



Kitsap County Hearing Examiner

ADMINISTRATION BUILDING, 619 DIVISION ST, MS-36
http://www.kitsapgov.com/dcd/lu_env/he/

PORT ORCHARD, WA 98366
(360) 337-5777

NOTICE OF HEARING EXAMINER DECISION

January 25, 2016

To: Interested Parties and Parties of Record

RE: Project Name: Westphal Accessory Dwelling Unit
Applicant: Derek and Katherine Westphal
8531 NE State Highway 104
Kingston, WA 98346
Application: Conditional Use Permit
Permit Number: 15 04259

Enclosed is the Decision issued by the Kitsap County Hearing Examiner in the above-referenced matter.

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at: http://www.kitsapgov.com/dcd/lu_env/he/HE%20Rules%20for%20Kitsap%20County%20-%206-23-09.pdf

The Decision of the Hearing Examiner is final, unless appealed, as provided under Washington law.

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 Constance Blackburn at cblackburn@co.kitsap.wa.us or (360) 337-5777.

Cc Applicant and/or Rep:

Derek & Katherine Westphal: westphal.derek@gmail.com

CBAY Construction: sheldon@cbayconstruction.com

Interested Parties:

None

**BEFORE THE HEARING EXAMINER
FOR KITSAP COUNTY**

In the Matter of the Application of)	No. 15 04259
)	
Derek and Katherine Westphal,)	Westphal Accessory Dwelling Unit CUP
)	
)	FINDINGS, CONCLUSIONS,
<u>For Approval of a Conditional Use Permit</u>)	AND DECISION

SUMMARY OF DECISION

The request for a Conditional Use Permit to build an accessory dwelling unit at 8531 NE State Highway 104 in Kingston, Washington, is **APPROVED**. Conditions are necessary to mitigate project impacts and to ensure the proposal complies with relevant statutes, ordinances, and regulations.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on January 14, 2016.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Meg Sands, County Planner
Steve Heacock, County Environmental Planner
Sheldon Smith, Applicant Representative

Exhibits:

The following exhibits were admitted into the record:

1. Project Application, received October 26, 2015
2. Supplemental Application - Land Use Accessory Dwelling Unit, received October 26, 2015
3. Authorization Form, received October 26, 2015
4. Site Photograph, dated 2007
5. Supplemental Application – Concurrency Test, received October 26, 2015
6. Supplemental Application – Critical Area Buffer Reduction/Critical Area Variance, received October 26, 2015
7. Health District Building Site Application Approvals, dated March 25, 2014, and August 28, 2015
8. Site Plan, dated October 12, 2015
9. Supplemental Application – Environmental Checklist, dated October 11, 2015
10. Habitat Management Plan, The Wetland Corps, dated September 2015

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11. Single-Family Residence Photographs (4 total) and Floor Plans, undated
12. Treatment System Map, dated March 5, 2014
13. Site Development Plans, dated October 12, 2015, and August 15, 2015
14. Project Plans, dated April 22, 2015
15. Email from Kim Dunn to Theresa Rubino, dated October 27, 2015, with attached email string
16. Notice of Application – Type III, dated November 5, 2015
17. Heath District – Land Use Conditional Use Approval, dated November 9, 2015
18. Memo from Candy Mursell to Meg Sands, dated November 24, 2015
19. Email from Sheldon Smith to Meg Sands, dated December 16, 2015, with attached email string
20. Assessor’s Property Report, dated December 2, 2015
21. Parcel Map, dated October 27, 2015
22. Comprehensive Plan Map, dated December 2, 2015
23. Zoning Map, dated December 2, 2015
24. Critical Areas Map, dated December 2, 2015
25. Critical Aquifers Map, dated December 2, 2015
26. Topography Map, dated December 2, 2015
27. 2012 Imagery and Topography Map, dated December 2, 2015
28. 2012 Imagery Map, dated December 2, 2015
29. Revised Project Narrative, dated December 16, 2015
30. Email from Meg Sands to Eric Evans, dated November 9, 2015, with attached email string
31. Determination of Nonsignificance, dated December 18, 2015
32. Certificate of Public Notice, dated January 6, 2016
33. Staff Report, dated January 6, 2016
34. Memo from Meg Sands to the Hearing Examiner, dated January 7, 2016
35. PowerPoint Presentation (16 slides), dated January 14, 2016

The Hearing Examiner enters the following Findings and Conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

Application and Notice

1. Derek and Katherine Westphal (Applicant), request a Conditional Use Permit (CUP) to construct an 897 square foot accessory dwelling unit (ADU) at 8531 NE State Highway 104 in Kingston, Washington.¹ *Exhibit 1; Exhibit 2; Exhibit 19.*

¹ The Assessor Tax Parcel Number associated with the parcel is 2722702-2-2006. *Exhibit 1.* A full legal description of the parcel is included with the SEPA Checklist. *Exhibit 9.*

2. Kitsap County (County) determined that the application was complete on October 28, 2015. On November 5, 2015, the County published notice of the application in the *Kitsap Sun* and mailed notice of the application to the Applicant, Applicant Representative, persons owning property within 800 feet of the subject property, and interested parties. County Planner Meg Sands testified that the County received no public comments regarding the application. On December 29, 2015, the County posted notice of the open record hearing associated with the application at the property. Two days later, the County published notice of the open record hearing in the *Kitsap Sun*. On January 4, 2016, the County mailed notice of the open record hearing to interested parties and persons owning property within 800 feet of the property. *Exhibit 16; Exhibit 32; Exhibit 33, Staff Report, page 6; Testimony of Ms. Sands.*

State Environmental Policy Act

3. The County acted as lead agency and analyzed the environmental impacts of the project as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The County used the optional Determination of Nonsignificance (DNS) process under Washington Administrative Code (WAC) 197-11-355. Accordingly, on November 5, 2015, the County published notice of the SEPA comment period in the *Kitsap Sun* and mailed notice of the SEPA comment period to the Applicant, Applicant Representative, property owners within 800 feet, and interested parties. The SEPA comment period occurred concurrently with the notice of application. The County received no comments. The County analyzed the Applicant's SEPA Checklist and other available information and issued a Determination of Nonsignificance (DNS) on December 18, 2015. Ms. Sands testified that the DNS was not appealed. *Exhibit 9; Exhibit 31; Exhibit 33, Staff Report, page 2; Testimony of Ms. Sands.*

Comprehensive Plan, Zoning, and Surrounding Property

4. The County designated the property Rural Protection in its Comprehensive Plan. The County adopted the Rural Protection designation to promote low-density development that is consistent with rural character and that protects environmental and natural features such as steep slopes, wetlands, streams, and adjacent critical areas. *County Comprehensive Plan (December 2012), page 3-23.* The immediately adjacent properties are also designated Rural Protection.² *Exhibit 22; Exhibit 33, Staff Report, page 3.*
5. The County zoned the property Rural Protection. The County adopted the Rural Protection zone to implement the Rural Protection Comprehensive Plan designation. *County Comprehensive Plan (December 2012), page 3-39; Kitsap County Code (KCC)*

² The County has designated properties further to the west, northwest, north, and southeast as Rural Residential in its Comprehensive Plan. Properties located around the intersection of State Highway 104 and Miller Bay Road NE/Hansville Road NE, an area west of the property that Ms. Sands testified is known as George's Corner, are designated as a Local Area of More Intense Rural Development (LAMIRD) in the County Comprehensive Plan. *Exhibit 22; Exhibit 33, Staff Report, page 3; Testimony of Ms. Sands.*

17.305.010. Lots in the Rural Protection zone must be a minimum of 140 feet wide and deep. KCC 17.382.100. The Rural Protection zone requires front yard setbacks of 50 feet and side and rear yard setbacks of 20 feet. KCC 17.382.100. ADUs in the Rural Protection zone must have front yard setbacks of 50 feet, and side and rear yard setbacks of 5 feet. KCC 17.382.100. The County zoned the immediately surrounding properties Rural Protection, and they are generally developed with single-family residences.³ Exhibit 23; Exhibit 33, Staff Report, page 3.

6. County staff identified as relevant to the proposed project Comprehensive Plan policies that: limit designated rural areas to low residential densities that can be sustained by minimal infrastructure improvements, cause minimal environmental degradation, and will not create the future necessity or expectation of urban levels of service; provide a variety of densities in rural areas to make efficient use of land, maximize the return on public investment, and provide affordable housing; permit residential uses in rural areas consistent with the existing and planned rural character of the surrounding area; limit development to that which serves rural residential or resource needs and which will not draw people from urban growth areas; provide road and access standards that permit all-weather access for emergency vehicles while preserving and enhancing rural character; ensure proper installation, use, and maintenance of on-site septic systems; require native vegetation buffers along streams and wetlands to protect their function and value; strive to ensure no short-term loss of wetland function while promoting long-term gain of such function; require vegetative buffers along surface waters to protect fish and wildlife habitat; encourage developers to protect continuous corridors of native vegetation, disturb as little natural vegetation as possible, and enhance or restore wildlife habitat by transplanting or planting native vegetation in developed landscapes; encourage best management practices of herbicides and pesticides near surface waters or drainage ditches; ensure that a broad range of housing types are available through innovative planning; encourage and facilitate development of a variety of housing types; permit and encourage the development of residential accessory dwelling units; and encourage innovative land use practices and development standards that minimize housing costs.⁴ Exhibit 33, Staff Report, pages 4 through 6.

Existing Property

7. The property is an irregularly shaped 6.39-acre parcel fronting State Highway 104 between Miller Bay Road NE and Burkes Lane NE. The property is currently developed

³ Properties farther to the west, northwest, north, and southeast are zoned Rural Residential in accordance with their Comprehensive Plan designations. Properties in the nearby George's Corner LAMIRD are zoned Neighborhood Commercial and are generally developed with businesses. Exhibit 23; Exhibit 33, Staff Report, page 3.

⁴ Staff specifically identified Comprehensive Plan Policies RL-1, RL-2, RL-3, RL-4, RL-14, RL-15, NS-21, NS-22, NS-40, NS-42, NS-45, HS-6, HS-8, HS-9, and HS-11 as relevant to the project. Exhibit 33, Staff Report, pages 4 through 6.

with a single-family residence served by a well and septic system. The property sits in a Category II Critical Aquifer Recharge Area, but Ms. Sands testified that it was not a concern, given the residential nature of the project. The property gradually slopes from east to west, and a Type F stream flows with the grade across the property approximately 230 feet south of the proposed ADU location. Ms. Sands testified that the same stream flows across a neighboring parcel approximately 75 feet from the proposed project site. County Environmental Planner Steve Heacock testified that the property is heavily vegetated and that a thick buffer consisting of mature cedar and fir trees screened the proposed project site from where the stream crosses the neighboring property. County maps indicate the presence of hydric soils on the property, but Mr. Heacock testified that he found no hydric vegetation or other wetland indicators within 200 feet of the proposed project site. *Exhibit 2; Exhibit 9; Exhibit 10; Exhibit 21; Exhibit 24; Exhibit 25; Exhibit 26; Exhibit 27; Exhibit 28; Exhibit 33, Staff Report, page 2; Testimony of Ms. Sands; Testimony of Mr. Heacock.*

Conditional Use Permit

8. County zoning ordinances make some uses conditional in certain zones. *KCC 17.110.175. A conditional use is an activity specified by Title 17 KCC as a principal or accessory use that may be approved or denied based on consistency with specific criteria. KCC 17.110.175. An ADU is a conditional use outside urban growth area boundaries and permitted only with a CUP. KCC 17.381.060.3.b; KCC Table 17.381.040(E). The Applicant seeks to build an ADU on property located outside an Urban Growth Area. Exhibit 33, Staff Report, page 7.*
9. The KCC permits ADUs where: there are no other ADUs on the lot; the owner resides in the ADU or primary residence; the ADU's footprint does not exceed half of the primary residence's habitable area or 900 square feet, whichever is smaller; the ADU is located within 150 feet of the primary residence or within an existing converted detached structure; the ADU maintains the appearance of the primary residence; the ADU complies with the setback requirements applicable to the zone it would be built in; the ADU meets applicable health district standards for water and sewage disposal; the ADU is not comprised of a mobile home or recreational vehicle; the ADU uses the same side street entrance as the primary residence and is provided with additional off-street parking; and no accessory living quarters are also located on the lot. *KCC 17.381.060.3.c-1.*
10. Applicant Representative Sheldon Smith testified that the Applicant would construct the ADU to provide housing for family members. Ms. Sands testified that the Applicant would continue to reside in the primary residence located on the property after completion of the ADU. There are currently no ADUs developed on the property, and the Applicant proposes building only a single ADU. Ms. Sands testified that there are also no accessory living quarters currently developed on the property. *Exhibit 2; Exhibit*

29; Exhibit 33, Staff Report, pages 7 and 9; Testimony of Mr. Smith; Testimony of Ms. Sands.

11. Ms. Sands testified that the habitable area of the primary residence on the property is approximately 2,000 square feet.⁵ *Testimony of Ms. Sands.*
12. Ms. Sands testified that the Applicant would build the ADU 105 feet from the primary residence. At that location, the ADU would be set back at least 200 feet from the front property boundary, 20 feet from the east side boundary, 80 feet from the west side boundary, and 900 feet from the rear boundary. *Exhibit 2; Exhibit 29; Exhibit 33, Staff Report, page 8; Testimony of Ms. Sands.*
13. Ms. Sands testified that the Applicant proposes a stick-built ADU that would complement and be similar to the primary residence. Like the primary residence, the ADU would have a pitched, composite roof; lap siding; and vinyl windows. The Applicant would paint the body and trim of the ADU with the same colors as those used on the primary residence. *Exhibit 2; Exhibit 29; Exhibit 33, Staff Report, pages 7 and 8; Testimony of Ms. Sands.*
14. The proposed ADU would use an on-site well for water. The Applicant would install a septic system to serve the ADU. The Kitsap Public Health District approved the proposed water and septic systems without conditions on November 9, 2015. *Exhibit 7; Exhibit 17; Exhibit 30; Exhibit 33, Staff Report, page 8.*
15. The existing driveway would serve both the primary residence and the ADU. The driveway is large enough to provide the required two parking spaces for the primary residence and Ms. Sands testified that it would also allow a parking space next to the ADU. *Exhibit 2; Exhibit 29; Exhibit 33, Staff Report, pages 8 and 9; Testimony of Ms. Sands.*
16. The KCC requires 150-foot buffers around Type F streams. *KCC Table 19.300.315.* The KCC permits administrative reduction of these buffers where the Applicant demonstrates an inability to comply with the buffers and agrees to a Habitat Management Plan (HMP) satisfying the provisions of KCC 19.700.720. Staff determined that the Applicant could not comply with the required buffers because of the way the stream flows across the property and the neighboring parcel. The Applicant produced a HMP created by The Wetland Corps that staff deemed compliant with KCC 19.700.720. The HMP requires the Applicant to enhance an area equivalent to the area disturbed by the project, or 2,500 square feet. The Applicant would remove invasive species from the enhanced area and

⁵ The application and project narrative state that the area of the primary residence is 2,444 square feet. Ms. Sands testified that figure erroneously included the garage area as habitable area. *Exhibit 2; Exhibit 29; Testimony of Ms. Sands.*

then replant the area with native species. Based on the proposed HMP, County staff reduced the critical area buffer around the stream by 50 percent, to 75 feet. Ms. Sands testified that the remaining 75 feet of buffer, which is thickly vegetated with mature trees, would protect the functionality of the stream and that, with implementation of the HMP, the project would not result in environmental degradation. *Exhibit 6; Exhibit 9; Exhibit 10; Exhibit 33, Staff Report, page 9; Testimony of Ms. Sands.*

17. The KCC requires 15-foot building setbacks around the buffers surrounding Type F streams. *KCC Table 19.300.315.* The KCC, however, provides for the reduction or elimination of the buffer setback requirements for certain nonconforming structures. *KCC 19.100.130.B.* To be eligible, the structure must have been constructed before codification of the County's critical area ordinances and have been lawful at the time of its construction. *KCC 19.100.130.B.* In such cases, where the structure does not satisfy the buffers or buffer setbacks currently required by Chapter 19 KCC, the structure may be remodeled or reconstructed so long as the newly remodeled or reconstructed structure does not further intrude into the buffer or buffer setback. *KCC 19.100.130.B.* Both Ms. Sands and Mr. Heacock testified that the Applicant would build the ADU where a mobile home had sat on the property until its recent demolition. Ms. Sands testified that, at that location, one of the ADU's walls would be 75 feet from where the stream flowed across the neighboring parcel, meaning that the proposal does provide the required 15-foot buffer setback. Mr. Heacock, however, testified that the County considered the proposed ADU a reconstruction of the mobile home but that the ADU would not intrude further into the buffer setback as compared to the mobile home, making the ADU permissible under *KCC 19.100.130.B.* *Exhibit 4; Exhibit 33, Staff Report, page 9; Testimony of Ms. Sands; Testimony of Mr. Heacock.*

Staff Recommendation

18. Ms. Sands testified that County staff recommends approval of the application, with 27 conditions. These conditions generally require the Applicant to: obtain all necessary permits and seek all required review before clearing land, building, or beginning occupancy; pay all necessary impact fees; comply with all relevant statutes, ordinances, and regulations, including County ordinances governing stormwater control and treatment, buffers for Type F streams, and the permitting of ADUs; comply with the HMP; refrain from subdividing the lot to separate the ADU and primary residence; refrain from selling the ADU separately from the primary residence; file a Notice of Land Use Binder with the County Auditor; seek further review if the project changes; and submit a complete building permit application within three years. Mr. Smith testified that the Applicant accepted the conditions proposed by the County. *Exhibit 33, Staff Report,*

pages 10 to 14; Exhibit 34; Testimony of Ms. Sands; Testimony of Mr. Smith.

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide Conditional Use Permit applications as Type III permit decisions. *KCC 17.421.020.*

Criteria for Review

The Hearing Examiner may approve, approve with conditions, or deny a conditional use permit. Approval or approval with conditions may be granted by the Hearing Examiner only when all the following criteria are met:

- (1) The proposal is consistent with the Comprehensive Plan;
- (2) The proposal complies with applicable requirements of this title;
- (3) The proposal will not be materially detrimental to 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.

KCC 17.421.030.A.

The criteria for review adopted by the Kitsap County Board of Commissioners are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with County development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusion Based on Findings

- 1. With conditions, the proposed ADU would be consistent with the criteria found in KCC 17.381.060.** The proposed ADU would be located within the Rural Protection zoning district, outside the boundary of an Urban Growth Area. Consequently, the ADU is a conditional use. The Applicant would build a single ADU on a lot with no other ADUs or accessory living quarters. The Applicant would reside in the primary residence on the property after completion of the ADU. The Applicant proposes to build a stick-built 897 square-foot ADU, which is smaller than half of the habitable square footage of the primary residence, and also less than 900 square feet. The Applicant would build the ADU 105 feet from the primary residence. The ADU would comply with the setback provisions of the Rural Protection zone at that location, with a front setback of 200 feet, side setbacks of at least 20 feet, and a rear setback of 900 feet. The Applicant would

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build the ADU to maintain the appearance of the primary residence: the ADU would have a pitched, composite roof; lap siding; and vinyl windows. The Applicant would paint the body and trim of the ADU the same colors as those used on the primary residence. The health district has approved, without conditions, the water and sewer systems proposed for the project. The ADU would use the same street access as the primary residence, and the Applicant would provide two parking spaces for the primary residence and one for the ADU.

Conditions are necessary to mitigate project impacts and ensure compliance with relevant statutes, ordinances, and regulations. These conditions generally require the Applicant to: obtain all necessary permits and seek all required review before clearing land, building, or beginning occupancy; pay all necessary impact fees; comply with all relevant statutes, ordinances, and regulations, including County ordinances governing stormwater control and treatment, buffers for Type F streams, and the permitting of ADUs; comply with the HMP; refrain from subdividing the lot to separate the ADU and primary residence; refrain from selling the ADU separately from the primary residence; file a Notice of Land Use Binder with the County Auditor; seek further review if the project changes; and submit a complete building permit application within three years. *Findings 1-18.*

2. **With conditions, the proposed project would be consistent with the CUP approval criteria found in KCC 17.421.030.A.** The County provided reasonable notice of the application and opportunity to comment. The County determined that the project would not have probable, significant adverse environmental impacts. That determination was not appealed.

The proposed ADU would be consistent with the County Comprehensive Plan goals and policies. The proposed project would result in the construction of an ADU, an outcome encouraged by a specific comprehensive plan policy, as well as goals and policies generally encouraging diverse housing options within the county. The Public Health Division has approved the proposed water and septic systems without conditions. The Applicant would build the proposed ADU in an area formerly occupied by a mobile home, limiting disturbance of the vegetated buffers surrounding the nearby Type F stream. The project would retain a corridor of vegetation to protect the functionality of the stream. The HMP required as a condition of project approval would enhance a portion of the property by removing invasive species and replanting it with native species. With implementation of the HMP, the proposed project would not result in environmental degradation.

The proposed project is consistent with the provisions of Title 17 KCC. The proposed project satisfies the criteria governing ADUs in residential areas found in KCC 17.381.060.3. An ADU satisfying those criteria necessarily satisfies the setback

provisions of KCC 17.382.100. The proposed ADU satisfies the buffer and setback requirements of the KCC as modified by an administrative buffer reduction allowed by the proposed HMP and County staff's determination that the project was a reconstruction of an existing nonconforming structure.

The project would not be materially detrimental to other uses or property in the vicinity. As noted, the County determined that the proposed project would not have probable, significant adverse environmental impacts. The Applicant would implement a HMP to ensure that the project does not result in environmental degradation.

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. The Applicant would build the ADU on a portion of the property where a mobile home sat and thereby avoid disturbing another area. The Applicant would construct the ADU to complement the existing single-family residence on the property by using a roof design, windows, and paint on the body and trim similar to the residence.

As discussed above, conditions are necessary to mitigate project impacts and ensure compliance with relevant federal, state, and local statutes, ordinances, and regulations.
Findings 1-18.

DECISION

Based on the preceding Findings and Conclusions, the request for a Conditional Use Permit to develop an 897 square foot ADU at 8531 NE State Highway 104 in Kingston, Washington, is **APPROVED**. Conditions are necessary to mitigate specific impacts of the proposed development and to ensure compliance with existing County ordinances:

1. The information provided demonstrates this proposal is within the buffer area of a designated Critical Area (stream), and as such will require an Engineered Small Site Review (ESSR) from Development Services and Engineering. This aspect of review will take place with the building permit application.
2. Stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with the version of Title 12 KCC effective at the time the Conditional Use Permit application was deemed complete, October 28, 2015. The submittal documents shall be prepared by a civil engineer licensed in the state of Washington. The fees and submittal requirements shall be in accordance with Kitsap County ordinances in effect at the time of Building Permit application.

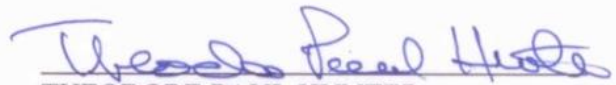
3. At building permit application, submit KCPW Form 1601 for issuance of a concurrency certificate, as required by KCC 20.04.030.
4. Any work within the County right-of-way requires a Public Works permit to perform work in the right-of-way and possibly a maintenance or performance bond. This application to perform work in the right-of-way shall be submitted as part of the building permit application. The need for and scope of bonding will be determined at that time.
5. A 75-foot F-type stream buffer shall be provided through the buffer averaging provision of KCC 19.300.315 A-4 and as guided by the Habitat Management Plan (Exhibit 10).
6. The project shall comply with the implementation and monitoring requirements as outlined in the Habitat Management Plan (Exhibit 10).
7. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.
8. An approved and issued building permit is required to construct the proposed ADU.
9. The ADU is subject to the payment of impact fees. Impact fees must be paid at the 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.
10. 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 the Department of Community Development and granted approval prior to such modification, expansion, construction and/or issuance of a building permit.
11. Only one ADU shall be permitted on the subject property.
12. 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.
13. The ADU is limited in size to that proposed by the Applicant in Exhibit 14 and no greater than 900 square feet.
14. The ADU shall be designed to maintain the appearance of the primary residence.
15. The ADU shall meet the applicable health district standards for water and sewage disposal.

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16. No mobile home or recreational vehicle shall be allowed as an ADU.
17. The ADU shall use the same side street entrance as the primary residence and shall provide additional off-street parking.
18. An accessory living quarters (ALQ) or guest house (GH) is not permitted on the same lot unless the accessory dwelling unit is removed and the ALQ or GH complies with all requirements imposed by the Kitsap County Code.
19. 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.
20. The ADU cannot be sold separately from the primary residence unless it has legally been segregated onto its own lot.
21. 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 by the Department and recorded at the Applicant's expense. The Applicant shall provide recorded copies of the Binder to the Department. The Binder shall be recorded within 30 days of the final land use decision and notification by the Department.
22. 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 above 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.
23. 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.

24. The decision set forth herein is based upon representations made and exhibits contained in the project application 15 04259. 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.
25. This Conditional Use Permit approval shall become void if no building permit application to build the ADU is accepted as complete, by the Department of Community Development, within three years of the date of the Notice of Decision and resolution of any appeals.
26. Any violation of the conditions of approval shall be grounds to initiate revocation of this Conditional Use Permit.
27. This permit shall comply with all Kitsap Public Health District regulations and conditions of approval.

DECIDED this 22nd day of January 2016.



THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center