

DSE
DCD
South Kitsap Fire District
Kitsap School District
South Kitsap School District
Puget Sound Energy
Water Purveyor
Point No Point Treaty Council
Suquamish Tribe
Squaxin Island Tribe
Puyallup Tribe
WA Dept of Fish & Wildlife
WA State Dept of Ecology-SEPA
WA State Dept of Ecology-Wetland Review
WA State Dept of Transportation

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

**Accessory Dwelling Unit Conditional Use Permit
Buckley, File No. 20-01920**

April 21, 2021

1. FINDINGS OF FACT

1.1 Proposal. Construct an 884 square foot accessory dwelling unit (“ADU”) on a 4.77 acre lot.

Applicant/Property Owner. William Buckley, 14501 Cavalli Road SE, Olalla, WA 98359.

Location. 14501 Cavalli Road SE, Olalla, WA 98359. Assessor Parcel No. 4862-001-001-0105.

1.2 Hearing. An open record public hearing was held April 8, 2021. 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 through April 15.¹ No comment was received following the hearing. At the hearing, DCD, through Ms. Santos, described the project. DCD found it consistent with requirements, and recommended approval with conditions. The Applicant, represented by Ms. Ames, confirmed there were no concerns with DCD's proposed conditions. No member of the public indicated a wish to speak.

1.3 Administrative Record. The Hearing Examiner admitted Exhibits 1-27, 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, which notes compliance with Title 12 (stormwater control), Title 17 (land use), Title 19 (critical areas), and the engineering preliminary conditions memo, is required.²

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.³

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

² Exhibit 13; Exhibit 22 (Staff Report), p. 2.

1.7 Zoning/Plan Designations and Critical Areas. Outside the urban growth area, the site's Comprehensive Plan and zoning designation are Rural Residential (RR),⁴ allowing one dwelling unit per five acres. An ADU is authorized by CUP, with requirements specific to the use. Surrounding properties have the same zoning and are developed with single-family residences to the south, east and west; and public right-of-way and single-family residences to the north.⁵

1.8 Utility and Public Services.

- **Water:** On-site well
- **Power:** Puget Sound Energy
- **Sewer:** On-site septic
- **Police:** Kitsap County Sheriff
- **Fire:** South Kitsap Fire & Rescue
- **Schools:** South Kitsap School District #402

1.9 Access. Cavalli Road SE, a County right-of-way. An existing driveway serving the single-family residence will be extended to the ADU, with the driveway extension providing additional parking for the ADU.

1.10 Site Characteristics, Dimensions and Setbacks. The heavily wooded site is developed with a 2,649 square foot single-family residence, driveway, well, and septic system. There are no critical areas on the site. The ADU meets the 35-foot height limit.⁶ After moving the planned ADU location, it meets or exceeds setback requirements, with at least 50 feet on the front, approximately 225 on the rear, 370 on the second front (north) and 253 on the south side.⁷

1.11 Building and Site Aesthetics. The primary residence and ADU are similar in appearance. Both structures have pitched/gable composite shingle roofs, wood siding and trim, and white vinyl windows.⁸ Setbacks provide visual mitigation.

1.12 Environmental. There are no on-site critical areas. Hydric soils mapped off-site to the east contain potential wetlands. This area is over 400 feet from the project area, exceeding maximum buffer requirements. No further environmental review is needed.

1.13 Development Engineering/Stormwater. Development Services and Engineering reviewed the proposal, found the concept supportable in its approach to civil site development, and required four conditions.⁹

³ Exhibits 10, 23, and 24; Exhibit 22 (Staff Report), p. 6; KCC 21.04.080, .210.

⁴ Exhibits 16 and 19; Exhibit 22 (Staff Report), p. 2.

⁵ Exhibit 22 (Staff Report), p. 3.

⁶ Exhibit 22 (Staff Report), p. 2.

⁷ Exhibit 22 (Staff Report), p. 3; Exhibit 25.

⁸ Exhibits 1, 5, and 7; Exhibit 22 (Staff Report), p. 8.

⁹ Conditions 21-24.

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.

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Review Authority. The Hearing Examiner has CUP review authority for this ADU.¹⁰ The Examiner may approve, approve with conditions, or deny a CUP.¹¹

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.¹² 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."¹³ These requirements are met. Only one ADU is proposed for a lot outside the urban growth area, no accessory living quarters or other ADUs are on the lot, and the property owner lives in the 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."¹⁴ The primary residence's habitable area is 2,649 square feet.¹⁵ At 884, the ADU complies.

The ADU, at approximately 100 feet from the primary residence,¹⁶ 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)..."¹⁷ The proposal complies with all other setback requirements.

As for design, as the findings address, the primary residence and ADU share similar features,¹⁸ as the ADU has been "designed to maintain the appearance of the primary residence."¹⁹ Also, the proposed ADU is stick-built, so is not a mobile home or recreational vehicle.²⁰

The ADU will be supplied by well water and a septic system. Kitsap Public Health approved the ADU.²¹ The ADU will "meet the applicable health district standards for water and sewage disposal."²²

¹⁰ KCC 17.410.010, 21.04.100 (permit type #18), and 17.410.042 (use #100).

¹¹ KCC 17.550.030.

¹² KCC Table 17.410.042, FN 1, requiring KCC 17.410.060 compliance. *See* KCC 17.410.060(B)(3).

¹³ KCC 17.410.060(B)(3).

¹⁴ KCC 17.410.060(B)(3).

¹⁵ Exhibit 22 (Staff Report), pp. 2 and 7.

¹⁶ Exhibit 25; Exhibit 21 (Staff Report), p. 8.

¹⁷ KCC 17.410.060(B)(3).

¹⁸ Exhibits 1, 5, and 7; Exhibit 22 (Staff Report), p. 8.

¹⁹ KCC 17.410.060(B)(3).

²⁰ KCC 17.410.060(B)(3).

²¹ Exhibits 3 and 21; Exhibit 22 (Staff Report), p. 8.

²² 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."²³ The existing driveway will be extended to serve the ADU and single-family residence. With sufficient space to meet minimum parking requirements and with the "additional off-street parking,"²⁴ parking requirements are met. All requirements specific to the ADU use are met.

2.3 Conditional Use Permit Requirements.

A CUP must meet four requirements.

1. The proposal is consistent with the Comprehensive Plan;
2. The proposal complies with applicable requirements of [Title 17];
3. The proposal will not be materially detrimental to existing or future uses or property in the immediate vicinity; and
4. The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing character, appearance, quality or development, and physical characteristics of the subject property and the immediate vicinity.²⁵

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 which will cause minimal environmental degradation. The Plan supports residential uses consistent with the existing and planned rural character of the surrounding rural area, while minimizing housing costs and providing for a range of housing types. The ADU does not have significant environmental impacts, does not require urban infrastructure, and is consistent with the surrounding area's rural character. The proposal follows 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 uses. It is aesthetically consistent with the existing residence. The ADU's small size, existing vegetation, and setbacks which meet or exceed code requirements 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.

²³ KCC 17.410.060(B)(3).

²⁴ KCC 17.410.060(B)(3).

²⁵ KCC 17.550.030(A).

DECISION

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

Planning/Zoning

1. The proposed ADU shall meet the required 50-foot front yard setback, as measured from the edge of Cavalli Road SE.
2. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.
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. Only one ADU shall be permitted on the subject property.
6. 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. 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 884 square feet. Any future expansion of the ADU will require a building permit and would have to comply with all code requirements in place at the time of the new building permit application.
7. The ADU shall be 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 or guest house 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.

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 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.

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 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.

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 Permit #20-01920. 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 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.

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

Development Engineering

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 include a stormwater management design, depicting how the project meets Minimum Requirements #1-5, as outlined in the Kitsap

County Stormwater Design Manual.

22. On-site stormwater management, and erosion and sedimentation control, shall be designed in accordance with KCC Title 12 effective at the time the CUP application was deemed complete, May 19, 2020.

23. Prior to requesting the final inspection for the building permit, soil amendment is required for all disturbed areas not covered by hard surface.

24. If the project proposal is modified from that shown on the site plan accepted for review October 5, 2020, Development Services and Engineering will require additional review and potentially new conditions.

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.

26. The Site Plan submitted for the required building permit application shall include plans for construction of the road approach between the edge of existing pavement and the right-of-way line at all intersections with county rights-of-way. Approaches shall be designed in accordance with the Kitsap County Road Standards as established in Chapter 11.22 of the KCC. Existing approaches may need to be improved to meet current standards.

27. 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

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

Fire

29. The driveway approach shall be 150 feet from the edge of SE Nelson Road. This shall be shown on the site plan submitted with the required building permit.

Absent a timely appeal or grant of reconsideration, this Decision is final.²⁶

DECISION entered April 21, 2021.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond

²⁶ See Ch. 36.70C RCW (any appeal to be filed within 21 days to superior court); HER 1.9.1.