



## Notice of Hearing Examiner Decision

03/12/2020

To: Interested Parties and Parties of Record

RE:           Project Name: Barth Accessory Dwelling Unit  
                  Applicant: Edward Barth  
                                1326 Duckhaven Lane  
                                Port Orchard, WA  
                  Application: Conditional Use Permit – Accessory Dwelling Unit  
                                (CUP-ADU)  
                  Permit Number: 19-03645

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **19-03645 Barth Accessory Dwelling Unit CUP-ADU**, subject to the conditions outlined in this Notice and included Decision.

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

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

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

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

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

CC: Applicant: Barth, Edward, ARL38@aol.com  
Owner: Edward L Jr & Nancy Barth  
Health District  
Public Works  
Parks  
DSE  
Kitsap Transit  
South Kitsap

Fire District  
South Kitsap School District  
Puget Sound Energy  
Point No Point Treaty Council  
Suquamish Tribe  
Port Gamble S'Klallam Tribe  
Squaxin Island Tribe  
Puyallup Tribe  
WA Dept of Fish & Wildlife  
WA State Dept of Ecology-SEPA  
Interested Parties:  
None

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

**Accessory Dwelling Unit Conditional Use Permit  
Barth, File No. 19-03645**

**March 9, 2020**

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**1. FINDINGS OF FACT**

**1.1 Proposal.** The project adds an accessory dwelling unit to a 4.88 acre lot.

**Applicant/Property Owner.** Edward Barth, 1326 SW Duckhaven Lane, Port Orchard, WA 98367.

**Location.** 1326 SW Duckhaven Lane, Port Orchard, WA 98367. Assessor Parcel No. 032201-3-059-2000.

**1.2 Hearing.** An open record public hearing was held February 27, 2020. Kitsap County Department of Community Development (“DCD”), through Ms. Barnhart, described the project. DCD found it consistent with requirements, and recommended approval with conditions. Mr. Barth confirmed the Applicant had 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 1-23, 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 a Determination of Non-Significance,<sup>1</sup> with a condition requiring compliance with Title 12 to address stormwater control and Title 19 to address critical areas. The DNS was not appealed.

**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.** Outside the urban growth area, the Comprehensive Plan and zoning designations are Rural Residential,<sup>3</sup> which allows one dwelling unit per five acres. An ADU is authorized by CUP, with requirements specific to the use. Surrounding properties are also zoned Rural Residential, and are either vacant or in residential use.

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<sup>1</sup> Exhibit 20; Exhibit 22 (Staff Report), p. 2.

<sup>2</sup> Exhibits 14 and 21; *see* KCC 21.04.080.

<sup>3</sup> Exhibit 22 (Staff Report), pp. 1-2.

**1.8 Critical Areas.** A Category III wetland, subject to 110-foot vegetated buffer and 15-foot building setback, is at the site's northwest corner. The ADU is outside this area.

**1.9 Utility and Public Services.**

- **Water:** Private two-party well
- **Power:** Puget Sound Energy
- **Sewer:** Septic
- **Police:** Kitsap County Sheriff
- **Fire:** South Kitsap Fire & Rescue
- **Schools:** South Kitsap School District #402

**1.10 Access.** Access is through an existing private easement, SW Duckhaven Lane, which is the same access and driveway used for the existing residence.

**1.11 Dimensions and Setbacks.** The site includes a 1,782 square foot single-family residence, 1,240 square foot detached garage, and 304 square foot carport. The ADU would be 600 square feet, and 80 feet from the primary residence. Setbacks exceed requirements, with 300 feet on the front (east), 70 on the north, 230 on the south, and 220 to the west (rear).<sup>4</sup> The 35 foot height limit will be complied with.

**1.12 Building and Site Aesthetics.** ADU materials will be compatible with the existing single-family residence, with a similar style and color.<sup>5</sup> “Both are manufactured homes with pitched, shingled roofing.”<sup>6</sup> “The ADU and house will share a similar pitched-gable roof with composition shingles, vertical wood siding, white vinyl framed windows ... The single family residence is light green with dark green trim. The ADU color ... is conditioned to be of similar color.”<sup>7</sup> Except for the centrally located developed area, the parcel is forested; along with extensive setbacks, this provides visual mitigation.<sup>8</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>9</sup> The Examiner may approve, approve with conditions, or deny a CUP.<sup>10</sup>

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<sup>4</sup> Exhibit 22 (Staff Report), p. 3.  
<sup>5</sup> Exhibits 1, 3, and 4; Exhibit 22 (Staff Report), p. 8.  
<sup>6</sup> Exhibit 1.  
<sup>7</sup> Exhibit 22 (Staff Report), p. 8; Condition 7.  
<sup>8</sup> Exhibit 22 (Staff Report), p. 1.  
<sup>9</sup> KCC 17.410.010(C) and 21.04.100 (*see* permit type No. 18).  
<sup>10</sup> KCC 17.550.030.

**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>11</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>12</sup> These requirements are met. Only one ADU is proposed for a lot outside the urban growth area, no accessory dwelling quarters or other ADUs are on the lot, and the property owner will live in the existing single-family residence.

The ADU cannot "exceed fifty percent of the square footage of the habitable area of primary residence or nine hundred square feet, whichever is smaller."<sup>13</sup> The primary residence's habitable area is 1,782 square feet,<sup>14</sup> so the ADU is limited to 891 square feet. At 600, the ADU complies.

The ADU, proposed to be 80 feet from the primary residence,<sup>15</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>16</sup> The proposal complies with all other setback requirements.

As for design, as the findings address, the primary residence and ADU will be similar in appearance,<sup>17</sup> as the ADU has been "designed to maintain the appearance of the primary residence."<sup>18</sup> Also, the proposed ADU is a manufactured home, so is not a mobile home or recreational vehicle.<sup>19</sup>

The ADU will be supplied by well water and a septic system. Kitsap Public Health approved the ADU. A new septic tank is to be installed for the ADU, with connection to the existing drainfield. A Notice to Title is required at time of building permit, limiting the primary dwelling unit to two bedrooms. Kitsap Public Health also approved connection to the existing well. The ADU will "meet the applicable health district standards for water and sewage disposal."<sup>20</sup>

Parking and entry requirements are met. The ADU will use "the same side street entrance as the primary residence."<sup>21</sup> Two added ADU parking spaces are provided.<sup>22</sup> With sufficient space to meet minimum parking requirements and with the "additional off-street parking,"<sup>23</sup> parking requirements are met. All requirements specific to the ADU use are met.

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<sup>11</sup> KCC Table 17.410.042, FN 1, requiring KCC 17.410.060 compliance. *See* KCC 17.410.060(B)(3).

<sup>12</sup> KCC 17.410.060(B)(3).

<sup>13</sup> KCC 17.410.060(B)(3).

<sup>14</sup> Exhibit 6; Exhibit 22 (Staff Report), pp. 1, 7.

<sup>15</sup> Exhibit 22 (Staff Report), p. 8.

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

<sup>17</sup> Exhibits 1, 3, and 4; Exhibit 22 (Staff Report), pp. 1, 8.

<sup>18</sup> KCC 17.410.060(B)(3).

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

<sup>20</sup> KCC 17.410.060(B)(3); Exhibit 22 (Staff Report), p. 8; Exhibit 7; Conditions 25 and 26.

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

<sup>22</sup> Exhibit 22 (Staff Report), p. 8; KCC 17.490.030.

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

### **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>24</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 use consistent with the existing and planned rural character of the surrounding rural area, while minimizing housing costs and providing for a range of housing types. The ADU does not have significant environmental impacts, does not require urban infrastructure, and is consistent with the surrounding area's rural character. The proposal 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 existing residence. The ADU's small size, existing vegetation, and extensive setbacks which exceed code requirements all ensure it is consistent with the surrounding character, appearance, and quality of development on site and in the immediate vicinity. As conditioned and proposed, the ADU meets all CUP criteria and should be approved.

### **DECISION**

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

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<sup>24</sup> KCC 17.550.030(A).

## Planning/Zoning

1. [omitted]
2. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy. A Kitsap County Building Permit will be required for the ADU.
3. 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.
4. 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.
5. 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. Only one ADU shall be permitted on the subject property.
7. The owner of the property must reside in either the primary residence or the ADU and only one of the structures may be rented at any one time.
8. The ADU shall be designed to maintain the appearance of the primary residence. At the time of building permit for the ADU, the Applicant shall demonstrate that the paint colors are similar to the primary residence.
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 an agreement to abide by the terms and conditions of the CUP and as a notice to prospective purchasers of the existence of the permit. The Binder shall be prepared and recorded by the Department at the Applicant's expense.

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 19-03645. 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. Construction plans and profiles for all roads, storm drainage facilities and appurtenances prepared by the developer's engineer shall be submitted to Kitsap County for review and acceptance. No construction shall be started prior to said plan acceptance.

21. The information provided demonstrates this proposal is a Small Project as defined in KCC Title 12, and as such will require the building permit application include information demonstrating compliance with Minimum Requirement #2, Construction Stormwater Pollution Prevention.

22. Erosion and sedimentation control shall be designed in accordance with KCC Title 12 effective at the time the CUP application was deemed complete, September 24, 2019.

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

#### **Environmental**

24. A 110-foot wetland buffer and 15-foot building setback are met per the approved site plan and Single-Family Wetland Certification by Soundview Consultants (1/13/20) and must be maintained. Wetland Buffer signs shall be placed along the outer buffer edge by the wetland specialist prior to final inspection of the building permit.

#### **Traffic and Roads**

25. Submit an Application for Concurrency Test (KCPW Form 1601) as required by Chapter 20.04.030, Transportation Concurrency, of the KCC. The KCPW 1601 form reserves road capacity for the project.

#### **Kitsap Public Health District**

26. The permit shall comply with all Kitsap Public Health District regulations and conditions of approval.

27. A notice to title limiting the Primary Dwelling Unit to 2 bedrooms will be required prior to building permit final.

Absent a timely appeal, this Decision is final.<sup>25</sup>

DECISION entered March 9, 2020.



Kitsap County Hearing Examiner  
Susan Elizabeth Drummond

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<sup>25</sup> See Ch. 36.70C RCW (any appeal to be filed within 21 days to superior court).