ADU, subject to both a CUP and separate requirements specific to the use. Surrounding properties have the same zoning and are primarily in forest land and undeveloped, with a single-family residence under construction to the north.

1.8 Critical Areas. A small geologic critical area, designated as high erosion hazard, is in the southeast corner and runs along the east property line. The ADU is outside this area.

1.9 Utility and Public Services.

- **Water:** On-site two party well
- **Power:** Puget Sound Energy
- **Sewer:** Septic
- **Police:** Kitsap County Sheriff
- **Fire:** South Kitsap Fire & Rescue
- **Schools:** South Kitsap School District #402

1.10 Access. SW Ridgeline Drive, a gravel easement that connects to Carney Lake Road, a paved county-maintained road.

1.11 Dimensions and Setbacks. The ADU would be 889 square feet, with a 960 square foot attached garage. While providing a laundry and bathroom, the garage will not be heated so does not count toward ADU habitable area limits. The ADU would be about 55-90 feet from the single-family home being constructed.⁴ The site is zoned RW so while the 100-foot setbacks from surrounding RW zones do not apply, they are met.⁵ Setbacks exceed these and standard requirements, with 170 on the front, 900 on the east side, 280 on the west side, and 400 on the rear.⁶ The 35 foot height limit will be complied with.

1.12 Other New Construction. A building permit application is under review to construct a 3,028 square foot single-family residence and 887 square foot attached garage, along with a 1,392 square foot shop/garage and RV storage.

1.13 Building and Site Aesthetics. ADU building materials will be compatible with the existing single-family residence, with a similar style and color.⁷ “The siding, roof and architectural features are going to be the same. The structures were designed and engineered by the same businesses. They are both ramblers with attached garages.”⁸ As further detailed in the Staff Report and application materials, both are one story ramblers with matching paint and trim. Conifers are scattered across the site, along with extensive setbacks, providing visual mitigation.⁹

⁴ Site plan shows scales at less than 55; the application indicates 90. Exhibit 23, p. 8; Exhibits 1 and 9.

⁵ Exhibit 23 (Staff Report), p. 3; KCC 17.420.052; Testimony, Mr. Smith.

⁶ Exhibit 23 (Staff Report), p. 3.

⁷ Exhibits 3, 4, 7, 9-11; Exhibit 23 (Staff Report), p. 9.

⁸ Exhibit 1 (Application), p. 4.

⁹ Exhibit 23 (Staff Report), p. 4.

1.14 Conditions/Staff Report. The Applicant accepted the proposed conditions, which are incorporated without revision. Except as the Decision revises it, the Staff Report is incorporated by reference.

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Review Authority. The Hearing Examiner has CUP review authority for this ADU.¹⁰ The Examiner may approve, approve with conditions, or deny a CUP.¹¹

2.2 Code Requirements Specific to an ADU in the RW Zone. An ADU outside the urban growth area, and within the RW zone, must obtain a CUP and comply with requirements specific to the use.¹² 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."¹³ 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."¹⁴ The primary residence's habitable area is planned to be 3,028 square feet, so the ADU is limited to 900 square feet. At 889, the ADU complies.

The ADU, proposed to be less than 100 feet from the primary residence,¹⁵ 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 (e.g, garage)..."¹⁶ The proposal complies with all other setback requirements.

As for design, as the findings address, the primary residence and ADU will be similar in appearance,¹⁷ as the ADU has been "designed to maintain the appearance of the primary residence."¹⁸ Also, the proposed ADU is stick-built, so is not a mobile home or recreational vehicle.¹⁹

The ADU will be supplied by well water and a septic system. The Health District approved the Building Site Application with a condition on residential occupancy, so the ADU will "meet the applicable health district standards for water and sewage disposal."²⁰

¹⁰ KCC 17.410.010(C) and 21.04.100 (*see* permit type No. 18).

¹¹ KCC 17.550.030.

¹² KCC Table 17.410.042, FN 1, requiring KCC 17.410.060 compliance. *See* KCC 17.410.060(B)(3).

¹³ KCC 17.410.060(B)(3).

¹⁴ KCC 17.410.060(B)(3).

¹⁵ Exhibit 23 (Staff Report), p. 8.

¹⁶ KCC 17.410.060(B)(3).

¹⁷ Exhibits 3, 4, 7, 9-11; Exhibit 23 (Staff Report), p. 9.

¹⁸ KCC 17.410.060(B)(3).

¹⁹ KCC 17.410.060(B)(3).

²⁰ KCC 17.410.060(B)(3); Exhibit 23 (Staff Report), pp. 8-9; Exhibit 8; Conditions 9 and 33.

Parking and entry requirements are met. The ADU is conditioned to use "the same side street entrance as the primary residence."²¹ The condition was necessary, as there are multiple access points to the site from an easement and logging roads. Revegetation of the south and north logging road access points is required to allow access through only the easement.²² Three parking spaces are required for the main house; one for the ADU.²³ Five are proposed. With sufficient space to meet minimum parking requirements and with the "additional off-street parking,"²⁴ parking requirements are met. 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.²⁵

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, and will cause minimal environmental degradation. The Plan supports residential use 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 surrounding area's rural character. 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.

²¹ KCC 17.410.060(B)(3); Conditions 11 and 21.

²² Exhibit 23 (Staff Report), p. 9; Condition 21.

²³ Exhibit 23 (Staff Report), p. 10; KCC 17.490.030.

²⁴ KCC 17.410.060(B)(3).

²⁵ KCC 17.550.030(A).

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 which exceed code requirements 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.

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 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 owner of the property 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 size of the ADU is 889 square feet (Exhibit 9).
7. The ADU shall be located within 150 feet of the primary residence.
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 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 an 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 19-03245 Paul 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.
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.

21. The north-south logging road shall be revegetated at the south and north access points to the subject property to only allow direct access from the easement.

Development Engineering

22. 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.

23. The information provided demonstrates this proposal is a Small Project as defined in KCC Title 12, and as such will require the building permit submittal materials demonstrate compliance with Minimum Requirements 1-5.

24. Onsite stormwater management, and erosion and sedimentation control shall be designed in accordance with KCC Title 12 effective at the time the CUP application was deemed complete, August 5, 2019. The submittal documents shall be prepared by a civil engineer licensed in the State of Washington.

25. Should the proponent propose phasing of the project, a phasing plan shall be submitted to Development Services and Engineering for review and approval. The phasing plan shall, as a minimum, address the following items:

- a. Timetables indicating the anticipated time between initial site grubbing/grading activity and the completion of construction, including site stabilization of that specific phase.
- b. The extent of drainage improvements to be installed during the various phases.

26. The site plan indicates that greater than one acre will be disturbed during construction. This threshold requires a National Pollutant Discharge Elimination System (NPDES) Stormwater Construction permit from the State Department of Ecology. More information about this permit can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/> or by calling Josh Klimek at 360-407-7451, email joshklimek@ecy.wa.gov. This permit is required prior to issuance of the building permit.

27. Although permit application submittal materials indicate the on-site roads used for a previous logging operation are existing, conditions of the Timber Harvest permit for the logging stipulate that the logging roads be abandoned upon completion of the logging. The stormwater design shall include the roads to be utilized for this proposal in the new/replaced hard surface area figure and account for that hard surface area in the stormwater design.

28. If the project proposal is modified from that shown on the submitted site plan dated July 25, 2019, Development Services and Engineering will require additional review and potentially new conditions.

Environmental

29. The project shall remain in compliance with the county's Timber Harvest Minor permit 10-89178 and a Department of Natural Resources Forest Practices Application (FPA) No. 2410478 that was approved on March 4, 2005 and the County's Timber Harvest Major, Conversion Option Harvest Permit (COHP) 04-22066 that was approved on January 21, 2005.

Traffic and Roads

30. 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.

31. 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.

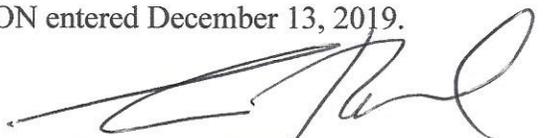
32. Any work within the County right-of-way shall require a Public Works permit and possibly a maintenance or performance bond. This application to perform work in the right-of-way shall be submitted as part of the SDAP process. The need for and scope of bonding will be determined at that time.

Kitsap Public Health District

33. KPHD has a BSA pending for the well being drilled. The barn does not show laundry facilities on the BSA but will need a Notice to Title stating it won't be used as a dwelling unit. A Notice to Title shall be recorded stating the shop won't be used as a dwelling unit.

Absent a timely appeal, this Decision is final.²⁶

DECISION entered December 13, 2019.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond

²⁶ See Ch. 36.70C RCW (any appeal to be filed within 21 days to superior court).