



Hearing Examiner Staff Report and Recommendation

Report Date: September 16, 2021

Hearing Date: September 23, 2021

Application Submittal Date: June 21, 2021

Application Complete Date: July 14, 2021

Project Name: Nichols-Newby ADU

Type of Application: Conditional Use Permit – Accessory Dwelling Unit

Permit Number: 21-03571

Project Location

8599 SE Overaa Rd
Port Orchard, WA
Commissioner District 2 (south)

Assessor's Account

102302-3-039-2004

Applicant/Owner of Record

David Nichols and Nicole Newby
8599 SE Overaa Rd
Port Orchard, WA

Recommendation Summary

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

VICINITY MAP



1. Background

David Nichols and Nicole Newby (hereafter, “the Applicant”) propose to construct a detached Accessory Dwelling Unit (ADU). Per KCC 17.410.060.B.3.b, ADUs proposed outside of the urban growth boundary (UGA) shall be subject to a conditional use permit (CUP). The subject site is located outside of the UGA, zoned Rural Residential and therefore, CUP approval is required. The property is 4.52 acres in size and is currently developed with a single-family home, which was permitted in 2019 (permit # 19-05614).

2. Project Request

The proposal is for a Conditional Use Permit (CUP) to allow the construction of a new 720-square-foot Accessory Dwelling Unit (ADU).

The property will receive water from an existing private well and will use existing onsite septic. The ADU meets all applicable provisions applying to special uses per KCC 17.410.060 as well as criteria for CUP approval per KCC 17.550.030.A.

3. SEPA (State Environmental Policy Act)

The County used the optional DNS process allowed under WAC 197.11.355. The SEPA comment period was combined with the Notice of Application issued on August 4, 2021. No comments were received. A SEPA DNS was issued on September 2, 2021, followed by a 14-day appeal period. No appeals were filed.

4. Physical Characteristics

According to the Kitsap County Assessor, the subject site is 4.52 acres. The site is currently developed with a 1,788-square-foot single family home and associated driveway and septic drain field. The home uses a private well for water. The site is a wooded property that generally flat.

Table 1 - Comprehensive Plan Designation and Zoning

Comprehensive Plan: Rural Residential Zone: Rural Residential (RR)	Standard	Proposed
Minimum Density	N/A	N/A - Subject property is an existing lot.
Maximum Density	1 dwelling unit/5 acres	
Minimum Lot Size	5 acres	N/A
Maximum Lot Size	NA	N/A
Minimum Lot Width	140 feet	N/A
Minimum Lot Depth	140 feet	N/A
Maximum Height	35-feet	1 story structure
Maximum Impervious Surface Coverage	N/A	N/A
Maximum Lot Coverage	N/A	N/A

Applicable footnotes: None

Staff Comment: The proposal meets applicable standards for the RR zone.

Table 2 - Setback for Zoning District

	Standard	Proposed
Front (north)	50 feet standard	Approx. 65 feet
Side (west)	20 feet; 5 feet for accessory structures	Approx. 125 feet

Side (east)	20 feet; 5 feet for accessory structures	Approx. 500 feet
Rear (north)	20 feet; 5 feet for accessory structures	Approx. 210 feet

Applicable footnotes: None

Staff Comment: *The ADU meets all dimensional requirements of the RR zone.*

Table 3 - Surrounding Land Use and Zoning

Surrounding Property	Land Use	Zoning
North	Single-family residences	Rural Residential (RR)
South	Single-family residences	Rural Residential (RR)
East	Vacant; Single-family residences	Rural Residential (RR)
West	Single-family residences	Rural Residential (RR)

*See Attachment A – Zoning Map

Table 4 - Public Utilities and Services

	Provider
Water	Private Well
Power	Puget Sound Energy
Sewer	Onsite Septic System
Police	Kitsap County Sherriff
Fire	South Kitsap Fire & Rescue
School	South Kitsap School District

5. Access

The site will be accessed from the south via SE Overaa Road. The proposed ADU will use the same private driveway as the existing home.

6. Site Design

The submitted site plan shows the existing 1,788-square-foot primary residence, detached garage, retention pond and existing drainfield. The plan also shows the proposed ADU, located to the south of existing improvements in a generally cleared area.

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 and amended April 27, 2020.

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

Land Use Policy 50

Limit the designed 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 designation, zoning designation, and zoning code provisions.

Housing, Human Services Policy 5

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

Housing, Human Services Policy 7

Adopt regulatory changes to allow non-traditional housing types.

Housing, 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, Human Services Policy 12

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

Housing, Human Services Policy 13

Identify and remove impediments to creating housing for harder to house populations.

Housing, 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 13	Water and Sewers
Title 14	Buildings and Construction
Title 17	Zoning
Chapter 18.04	State Environmental Policy Act (SEPA)
Chapter 20.04	Transportation Facilities Concurrency Ordinance
Chapter 21.04	Land Use and Development Procedures

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 the following Exhibits.

Exhibit #	Document	Dated	Date Received / Accepted
1	Building Site Application (BSA)		07/14/2021
2	Concurrency Test		07/14/2021
3	Authorization Form		07/14/2021
4	Elevations for ADU		07/14/2021
5	Elevations for SFR		07/14/2021
6	Floor Plan for ADU		07/14/2021
7	Floor Plan for SFR		07/14/2021
8	Post-Construction Soil Quality Depth Worksheet		07/14/2021
9	Site Assessment Planning Packet		07/14/2021
10	Stormwater Infeasibility and BMPs Worksheet		07/14/2021
11	Stormwater SWPPP		07/14/2021
12	SWPPP Drawing		07/14/2021
13	Photos of SFR		07/14/2021

14	Permit Questionnaire		07/14/2021
15	SEPA Environmental Checklist		07/14/2021
16	Stormwater Worksheet		07/14/2021
17	Notice of Application	08/4/2021	
18	Updated Project Narrative		08/31/2021
19	Site Plan (Parcel Map 1)		08/31/2021
20	SEPA Determination of Non-Significance (DNS)	09/02/2021	
21	Notice of Public Hearing	09/08/2021	
22	Certification of Public Notice	09/16/2021	
23	Staff Report	09/16/2021	
24	Staff Presentation	09/23/2021	
25	Hearing Sign In	09/23/2021	

9. Public Outreach and Comments

A Notice of Application was distributed pursuant to Title 21 land use and development procedures, which provided recipients with project information and an opportunity for public comment. No comments were received.

10. Analysis

a. Planning/Zoning

Per KCC 17. 410.060.B.3, 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, subject to the following criteria (*italicized*). Staff comments are provided below:

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

Staff Comment: The subject property is not located within the urban growth boundary.

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

Staff Comment: The subject property is located outside of the urban growth boundary. This application is a Conditional Use Permit for an Accessory Dwelling Unit.

c. Only one ADU shall be allowed per lot;

Staff Comment: This application proposes only one ADU. There are no other ADUs present or proposed.

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

Staff Comment: The owner resides and will continue to reside in the single-family residence. A conditional of approval #5 has been added with this requirement.

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

Staff Comment: The existing single-family residence is 1,788 square feet. 50 percent of the home is 894 square feet; therefore, the ADU is limited to 900 square feet (the smaller value). The exterior dimensions of the ADU are 24' by 30', totaling 720 square feet and meeting this criteria.

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

Staff Comment: Per the submitted site plan, the proposed single-family residence and the proposed accessory dwelling unit are approximately 88 feet apart, satisfying this requirement.

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

Staff Comment: The elevations of the single-family residence were compared to the elevations of the proposed ADU (see exhibit 4 and 5). Both are one story structures with a pitched roof, horizontal siding, and slider windows. The applicant has stated that both structures will use matching materials, include similar design details, and utilize a similar color scheme of greys, whites and blues. A condition of approval has been added for colors and materials to be reviewed again at the time of building permit.

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

Staff Comment: The proposed ADU was reviewed against the dimensional standards of the RR zone. Please see Table 2.

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

Staff Comment: The application was routed to Kitsap County Health District for review and was approved. The project will be served for by a private well and private septic. Documentation of health approval will be required with building permit.

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

Staff Comment: There are no mobile homes or recreational vehicles present on the subject property or proposed in this application.

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

Staff Comment: The submitted site plan (Exhibit 19) shows the proposed ADU will use the same driveway that will also serve the single-family residence. Adequate parking is available onsite for the home as well as ADU. A 270-square-foot area will be created adjacent to the west of the ADU which will easily accommodate the one additional parking space that is required. See Table 5 below for the parking analysis.

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

Staff Comment: There are no present or proposed accessory living quarters. Please see the single-family residence floor plan (Exhibit 8).

b. Lighting

Lighting was not analyzed as part of this proposal.

c. Off-Street Parking

Per KCC 17.490.030, a single-family dwelling requires 3 parking spaces plus one additional for Accessory Dwelling Units. The proposal provides adequate parking per the table below.

Table 5 - Parking Table

Use Identified in 17.490.030	Standard	Required Spaces	Proposed Spaces/Existing Spaces
Single-Family (attached or detached)	3 spaces	3	3 existing
ADU	1 additional space for ADU	1	1 existing
Total	4	4	4

d. Signage

No signage is proposed or required.

e. Landscaping

Per KCC 17.500.010, single-family lots are exempt from landscaping requirements.

f. Frontage Improvements

No frontage improvements are required or proposed as part of this application.

g. Design Districts/Requirements

The subject property is not within a design district.

h. Development Engineering/Stormwater

Development Services and Engineering has reviewed land use proposal and finds the concept supportable in its approach to civil site development. Development Services and Engineering accepts the concepts contained in this preliminary submittal and added conditions of approval # 20-22.

i. Environmental

The site is relatively flat. Portions of the site are mapped as a moderate erosion hazard area. A stream is mapped north east of the property line but is over 300 feet from the area of development. A small pocket of erosion hazard area is also mapped in the northeast of the property but is not adjacent to this development area. The ADU will be in a relatively flat and cleared area of the property. No other mapped critical areas are on site and there are no environmental concerns for the ADU as proposed.

A SEPA DNS was issued for the project (Exhibit 20).

j. Access, Traffic and Roads

Development Services and Engineering has reviewed the proposal for compliance with traffic and road standards and has recommended approval, with conditions.

k. Fire Safety

The Kitsap County Fire Marshall's Office reviewed and approved the proposal with no conditions at this time.

l. Solid Waste

The proposed ADU will use the same solid waste services as the existing single-family residence.

m. Water/Sewer

The property will receive water and sewer from onsite private systems. The Kitsap County Health District has reviewed this project and will review again with building permit.

n. Kitsap Public Health District

Kitsap County Health District as reviewed and approved the proposal with no conditions at this time.

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 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 located 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 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 - ADU request for Nichols-Newby ADU be **approved**, subject to the following conditions:

a. Planning/Zoning

1. All required permits shall be obtained prior to commencement of land clearing, tree removal, 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 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 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 and only one of the structures may be rented at any one time. The accessory dwelling unit'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 720 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.
6. The accessory dwelling unit shall be located within 150 feet of the primary residence.
7. The accessory dwelling unit 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.
10. The accessory dwelling unit 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 or guest house is not permitted on the same lot unless the accessory dwelling unit is removed or altered and the ALQ or GH complies with all requirements imposed by the Kitsap County Code.
12. A property with a primary residence and an accessory dwelling unit 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 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. 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 Permit #21-03571. 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.

b. Environmental

None at this time.

c. Development Engineering

20. The ADU proposal does not create or disturb over 2,000 sf of surface area and therefore the owner can use splash blocks for Storm Mitigation (deemed insignificant for overall drainage).

d. Traffic and Roads

21. At building permit application, submit KCPW Form 1601 for issuance of a concurrency certificate, as required by KCC Section 20.04.030, Transportation Concurrency.

22. Work within the county right-of-way requires a permit to perform work in the right-of-way from the Kitsap County Department of Public Works.

e. Fire Safety

None at this time.

f. Solid Waste

None at this time.

g. Kitsap Public Health District

None at this time.

Report prepared by:



Colin Poff, Staff Planner / Project Lead

07/15/2021

Date

Report approved by:



Scott Diener, Department Manager / Supervisor

7/16/2021

Date

Attachments:

Attachment A – Zoning Map

Attachment B – Critical Areas Map

CC: Applicant: David Nichols and Nicole Newby

Project Representative: Puget Sound Construction Services, joepanzera@aol.com

Kitsap County Health District, MS-30

Kitsap County Public Works Dept., MS-26

DCD Staff Planner: Colin Poff

Interested Parties: None

Attachment B – Critical Areas Map

