



## Notice of Hearing Examiner Decision

03/27/2020

To: Interested Parties and Parties of Record

RE:           Project Name:   Arsers Accessory Dwelling Unit  
                  Applicant:     Rose and Nickolas Arsers  
                                P. O. Box 22, Indianola, WA  
                                Indianola, WA  
                  Application:   Conditional Use Permit (CUP-ADU)  
                  Permit Number: #19-02984

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **Arsers Accessory Dwelling Unit – Conditional Use Permit – Accessory Dwelling Unit, subject to the 20 conditions outlined in this Notice and included Decision.**

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

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at:

<https://spf.kitsapgov.com/dcd/HEDocs/HE-Rules-for-Kitsap-County.pdf>

Please note affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation. Please contact the Assessor's Office at 360-337-5777 to determine if a change in valuation is applicable due to the issued Decision.

The complete case file is available for review at the Department of Community Development, Monday through Thursday, 8:00 AM to 4:00 PM and Friday 9:00 AM to 1:00 PM, except holidays. If you wish to view the case file or have other questions, please contact [Help@Kitsap1.com](mailto:Help@Kitsap1.com) or (360) 337-5777.

CC:   Owner: Nick Arsers, [narsers@gmail.com](mailto:narsers@gmail.com)

Interested Parties:

Katelyn Piazza – WA State Dept Ecology, [katelynn.piazza@ecy.wa.gov](mailto:katelynn.piazza@ecy.wa.gov)

Mark Adams – WA State Dept Ecology, [mada461@ecy.wa.gov](mailto:mada461@ecy.wa.gov)

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

**Accessory Dwelling Unit Conditional Use Permit  
Arsers, File No. 19-02984**

**March 26, 2020**

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**1. FINDINGS OF FACT**

**1.1 Proposal.** The project converts an existing 984 square foot single-family residence (including a 480 square foot garage on the first floor) into a second-story 504 square foot accessory dwelling unit (“ADU”) on a 2.39 acre lot.

**Applicant/Property Owner.** Rose and Nickolas Arsers, P. O. Box 22, Indianola, WA 98342.

**Location.** 22876 South Kingston Road NE, Kingston, WA 98346. Assessor Parcel No. 022602-3-012-2002.

**1.2 Hearing.** An open record public hearing was held March 12, 2020. Kitsap County Department of Community Development (“DCD”), through Ms. Sands, described the project. DCD found it consistent with requirements, and recommended approval with conditions. Mr. Arsers confirmed there were no concerns with DCD's proposed conditions. No member of the public indicated a wish to speak.

**1.3 Administrative Record.** The Hearing Examiner admitted Exhibits 1-33, which included the Staff Report, application materials, documentation of agency consultation, public notice documents, and a DCD Power Point presentation.

**1.4 SEPA.** DCD issued an unappealed Determination of Non-Significance,<sup>1</sup> with a condition requiring compliance with Title 12 to address stormwater control

**1.5 Agency Comment.** The proposal was circulated within the County. As long as requirements are met, there were no objections to approval.

**1.6 Notice.** Hearing and application notice was provided consistent with KCC requirements.<sup>2</sup>

**1.7 Zoning/Plan Designations and Critical Areas.** Outside the urban growth area, the site’s Comprehensive Plan and zoning designations are Rural Residential,<sup>3</sup> allowing one dwelling unit per five acres. An ADU is authorized by CUP, with requirements specific to the

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<sup>1</sup> Exhibit 22; Exhibit 32 (Staff Report), p. 2.

<sup>2</sup> Exhibits 11, 29, and 31; *see* KCC 21.04.080.

<sup>3</sup> Exhibits 24 and 26; Exhibit 32 (Staff Report), p. 3.

use. Surrounding properties are also zoned Rural Residential, and are undeveloped or in residential use. The site does not have critical areas.<sup>4</sup>

### **1.8 Utility and Public Services.**

- **Water:** Public water for the single-family residence  
On-site two-party well for the ADU
- **Power:** Puget Sound Energy
- **Sewer:** Septic
- **Police:** Kitsap County Sheriff
- **Fire:** North Kitsap Fire & Rescue #10
- **Schools:** North Kitsap School District #400

**1.9 Access.** South Kingston Road NE, a paved county-maintained road classified as a Rural Minor Collector.

**1.10 Dimensions and Setbacks.** The site includes a 2,966 square foot residence under construction; and, a 984 square foot two-story residence with a 480 square foot two-car garage on the first floor and 504 square foot of habitable area on the second floor. The ADU is 80 feet from the primary residence. Setbacks exceed requirements, with over: 90 feet on the front (west), 80 on the north, 200 on the south, and 180 on the east (rear). The ADU complies with the 35 foot height limit.<sup>5</sup>

**1.11 Building and Site Aesthetics.** The primary residence and ADU will be similar in appearance. Both are two stories, have pitched composite-shingle roofs and open pane windows.<sup>6</sup> “[B]oth SFR and ADU will have identical paint colors, matching window frames, matching landscape.”<sup>7</sup> Except for the developed area, the parcel is thickly wooded with evergreen (primarily coniferous) trees and understory shrubs. This is coupled with extensive setbacks, providing visual mitigation.<sup>8</sup>

**1.12 Agency Comment.** Based on SEPA Checklist review, the Washington State Department of Ecology commented:

The building location appears to be downhill from the “Indianola Dump”, an Ecology-listed contaminated site. Although the proposed development does not appear to involve additional risk, there may be an existing risk of contamination to the water supply well, and an existing risk of landfill gas entering the property.<sup>9</sup>

DCD consulted with the Department of Ecology and Kitsap Public Health District on

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<sup>4</sup> Exhibits 27 and 28; Exhibit 32 (Staff Report), p. 2. A different use could trigger aquifer protection requirements.

<sup>5</sup> Exhibit 22 (Staff Report), p. 3.

<sup>6</sup> Exhibits 1, 2, and 3; Exhibit 32 (Staff Report), p. 9.

<sup>7</sup> Exhibit 1.

<sup>8</sup> Exhibit 32 (Staff Report), p. 2.

<sup>9</sup> Exhibit 15.

this landfill site, and whether additional protective measures were needed.<sup>10</sup> The landfill operated for about ten years in the 1940's, likely burning organic matter. An impermeable cap was not installed. This could have limited methane off-gassing and potentially increased explosion risks. Instead, the cover is permeable. The site was graded and trees were planted. There is no known history of explosive gas problems, and the new single-family residence is over 1,000 feet from the landfill footprint. Based on Kitsap County Public Health District's site evaluation and adjacent landfill characteristics, further conditions were found unnecessary.<sup>11</sup>

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

## 2. CONCLUSIONS OF LAW

**2.1 Hearing Examiner Review Authority.** The Hearing Examiner has CUP review authority for this ADU.<sup>12</sup> The Examiner may approve, approve with conditions, or deny a CUP.<sup>13</sup>

**2.2 Code Requirements Specific to an ADU in the RR Zone.** An ADU outside the urban growth area, and within the RR zone, must obtain a CUP and comply with requirements specific to the use.<sup>14</sup> Only one ADU is allowed per lot, on which no accessory dwelling quarters are located, and the owner "must reside in either the primary residence or the ADU."<sup>15</sup> These requirements are met. Only one ADU is proposed for a lot outside the urban growth area, no accessory dwelling quarters or other ADUs are on the lot, and the property owners will live in the new single-family residence when construction is completed.

The ADU cannot "exceed fifty percent of the square footage of the habitable area of primary residence or nine hundred square feet, whichever is smaller."<sup>16</sup> The new primary residence's habitable area will be 2,339 square feet,<sup>17</sup> so the ADU is limited to 900 square feet. At 504, the ADU complies.

The ADU, proposed to be 80 feet from the primary residence,<sup>18</sup> 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)..."<sup>19</sup> The proposal complies with all other setback requirements.

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<sup>10</sup> Exhibits 15, and 17-19

<sup>11</sup> Exhibit 19; Exhibit 32 (Staff Report), pgs. 6-7; Testimony, Ms. Sands.

<sup>12</sup> KCC 17.410.010, 21.04.100 (permit type #18), and 17.410.042 (use #100).

<sup>13</sup> KCC 17.550.030.

<sup>14</sup> KCC Table 17.410.042, FN 1, requiring KCC 17.410.060 compliance. *See* KCC 17.410.060(B)(3).

<sup>15</sup> KCC 17.410.060(B)(3).

<sup>16</sup> KCC 17.410.060(B)(3).

<sup>17</sup> Exhibit 5; Exhibit 32 (Staff Report), pgs. 1, 8.

<sup>18</sup> Exhibits 7 and 12; Exhibit 32 (Staff Report), p. 9.

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

As for design, as the findings address, the primary residence and ADU will be similar in appearance,<sup>20</sup> as the ADU has been "designed to maintain the appearance of the primary residence."<sup>21</sup> Also, the proposed ADU is stick-built, so is not a mobile home or recreational vehicle.<sup>22</sup>

The ADU will be supplied by well water and a septic system. Kitsap Public Health approved the ADU.<sup>23</sup> The ADU will "meet the applicable health district standards for water and sewage disposal."<sup>24</sup>

Parking and entry requirements are met. The ADU will use "the same side street entrance as the primary residence."<sup>25</sup> There are at least two parking spaces in front of the ADU and at least three next to the primary residence under construction.<sup>26</sup> With sufficient space to meet minimum parking requirements and with the "additional off-street parking,"<sup>27</sup> parking requirements are met. All requirements specific to the ADU use are met.

### **2.3 Conditional Use Permit Requirements.**

A CUP must meet four requirements.

1. The proposal is consistent with the Comprehensive Plan;
2. The proposal complies with applicable requirements of [Title 17];
3. The proposal will not be materially detrimental to existing or future uses or property in the immediate vicinity; and
4. The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing character, appearance, quality or development, and physical characteristics of the subject property and the immediate vicinity.<sup>28</sup>

These criteria are met. The Staff Report provided detail on Comprehensive Plan policies. They provide for development at low residential densities that can be sustained without urban levels of service, and will cause minimal environmental degradation. The Plan supports residential uses consistent with the existing and planned rural character of the surrounding rural 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

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<sup>20</sup> Exhibits 1, 2, and 3; Exhibit 32 (Staff Report), p. 9; Testimony, Ms. Sands and Mr. Arsers.

<sup>21</sup> KCC 17.410.060(B)(3).

<sup>22</sup> KCC 17.410.060(B)(3).

<sup>23</sup> Exhibits 6 and 7.

<sup>24</sup> KCC 17.410.060(B)(3).

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

<sup>26</sup> Exhibits 7 and 12; Exhibit 32 (Staff Report), p. 9; KCC 17.490.030.

<sup>27</sup> KCC 17.410.060(B)(3).

<sup>28</sup> KCC 17.550.030(A).

consistent with the surrounding area's rural character. The proposal is consistent with the Comprehensive Plan.

The proposal is conditioned to ensure compliance with Title 17 and other code requirements. No code provision was identified which would not be complied with. Also, the proposal will not be materially detrimental to existing or future uses or property in the immediate vicinity. All impacts identified have been addressed through project design, additional mitigation, and/or code requirements.

The proposal is compatible with surrounding existing and planned rural uses. It is aesthetically consistent with the residence under construction. The ADU's small size, existing vegetation, and extensive setbacks which exceed code requirements all ensure it is consistent with the surrounding character, appearance, and quality of development on site and in the immediate vicinity. As conditioned and proposed, the ADU meets all CUP criteria and should be approved.

### **DECISION**

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested CUP for the proposed ADU, provided these conditions are adhered to:

#### **Planning/Zoning**

1. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.
2. The ADU is subject to the payment of impact fees. Impact fees must be paid at time of permit issuance, or if deferred, must be paid prior to final inspection. No certificate of occupancy will be granted until all impact fees are paid.
3. Any proposed modification (not including cosmetic work such as painting, papering and similar finish work), remodel or expansion of the ADU building, regardless of whether a building permit is required, shall be reviewed by DCD and granted approval prior to such modification, expansion, construction and/or issuance of a building permit.
4. Only one ADU shall be permitted on the subject property.
5. The owner of the property must reside in either the primary residence or the ADU and only one of the structures may be rented at any one time.
6. The ADU's habitable area shall not exceed 50% of the primary residence or 900 square feet, whichever is smaller. The size of the habitable area of the ADU is 504 square feet and located on the second floor (Exhibit 4). The ADU shall not exceed 900 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.

7. The ADU shall be designed to maintain the appearance of the primary residence.
8. This permit shall comply with all Kitsap Public Health District regulations and conditions of approval.
9. No mobile home or recreational vehicle shall be allowed as an ADU.
10. The ADU shall use the same side street entrance as the primary residence and shall provide one additional off-street parking space.
11. An accessory living quarters (ALQ) or guest house (GH) is not permitted on the same lot unless the ADU is removed and the ALQ or GH complies with all requirements imposed by the KCC.
12. A property with a primary residence and an ADU cannot be segregated to create two separate legal lots unless it complies with all subdivision, zoning and density requirements in place at the time of a complete subdivision application.
13. The ADU cannot be sold separately from the primary residence unless it has legally been segregated onto its own lot.
14. The recipient of any CUP shall file a Notice of Land Use Binder with the county auditor prior to any of the following: initiation of any further site work, issuance of any development/construction permits by the county, or occupancy/use of the subject property or buildings thereon for the use or activity authorized. The Notice of Land Use Binder shall serve both as an acknowledgment of and agreement to abide by the terms and conditions of the CUP and as a notice to prospective purchasers of the existence of the permit. The Binder shall be prepared and recorded by the Department at the Applicant's expense.
15. The uses of the subject property are limited to the uses proposed by the Applicant and any other uses will be subject to further review pursuant to the requirements of the KCC. Unless in conflict with the conditions stated and/or any regulations, all terms and specifications of the application shall be binding conditions of approval. Approval of this project shall not be, and is not to be, construed as approval for more extensive or other utilization of the subject property.
16. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the Applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the Applicant agrees to promptly bring such development or activities into compliance.

17. The decision set forth herein is based upon representations made and exhibits contained in the project application 19-02984 Arsers ADU CUP. Any change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to further review and approval of the County and potentially the Hearing Examiner.

18. This CUP approval shall automatically become void if no development permit application is accepted as complete by DCD within four years of the Notice of Decision date or the resolution of any appeals.

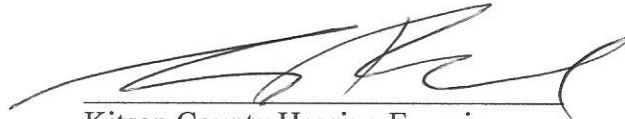
19. Any violation of the conditions of approval shall be grounds to initiate revocation of this CUP.

### **Development Engineering**

20. If the project proposal is modified from that shown on the submitted site plan received August 1, 2019, Development Services and Engineering will require additional review and potentially new conditions.

Absent a timely appeal, this Decision is final.<sup>29</sup>

DECISION entered March 26, 2020.



Kitsap County Hearing Examiner  
Susan Elizabeth Drummond

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<sup>29</sup> See Ch. 36.70C RCW (any appeal to be filed within 21 days to superior court).