



## Hearing Examiner Staff Report and Recommendation

**Report Date:** December 11, 2019  
**Hearing Date:** December 19, 2019

**Application Submittal Date:** June 25, 2019  
**Application Complete Date:** August 19, 2019

**Project Name:** Abair Accessory Dwelling Unit (ADU)  
**Type of Application:** Conditional Use Permit (CUP) and Shoreline Conditional Use Permit (SCUP)  
**Permit Number:** 19-02852 (CUP) & 19-03027 (SCUP)

### Project Location

4199 Locker Road SE  
Port Orchard, WA 98366  
South Kitsap County  
Commissioner District 2

### Assessor's Account #

4766-000-005-0100

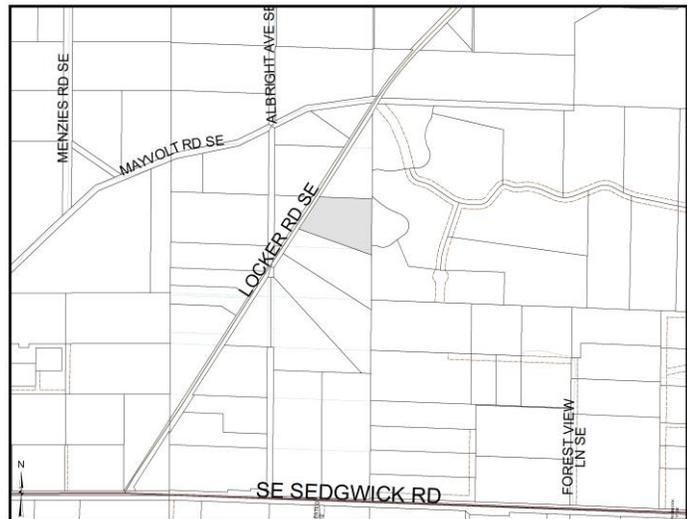
### Applicant/Owner of Record

Rebecca Abair  
4199 Locker Road SE  
Port Orchard, WA 98366

### Recommendation Summary

Approved subject to 32 conditions listed under section 13 of this report.

### VICINITY MAP



### 1. Background

The Department of Community Development has reviewed the applicant's Conditional Use Permit (CUP) and Shoreline Conditional Use Permit (SCUP) to convert the existing single-family residence into a 429 square foot accessory dwelling unit (ADU) and convert an existing 896 square foot garage/accessory building constructed under building permit 18-03762 into the primary residence (SFR). The ADU and SFR will be served by an existing on-site 2-party well and on-site septic system.

### 2. Project Request

The request is to convert an existing 429 square foot single-family residence into a 429 square foot accessory dwelling unit (ADU) and convert an existing 896 square foot garage/accessory building constructed under building permit 18-03762 into the primary residence (SFR).

### **3. SEPA (State Environmental Policy Act)**

The State Environmental Policy Act (SEPA), found in Chapter 43.21C RCW (Revised Code of Washington), is a state law that requires the County to conduct an environmental impact review of any action that might have a significant, adverse impact on the environment. The review includes the completion of an Environmental Checklist by the applicant and a review of that checklist by the County. If it is determined that there will be environmental impacts, conditions are imposed upon the applicant to mitigate those impacts below the threshold of “major” environmental impacts. If the impacts cannot be mitigated, an environmental impact statement (EIS) must be prepared. The decision following environmental review, which may result in a Determination of Nonsignificance (DNS), Mitigated DNS, or the necessity for an EIS is called a threshold determination. A separate notice of the threshold determination is given by the County. If it is not appealed, it becomes part of the hearing record as it was issued, since it cannot be changed by the Hearing Examiner.

Pursuant to WAC 197-11-355, the optional DNS process was utilized for this project. The SEPA Comment period previously occurred concurrent with the Notice of Application dated September 13, 2019 (Exhibit 18). A Determination of Nonsignificance (DNS) was issued on November 26, 2019 (Exhibit 20).

SEPA noted the following conditions:

1. The project will be conditioned for stormwater controls pursuant to KCC Title 12.
2. The project will be conditioned for critical area ordinance controls per KCC Title 19.
3. The proposal will be conditioned for shoreline master program requirements, per KCC Title 22.
4. The proposal will be conditioned for land use impacts per KCC Title 17 Zoning to mitigate impacts.

Relevant and applicable conditions are listed at the end of this report.

The SEPA appeal period expired December 10, 2019. No appeals were filed; therefore, the SEPA determination is final.

### **4. Physical Characteristics**

The 2.87-acre parcel is developed with an existing SFR near the center of the property, a garage/accessory building near the southwest corner of the property, a workshop northeast of the existing SFR and a couple of accessory buildings, one to the northeast and one to the southeast of the existing SFR. Curley Creek, a type S stream or Designated Shoreline of the State, runs through the southeast corner and northeast corner of the property based on the county's geographic information system (GIS); however, the creek is located slightly off-site near the northeast corner of the subject property (Exhibits 13 and 25). The shoreline designation is Rural Conservancy. Curley Creek is associated with a 100-year floodplain. The property also includes geologic critical areas, including moderate Landside Hazard Areas and high Erosion Hazard Areas. The property has a gentle slope from the west downward to the east. The entire parcel is forested with a mix of coniferous and deciduous trees except in the

areas of development.

**Table 1 - Comprehensive Plan Designation and Zoning**

Comprehensive Plan: Rural Protection Zone: Rural Protection (RP)	Standard	Proposed
Minimum Density	Not Applicable (NA)	NA
Maximum Density	1 dwelling unit (DU)/10 acres	
Minimum Lot Size	10 acres for newly created lots	Property is an existing legal lot, 2.87 acres
Maximum Lot Size	NA	NA
Minimum Lot Width	140 feet	NA, existing
Minimum Lot Depth	140 feet	NA, existing
Maximum Height	35 feet	2 stories, <35 feet
Maximum Impervious Surface Coverage	NA	Not calculated
Maximum Lot Coverage	NA	Not calculated

Applicable footnotes: none

**Table 2 - Setback for Zoning District**

	Standard	Proposed
Front (West)	50 feet	Existing, over 130 feet
Side (North)	20-feet, 5 feet for accessory structure, ADU = 5 feet	Existing, over 100 feet
Side (South)	20 feet, 5 feet for accessory structure, ADU = 5 feet	Existing, over 120 feet
Rear (East)*	20 feet, 5 feet for accessory structure, ADU = 5 feet	Existing, over 180 feet

\*Shoreline regulations supersede the zoning setbacks for the rear property line in this case. The shoreline designation is Rural Conservancy. The shoreline buffer requirement is 200 feet from the ordinary high water plus an additional 15-foot building setback; however, the proposed ADU is an existing structure constructed in 2012 that has been permitted and finalized.

Applicable footnotes: Footnote 29 "One-hundred-foot setback required for single-family buildings abutting FRL or RW zones".

*Staff Comment: The subject property does not abut a FLR or RW zone.*

**Table 3 - Surrounding Land Use and Zoning**

Surrounding Property	Land Use	Zoning
North	Single-family residence (SFR)	Rural Protection (RP)
South	SFR	RP
East	Undeveloped	RP
West	SFR	RP

**Table 4 - Public Utilities and Services**

	Provider
Water	On-site 2-party well
Power	Puget Sound Energy
Sewer	On-site septic system
Police	Kitsap County Sheriff
Fire	South Kitsap Fire & Rescue
School	South Kitsap School District #402

**5. Access**

Access to the site is via Locker Road SE, a paved county-maintained road classified as rural local access.

**6. Site Design**

The acreage parcel is developed with an existing residence and associated residential buildings including a garage, workshop, and shed that currently qualifies as an ADU. An existing garage near the southwest corner will be converted into the primary residence (SFR), the existing SFR will be converted into the ADU and the shed will need to be modified to not qualify as an ADU or guest house. There is space for at least one parking space adjacent to each building and there is more than one space next to the proposed ADU and SFR buildings. The property is thickly forested with a mix of deciduous and evergreen trees. Curley Creek traverses the property in the southeast corner and is off-site to the east and near the northeast corner.

**7. Policies and Regulations Applicable to the Subject Proposal**

The Growth Management Act of the State of Washington, RCW 36.70A, requires that the County adopt a Comprehensive Plan, and then implement that plan by adopting development regulations. The development regulations must be consistent with the Comprehensive Plan. The Comprehensive Plan process includes public involvement as required by law, so that those who are impacted by development regulations have an opportunity to help shape the Comprehensive Plan which is then used to prepare development regulations.

Kitsap County Comprehensive Plan, adopted June 30, 2016

The following Comprehensive Plan goals and policies are most relevant to this application:

*Land Use Policy 50*

*Limit the designated rural area to low residential densities that can be sustained by minimal infrastructure improvements, cause minimal environmental degradation, and that will not cumulatively create the future necessity or expectation of urban levels of service.*

*Land Use Policy 51*

*Permit residential uses in rural areas consistent with the planned rural character of the surrounding area.*

*Land Use Policy 53*

*Outside of the Type III Limited Area of More Intensive Rural Development (LAMIRD), limit development only to that which serves rural residential or resource needs and does not draw population from Urban Growth Areas. This policy is implemented through Comprehensive Plan Land Use designations, zoning designations, and zoning code provisions.*

*Housing and Human Services Policy 5*

*Use regulatory strategies to incentivize and provide flexibility for development of affordable and special needs housing.*

*Housing and Human Services Policy 7*

*Adopt regulatory changes to allow non-traditional housing types.*

*Housing and Human Services Policy 11*

*Promote fair housing to ensure that all residents of Kitsap County have an equal and fair opportunity to obtain safe and sanitary housing suitable to their needs and financial resources, regardless of race, religion, gender, sexual orientation, age, national origin, family status, income, disability, or other protected class.*

*Housing and Human Services Policy 12*

*Identify and remove regulatory barriers that limits access to or the provision of a diverse affordable housing supply.*

*Housing and Human Services Policy 14*

*Disperse affordable housing opportunities throughout the County.*

The County’s development regulations are contained within the Kitsap County Code. The following development regulations are most relevant to this application:

Code Reference	Subject
Title 12	Storm Water Drainage
Title 14	Buildings and Construction
Title 17	Zoning
Chapter 18.04	State Environmental Policy Act (SEPA)
Title 19	Critical Areas Ordinance
Chapter 20.04	Transportation Facilities Concurrency Ordinance
Chapter 21.04	Land Use and Development Procedures
Title 22	Shoreline Master Program

**8. Documents Consulted in the Analysis**

A complete index of exhibits is located in the project file. To date, the index to the record consists of Exhibits 1-29.

Exhibit #	Document	Dated	Date Received
1	Application: CUP - ADU		06.27.2019
8	Application: JARPA		07.09.2019
7	Application: SCUP		07.09.2019
2	Concurrency Test		06.27.2019
12	Cumulative Impacts Assessment		08.15.2019
5	Elevations - ADU photos		06.27.2019,
16	Elevations - ADU line drawings		09.06.2019
3	Elevations - SFR line drawings		06.27.2019
5	Elevations - SFR photos		
15	Floor Plans, Revised - ADU loft		09.06.2019
16	Floor Plans, Revised - ADU		
4	Floor Plans - SFR		06.27.2019
11	Health District Building Site Application (BSA)		08.13.2019
5	Narrative		06.27.2019
13	Site Plan - Revised		08.19.2019
10	State Environmental Policy Act (SEPA) Checklist		07.22.2019
6	Stormwater Worksheet		06.27.2019

**9. Public Outreach and Comments**

No written comments received as of 12.10.2019.

Issue Ref. No.	Summary of Concern (See corresponding responses in the next table)	Comment Letter Exhibit Reference No.

Issue Ref. No.	Issue	Staff Response

**10. Analysis**

**a. Planning/Zoning**

An accessory dwelling unit within the RR zone requires a Conditional Use Permit as specified in Kitsap County Code (KCC) 17.410.042(A) Rural, resource, and urban residential zones use table subject to footnote 1. Footnote 1 indicates an ADU is subject to compliance with Section 17.410.060 Provisions applying to special uses.

**Accessory Dwelling Unit (ADU) Standards**

An ADU is required to meet the provisions and requirements outlined in KCC 17.410.060(B)(3) – Provisions applying to special uses; Accessory Dwelling Unit (ADU). In order to encourage the provision of affordable and independent housing for a variety of households, an accessory dwelling unit may be located in residential zones. Criteria from KCC 17.410.060(B)(3) are listed below, with a staff response of the individual standard immediately following:

- a. An ADU shall be allowed as a permitted use in those areas contained within an urban growth boundary.

*Staff Response: The proposed ADU is not within an urban growth boundary. Therefore, the ADU cannot be permitted in conjunction with a building permit as an outright use. Land use approval is required for this ADU.*

- b. An ADU shall be subject to a conditional use permit in those areas outside an urban growth boundary.

*Staff Response: The subject property is outside an urban growth boundary. As a result, the applicant has applied for and is requesting approval of a conditional use permit as required by the KCC.*

- c. Only one ADU shall be allowed per lot.

*Staff Response: Based on a site visit 10.02.2019, there is an existing building labeled existing shed on the site plan that has provisions for living, sleeping, cooking and sanitation. As a result, the stove and toilet shall be removed from the shed because the applicant has requested to convert the existing SFR into an ADU. The existing shed shall not be used for any overnight accommodations. Compliance with the requirements herein for the shed would result in no guest house and only one ADU for the subject lot. The applicant shall submit a building permit to convert the existing SFR built under Building Permit (BP) 12-105209 and the addition built under BP 17-04591 into an ADU. The applicant shall submit a building permit to convert the garage built under BP 18-03762 into a SFR. The applicant shall obtain a demolition or 'demo' permit to remove the stove and toilet from the existing shed building and request a final inspection from the Code Compliance division to verify compliance with the requirements to ensure that the building no longer qualifies as a guest house or ADU.*

- d. Owner of the property must reside in either the primary residence or the ADU.

*Staff Response: The owner of the property, Rebecca Abair, currently resides in the existing SFR to be converted into the ADU located on the subject property. After conversion of the new garage built under BP 18-03762 into the SFR, Ms. Abair will continue to reside in the building converted into the ADU. According to Ms. Abair, the SFR will be occupied occasionally by her children. A new building permit will be required to convert the existing SFR into an ADU and a separate building permit will be required to convert the garage into a SFR.*

- e. The ADU shall not exceed fifty percent of the square footage of the habitable area of primary residence or 900 square feet, whichever is smaller. Dimensions are determined by exterior measurements.

*Staff Response: The proposed ADU is 429 square feet and will not exceed 50% of the habitable area of the primary residence, which will be 896 square feet upon completion. The proposed ADU is an existing building, original construction under BP 12-105209, completed in 2015 was 312 square feet on the first floor. A 117 square foot addition, BP 17-04591, was added and completed in 2018. There is a 126 square foot loft that is only accessible by a ladder and is used for storage. The loft shall only be used for storage and remain accessible by only a ladder. The loft shall not be converted to habitable area. Because the loft area is not part of the habitable area of the ADU, the ADU will comply with the size requirement. The habitable area of the primary residence will be 896 square feet upon completion of the required conversion permit from a garage to a SFR. The main living area will be located on the second floor, which will be 448 square feet when it is finished. The first floor that was previously garage space has been designated as a rec room and is also 448 square feet. It has been determined that no interior connection is*

*required between the first and second floors of the primary residence. The first floor is also required to meet building code requirements for habitable space.*

- f. The ADU shall be located within 150 feet of the primary residence or shall be the conversion of an existing detached structure (i.e., garage).

*Staff Response: Based on field measurement during the site visit 10.02.2019, the ADU building is located approximately 155 to 160 feet from the proposed primary residence. Because code allows for the conversion of an existing detached structure, such as a garage, the conversion of the garage into the SFR may proceed subject to all other requirements except this one.*

- g. The ADU shall be designed to maintain the appearance of the primary residence.

*Staff Response: The proposed primary residence and ADU are similar in appearance. Both buildings have natural wood siding, brown trim, pitched roofs, the SFR is a metal roof and the ADU is shake on the original and metal on the recent addition, similar windows and are complementary in design.*

- h. All setback requirements for the zone in which the ADU is located shall apply.

*Staff Response: The proposed ADU building's existing front setback, along the west property line and Locker Road SE, is over 130 feet. The north side setback is over 100 feet and the south side setback is over 120 feet. The rear setback, along the east property line, is shown as over 180 feet (Exhibit 13). All required zoning setbacks as delineated for the ADU are in compliance with the KCC.*

- i. The ADU shall meet the applicable health district standards for water and sewage disposal.

*Staff Response: The Health District approved the Building Site Application (BSA), Memo #28018, for the ADU with conditions on 07.01.2019 (Exhibit 11). Health District conditions: 1. Sewer line from shed must be cut and capped prior to final permit approval. 2. All fuel and yard chemicals must be removed from the wellhouse prior to final permit approval.*

- j. No mobile homes or recreational vehicles shall be allowed as an ADU.

*Staff Response: The existing SFR to be converted into an ADU is stick-built; it is not a mobile home or recreational vehicle.*

- k. An ADU shall use the same side street entrance as the primary residence and shall provide additional off-street parking.

*Staff Response: Both the ADU and primary residence will be required to use the same existing driveway near the center of the west property line. The separate existing south driveway access shall be removed and the area revegetated to prevent future access.*

*Three parking spaces are required for the SFR and could be accommodated on the existing gravel driveway in front of and next to the building. One parking space is required for the ADU. At least two parking spaces are adjacent to the ADU building on the existing gravel driveway (Exhibit 13).*

- l. An ADU is not permitted on the same lot where an accessory living quarters exists.

*Staff Response: Based on a site inspection 10.02.2019, Meg Sands, Planner, verified the building labeled 'existing shed' qualifies as an ADU because there are provisions for sleeping, cooking and sanitation. The stove and toilet shall be removed from the building because the building cannot fall under the criteria for an ADU or guest house. KCC 17.410.060(B)(8)(g) stipulates "No guest house is allowed on a parcel with an existing accessory dwelling unit or accessory living quarters". The floor plan for the proposed SFR does not have accessory living quarters (Exhibit 4).*

**b. Lighting**

Not applicable; there are no lighting requirements for an ADU.

**c. Off-Street Parking**

Three parking spaces are required for the single-family residence and one additional parking space is required for the ADU. There are at least 3 parking spaces near the ADU and at least 1 space next to the SFR and 2 spaces nearby. The property has adequate space for the total number of required parking spaces.

**Table 5 - Parking Table**

Use Identified in 17.490.030	Standard	Required Spaces	Proposed Spaces/Existing Spaces
Single-Family (attached or detached)	3 per unit + 1 per ADU	3 spaces - SFR 1 space - ADU	3 spaces - SFR 2 spaces - ADU
Total		4 spaces	5 spaces

**d. Signage**

Not applicable; there is no signage requirements for an ADU and none is proposed.

**e. Landscaping**

Not applicable; there are no landscaping requirements for an ADU.

**Table 6 - Landscaping Table**

	Required	Proposed
Required Landscaping (Sq. Ft.) 15% of Site		
Required Buffer(s)		
North		
South		
East		
West		
Street Trees		

**f. Frontage Improvements**

Not applicable; there are no frontage improvement requirements for an ADU. However, there are access requirements that limit access to one road approach. This is addressed below under the access heading.

**g. Design Districts/Requirements**

Not applicable; the subject property is not located within a design district.

**h. Development Engineering/Stormwater**

There is no new construction associated with this proposal. Stormwater review and approval occurred with the previous building permits.

**i. Environmental**

The county's geographic information system (GIS) indicates Curley Creek, a type S stream or Designated Shoreline of the State, runs through the southeast corner and northeast corner of the property; however, the creek is located slightly off-site near the northeast corner of the subject property (Exhibits 13 and 25). The shoreline designation is Rural Conservancy (Exhibit 26). Curley Creek is associated with a 100-year floodplain. The property also includes geologic critical areas, including moderate Landside Hazard Areas and high Erosion Hazard Areas (Exhibit 25). A portion of the eastern half of the property is located over a Category II Aquifer Recharge Area (Exhibit 24).

The proposed residential use is not identified as "activities with potential threat to groundwater" at KCC 19.600.620; therefore, a hydrogeological report is not needed for this project. However, this project will be conditioned to prohibit any "activities with potential threat to groundwater" without additional review and approval by the Kitsap County Department of Community Development.

Based on information in the Cumulative Impact Assessment prepared by Soundview Consultants LLC, Curley Creek originates from Long Lake approximately 1.6 miles southwest of the subject property. The stream enters the subject property from the southwest, meanders on and offsite along the eastern property line, and eventually flow into Puget Sound approximately 1.2 miles to the northeast. The Washington State Department of Fish and Wildlife (WDFW) has documented the presence of coho, fall chinook, fall chum, resident coastal cutthroat trout, summer chum, and winter steelhead within Curley Creek. No other potentially regulated wetlands, streams, and/or fish and wildlife habitat were observed on or within 300 feet of the subject property.

The existing SFR to be converted into an ADU is located within 200 feet of Ordinary High Water (OHW) of Curley Creek and therefore within the jurisdiction of the Kitsap County Shoreline Master Program (SMP).

#### Shoreline Master Program

##### 22.200.115 Shoreline Residential Designation

A. Purpose. To accommodate residential development and appurtenant structures that are consistent with this program, and to provide appropriate public access and recreational uses.

B. Designation Criteria.

1. Shoreline areas that are predominately single-family or multifamily residential development or are planned or platted for residential development;
2. Does not include shorelines supporting existing residential development that may not support higher densities of development due to potential cumulative impacts to sensitive environments or safety, such as steep slopes or floodplains. Such shorelines shall be designated rural or urban conservancy, whichever applies.

*Staff Response: The proposed SFR and ADU are compliant with the Shoreline Residential designation criteria.*

C. Management Policies.

1. Standards for buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality should be set to assure no net loss of shoreline ecological functions.

2. Multifamily and multi-lot residential and recreational developments should provide public access and joint use for community recreational facilities. If public access is not feasible on site, off-site options such as an in-lieu fee may be recommended.

*Staff Response: The proposal will provide water access for enjoyment to the residence and occupant of the accessory dwelling unit and conforms to this requirement.*

3. Access, utilities, and public services should be available and adequate to serve existing needs and/or planned future development.

4. Commercial development should be limited to water-oriented uses. Water-oriented includes water-dependent, water-related and water-enjoyment uses.

*Staff Response: The proposal is not a commercial project and therefore the water-oriented and water dependent use is not applicable.*

22.300.100 Critical Area and Ecological Protection

Goal: Protect and conserve shoreline natural resources, including protection of critical areas, while accommodating reasonable and appropriate uses which will assure, at a minimum, no net loss to shoreline ecological functions and processes.

A. Policy SH-1. Protect and conserve shoreline areas that are ecologically intact and minimally developed or degraded. Develop incentives and regulations for privately owned shorelines that will protect and conserve these areas while allowing reasonable and appropriate development.

*Staff Response: The proposed development is the minimum necessary to afford construction of an ADU (existing building), while still protecting ecological functions.*

B. Policy SH-2. Recognize that nearly all shorelines, even substantially developed or degraded areas, retain important ecological functions.

*Staff Response: Ecological functions, with proposed mitigation, will still be retained.*

C. Policy SH-3. Utilize transfer of development rights as allowed by Chapter 17.580, or as now or hereafter amended, as an option to protect ecological functions.

*Staff Response: The proposal will not implement the TDR program.*

D. Policy SH-4. Permitted uses and developments should be designed and conducted in a manner that protects the current ecological condition and prevents or mitigates adverse impacts. Mitigation measures shall be applied in the following sequence of steps listed in order of priority:

1. Avoid the impact altogether by not taking a certain action or parts of an action;
2. Minimize impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;
3. Rectify the impact by repairing, rehabilitating or restoring the affected environment;
4. Reduce or eliminate the impact over time by preservation and maintenance operations;
5. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments, including utilization of the in-lieu fee process where appropriate; and
6. Monitor the impact and the mitigation projects and take appropriate corrective measures.

*Staff Response: With mitigation, the proposed SFR and ADU will not impact the associated critical areas on site. A mitigation plan and associated monitoring and maintenance plan will assure compliance with these requirements.*

E. Policy SH-5. Shoreline ecological functions that should be protected include, but are not limited to:

1. Habitat (space or conditions for reproduction; resting, hiding and migration; and food production and delivery);
2. Water quality maintenance; and
3. Water quantity maintenance.

*Staff Response: Impacts to shoreline ecological functions are not anticipated, and habitat enhancement will offset any temporary disturbance through implementation of the required mitigation, monitoring and maintenance plans.*

F. Policy SH-6. Shoreline processes, both freshwater and marine, that should be protected to support the above functions include but are not limited to the delivery, loss and movement of:

1. Sediment;
2. Water;
3. Nutrients;
4. Toxins;
5. Pathogens; and

6. Large woody material.

*Staff Response: Impacts to shoreline and freshwater processes are not anticipated, and habitat enhancement will offset any temporary disturbance through implementation of the required mitigation, monitoring and maintenance plans.*

G. Policy SH-7. In assessing the potential for new uses and developments to impact ecological functions and processes, the following should be considered:

1. On-site and off-site impacts;
2. Immediate and long-term impacts;
3. Cumulative impacts, from both current and reasonably foreseeable future actions, resulting from the project; and
4. Any mitigation measures or beneficial effects of established regulatory programs to offset impacts.

*Staff Response: Implementation of the mitigation plan along with the required monitoring and maintenance of the project area will assure no net loss of ecological functions and processes.*

H. Policy SH-8. Critical areas in the shoreline jurisdiction shall be protected in a manner that results in no net loss to shoreline ecological functions. Pursuant to RCW 36.70A.030(5), critical areas include:

1. Wetlands.
2. Frequently flooded areas.
3. Fish and wildlife habitat conservation areas.
4. Geologically hazardous areas.
5. Critical aquifer recharge areas.

*Staff Response: There are no wetlands on site and no flood zone impacts are proposed. A shoreline-designated stream is located on site which may have minimal temporary impacts from construction activities. A slope on-site has been addressed for stability through geotechnical investigations and reports. Associated Impacts from buffer intrusions will be mitigated.*

22.300.105 Vegetation Conservation Buffers

Goal: Conserve, protect and restore shoreline vegetation to provide for ecological and habitat functions as well as human health and safety. These functions include, but are not limited to, variable shading of the nearshore, food and shelter for terrestrial and aquatic organisms, and slope/soil stabilization.

A. Policy SH-9. Preserve native plant communities on marine, river, lake and wetland shorelines. In order to maintain shoreline ecological functions and processes,

development along the shoreline should result in minimal direct, indirect, or cumulative impacts. This includes:

1. Keeping overhanging vegetation intact along the shoreline edge to provide shading and other ecological functions;
2. Preserving established areas of native plants and minimizing clearing and grading near bluff edges and other erosion or landslide-prone areas in order to maintain slope stability and prevent excess surface erosion and stormwater runoff;
3. Designing and placing structures and associated development in areas that avoid disturbance of established native plants, especially trees and shrubs; and
4. Removal of noxious weeds in accordance with WAC 16-750-020.

B. Policy SH-10. Shoreline landowners are encouraged to preserve and enhance native woody vegetation and native groundcovers to stabilize soils and provide habitat. When shoreline uses or modifications require a planting plan, maintaining native plant communities, replacing noxious weeds and avoiding installation of ornamental plants are preferred. Non-native vegetation requiring use of fertilizers, herbicides/pesticides, or summer watering is discouraged.

C. Policy SH-11. Maintaining native or ecologically functional vegetation is preferred over clearing to provide views or lawns. Limited and selective clearing may be allowed when slope stability and ecological functions are not compromised. Limited trimming and pruning is generally preferred over removal of native vegetation.

*Staff Response: Existing native vegetation on site is essentially intact and further tree removal related to future construction is minimized. Some shoreline vegetation has been removed in the past, but there is no further removal anticipated.*

#### 22.300.110 Water quality and quantity

Goal: Provide regulations and voluntary incentives to encourage practices which protect water quality and reduce stormwater runoff and erosion in order to protect against adverse impacts to the public health, to the land and its vegetation and wildlife, and to the waters of the state and its aquatic life.

A. Policy SH-12. Shoreline use and development should minimize impacts that contaminate surface or ground water, cause adverse effects on shoreline ecological functions, or impact aesthetic qualities and recreational opportunities, including healthy shellfish harvest.

B. Policy SH-13. Ensure mutual consistency with other regulations that address water quality and stormwater quantity, including standards as provided for in Title 12 (Storm Water Drainage) and Chapter 173-201A WAC (Water Quality Standards).

C. Policy SH-14. Utilize pervious materials and other appropriate low impact development techniques where soils and geologic conditions are suitable and where such practices could reduce stormwater runoff.

D. Policy SH-15. All shoreline use and development shall be conducted in accordance with Title 15 (Flood Hazard Areas). The subdivision of land should not be established when it would be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within the channel migration zone or floodway. When evaluating alternate flood control measures or floodplain restoration opportunities, consider the removal or relocation of structures in flood-prone areas.

*Staff Response: The proposed residential construction will use low impact development techniques for both the control of water on-site, and the treatment of water quality through implementation of water quality Best Management Practices.*

#### 22.300.125 Shoreline Use and Site Planning

Goal: Preserve and develop shorelines in a manner that allows for an orderly balance of uses by considering the public and private use, along with the development of shorelines and adjacent land areas with respect to the general distribution, location and extent of such uses and development.

A. Policy SH-20. For shoreline use and development activities, including plats and subdivisions at full build-out, employ innovative development features to achieve no net loss of ecological functions, such as sustainable and low impact development practices where appropriate.

B. Policy SH-21. Give preference to water-dependent uses and single-family residential uses that are consistent with preservation of shoreline ecological functions and processes. Secondary preference should be given to water-related and water-enjoyment uses. Non-water-oriented uses should be limited to those locations where the above-described uses are inappropriate or where non-water-oriented uses demonstrably contribute to the objectives of the Act. For use preference within shorelines of statewide significance, see Section 22.300.145(B).

C. Policy SH-22. Designate and maintain appropriate areas for protecting and restoring shoreline ecological functions and processes to control pollution and prevent damage to the shoreline environment and/or public health.

D. Policy SH-23. Through appropriate site planning and use of the most current, accurate and complete scientific and technical information available, shoreline use and development should be located and designed to avoid the need for shoreline stabilization or actions that would result in a net loss of shoreline ecological functions.

*Staff Response: The implementation of recommendations from the Cumulative Impact Assessment Report (Exhibit 12), along with the minimization of the building size and limitation to buffer and shoreline areas will meet the associated goals and policies.*

#### 22.400.105 Proposed Development

A. Location.

1. New development shall be located and designed to avoid or, if that is not possible, to minimize the need for new and maintenance dredging.
2. New development shall be located and designed to avoid the need for future shoreline stabilization for the life of the structure. Likewise, any new development which would require shoreline stabilization which causes significant impacts to adjacent or down-current properties shall not be allowed.
3. New development on lots constrained by depth, topography or critical areas shall be located to minimize, to the extent feasible, the need for shoreline stabilization.
4. New development on steep slopes or bluffs shall be set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure, as demonstrated by a geotechnical analysis.
5. Subdivision shall be planned to avoid the need for shoreline stabilization for newly created lots, utilizing geotechnical analysis where applicable.
6. Non-water-oriented facilities and accessory structures, except for preferred shoreline uses, such as single-family residences and single-family residential appurtenances when consistent with buffer provisions in this chapter, must be located landward of buffers and adjacent water-oriented uses, or outside shoreline jurisdiction, unless no other location is feasible.

*Staff Response: The proposed conversion of existing buildings into an SFR and ADU are permitted uses, subject to this Conditional Use Permit for the ADU. As such, the proposed SFR and ADU meet all aspects of location, and will not require shoreline armoring.*

#### 22.400.110 Mitigation (Sequencing and Mitigation Options)

Staff Response: The planned SFR and ADU buildings are existing and may be remodeled to comply with the CUP conditions. The implementation of the Cumulative Impacts Analysis report (Exhibit 12) meets all qualifications for mitigation sequencing and options.

#### 22.400.115 Critical Areas

Staff Response: As the associated ADU use located on the property is within the 200-foot shoreline zone, review of the associated critical areas ordinance will be completed under the variance criteria and analyzed under 22.500.100 (E).

#### 22.400.120 Vegetation Conservation Buffers

Staff Response: The associated vegetation conservation buffer standards for this proposal are analyzed under the Shoreline Residential buffer criteria in 22.400.120 (B) requiring a 200-foot buffer. As the proposed development is located in a Conservancy Shoreline designation and occurs within 200-feet of the Ordinary High Water Line of Curley Creek, review of the application requires a Shoreline Conditional Use Permit.

#### 22.400.125 Water Quality and Quantity

Staff Response: The proposal is located outside of the urban growth and urban census area, and as such is creating less than 10,000 square feet of impervious surfaces. No further Stormwater review has been required.

#### 22.400.130 Historic Archeological. Cultural, Scientific and Educational Resources

##### A. Applicability and Other Regulations.

1. This section applies to archaeological and historic resources either recorded by the Department of Archaeology and Historic Preservation, local jurisdictions or applicable tribal databases or predictive models.

2. HASCE sites shall comply with Kitsap County Contract KC 442-07 (Agreement with Department of Archaeology and Historic Preservation), Chapter 25-48 WAC (Archaeological Excavation and Removal Permit), Chapter 27.44 RCW (Indian Graves and Records), and Chapter 27.53 RCW (Archaeological Sites and Resources).

*Staff Response: The Suquamish Tribe was notified via the Notice of Application procedures and did not respond regarding the project. Kitsap County has conditioned the project that should any middens or remains be found during work, that the applicant or representative immediately notify Kitsap DCD staff and the Suquamish Tribe.*

#### 22.400.135 View Blockage

Staff Response: There is no view blockage concern for the proposed SFR and ADU.

#### 22.400.140 Bulk and Dimension Standards

Staff Response: The proposed SFR and ADU meet the criterial under this code.

#### 22.500.100 Shoreline Variance Criteria

Variance permits for development that will be located landward of the OHWM, except within those areas designated as marshes, bogs, or swamps pursuant to Chapter 173-22 WAC, may be authorized provided the applicant can demonstrate all of the following per KCC 22.500.100.E.4:

- a. That the strict application of the bulk, dimensional or performance standards set forth in Chapters 22.400 and 22.600 precludes, or significantly interferes with, reasonable use of the property;
- b. That the hardship described in subsection (E)(1) of this section is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of this program, and for example, not from deed restrictions or from the actions of the applicant or a predecessor in title;
- c. That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and this program, will not cause net loss to shoreline ecological functions and does not conflict with existing water-dependent uses;

- d. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
- e. That the variance requested is the minimum necessary to afford relief; and
- f. That the public interest will suffer no substantial detrimental effect.

*Staff Response: The applicant has provided a comprehensive analysis of the project. Staff has reviewed the project narrative, which is provided (Exhibit 5) and the associated Cumulative Impact Analysis report prepared by Soundview Consultants (Exhibit 12) and find that there will be no new impacts to the Shoreline jurisdiction. We have reviewed the provided documents and find that it meets all the variance criteria under items a through f. Kitsap County finds that the existing ADU building was previously located and permitted prior to the current SMP implemented on December 24, 2014. Further, the ADU is considered a grandfathered location, approximately 185-feet from the Ordinary High Water Line of Curley Creek, a Type-S creek as a previous building was located within the 200-foot Type-S creek buffer. As such, the criteria for a variance is not applicable to the proposed ADU as the building exists, no expansion is proposed, and the re-location was mitigated in the previous permit issued in 2012. In addition to meeting the project variance criteria, the proposal meets the expectations under the Kitsap County Code, and we find that the proposed actions, with the implemented mitigation meets the intent of the shoreline code and Critical Area Ordinance.*

22.600.170 Residential Development

A. Environment Designations Permit Requirements

3. Shoreline residential and high intensity:

- a. Primary single-family residences are exempt pursuant to criteria in Section 22.500.100(C);
- b. SDP if exemption criteria not met.
- c. SDP for multifamily units, accessory dwelling units, and subdivisions.

*Staff Response: The proposal is for approval of a new primary residence (conversion of an existing garage building outside of the 200-foot shoreline jurisdiction) and conversion an existing SFR into an ADU within the 200-foot shoreline zone. This proposal is addressed under a shoreline Conditional Use Permit for the Rural Conservancy Shoreline Designation.*

4. Aquatic: prohibited.

*Staff Response: Not applicable.*

B. Development Standards.

1. All new residential development, including subdivision of land, shall be designed, configured and developed in a manner that ensures no net loss of shoreline ecological function.
2. All sewage disposal and water systems shall be in compliance with state and local health regulations including but not limited to Kitsap County board of health Ordinance 2008A-01 for on-site sewage requirements.
3. New and remodeled residential development and new subdivisions shall be designed, located and constructed so that structural improvements, including bluff walls and other stabilization structures, are not required to protect such structures and uses.

*Staff Response: No armoring is required and the permit is conditioned to indicate that no armoring shall be allowed for residential protection purposes.*

4. New over-water residences, including floating homes, are prohibited. Where such homes exist as of the adoption date of this program, they shall be reasonably accommodated to allow improvements associated with life safety matters and property rights.

*Staff Response: Not applicable.*

5. Stormwater quality and quantity measures for residential development must comply with current codes.

Staff Response: The proposal meets the stormwater control guidelines for Kitsap County under Title 12.

6. Flood hazard reduction measures for residential development shall comply with Chapter 19.500, as incorporated here by Section 22.400.115 (Critical areas), and Section 22.400.150 (Flood hazard reduction measures) of this program and shall be designed to prevent net loss of shoreline ecological functions.

*Staff Response: Not applicable.*

7. New multi-unit residential development, including the subdivision of land for five or more parcels, shall provide for joint or community and/or public access, except where demonstrated to be infeasible due to any of the following:
  - a. Incompatible uses;
  - b. Safety;
  - c. Security;
  - d. Impact to the shoreline environment;
  - e. Constitutional or other legal limitations that may be applicable.

8. In cases where on-site access is infeasible, alternate methods of providing public access shall be considered, such as off-site improvements.

9. Lot area shall be calculated using only those lands landward of the OHWM.

10. Single-family residential uses are a priority use only when developed in a manner consistent with control of pollution and prevention of damage to the natural environment.

*Staff Response: This is not a subdivision proposal. Not applicable.*

**j. Access, Traffic and Roads**

Access to the site is via Locker Road SE, a paved county-maintained road classified as rural local access.

There are 2 existing access points to the property from Locker Road SE. The southerly access point that leads directly to the existing garage to be converted into a SFR shall be removed and at least one tree and several shrubs planted to prevent future access.

A residence is attributed 10 average daily trips (ADT). Traffic is expected to be an additional 10 ADT for the new dwelling unit when in use. The local roads can handle the expected traffic generated by the new dwelling unit.

**k. Fire Safety**

Not applicable; the building permit for the ADU and SFR will be evaluated to ensure compliance with fire safety requirements in the International Residential Code (IRC) and International Fire Code (IFC).

**l. Solid Waste**

Waste Management is the local service provider. Solid waste generated by the ADU is expected to be picked up as part of the typical residential garbage collection.

**m. Water/Sewer**

The property and dwellings will be served by an on-site 2-party well and by an on-site septic system.

**n. Kitsap Public Health District**

Kitsap Public Health District has reviewed the application and noted they have an approved BSA on file that matches the proposal.

**11. Review Authority**

The Hearing Examiner has review authority for this Conditional Use Permit application under KCC, Sections 17.550.020 and 21.04.100. The Kitsap County Commissioners have determined that this application requires review and approval of the Hearing Examiner. The Hearing

Examiner may approve, approve with conditions, or deny a Conditional Use Permit. The Hearing Examiner may also continue the hearing to allow for additional information necessary to make the proper decision. The powers of the Hearing Examiner are at KCC, Chapter 2.10.

## **12. Findings**

1. The proposal is consistent with the Comprehensive Plan.
2. The proposal complies or will comply with requirements of KCC Title 17 Zoning and Title 22 Shoreline Master Program and complies with or will comply with all of the other applicable provisions of Kitsap County Code and all other applicable regulations, including all applicable development standards and design guidelines, through the imposed conditions outlined in this report.
3. The proposal is not materially detrimental to existing or future uses or property in the immediate vicinity.
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.

## **13. Recommendation**

Based upon the analysis above and the decision criteria found in KCC 17.550.030.A, the Department of Community Development recommends that the Conditional Use Permit and Shoreline Conditional Use Permit requests for Abair Accessory Dwelling Unit be **approved**, subject to the following 32 conditions:

### **a. 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 primary residence is 896 square feet as indicated in Exhibit 4. The ADU is 429 square feet as indicated in Exhibits 15 and 16. 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.
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 19-02852 Abair Accessory Dwelling Unit (ADU) Conditional Use Permit (CUP) and 19-03027 Abair ADU Shoreline 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. The applicant shall submit a building permit to convert the existing SFR built under Building Permit (BP) 12-105209 and the addition built under BP 17-04591

into an accessory dwelling unit.

21. The applicant shall submit a building permit to convert the garage built under BP 18-03762 into a single-family residence. The previous first floor garage area and the second floor are both required to meet building code requirements for habitable space.
22. The applicant shall obtain a demolition (demo) permit to remove the stove and toilet from the building labeled existing shed and request a final inspection from the Code Compliance division to verify compliance prior to final approval of the accessory dwelling unit building permit.
23. The building labeled existing shed shall not be used for any overnight accommodations.
24. Remove the southerly driveway access that leads to the proposed single-family residence and plant at least one tree and several shrubs to prevent future access.

**b. Development Engineering**

25. If the project proposal is modified from that shown on the submitted site plan received August 19, 2019, Development Services and Engineering will require additional review and potentially new conditions.

**c. Environmental**

26. 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.
27. No new shoreline armoring shall be allowed or constructed for residential protection purposes.
28. If any activities on the property uncover middens or remains, the property owner or their representative shall immediately notify Kitsap County Department of Community Development environmental staff and the Suquamish Tribe. The project shall comply with Kitsap County Contract KC 442-07 (Agreement with Department of Archaeology and Historic Preservation), Chapter 25-48 WAC (Archaeological Excavation and Removal Permit), Chapter 27.44 RCW (Indian Graves and Records), and Chapter 27.53 RCW (Archaeological Sites and Resources).

29. The project shall comply with the recommendations of the Cumulative Impact Analysis report prepared by Soundview Consultants, dated August 14, 2019 (Exhibit 12).

**d. Traffic and Roads**

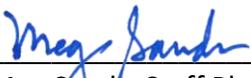
30. Any work within the County right-of-way shall require a Public Works permit and possibly a maintenance or performance bond.

**e. Kitsap Public Health District**

31. The sewer line from the shed shall be cut and capped prior to final building permit approval for the accessory dwelling unit.

32. All fuel and yard chemicals shall be removed from the wellhouse prior to final building permit approval for the accessory dwelling unit.

**Report prepared by:**

  
\_\_\_\_\_  
Meg Sands, Staff Planner / Project Lead 19-02852 CUP

12 December 2019  
Date

  
\_\_\_\_\_  
Steve Heacock, Staff Planner / Project Lead 19-03027 SCUP

12/12/2019  
Date

**Report approved by:**

  
\_\_\_\_\_  
Shawn Alire, Department Manager / Supervisor

12/12/2019  
Date

**Attachments:**

- Attachment A – Building Elevations: ADU
- Attachment B – Building Elevations: SFR
- Attachment C – Floor Plans: ADU
- Attachment D – Floor Plans: SFR
- Attachment E – Zoning Map

CC: Applicant/Owner: Rebecca Abair, [rabair@wavecable.com](mailto:rabair@wavecable.com)  
Interested Parties: none as of 12.10.2019  
Kitsap County Health District, MS-30  
Kitsap County Public Works Dept., MS-26  
DCD Staff Planners: Meg Sands, Steve Heacock



**ATTACHMENT A - BUILDING ELEVATIONS - ADU**



Southwest elevation



Southeast elevation

ATTACHMENT B - BUILDING ELEVATIONS - SFR



West elevation

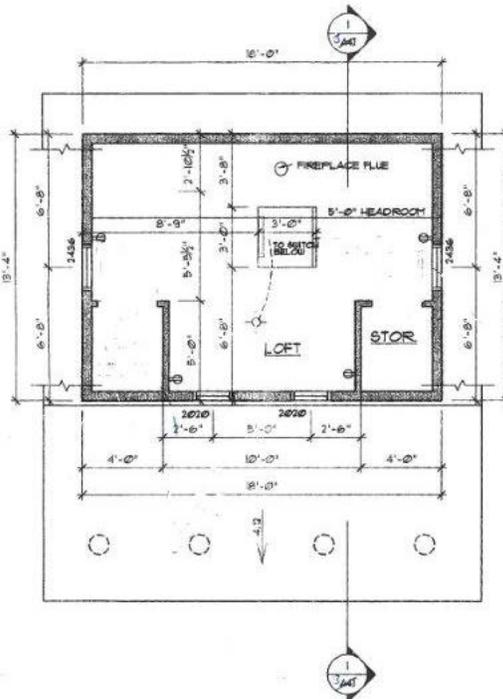
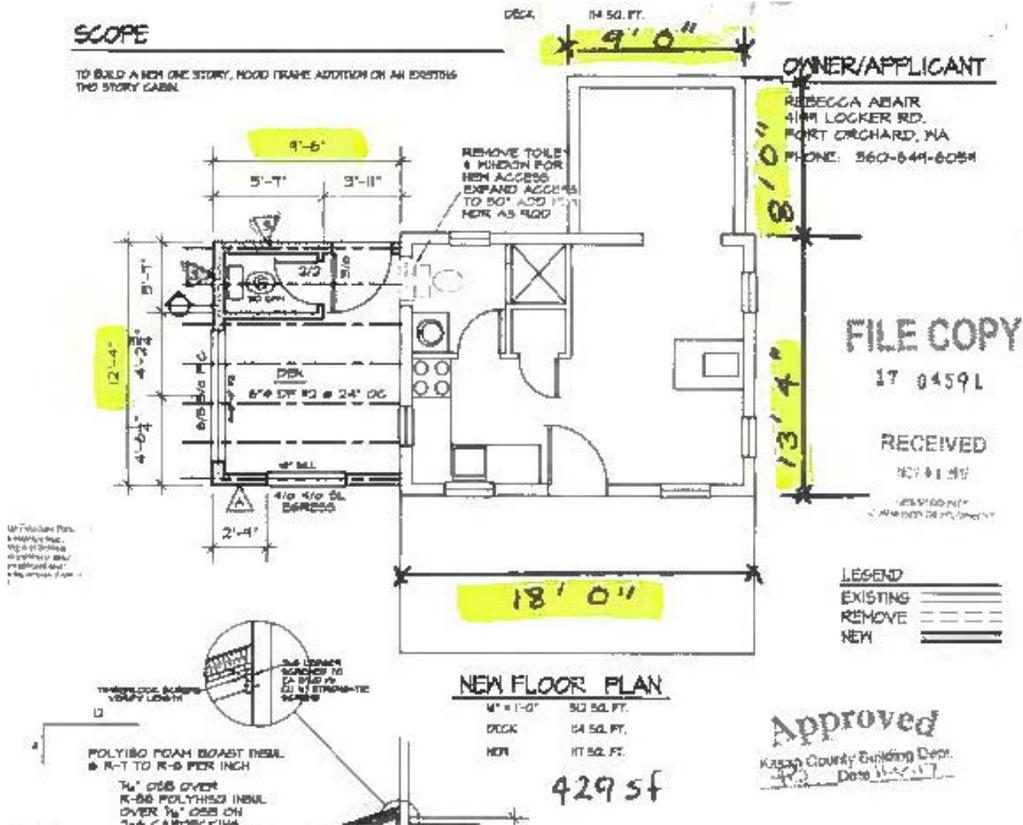


South elevation



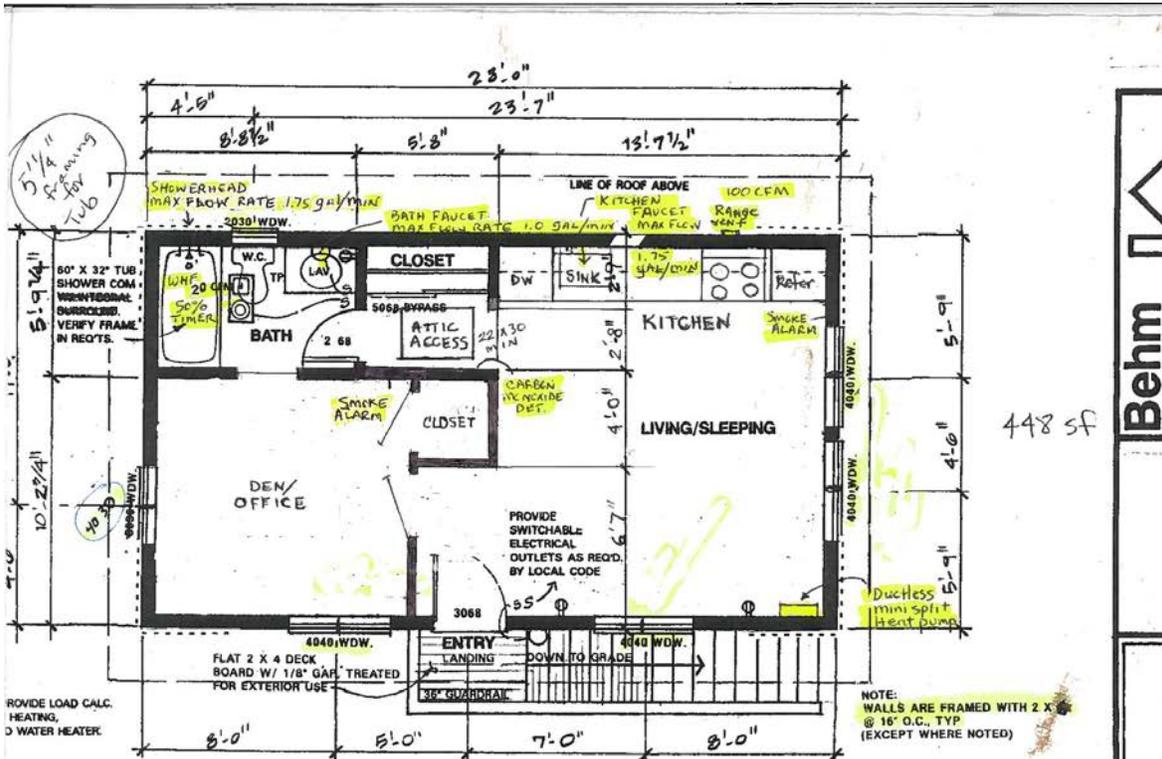
North elevation

# ATTACHMENT C - FLOOR PLANS - ADU



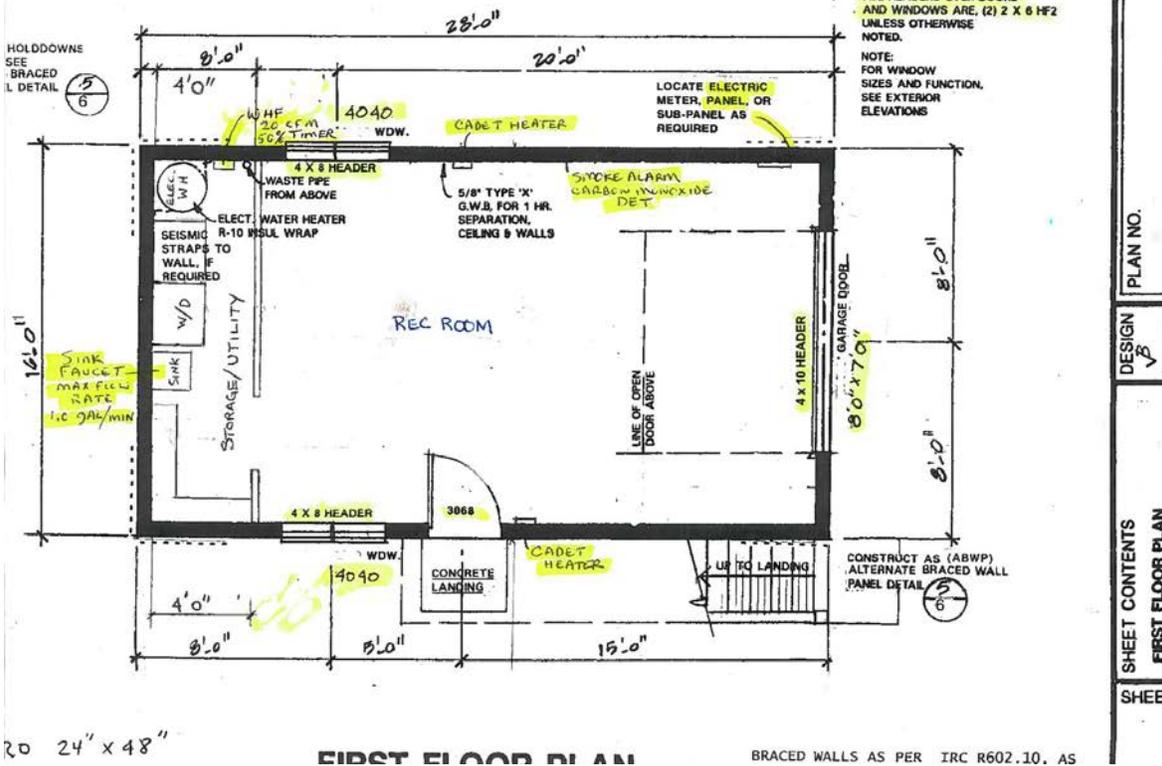
**UPPER FLOOR PLAN**  
SCALE: 1/4" = 1'-0"

ATTACHMENT D - FLOOR PLANS - SFR



448 sf

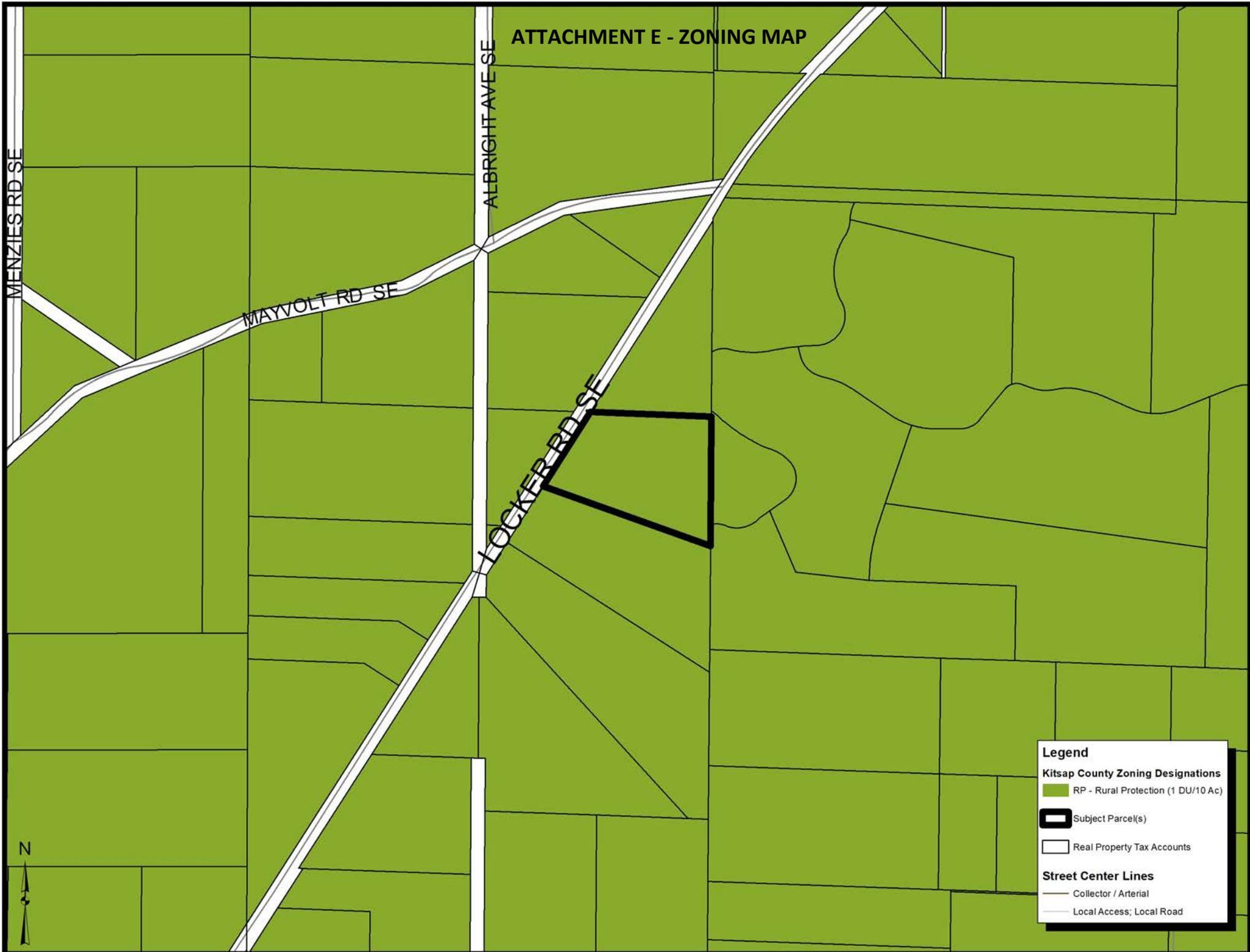
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DESIGN PLAN NO. V.P.  
SHEET CONTENTS FIRST FLOOR PLAN SHEET

20 24" x 48"

# ATTACHMENT E - ZONING MAP



**Legend**

**Kitsap County Zoning Designations**

- RP - Rural Protection (1 DU/10 Ac)

**Subject Parcel(s)**

- Subject Parcel(s)

**Real Property Tax Accounts**

- Real Property Tax Accounts

**Street Center Lines**

- Collector / Arterial
- Local Access; Local Road