



## Notice of Hearing Examiner Decision

05/08/2020

To: Interested Parties and Parties of Record

RE:           Project Name: Sultan Accessory Dwelling Unit  
              Applicant: Tanya & Nels Sultan  
                          11936 NE Apple Tree Point Lane NE  
                          Port Orchard, WA 98366  
              Application: Conditional Use Permit – Accessory Dwelling Unit  
                          (CUP-ADU)  
              Permit Number: 19-03399

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **19-03399 Sultan 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/Owner: Tanya Sultan, [oceantanya@gmail.com](mailto:oceantanya@gmail.com)  
Health District  
Public Works  
Parks  
Navy  
DSE  
Kitsap Transit  
North Kitsap Fire District  
North 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:

John Barlow, [john@jbarlow.net](mailto:john@jbarlow.net); Sara Frey, [mountaire1@yahoo.com](mailto:mountaire1@yahoo.com);  
Ruthanne Gustafson, [rsgus@outlook.com](mailto:rsgus@outlook.com); Scott Manson,  
[scottmanson357@gmail.com](mailto:scottmanson357@gmail.com)

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

**Accessory Dwelling Unit Conditional Use Permit  
Sultan, File No. 19-03399**

**May 6, 2020**

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**1. FINDINGS OF FACT**

**1.1 Proposal.** Conversion of one-story 836 square foot guest house built in 1958 to an accessory dwelling unit (“ADU”) on a 4.54 acre parcel.

**Applicant/Property Owner.** Tanya and Nels Sultan, P.O. Box 435, Kingston, WA 98346.

**Location.** 11936 NE Apple Tree Point Lane, Kingston, WA 98346, Assessor No. 242702-2-004-2007.

**1.2 Hearing.** An open record public hearing was held April 23, 2020. Due to COVID-19 restrictions, the hearing was conducted remotely, with the Examiner, Kitsap County Department of Community Development (“DCD”), and Applicant calling in. Access information was provided to the public to allow citizens to join via either a video link or telephone call-in. There were no reported technical difficulties during the call or afterwards. However, in case any citizens who wished to comment had difficulty calling in, the record was kept open for a week, through April 30.<sup>1</sup> No additional written comments were received. At the hearing, DCD, through Ms. Sands, described the project. DCD found it consistent with requirements, and recommended approval with conditions. The Applicant, through Mr. Sultan, confirmed there were no concerns with DCD's proposed conditions. Ms. Sultan was also present in the remote hearing room. No member of the public indicated a wish to speak.

**1.3 Administrative Record.** The Hearing Examiner admitted Exhibits 1-35, 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>2</sup> with conditions requiring compliance with Title 12 to address stormwater control, Title 19 to address critical areas, and Title 17 to address zoning.

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

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<sup>1</sup> Temporary Emergency Rule to Address COVID-19 Situation (April 1, 2020).

<sup>2</sup> Exhibit 30; Exhibit 34 (Staff Report), pg. 2.

**1.6 Public Comment.** Several written comments were submitted to DCD during the permit review process. Concerns included traffic impacts, road impact/maintenance fee delinquency, trespass concerns, health district concerns, and setback encroachment. The concerns are either addressed through code or are outside Examiner jurisdiction. The Staff report provides detail, but in summary:

- **Traffic.** The ADU is an existing structure. As either a residence or ADU it is attributed 10 trips per day, so there is not a quantifiable increase in impact. The private road has been sufficient to access the property, and documentation from a licensed engineer has not been provided indicating it cannot safely accommodate the use conversion.
- **Trespass.** Local law enforcement can address trespass issues.
- **Fees.** The Examiner lacks jurisdiction to resolve private party maintenance fee disputes.
- **Health.** Health District requirements will be complied with.
- **Setbacks.** The ADU complies with setbacks associated with the referenced property line.<sup>3</sup>

**1.7 Notice.** Hearing and application notice was provided consistent with KCC requirements.<sup>4</sup> No objections to notice or concerns with an inability to provide input were raised.

**1.8 Zoning/Plan Designations.** Outside the urban growth area, the site's Comprehensive Plan and zoning designations are Rural Residential (RR),<sup>5</sup> allowing one dwelling unit per five acres. An ADU is authorized by CUP, with requirements specific to the use. Surrounding properties are also Rural Residential, excepting the shoreline to the north. Single-family residences are to the east; the south and west sides are undeveloped.<sup>6</sup>

#### **1.9 Utility and Public Services.**

- **Water:** On-site well
- **Power:** Puget Sound Energy
- **Sewer:** Septic
- **Police:** Kitsap County Sheriff
- **Fire:** North Kitsap Fire & Rescue #10
- **Schools:** North Kitsap School District #400

**1.10 Access.** NE Apple Tree Point Lane. A portion is paved county maintained road classified as rural local access. Direct access is from a private easement.

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<sup>3</sup> Exhibit 34 (Staff Report), pp. 6-8, see Exhibits 18-21.

<sup>4</sup> Exhibits 16, 32 and 33; see KCC 21.04.080.

<sup>5</sup> Exhibits 25 and 29; Exhibit 34 (Staff Report), p. 3.

<sup>6</sup> Exhibit 34 (Staff Report), p. 4.

**1.11 Dimensions and Setbacks.** The site includes the existing guest house and a 2,400 square foot single-family residence.<sup>7</sup> The ADU is 40-65 feet from the primary residence.<sup>8</sup> The existing front setback is 25 feet, less than the 50 otherwise required.<sup>9</sup> But, the ADU converts an existing structure, and setbacks are otherwise exceeded, ranging from over 120-600 feet on the other three sides. The ADU is outside shoreline jurisdiction and meets the 35 foot height limit.<sup>10</sup>

**1.12 Building and Site Aesthetics.** The primary residence and ADU will be similar in appearance. Both will have a pitched roof, horizontal siding, open pane windows with white frames, and painted a light color with white/grey trim.<sup>11</sup> The setbacks, with three sides exceeding requirements, provide visual mitigation.<sup>12</sup>

**1.13 Environmental.** The shoreline area has a Rural Conservancy designation, but the ADU is outside shoreline jurisdiction. There is a non-fish bearing seasonal stream (type Ns) along the site's SE edge. Landslide, erosion, and seismic hazard areas are mapped as being on site. However, the structure is existing and presents no new environmental impacts. The residential use is not an activity presenting a potential groundwater threat, so hydrogeological report requirements are not triggered.<sup>13</sup>

**1.14 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>14</sup> The Examiner may approve, approve with conditions, or deny a CUP.<sup>15</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>16</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>17</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 live in the single-family residence.<sup>18</sup>

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<sup>7</sup> Exhibit 34 (Staff Report), pp. 1, 2, and 9.

<sup>8</sup> Exhibit 34 (Staff Report), p. 10. *See also* Exhibits 7, 11, 12, and 15.

<sup>9</sup> This is based on the east-side entry, which places the front side adjacent to the rear or shoreline/north side. Typically, the front would be opposite the rear. If measured this way, with the south being the rear, setbacks are met. Exhibit 34 (Staff Report), p. 10.

<sup>10</sup> Exhibit 34 (Staff Report), pp. 3 and 10.

<sup>11</sup> Exhibits 3-6, 12, and 15; Exhibit 34 (Staff Report), p. 10.

<sup>12</sup> Exhibit 30 (Staff Report), p. 3.

<sup>13</sup> Exhibit 34 (Staff Report), pp. 2-3, 12.

<sup>14</sup> KCC 17.410.010, 21.04.100 (permit type #18), and 17.410.042 (use #100).

<sup>15</sup> KCC 17.550.030.

<sup>16</sup> KCC Table 17.410.042, FN 1, requiring KCC 17.410.060 compliance. *See* KCC 17.410.060(B)(3).

<sup>17</sup> KCC 17.410.060(B)(3).

<sup>18</sup> *See* Exhibit 34 (Staff Report), p. 9 for details.

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>19</sup> The primary residence's habitable area is 2,400 square feet.<sup>20</sup> Regardless, the ADU is limited to 900 square feet; at 836 square feet, the ADU complies.

The ADU, within 40-65 feet from the primary residence,<sup>21</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>22</sup> With possibly one exception, the existing structure complies with setback requirements.

On design, as the findings address, the primary residence and ADU will be similar in appearance,<sup>23</sup> as the ADU has been "designed to maintain the appearance of the primary residence."<sup>24</sup> Also, the proposed ADU is stick-built, so is not a mobile home or recreational vehicle.<sup>25</sup>

The ADU will be supplied by well water and a septic system. Kitsap Public Health approved the ADU.<sup>26</sup> The ADU will "meet the applicable health district standards for water and sewage disposal."<sup>27</sup>

Parking and entry requirements are met. The ADU will use "the same side street entrance as the primary residence."<sup>28</sup> Four parking spaces are provided.<sup>29</sup> With sufficient space to meet minimum parking requirements and with the "additional off-street parking,"<sup>30</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

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

<sup>20</sup> Exhibit 34 (Staff Report), p. 9; Exhibit 6.

<sup>21</sup> Exhibit 34 (Staff Report), p. 10.

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

<sup>23</sup> Exhibits 3-6, 12; Exhibit 34 (Staff Report), p. 10.

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

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

<sup>26</sup> Exhibits 7 and 8; Exhibit 34 (Staff Report), p. 10.

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

<sup>28</sup> KCC 17.410.060(B)(3).

<sup>29</sup> Exhibit 34 (Staff Report), p. 11; KCC 17.490.030.

<sup>30</sup> KCC 17.410.060(B)(3).

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>31</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 increase 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 Titles 12, 17, and 19, 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 uses. It is aesthetically consistent with the existing residence. The ADU's small size, existing vegetation, and setbacks exceeding requirements on three sides 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 the Department of Community Development and granted approval prior to such modification, expansion, construction and/or issuance of a building permit.

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<sup>31</sup> KCC 17.550.030(A).

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 primary residence is 2,400 square feet as indicated in Exhibit 6. The existing size of the ADU is 836 square feet as indicated in Exhibit 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.
7. The ADU shall be located within 150 feet of the primary residence.
8. The ADU shall be designed to maintain the appearance of the primary residence.
9. This permit shall comply with all Kitsap Public Health District regulations and conditions of approval.
10. No mobile home or recreational vehicle shall be allowed as an ADU.
11. The ADU shall use the same side street entrance as the primary residence and shall provide one additional off-street parking space.
12. 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.
13. 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.
14. The ADU cannot be sold separately from the primary residence unless it has legally been segregated onto its own lot.
15. The recipient of any conditional use permit shall file a Notice of Land Use Binder with the county auditor prior to any of the following: initiation of any further site work, issuance of any development/construction permits by the county, or occupancy/use of the subject property or buildings thereon for the use or activity authorized. The Notice of Land Use Binder shall serve both as an acknowledgment of and agreement to abide by the terms and conditions of the conditional use permit and as a notice to prospective purchasers of the existence of the permit. The Binder shall be prepared and recorded by the Department at the applicant's expense.

16. The uses of the subject property are limited to the uses proposed by the applicant and any other uses will be subject to further review pursuant to the requirements of the Kitsap County Code. Unless in conflict with the conditions stated and/or any regulations, all terms and specifications of the application shall be binding conditions of approval. Approval of this project shall not, and is not, to be construed as approval for more extensive or other utilization of the subject property.

17. 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.

18. The decision set forth herein is based upon representations made and exhibits contained in the project application 19-03399. 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.

19. This Conditional Use Permit approval shall automatically become void if no development permit application is accepted as complete by the Department of Community Development within four years of the Notice of Decision date or the resolution of any appeals.

20. Any violation of the conditions of approval shall be grounds to initiate revocation of this Conditional Use Permit.

21. The applicant shall submit a building permit to convert the existing guest house into an ADU.

### **Development Engineering**

22. Erosion and sedimentation control measures shall be installed as necessary in accordance with Kitsap County Code Title 12 effective at the time the Conditional Use Permit application was deemed complete, October 11, 2019. Any required erosion and sedimentation control measures installed shall remain in place through the construction period

23. If the project proposal is modified from that shown on the submitted site plan dated October 8, 2019, Development Services and Engineering will require additional review and potentially new conditions.

### **Environmental**

24. Any future changes to the footprint, or addition of square footage or decks will require further review and permitting. This may include the need for a Geotechnical Report and other special reports with building permit submittal.

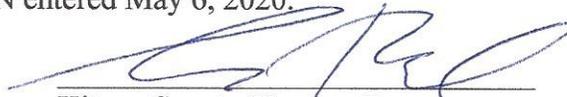
25. No uses that are identified as "activities with potential threat to groundwater" at Kitsap County Code 19.600.620 shall occur prior to obtaining the required approval from the Department of Community Development and/or the Hearing Examiner.

### **Traffic and Roads**

26. Any work within the County right-of-way shall require a Public Works permit and possibly a maintenance or performance bond. If work occurs within County right-of-way, this application to perform work in the right-of-way shall be submitted as a stand-alone permit.

Absent a timely appeal, this Decision is final.<sup>32</sup>

DECISION entered May 6, 2020.



Kitsap County Hearing Examiner  
Susan Elizabeth Drummond

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<sup>32</sup> See Ch. 36.70C RCW (any appeal to be filed within 21 days to superior court).