



## Notice of Hearing Examiner Decision

04/22/20

To: Interested Parties and Parties of Record

RE:           Project Name: Surly Crab Accessory Dwelling Unit  
                  Applicant: Lauren Rist, Eerkes Architects  
                                120 Madrone Lane North  
                                Bainbridge Island, WA 98110  
                  Application: Conditional Use Permit – Accessory Dwelling Unit  
                                (CUP-ADU)  
                  Permit Number: 19-05227

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **19-05227 Surly Crab Accessory Dwelling Unit – CUP-ADU**, subject to the conditions outlined in this Notice and included Decision.

**THE DECISION OF THE HEARING EXAMINER IS FINAL, UNLESS TIMELY APPEALED, AS PROVIDED UNDER WASHINGTON LAW.**

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>

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: Scott Lynes / Lyneshard LLC, [scottalynes@gmail.com](mailto:scottalynes@gmail.com)  
Applicant: Lauren Rist / Eerkes Architects, [laurenr@eerkesarchitects.com](mailto:laurenr@eerkesarchitects.com)  
Authorized Agent: Fradkin Fine Construction, [lionel@fradkinfineconstruction.com](mailto:lionel@fradkinfineconstruction.com)  
Contractor: Brent Williams / Fradkin Fine Construction,  
[brent@fradkinfineconstruction.com](mailto:brent@fradkinfineconstruction.com)  
Engineer: Browne Wheeler Engineers Inc., [adam@brownewheeler.com](mailto:adam@brownewheeler.com)  
Biologist: Ecological Land Services, Inc., [joanne@eco-land.com](mailto:joanne@eco-land.com)  
Geologist: Rob Cousins / Coastal Solutions LLC, [rob@coastalsolns.com](mailto:rob@coastalsolns.com)

Prosecutors Office  
Assessor's Office  
DCD  
Kitsap Sun  
Health District  
Navy  
Central Kitsap Fire District  
Central Kitsap School District  
Puget Sound Energy  
Water Purveyor - N/A  
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 Ecology-Wetland Review  
Interested Parties:

Mary Lyons, [Mlyons1919@yahoo.com](mailto:Mlyons1919@yahoo.com)  
Elizabeth Waxham, [b1waxham@aol.com](mailto:b1waxham@aol.com)

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

**Accessory Dwelling Unit Conditional Use Permit  
Surly Crab, File No. 19-05227**

**April 17, 2020**

---

**1. FINDINGS OF FACT**

**1.1 Proposal.** Construction of a 750 square foot accessory dwelling unit (“ADU”) on existing impervious surface on a 4.93 acre lot.

**Applicant/Property Owner.** Lyneshard LLC, 8695 Sunset Lane NW, Seabeck, WA 98380.

**Location.** 8695 Sunset Lane NW, Seabeck, WA 98380. Assessor Parcel No. 192501-2-023-1006.

**1.2 Hearing.** An open record public hearing was held April 9, 2020. Due to COVID-19 restrictions, the hearing was conducted remotely, with the Examiner, Kitsap County Department of Community Development (“DCD”), and Applicant calling in. Access information was provided to the public to allow citizens to join via either a video link or telephone call-in. There were no reported technical difficulties during the call or afterwards. However, in case any citizens who wished to comment had difficulty calling in, the record was kept open for a week, through April 16.<sup>1</sup> No additional written comments were received. At the hearing, DCD, through Ms. Shaffer, described the project. DCD found it consistent with requirements, and recommended approval with conditions. The Applicant confirmed there were 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 1-32, 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 an unappealed Determination of Non-Significance,<sup>2</sup> with a condition requiring compliance with Kitsap County Code (“KCC”) Title 12 to address stormwater control.

**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 Public Comment.** Staff received two inquiries about the project. The first, from a neighbor who wished to be anonymous, was concerned the proposed ADU could become a

---

<sup>1</sup> Temporary Emergency Rule to Address COVID-19 Situation (April 1, 2020).

<sup>2</sup> Exhibit 19; Exhibit 29 (Staff Report), p. 2.

vacation rental. Staff told the neighbor that if the ADU were used as a vacation rental and the property became a nuisance, Kitsap County Code Compliance could be contacted.

The second was from Ms. Waxham, whose concern related to traffic and speeding on Sunset Lane NW.<sup>3</sup> ADUs do not require traffic impact analyses; however, Condition 28 requires a traffic concurrency test with the building permit.

**1.7 Notice.** Hearing and application notice was provided consistent with KCC requirements.<sup>4</sup>

**1.8 Zoning/Plan Designations and Critical Areas.** Outside the urban growth area, the site's Comprehensive Plan and zoning designations are Rural Residential,<sup>5</sup> allowing one dwelling unit per five acres. An ADU is authorized by CUP, with requirements specific to the use. Surrounding properties are also zoned Rural Residential, and are developed with single-family residences to the north, south, and east; with Hood Canal to the west.<sup>6</sup> Because the proposed ADU is not located within 200 feet of the shoreline, it does not fall under Shoreline Master Program jurisdiction.<sup>7</sup>

**1.9 Environmental.** A non-fish bearing stream is north of the ADU. The stream's 50-foot buffer and construction buffer will be met.<sup>8</sup> A Geotechnical Engineering Investigation prepared by Coastal Solutions, did not address the proposed ADU; an addendum to the report addressing the ADU is required (Condition 27).<sup>9</sup>

**1.10 Utility and Public Services.**

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

**1.11 Access.** Easement road from Sunset Lane NW, a county-maintained right of way.

**1.12 Dimensions and Setbacks.** The site includes a 1,346 square foot residence, a 560 square foot detached garage, and a bulkhead; a permit has been issued to replace the residence with a 3,900 square foot home.<sup>10</sup> The ADU will be 140 feet from the primary residence.<sup>11</sup>

---

<sup>3</sup> Exhibit 27.

<sup>4</sup> Exhibits 17, 28, and 31; *see* KCC 21.04.080.

<sup>5</sup> Exhibits 21 and 24; Exhibit 29 (Staff Report), p. 2.

<sup>6</sup> Exhibit 29 (Staff Report), p. 3.

<sup>7</sup> Exhibit 29 (Staff Report), p. 1.

<sup>8</sup> Exhibit 29 (Staff Report), p. 10.

<sup>9</sup> Exhibit 8; Exhibit 29 (Staff Report), p. 10.

<sup>10</sup> Exhibit 20; Exhibit 29 (Staff Report), pp. 1-2.

<sup>11</sup> Exhibit 20; Exhibit 29 (Staff Report), p. 8.

Setbacks meet or exceed requirements, ranging from 50 to over 300 feet, and over 200 feet from the shoreline's ordinary high-water mark. The ADU complies with the 35 foot height limit.<sup>12</sup>

**1.13 Building and Site Aesthetics.** The primary residence and ADU will be similar in appearance. Both will have the same roof pitch and wood siding.<sup>13</sup> "The proposed ADU will have window walls on the western façade to maximize forest and waterfront views similar to the main house. The proposed structures will be built at the same time by the same contractor. This will provide a cohesive design for the ... site."<sup>14</sup> The property is heavily wooded with landscaping planned near the residence and ADU. This, coupled with extensive setbacks, provides visual mitigation.<sup>15</sup>

**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.<sup>16</sup> The Examiner may approve, approve with conditions, or deny a CUP.<sup>17</sup>

**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.<sup>18</sup> 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."<sup>19</sup> 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 owner lives in the 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."<sup>20</sup> The primary residence's habitable area is 1,346 square feet; if enlarged, it will be 3,900 square feet.<sup>21</sup> The project will be conditioned to require final approval of the single-family residence permit prior to final approval of the ADU permit (Condition 20).

The ADU, proposed to be 140 feet from the primary residence,<sup>22</sup> complies with the requirement to be "within one hundred fifty feet of the primary residence or shall be the

---

<sup>12</sup> Exhibit 29 (Staff Report), p. 3.

<sup>13</sup> Exhibits 1, 4 and 5; Exhibit 29 (Staff Report), p. 8.

<sup>14</sup> Exhibit 1.

<sup>15</sup> Exhibit 13; Exhibit 29 (Staff Report), p. 2.

<sup>16</sup> KCC 17.410.010, 21.04.100 (permit type #18), and 17.410.042 (use #100).

<sup>17</sup> KCC 17.550.030.

<sup>18</sup> KCC Table 17.410.042, FN 1, requiring KCC 17.410.060 compliance. *See* KCC 17.410.060(B)(3).

<sup>19</sup> KCC 17.410.060(B)(3).

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

<sup>21</sup> Exhibits 6 and 7; Exhibit 29 (Staff Report), pp. 1, 7-8.

<sup>22</sup> Exhibit 20; Exhibit 29 (Staff Report), p. 8.

conversion of an existing detached structure (e.g., garage)...<sup>23</sup> 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,<sup>24</sup> as the ADU has been "designed to maintain the appearance of the primary residence."<sup>25</sup> Also, the proposed ADU is stick-built, so is not a mobile home or recreational vehicle.<sup>26</sup>

The ADU will be supplied by a private two-party well and a septic system. Kitsap Public Health approved the ADU.<sup>27</sup> The ADU will "meet the applicable health district standards for water and sewage disposal."<sup>28</sup>

Parking and entry requirements are met. The ADU will use "the same side street entrance as the primary residence."<sup>29</sup> The driveway will provide an additional off-street parking space.<sup>30</sup> With sufficient space to meet minimum parking requirements and with the "additional off-street parking,"<sup>31</sup> 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.<sup>32</sup>

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 uses consistent with the existing and planned rural character of the surrounding rural

---

<sup>23</sup> KCC 17.410.060(B)(3).

<sup>24</sup> Exhibits 1, 4 and 5; Exhibit 29 (Staff Report), p. 8.

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

<sup>26</sup> KCC 17.410.060(B)(3).

<sup>27</sup> Exhibit 16; Exhibit 29 (Staff Report), p. 8.

<sup>28</sup> KCC 17.410.060(B)(3).

<sup>29</sup> KCC 17.410.060(B)(3).

<sup>30</sup> Exhibit 29 (Staff Report), pp. 8-9; KCC 17.490.030.

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

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

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. 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 uses. It is aesthetically consistent with the planned single-family 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. 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 750 square feet (Exhibit 6). Any future expansion of the ADU will require a building permit and would have to comply with all code requirements in place at the time of the new building permit application.
6. The ADU shall be located within 150 feet of the primary residence.

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 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 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 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 Permit #19-05227. 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. The building permit for the ADU (#19-05221) cannot be finalized until the building permit for the single-family residence (#19-05212) is finalized. The two structures can be built simultaneously but the single-family residence shall receive final approval first. The primary residence must receive its Certificate of Occupancy prior to the ADU Certificate of Occupancy.

21. All the plans submitted with the building permit for the ADU #19-05221 must be revised to match the approved site plan with the CUP #19-05227.

### **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 meets the Simplified Drainage Review-Engineered level of drainage review. Engineered drainage plans are required as an element of building permit review and approval.

24. On-site 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, January 13, 2020. 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 KCC in effect at the time of building permit application.

25. At the time of submittal of a building permit, soil amendment is required for all disturbed areas not covered by hard surface.

26. If the project proposal is modified from that shown on the submitted site plan dated November 13, 2019, Development Services and Engineering will require additional review and potentially new conditions.

## Environmental

27. With the building permit for the ADU #19-05221 an addendum to the submitted Geotechnical Engineering Investigation prepared by Coastal Solutions dated September 15, 2019 shall be required.

## Traffic and Roads

28. 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.

29. 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.

30. 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 (or building permit if no SDAP is required). The need for and scope of bonding will be determined at that time.

Absent a timely appeal, this Decision is final.<sup>33</sup>

DECISION entered April 17, 2020.

  
Kitsap County Hearing Examiner  
Susan Elizabeth Drummond

---

<sup>33</sup> See Ch. 36.70C RCW (21-day appeal period for filing in superior court consistent with statutory requirements).