



## Notice of Hearing Examiner Decision

4/4/2017

To: Interested Parties and Parties of Record

RE:           Project Name: MARTIN – Accessory Dwelling Unit (ADU)  
                  Applicant: MARTIN JEFFREY S & RENEE N  
                                  11894 WILLAMETTE MERIDIAN RD NW  
                                  SILVERDALE, WA 98383-9786  
                  Application: Conditional Use Permit (CUP-ADU)  
                  Permit Number: 16 04788

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

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-%2006-23-09.pdf](http://www.kitsapgov.com/dcd/lu_env/he/HE%20Rules%20for%20Kitsap%20County%20-%2006-23-09.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 [Help@Kitsap1.com](mailto:Help@Kitsap1.com) or (360) 337-5777.

CC: Owner: MARTIN JEFFREY S & RENEE N [gotsand2004@gmail.com](mailto:gotsand2004@gmail.com)

Interested Parties:

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

**Accessory Dwelling Unit Conditional Use Permit  
File No. 16 04788**

**April 3, 2017**

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The Kitsap County Hearing Examiner has reviewed this accessory dwelling unit (ADU) proposal, and makes the following findings, conclusions, and decision.

**1. FINDINGS OF FACT**

**1.1 Proposal.** The Applicants request a Conditional Use Permit (CUP) to convert an existing 898 square foot single family residence with attached 2,810 square foot garage<sup>1</sup> into an ADU. The ADU would complement a new 2,436 square foot single family residence with attached 749 square foot garage and 474 square foot unheated bonus/storage room. The Applicants/property owners and site location are as follows.

**Applicants/Property Owners:** Jeffrey and Renee Martin, 11894 Willamette Meridian Road NW, Silverdale, WA 98383.

**Site Location:** 11894 Willamette Meridian Road NW, Silverdale, WA 98383 (Assessor No. 072501-3-041-2004).

**1.2 Hearing.** An open record public hearing was held on March 23, 2017. The Department of Community Development, through Ms. Roberts, addressed how the ADU meets applicable code requirements, and noted DCD's recommendation of approval. The Applicant, through Mr. Martin, after being sworn in, confirmed general consensus with the staff's summary, and did not raise concerns with the staff report's proposed conditions. No person present indicated a wish to submit oral comment.

**1.3 Administrative Record.** The Hearing Examiner reviewed Exhibits 1-23 before the hearing, which included the Staff Report. At the hearing, DCD proposed adding a power point as Exhibit 24. The Examiner admitted all exhibits.

**1.4 SEPA.** The SEPA comment period occurred concurrent with the Notice of Application.<sup>2</sup> A Determination of Non-Significance (DNS) was issued on December 8, 2016.<sup>3</sup> Comments were received about the seasonal stream. In response, the DNS noted that the proposal will comply with local stormwater control and critical areas requirements. The DNS was not appealed.

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<sup>1</sup> The garage square footage was clarified at the hearing through sworn DCD testimony.

<sup>2</sup> Exhibit 9.

<sup>3</sup> Exhibit 11.

**1.5 Public Notice.** The CUP was properly noticed, with both mailing and publication occurring for the notice of application and public hearing.<sup>4</sup> No issues on notice were raised.

**1.6 Public Comment.** During the review process, prior to the hearing, DCD received public comment from two neighboring property owners.

Neighbors located along the site's south side (Mr. and Ms. Roult), commented regarding stream buffers and placement of "land waste" on the west side of the stream, and also questioned whether the Applicants' business was being operated out of the site.<sup>5</sup> DCD's staff report and sworn hearing testimony addressed the Department's December 13, 2016 site visit. During that visit, DCD did not find evidence that land debris had been dumped on-site or in the stream buffer. Staff noted two piles of logs that appeared to have been there for some time. According to the Applicants, they were from the original land clearing activity that occurred prior to construction of the existing residence and garage. Staff noted a dump truck parked on-site next to the existing garage. DCD informed the Applicants that for a contractor's storage yard, one piece of heavy equipment is allowed on-site without CUP approval.<sup>6</sup>

Another adjacent property owner, Mr. Cole, raised concerns regarding noise associated with the land clearing and construction activities occurring on-site.<sup>7</sup> The Staff Report noted that while construction activities are exempt (KCC 10.28.050), the Applicants must still comply with the noise code before 7:00 a.m. and after 10:00 p.m. The Applicants confirmed with DCD that they would comply with these noise requirements.

**1.7 Agency Comment.** The proposal was circulated within the County, and comment was received regarding regulatory compliance. As long as applicable requirements are met, there were no objections to approval.

**1.8 Zoning/Plan Designations.** The Comprehensive Plan designation is Rural and the Zoning designation is Rural Residential, or RR.<sup>8</sup> RR zoning allows one dwelling unit per five acres, and is designed to promote "low-density residential development and agricultural activities that are consistent with rural character."<sup>9</sup> The surrounding properties are also zoned RR. Parcels in the area are predominantly developed with single family residences or undeveloped.

**1.9 Physical Characteristics.** The 4.81-acre rectangular parcel is currently developed with an 898 square foot single family residence and 2,810 square foot attached four-car garage. The Applicants have applied for a building permit (16 05744) to construct a new single family residence. The County critical areas map shows potential wetlands on the eastern portion of the property as well as a non-fish bearing stream. Environmental Planner, Ms.

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<sup>4</sup> See e.g., Exhibit 22, and DCD hearing testimony.

<sup>5</sup> Comment details are at Exhibit 10.

<sup>6</sup> KCC 17.410.050(A)(18).

<sup>7</sup> Exhibit 16.

<sup>8</sup> Exhibits 17 and 20. *See also* Staff Report and DCD testimony.

<sup>9</sup> KCC 17.130.010.

Shaffer, reviewed the proposal and determined that the location of the proposed single family residence exceeds all buffer and setback requirements. The ADU is an existing structure and was reviewed for critical areas compliance when the building permit for that structure was approved. The eastern portion of the property also lies within a Category II Critical Aquifer Recharge Area.<sup>10</sup> The proposal does not present a threat to the aquifer, and DCD determined no further analysis or mitigation was required to accommodate the proposal.

The location of the proposed residence is presently a grassy lawn. The Applicants will be abandoning the existing driveway running along the south property line, restoring it with vegetation, and installing a new driveway along the north property line to better serve both residences. Outside of the developed area, the property is forested with predominantly coniferous trees. The property is relatively flat, sloping gradually from west to east towards the stream.

### **1.10 Utility and Public Services.**

- **Water:** Silverdale Water
- **Power:** Puget Sound Energy
- **Sewer:** On-site septic system
- **Police:** Kitsap County Sheriff
- **Fire:** Central Kitsap Fire and Rescue
- **Schools:** Central Kitsap School District 401

**1.11 Access.** Site access is off of Willamette Meridian Road NW, a County maintained, paved road.

**1.12 Aesthetics.** The primary residence and ADU will be similar in appearance, with complementary materials, construction style, and exterior colors. The residence itself is attractively designed and laid out, in a style in keeping with the rural area.<sup>11</sup>

## **2. CONCLUSIONS OF LAW**

### **2.1 Hearing Examiner Review of ADU CUP.**

The Hearing Examiner reviews this type of CUP application.<sup>12</sup> The Hearing Examiner may approve, approve with conditions, or deny a CUP.<sup>13</sup> The Hearing Examiner may also continue the hearing to allow for additional information necessary to make the proper decision.

### **2.2 Code Requirements Specific to an ADU in the RR Zone.**

An ADU located outside the urban growth area, and within the RR zone, must obtain a CUP and comply with requirements specific to the use.<sup>14</sup> Only one ADU is allowed per lot, on

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<sup>10</sup> Exhibit 19. *See also* Staff Report and DCD testimony.

<sup>11</sup> See e.g., Exhibit 5.

<sup>12</sup> KCC Sections 17.410.010(C) and 21.04.100.

<sup>13</sup> KCC 17.550.030(A).

which no accessory living quarters are located, and the owner "must reside in either the primary residence or the ADU."<sup>15</sup> As only one ADU is being proposed on a lot located outside the urban growth area, no accessory living quarters or other ADU are located on the lot, and the property owners will live in the proposed new single family residence to be constructed on the property, these requirements are met.

The ADU cannot "exceed fifty percent of the square footage of the habitable area of the primary residence or nine hundred square feet, whichever is smaller."<sup>16</sup> The proposed primary residence's habitable area is 2,436 square feet according to the floor plan.<sup>17</sup> Fifty percent of its habitable area (1,218 square feet) is over 900 square feet, so the ADU would be limited to 900 square feet as determined by exterior measurements. The entire ADU/garage building is 3,708 square feet. The habitable area is 898 square feet, and the four-car garage is 2,810 square feet. The garage shall be used as garage space only and shall not be converted to habitable area.

The ADU building will be located approximately 86 feet from the primary residence,<sup>18</sup> so complies with the requirement to be located "within one hundred fifty feet of the primary residence or ... be the conversion of an existing detached structure (i.e., garage)..."<sup>19</sup>

As for design, the primary residence and ADU will be similar in appearance. All materials, construction style and exterior colors will match.<sup>20</sup> As a result, the ADU has been "designed to maintain the appearance of the primary residence."<sup>21</sup> Also, the proposed ADU is stick built, so is not a "mobile home or recreational vehicle."<sup>22</sup>

The proposed ADU building will be required to comply with the standard RR setbacks. The ADU shall be a minimum of 50 feet at the closest point to the west property line (front). The front yard setback, along the west property line, scales out at 450 feet +/- . The ADU shall be a minimum of five feet at the closest point to the east, north and south property lines. The side yard setback, along the south property line, scales 45 feet +/- and the other side yard, along the north property line, is shown at 35 feet +/- .<sup>23</sup> The rear setback to the east property line scales at over 800 feet. All required zoning setbacks as delineated for the ADU are in compliance with the KCC. As a result, the requirement that "[a]ll setback requirements for the zone in which the ADU is located shall apply"<sup>24</sup> is met.

The Health District recommends approval of this project.<sup>25</sup> As such, the proposed ADU will "meet the applicable health district standards for water and sewage disposal."<sup>26</sup>

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<sup>14</sup> KCC Table 17.410.040(A) Rural, Resource, and Urban Residential Zones, and Footnote 1, requiring ADU compliance with KCC 17.410.060. See KCC 17.410.060(B)(3).

<sup>15</sup> KCC 17.410.060(B)(3).

<sup>16</sup> *Id.*

<sup>17</sup> Exhibit 5.

<sup>18</sup> Exhibit 14, Staff Report, and DCD testimony.

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

<sup>20</sup> Exhibit 2 and Staff Report.

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

<sup>22</sup> *Id.*

<sup>23</sup> Exhibit 14 and Staff Report.

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

<sup>25</sup> Exhibit 13.

Parking and entry requirements are met. The proposed ADU uses "the same side street entrance as the primary residence and shall provide additional off-street parking."<sup>27</sup> Both the primary residence and the ADU will use the same proposed gravel driveway. Two parking spaces are required for the single family residence, which will be located on the parking apron in front of the single family residence's garage. One additional parking space is required for the ADU, which will be located in front of the garage attached to the ADU.<sup>28</sup>

Based on the single family residence floor plan, the structure does not have accessory living quarters,<sup>29</sup> so the requirement that an "ADU is not permitted on the same lot where an accessory living quarters exists"<sup>30</sup> is met. As a result, all requirements specific to the ADU use are met.

**2.3 Critical Areas.** According to Kitsap County geographic information system (GIS) data, there is a potential wetland on the eastern portion of the subject property.<sup>31</sup> However, the Environmental Planner has determined that the existing setback to the ADU exceeds all buffer requirements, and no further reports or reviews are necessary. The GIS data also indicates that the eastern portion of the site lies within a Category II Critical Aquifer Recharge Area.<sup>32</sup> Single-family development is not a threat and doesn't require any further analysis or reports within this recharge area designation.

**2.4. Stormwater.** Development Services and Engineering has reviewed the request for CUP approval and accepts the concepts contained in the preliminary submittal. Stormwater and traffic conditions are included as Conditions 21-24.

**2.5 Conditional Use Permit Requirements.**

A CUP must comply with the following:

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,

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<sup>26</sup> KCC 17.410.060(B)(3).

<sup>27</sup> *Id.*

<sup>28</sup> Exhibit 14 and Staff Report.

<sup>29</sup> Exhibit 5 and Staff Report.

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

<sup>31</sup> Exhibit 18 and Staff Report.

<sup>32</sup> Exhibit 19 and Staff Report.

appearance, quality or development, and physical characteristics of the subject property and the immediate vicinity.<sup>33</sup>

These criteria are met. The Staff Report provided detail on applicable comprehensive plan policies. These policies provide for development at low residential densities that can be sustained without urban levels of service, will cause minimal environmental degradation, and provide for 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, is consistent with the character of the surrounding area, and meets a need to provide future housing for extended family. The ADU and residence are both attractively designed and laid out, with landscaping which will not only maintain present aesthetics, but improve on same. As such, 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 appropriate mitigation and/or code requirements.

The proposal is compatible with surrounding existing and planned rural uses. It will be aesthetically consistent with the primary residence. The ADU's small size and setbacks provided ensure ADU consistency with the surrounding character, appearance, and quality of development on site and in the immediate vicinity. Based on hearing testimony and the record, and as noted above, overall property aesthetics will be improved through both architectural design and landscaping. As conditioned and proposed, the ADU meets all CUP criteria.

## DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested ADU, provided the following 25 conditions are adhered to.

### **Planning/Zoning.**

1. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.
2. An approved, issued and finalized building permit is required to convert the existing single family residence into an ADU.
3. The ADU is subject to the payment of impact fees. Impact fees must be paid at time of permit issuance, or if deferred, must be paid prior to final inspection. No certificate of occupancy will be granted until all impact fees are paid.
4. Any proposed modification (not including cosmetic work such as painting,

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<sup>33</sup> KCC 17.550.030(A).

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. At no time shall the ADU be more than 900 square feet.

5. Only one ADU shall be permitted on the subject property.
6. The property owner must reside in either the primary residence or the ADU and only one of the structures may be rented at any one time.
7. The ADU's habitable area shall not exceed 50% of the primary residence or 900 square feet, whichever is smaller. The proposed ADU is 898 square feet. No future expansion of the ADU shall be allowed.
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. A connection inspection will be required prior to requesting a final building permit inspection.
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 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 by the Department and recorded at the Applicants' expense. The Applicants shall provide recorded copies of the Binder to the Department immediately after recording. The Binder shall be recorded within 30 days of notification from the Department that the Binder is ready to be recorded.



16. The uses of the subject property are limited to the uses proposed by the Applicants 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.

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 Applicants represent 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 Applicants agree 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 (16 04788). 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 three 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.

**Stormwater.**

21. This project creates greater than 2,000 square feet of new or replaced impervious surface area. Therefore, at the time of building permit submittal, Minimum Site Development Requirements 1-5 of KCC 12.18 will need to be addressed.

22. The Applicants have placed a gravel pad around the existing garage; this results in new impervious surface area that would require a Site Development Activity Permit. The Applicants have indicated they would rather remove a portion of the gravel pad. Prior to approval of the single family residence building permit and the ADU building permit, the Applicants shall revise the site plan to reflect the removal of at least 450 square feet of the gravel pad. Removal of the gravel shall be completed prior to final inspection of the ADU building permit or the single family permit, whichever comes first. To satisfy this requirement, the Applicants shall remove at least 450 square feet of the gravel pad, scarify the surface, and plant the area with lawn and/or landscaping. An inspection will be conducted to verify this has occurred.

**Traffic and Roads.**

23. At building permit application, submit KCPW Form 1601 for issuance of a concurrency certificate, as required by KCC Section 20.04.030, Transportation Concurrency.

24. The Applicants shall submit 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 KCC Chapter 11.22. Existing approaches may need to be improved to meet current standards.

**Fire.**

25. The minimum fire flow requirements for one and two family dwellings shall be 500 gallons per minute for thirty (30) minutes.

THIS DECISION is entered this 3rd day of April, 2017.



Kitsap County Hearing Examiner  
Susan Elizabeth Drummond