



Notice of Hearing Examiner Decision

05/12/2021

To: Interested Parties and Parties of Record

RE: Project Name: Erickson ADU – After the Fact Convert Garage to ADU

Applicant: Kenneth W. and Brenda Erickson
6585 NE Twin Spits Road
Hansville, WA 98340-7706

Application: Conditional Use Permit – Accessory Dwelling Unit (CUP-ADU)

Permit Number: #20-00034

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **Permit #20-00034 Erickson ADU – After the Fact Convert Garage to ADU – Conditional Use Permit – 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 or (360) 337-5777.

CC: Applicant: ERICKSON KENNETH W & BRENDA, kenneth285@aol.com
Owner: ERICKSON KENNETH W & BRENDA, kenneth285@aol.com
Project Representative: Erickson, Ken, kenneth285@aol.com
Health District
DSE

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

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

**Accessory Dwelling Unit Conditional Use Permit
Erickson, File No. 20-00034**

May 10, 2021

1. FINDINGS OF FACT

1.1 Proposal. After-the-fact conditional use permit (“CUP”) for an 864 square foot accessory dwelling unit (“ADU”) within the second story of an existing detached garage on a 4.72 acre lot.

Applicant/Property Owner. Kenneth and Brenda Erickson, 6585 NE Twin Spits Road, Hansville, WA 98340-7706.

Location. 6585 NE Twin Spits Road, Hansville, WA 98340-7706. Assessor Parcel No. 162802-3-001-2007.

1.2 Hearing. An open record public hearing was held April 22, 2021. 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 through April 29.¹

At the hearing, DCD, through Ms. Santos, described the project. DCD found it consistent with requirements, and recommended approval with conditions. The Applicant, through Mr. Erickson, confirmed there were no concerns with DCD's proposed conditions. A neighbor, Mr. Dalglish, objected to after-the-fact permit approval;² and with the Applicant's characterization of private access easement use. He believes the access gate should be limited to the size necessary to accommodate a lawn mower, but supported the proposed conditions. Both the neighbor and Applicant submitted comment following the hearing. The neighbor raised concerns over the building permit process and safety concerns. The Applicant objected to the neighbor's easement use characterizations.

1.3 Administrative Record. The Hearing Examiner admitted Exhibits 1-42, which included the revised Staff Report, application materials, documentation of agency consultation, public notice documents, public comments, and a DCD Power Point presentation.

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

² Building permits have all issued; only the ADU CUP remains.

1.4 SEPA. DCD issued an unappealed Determination of Non-Significance which notes Title 12 (stormwater control), Title 17 (land use), and Title 19 (critical areas) compliance is required.³

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 and application notice was provided consistent with KCC requirements.⁴

1.7 Written Public Comment. Four neighbors submitted written comment opposing the CUP. Monica and Gregg Nelson believe the property already has two finished dwellings including the primary residence and a separate residence adjoining it, so an ADU should not be allowed; and they oppose an “after the fact” permit.⁵ Cynthia Jensen comments the proposed ADU is used as a short-term vacation rental and its guests trespass on her property on their way to Buck Lake Park. Guests use the private access easement for ingress/egress instead of the driveway to the primary residence. The primary residence includes a second complete residence used for short-term vacation rentals and unpermitted private functions such as weddings; creating a nuisance for nearby property owners. The septic system is inadequate for three dwelling units.⁶ Mac and Dora Dalglish stated they did not receive CUP application notice. They have concerns about the safety of the unpermitted ADU, and state the property already has two complete dwelling units; adding a third would exceed allowed densities.⁷ Scott and Debra Dalglish stated the property already contains two finished dwelling units and a third should not be allowed.⁸

Conditions are imposed to limit the allowed homes and also ADU size to meet code requirements. Building, health, and fire code requirements will be met, and conditions are imposed addressing same. As for easement use, that is a private dispute outside Examiner jurisdiction, and the Examiner does not initiate code enforcement. The only issue the Examiner has jurisdiction over is whether the pre-existing ADU can meet permitting requirements and become an authorized use.

1.8 Zoning/Plan Designations and Critical Areas. Outside the urban growth area, the site’s Comprehensive Plan and zoning designation are Rural Residential (RR),⁹ allowing one dwelling unit per five acres. An ADU is authorized by CUP, with requirements specific to the use. Surrounding properties have the same zoning and are developed with single-family residences on three sides, and right-of-way to the north.¹⁰

³ Exhibit 26; Exhibit 40 (Revised Staff Report), p. 2.

⁴ Exhibits 12, 27, and 36; KCC 21.04.080, .210.

⁵ Exhibit 13.

⁶ Exhibits 14 and 28.

⁷ Exhibit 15.

⁸ Exhibits 38, 39, and 42.

⁹ Exhibits 30 and 34; Exhibit 40 (Revised Staff Report), p. 3.

¹⁰ Exhibit 40 (Revised Staff Report), p. 3.

1.9 Utility and Public Services.

- **Water:** Kitsap PUD
- **Power:** Puget Sound Energy
- **Sewer:** On-site septic
- **Police:** Kitsap County Sheriff
- **Fire:** North Kitsap Fire & Rescue
- **Schools:** North Kitsap School District #400

1.10 Access. Driveway off NE Twin Spits Road, a County maintained right-of-way.

1.11 Site Characteristics, Dimensions and Setbacks. The property slopes gradually down from the southwest at grades of approximately 6-10%. The northeast corner of the site steepens to a ravine approximately 20 feet high, with an approximately 43% grade. A Type-F stream at the bottom of the ravine flows south to north along the east property line. The site is developed with a single-family residence and detached garage. The proposed ADU conversion is on the second floor of the garage. The ADU meets the 35-foot height limit and exceeds setback requirements, with 380 feet on the front, 222 on the rear, 94 on the west side, and 203 on the east side.¹¹

1.12 Building and Site Aesthetics. The primary residence and ADU are similar in appearance. Both have horizontal siding, similar rooflines, white vinyl windows, and white painted trim.¹² Both provide attractive, rural-area styled designs. Extensive setbacks provide visual mitigation.

1.13 Environmental. There are various critical areas on site.¹³ The existing structure was reviewed for compliance with Kitsap County's Critical Areas Ordinance when it was constructed, under permit 10-94056. That permit was approved with no environmental conditions. The proposal does not expand the footprint, and no further environmental review is necessary.

1.14 Development Engineering/Stormwater. Development Services and Engineering reviewed the proposal and finds its concepts supportable in their approach to civil site development. A memo was issued with four recommended conditions (Conditions 22-25).¹⁴

1.15 Fire Safety. The existing garage with the second floor ADU conversion never received a final inspection. The Applicant will have to apply for an "after-the-fact" building permit and follow County Fire Marshal requirements.

¹¹ Exhibit 40 (Revised Staff Report), p. 3.

¹² Exhibits 4, 19, and 20; Exhibit 40 (Revised Staff Report), p. 10.

¹³ Exhibit 32.

¹⁴ Exhibit 16.

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

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Review Authority. The Hearing Examiner has CUP review authority for this ADU.¹⁵ The Examiner may approve, approve with conditions, or deny a CUP.¹⁶

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.¹⁷ 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."¹⁸ These requirements are met. Only one ADU is proposed for a lot outside the urban growth area and no accessory living quarters or other ADUs are on the lot. The project has been conditioned to ensure compliance (Conditions 3 and 13).¹⁹ The property owner will live in the ADU.

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."²⁰ The primary residence's habitable area is 3,613 square feet.²¹ At 864, the ADU complies.

The ADU, at approximately 60 feet from the primary residence,²² 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)..."²³ The proposal complies with all other setback requirements.

As for design, as the findings address, the primary residence and ADU share similar features,²⁴ as the ADU has been "designed to maintain the appearance of the primary residence."²⁵ Also, the proposed ADU is stick-built, so is not a mobile home or recreational vehicle.²⁶

The ADU will be supplied by public water and a septic system. Kitsap Public Health approved the ADU with two conditions (Conditions 27 and 28).²⁷ The ADU will "meet the applicable health district standards for water and sewage disposal."²⁸

¹⁵ KCC 17.410.010, 21.04.100 (permit type #18), and 17.410.042 (use #100).

¹⁶ KCC 17.550.030.

¹⁷ KCC Table 17.410.042, FN 1, requiring KCC 17.410.060 compliance. *See* KCC 17.410.060(B)(3).

¹⁸ KCC 17.410.060(B)(3).

¹⁹ *See also* Exhibit 6.

²⁰ KCC 17.410.060(B)(3).

²¹ Exhibit 40 (Revised Staff Report), p. 10.

²² Exhibit 40 (Revised Staff Report), p. 10.

²³ KCC 17.410.060(B)(3).

²⁴ Exhibits 4, 19, and 20; Exhibit 40 (Revised Staff Report), p. 10.

²⁵ KCC 17.410.060(B)(3).

²⁶ KCC 17.410.060(B)(3).

²⁷ Exhibits 3 and 11; Exhibit 40 (Revised Staff Report), p. 10.

²⁸ 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."²⁹ The existing driveway will serve the ADU and single-family residence and the permit will be conditioned to ensure compliance (Condition 12). With sufficient space to meet minimum parking requirements and with the "additional off-street parking,"³⁰ 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.³¹

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 which will cause minimal environmental degradation. The Plan supports 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 surrounding area's rural character. The proposal follows 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 uses. It is aesthetically consistent with the single-family residence. The ADU's small size, existing vegetation, and setbacks which meet or 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.

²⁹ KCC 17.410.060(B)(3).

³⁰ KCC 17.410.060(B)(3).

³¹ KCC 17.550.030(A).

DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the 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. Current occupancy of the ADU shall be inspected and approved by the Kitsap County Fire Marshal and subsequent interim occupancy shall be conditioned as a result of the inspection as further noted in Condition 26 below. The Applicant shall ensure:
 - a. A new septic system is installed, per Kitsap County Public Health District requirements, within 90 days of KPHD permit issuance.
 - b. An approved building permit has been issued and has received final inspection by DCD. A complete building permit application must be submitted within 90 days of CUP approval. The Director may extend this deadline at their discretion.
3. The Applicant shall remove the power source for the second stove in the primary residence, subject to applicable permits and inspections.
4. 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.
5. 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.
6. Only one ADU shall be permitted on the subject property.
7. 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 864 square feet. 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.
8. The ADU shall be located within 150 feet of the primary residence.
9. The ADU shall be designed to maintain the appearance of the primary residence.

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

11. No mobile home or recreational vehicle shall be allowed as an ADU.

12. The ADU shall use the same side street entrance as the primary residence and shall provide one additional off-street parking space.

13. An accessory living quarters or guest house 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.

14. 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.

15. The ADU cannot be sold separately from the primary residence unless it has legally been segregated onto its own lot.

16. 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.

17. 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.

18. 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.

19. The decision set forth herein is based upon representations made and exhibits contained in the project application permit 20-00034. 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.

20. This CUP approval shall automatically become void if no development (building) permit application is accepted as complete by DCD within 90 days of the Notice of Decision date or the resolution of any appeals. The Director may extend this deadline at their discretion.

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

Development Engineering

22. New and/or replaced hard surfaces do not exceed the 2,000 square foot threshold; nor does the project exceed 7,000 square feet of disturbed area. While a formal plan is not required, the Applicant must consider all elements required of a stormwater pollution prevention plan and make allowances for managing erosion and sediment discharge on site. Per KCC Title 12, if the project exceeds either of the thresholds noted above, then additional review for stormwater management will be required.

23. If the project proposal is modified from that shown on the submitted site plan dated January 7, 2020, Development Services and Engineering will require additional review and potentially new conditions.

Traffic and Roads

24. 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.

25. 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.

Fire Safety

26. The Applicant shall request a residential Fire Marshal safety inspection of the ADU and garage within 30 days of decision approval. Approval by the Fire Marshal for continued interim occupancy shall be subject to binding conditions as a result of the inspection.

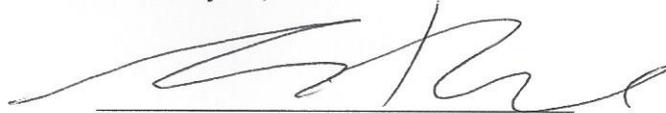
Kitsap Public Health District

27. A new septic tank is required for the ADU.

28. Old Notice to Title needs to be extinguished prior to final component permit approval.

Absent a timely appeal or grant of reconsideration, this Decision is final.³²

DECISION entered May 10, 2021.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond

³² See Ch. 36.70C RCW (any appeal to be filed within 21 days to superior court); HER 1.9.1.