



Notice of Hearing Examiner Decision

04/08/19

To: Interested Parties and Parties of Record

RE: Project Name: Costello – Conditional Use Permit Accessory Dwelling Unit and Shoreline Substantial Development Permit
 Applicant: Carol A Costello Trust
 c/o Ms. Costello, Trustee
 3109 N. Inglewood St.
 Arlington, WA
 Application: Conditional Use Permit (CUP-ADU) & Shoreline Substantial Development Permit (SSDP)
 Permit Number: 18-05258 & 18-05283

Enclosed is the Decision issued by the Kitsap County Hearing Examiner for the above project.

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>

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 Help@Kitsap1.com or (360) 337-5777.

CC: Owner/Applicant: Carol A. Costello - Trustee, edwardcostello@comcast.net
Authorized Agent: William M. Palmer, W.M. Palmer Consultants,
wpconslts@telebyte.net
Health District
Public Works
South Kitsap Fire District
Puget Sound Energy
Water Purveyor

Sewer Purveyor
Point No Point Treaty Council
Suquamish 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 and
Shoreline Substantial Development Permit**

Costello, File Nos. 18-05258 (CUP) and 18-05283 (SSDP)

April 5, 2019

1. FINDINGS OF FACT

1.1 Proposal. Remodel and expand an existing garage and replace with an 898 square foot accessory dwelling unit (“ADU”).

- **Applicants/Property Owners.** Carol A. Costello Trust, 3109 N. Inglewood Street, Arlington, VA 22207, c/o Ms. Costello, Trustee.
- **Location.** 1525 Colchester Drive East, Port Orchard, WA 98366, Assessor’s Account No. 4516-001-025-0008.

1.2 Administrative Record. The Hearing Examiner admitted Exhibits 1-32 at the hearing, which included Kitsap County Department of Community Development’s (“DCD”) Staff Report and Power Point presentation. Except as modified here, the Staff Report is incorporated by reference.

1.3 SEPA. DCD’s Determination of Non-Significance¹ was not appealed.

1.4 Hearing. The open record public hearing was held on March 28, 2019. At the hearing, DCD, through Ms. Shaffer, summarized the proposal. As DCD found the proposal consistent with code requirements, it recommended approval with mitigation. The Applicant, through its representative, Mr. Palmer, briefly addressed the proposal,² followed by Mr. Costello, with a clarification question regarding bulkhead repair, which DCD confirmed Condition 32 would not preclude.³ No person present indicated a wish to comment.

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

¹ Exhibit 28.

² Mr. Palmer advocated for an administrative review process, consistent with housing affordability objectives. This is a policy and legal issue. (Within the UGA, ADU’s are permitted outright.).

³ The condition is designed to ensure new construction is not used as a basis to expand such structures.

1.6 Notice. Hearing notice was provided through publishing and mailing, as was application notice.⁴ No concerns on notice were raised.

1.7 Site. The site is a rectangle shape which widens west near the shoreline. It has up to 30% slopes in places and is developed with two garages, a residence, and bulkhead.

1.8 Zoning/Plan Designations. Located outside the urban growth area, the site is zoned Manchester Village Low Residential. The same zoning, along with other single-family residences, surround the site.

1.9 Shoreline/Critical Areas. The ADU is 140 feet from the ordinary high water mark. A pipe with an energy dissipater will convey stormwater from the ADU to the shoreline.

1.10 Setbacks. The ADU exceeds almost all setback requirements. It is 164 feet from the west property line, 40 feet from the south side property line, five feet from the north side property line, and 140 feet from the ordinary high water mark on the east.

1.11 Utility and Public Services.

- **Water:** Manchester Water District #11
- **Power:** Puget Sound Energy
- **Sewer:** Kitsap County
- **Police:** Kitsap County Sheriff
- **Fire:** South Kitsap Fire & Rescue
- **Schools:** South Kitsap School District #402

1.12 Access. The site has direct access off Colchester Drive East, a County-maintained public right-of-way.

1.13 Setbacks/Height. Within the view protection overlay, the maximum height for buildings and new vegetation is 28 feet.⁵ The ADU complies (Condition 19), and meets setback requirements. There are no view blockage concerns.

1.14 Aesthetics. The ADU's planned architectural design and building materials will be similar and complementary to the appearance of the primary residence.⁶

1.15 Conditions. DCD proposed 35 conditions, which were not objected to. To ensure code compliance and consistency with the findings, DCD's proposed conditions should be imposed without substantive revision. A typographical error in Condition 27 was corrected, and at DCD request at the hearing, the word "additional" was added to Condition 32.

⁴ Exhibits 29 and 30.

⁵ KCC 17.420.056, and 17.420.060, FN 14.

⁶ Exhibit 31 (Staff Report), pg. 9; Exhibits 7-8.

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Review Authority. Single-family residences are exempt from shoreline substantial development permitting, but the ADU is not, and is reviewed by the Hearing Examiner.⁷ A CUP is required for an ADU within the Manchester Village Low Residential zone.⁸ The Examiner may approve, approve with conditions, or deny the permits.⁹

2.2 Code Requirements Specific to an ADU. An ADU outside the urban growth area must obtain a CUP and comply with requirements specific to the use.¹⁰ 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."¹¹ These requirements are met. Only one ADU is proposed on a lot located outside the urban growth area, no accessory dwelling quarters or other ADUs are on the lot, and the property owner will live in the single-family residence.¹²

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."¹³ The primary residence is 3,433 square feet, so the ADU is limited to 900. At 898 square feet, the ADU complies.

The proposed ADU will replace an existing garage which is 100 feet from the primary residence, so complies with both components of the requirement that it be "within one hundred fifty feet of the primary residence or shall be the conversion of an existing detached structure (i.e., garage)...."¹⁴ The proposal complies with all other setback requirements.

As for design, the primary residence and ADU will be similar in appearance,¹⁵ as the ADU has been "designed to maintain the appearance of the primary residence."¹⁶ The ADU will have the same siding, a metal roof, and a deck like that of the primary residence. Also, the proposed ADU is stick-built, so is not a "mobile home or recreational vehicle."¹⁷

The ADU will be supplied by public water and sewer, and will "meet the applicable health district standards for water and sewage disposal."¹⁸

⁷ KCC 22.500.100(B) and(C); KCC 22.600.170(A)(3); Ch. 21.04 KCC.

⁸ KCC 17.410.046.

⁹ KCC 17.550.030.

¹⁰ KCC 17.410.046; KCC Table 17.410.050(A), and Footnote 1, requiring ADU compliance with KCC 17.410.060. See KCC 17.410.060(B)(3).

¹¹ KCC 17.410.060(B)(3).

¹² The property is owned through a revocable trust; Ms. Costello is both grantor and trustee. For purposes of the residency requirement, in this instance, she is considered the owner.

¹³ KCC 17.410.060(B)(3).

¹⁴ KCC 17.410.060(B)(3).

¹⁵ Exhibit 31 (Staff Report), pg. 9; Exhibits 7-8.

¹⁶ KCC 17.410.060(B)(3).

¹⁷ KCC 17.410.060(B)(3).

¹⁸ KCC 17.410.060(B)(3).

Parking and entry requirements are met. The ADU will use "the same side street entrance as the primary residence."¹⁹ An entrance is being added to the existing driveway to access the ADU. That entrance also provides access to the property to the south (*see* Exhibit 27), so must remain open. Also the ADU "provide[s] additional off-street parking"²⁰ through the existing gravel driveway. All requirements specific to the ADU use are met.

2.3 Conditional Use Permit Requirements.

A CUP must meet these 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.²¹

These criteria are met. The Staff Report detailed relevant Comprehensive Plan policies. Plan policies provide for residential development in a way which will cause minimal environmental degradation, and provide for residential uses consistent with the existing and planned character of the surrounding area, while minimizing housing costs and providing for a range of housing types. The ADU does not have significant environmental impacts, is supported by public water and sewer, provides an important housing source, and follows the character of the surrounding area. The proposal is consistent with the comprehensive plan.

The proposal is conditioned to ensure compliance with Title 17 and other applicable code requirements. No relevant 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 and mitigated with mitigation and/or code requirements.

The proposal is compatible with surrounding existing and planned rural uses. It aesthetically follows the existing residence. The ADU's small size, design, and setbacks 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.

¹⁹ KCC 17.410.060(B)(3).

²⁰ KCC 17.410.060(B)(3); *see also* KCC 17.490.030 (parking requirements).

²¹ KCC 17.550.030(A).

2.4 Shoreline Substantial Development Permit.

The ADU requires an SSDP.²² An SSDP is granted if consistent with SMA and SMP policies and procedures, and WAC 173-27-150.²³ These criteria are met.

The project is located consistent with shoreline regulations. Set back 140 feet from the ordinary high water mark, it is well outside the standard Shoreline Residential designation's 85 foot shoreline buffer and 15 foot building setback.²⁴ The project is mitigated per code, complies with buffer requirements, and there will be no net loss of habitat.²⁵ The site is mapped as a High Geologic Hazard Area, and has been conditioned to have geologic information submitted with the building permit (Condition 31). The ADU is sufficiently set back and will not increase erosion hazards or contribute to landslide risks.²⁶ The ADU is not within a flood zone, and there are no other critical areas.²⁷

Shoreline development standards are complied with.²⁸ There will be no net loss of shoreline ecological function given setbacks and drainage design. Sewer and water service complies with regulations. The project is not over the water; stormwater management will comply with Title 12; this is not a multi-family project; lot area was calculated using only the area landward of the ordinary high water mark; and, the use will be developed consistent with regulations addressing pollution control and prevention of environmental damage.

No shoreline concerns have been identified. No cultural resources have been identified on site.²⁹ With compliance with setback and height requirements, there are no view blockage concerns.³⁰ Bulk and dimension requirements are also met.³¹

The ADU is a component of the preferred shoreline residential use at this location. The proposal follows shoreline policies and regulations. The ADU, whether viewed on its own or combined with the primary residence, will not cause a net loss to shoreline functioning and will not have significant environmental impacts on the shoreline. The proposal is consistent with the policies and procedures of the SMA, Ch. 90.58, and the County's SMP, and should be approved consistent with WAC 173-27-150.

DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested SSDP and CUP, provided these 35 conditions are adhered to.

²² KCC 22.600.170.3.c.

²³ KCC 22.500.100(B)(3).

²⁴ KCC 22.400.120(B)(1)(b).

²⁵ KCC 22.400.110.

²⁶ KCC 22.400.105.

²⁷ KCC 22.400.115; KCC Ch. 19.400.

²⁸ KCC 22.600.170(B)(1-10).

²⁹ KCC 22.400.130.

³⁰ KCC 22.400.135.

³¹ KCC 22.400.140.

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 proposed size of the ADU is 898 square feet (Exhibit 9). 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. No mobile home or recreational vehicle shall be allowed as an ADU.
9. 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 Kitsap County Code.
10. The ADU shall use the same side street entrance as the primary residence and shall provide one additional off-street parking space.
11. 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.
12. The ADU cannot be sold separately from the primary residence unless it has legally been segregated onto its own lot.
13. 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.

14. 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 be, and is not to be, construed as approval for more extensive or other utilization of the subject property.

15. 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.

16. The decision set forth herein is based upon representations made and exhibits contained in the project application (18-05258 and 18-05283). 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.

17. 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.

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

19. The proposed ADU shall be limited to the height restrictions (28') of the Manchester Village Low Residential zone.

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 Kitsap County Code Title 12; the required level of drainage review is Simplified Drainage

Review-Engineered. This level of drainage review takes place through the building permit application and review process.

22. Stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with Kitsap County Code Title 12 effective at the time the CUP application was deemed complete, November 7, 2018. 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.

23. The Washington State Department of Fish and Wildlife may require a Hydraulic Project Approval for the work required at the proposed outfall.

24. If the project proposal is modified from that shown on the submitted site plan dated October 31, 2018, Development Services and Engineering will require additional review and potentially new conditions.

25. Kitsap County sanitary sewer is available for the project. The Applicant needs to submit an "Application to Construct Sanitary Sewer" to KCPW Sewer Utility Division.

26. Kitsap County sanitary sewer is available for the project. The Applicant needs to submit a complete set of sewer plans, and specifications designed in accordance with Kitsap County Public Works - Sewer Utility Division Standards and Regulations.

27. If this project includes the construction of rock walls or other retaining facilities that either exceed four feet in height, a separate building permit with an engineered design is required for such walls. This note shall be placed on the face of the final construction drawings.

28. Rock and retaining walls shall meet all applicable setback requirements of Kitsap County Stormwater Design Manual, Vol. II, Chapter 9.

Environmental

29. This project shall comply with all requirements of Kitsap County Code Title 22, Shoreline Master Program.

30. At the time of building permit review, staff will analyze the clearing limits for nesting areas for Pacific Flyway birds.

31. Geologic documentation per Kitsap County Code 19.400.435 will be required with the building permit to address slope stability.

32. The placement of residential development on the property shall be located to make installation of additional shoreline protection structures unnecessary.

Traffic and Roads

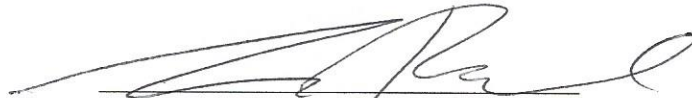
33. The Applicant shall submit an Application for Concurrency Test (KCPW Form 1601) as required by Chapter 20.04.030, Transportation Concurrency, of the Kitsap County Code. The KCPW 1601 form reserves road capacity for the project.

34. Any work within the County right-of-way shall require a Public Works permit 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. The need for and scope of bonding will be determined at that time.

Kitsap Public Health District

35. This permit shall comply with all Kitsap Public Health District regulations and conditions of approval.

THIS DECISION is entered this 5th day of April, 2019.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond