



Notice of Hearing Examiner Decision

04/01/2019

To: Interested Parties and Parties of Record

RE: Project Name: Pregartner and Miller CUP-ADU
 Applicant: Craig Pregartner and Rene Miller
 P.O. Box 1917
 Kingston, WA
 Application: Conditional Use Permit – Accessory Dwelling Unit
 Permit Number: 18-05021

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: PREGARTNER DAVID CRAIG & MILLER RENE GWEN,
david.pregartner@gmail.com; dpillshere@yahoo.com

Health District
Public Works
North Kitsap Fire District
North Kitsap School District
Point No Point Treaty Council
Suquamish Tribe
Port Gamble S'Klallam Tribe
Puyallup Tribe
Skokomish Tribe

Squaxin Island Tribe
WA Dept of Fish & Wildlife
WA State Dept of Ecology-SEPA
Kingston CAC
Interested Parties:
None

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

**Accessory Dwelling Unit Conditional Use Permit
Pregartner and Miller, File No. 18-05021**

March 26, 2019

1. FINDINGS OF FACT

1.1 Proposal. The project adds an 875 square foot accessory dwelling unit ("ADU") to a five acre lot.

Applicants/Property Owners. Craig Pregartner and Rene Miller, P.O. Box 1917, Kingston, WA 98346.

Location. 34705 Hansville Road NE, Kingston, WA 98346, Parcel No. 332802-1- 006 - 2005.

1.2 Administrative Record. The Hearing Examiner reviewed Exhibits 1-28 before the hearing. At the hearing, Kitsap County Department of Community of Development ("DCD") submitted a Power Point presentation, Exhibit 29. The Examiner admitted all exhibits.

1.3 SEPA. DCD issued a Determination of Non-Significance,¹ with a condition requiring compliance with Title 12, to address stormwater control. The DNS was not appealed.

1.4 Hearing. An open record public hearing was held March 14, 2019. DCD, through Ms. Bausher, described the project. As DCD found it consistent with requirements, it recommended approval with mitigation. The Applicant further addressed the ADU. No other person present wished to comment. At DCD's request, the record was kept open through March 21, 2019 to ensure adequate opportunity for comment. Nothing further was received.

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 notice was provided through posting, publishing, and mailing, and application notice through mailing and publishing.² Given a delay of several days in providing notice (mailing/posted hearing notice on March 5 and 6), DCD requested that the record remain open for a week. There were no objections and the record was kept open through March 21. Nothing further was received. Due to the extended comment period and lack of objections, any potentially interested parties were adequately notified and there has been substantial compliance with KCC notice requirements.

¹ Exhibit 19.

² Exhibit 27 (certificate of notice); Exhibits 12 and 13 (application notice); Exhibit 26 (hearing notice).

1.7 Zoning/Plan Designations. Located outside the urban growth area, the Comprehensive Plan and zoning designations are Rural Residential,³ which allows one dwelling unit per five acres. Surrounding properties have the same zoning and are developed with single-family residences and potentially some agricultural uses, with some vacant lands.

1.8 Critical Areas. The ADU and residence are outside the 50 foot buffer and 15 foot building setback required for a seasonal stream 100 feet away. There are no other on-site critical areas.

1.9 Utility and Public Services.

- **Water:** Well
- **Power:** Puget Sound Energy
- **Sewer:** Septic
- **Police:** Kitsap County Sheriff
- **Fire:** North Kitsap Fire & Rescue
- **Schools:** North Kitsap School District No. 400

1.10 Access. Access is from a private easement along the parcel's south end, located off of Hansville Road NE, a county-maintained road.

1.11 Setbacks/Height. Setback requirements are five feet for the side yards and 50 feet on the north and south sides.⁴ The proposed setbacks far exceed these requirements, with 320 feet on the south, 300 on the north, 245 on the east, and 50 on the west. The 35 foot height limit will be complied with.

1.12 Aesthetics. ADU building materials will be similar to the existing single-family residence, with similar styles and color.⁵ The site is vegetated, which provides screening and improved aesthetics.⁶

1.13 Conditions. DCD proposed 26 conditions. No concerns were raised. To ensure code compliance, the conditions should be imposed without substantive revision.

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Review Authority. The Hearing Examiner has Conditional Use Permit (“CUP”) review authority for this ADU.⁷ The Hearing Examiner may approve, approve with conditions, or deny a CUP.⁸

³ Exhibits 20 and 23.

⁴ Exhibit 28 (Staff Report), p. 3. Due to access easements serving more than four lots, a 50 foot setback is required on the south and north sides. Due to the easement, the parcel was treated as having two fronts.

⁵ Exhibit 28 (Staff Report), p. 8 and Attachments A and B. *See also* Exhibits 5-8.

⁶ Exhibit 29 (Power Point); Exhibit 28 (Staff Report), p. 1 (aerial photo of site).

⁷ KCC Sections 17.410.010(C) and 21.04.100 (*see* permit type No. 18).

⁸ KCC 17.550.030.

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.⁹ 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."¹⁰ 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 will live in the existing 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."¹¹ The primary residence's habitable area is 2,082 square feet, so the ADU is limited to 900 square feet. At 875 square feet, the ADU complies.

The ADU would be about 80 feet from the primary residence, so 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 (i.e., garage)...."¹² The proposal complies with all other setback requirements.

As for design, as addressed in the findings above, the primary residence and ADU will be similar in appearance,¹³ as the ADU has been "designed to maintain the appearance of the primary residence."¹⁴ Also, the proposed ADU is stick-built, so is not a mobile home or recreational vehicle.¹⁵

The ADU will be supplied by well water and a septic system, with Health District approval required (*see* Conditions 8 and 21), and so will "meet the applicable health district standards for water and sewage disposal."¹⁶

Parking and entry requirements are met. The ADU will use "the same side street entrance as the primary residence" and with sufficient space to meet minimum parking requirements will "provide additional off-street parking,"¹⁷ as verified when the building permit application is reviewed. 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;

⁹ KCC Table 17.410.042 Rural, Resource, and Urban Residential Zones, and Footnote 1, requiring ADU compliance with KCC 17.410.060. *See* KCC 17.410.060(B)(3).

¹⁰ KCC 17.410.060(B)(3).

¹¹ KCC 17.410.060(B)(3).

¹² KCC 17.410.060(B)(3).

¹³ Exhibit 28 (Staff Report), p. 8 and Attachments A and B. *See also* Exhibits 5-8.

¹⁴ KCC 17.410.060(B)(3).

¹⁵ KCC 17.410.060(B)(3).

¹⁶ KCC 17.410.060(B)(3).

¹⁷ KCC 17.410.060(B)(3).

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.¹⁸

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, 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, and is consistent with 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 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 and planned rural uses. It is aesthetically consistent with the existing residence. The ADU's small size, existing vegetation, and extensive setbacks 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.

¹⁸ KCC 17.550.030(A).

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 875 square feet (as indicated in Exhibit 5 and 6). 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. This permit shall comply with all Kitsap Public Health District regulations and conditions of approval.

9. No mobile home or recreational vehicle shall be allowed as an ADU.

10. The ADU shall use the same side street entrance as the primary residence and shall provide one additional off-street parking space.

11. 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.

12. 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.

13. The ADU cannot be sold separately from the primary residence unless it has legally been segregated onto its own lot.

14. 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 Applicants' expense.

15. 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.

16. 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.

17. The decision set forth herein is based upon representations made and exhibits contained in the project application (#18-05021). 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.

18. 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.

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

20. At the time of the building permit application, the building permit site plan shall identify the minimum property setbacks as 50 feet for front and five feet for side.

21. At the time of the building permit application, Health District documentation shall be submitted verifying approved sanitation and water availability.

Development Engineering

22. The information provided demonstrates this proposal is a Small Project as defined in Kitsap County Code Title 12, and as such will require that the building permit application materials demonstrate compliance with basic erosion and sediment control measures and compliance with the requirements of Kitsap County Code Title 12 at the time of building permit application.

23. If the project proposal is modified from that shown on the submitted site plan dated January 18, 2019, Development Services and Engineering will require additional review and potentially new conditions.

Environmental

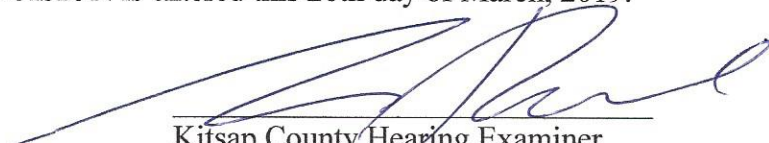
24. The subject property has a non-fish bearing stream that requires a 50 foot buffer and a 15 foot building setback. Permit approval is subject to chapter 19.300.315 of the Kitsap County Code, which states that buffers or setbacks shall remain undisturbed natural vegetation areas except where the buffer can be enhanced to improve its functional attributes. Refuse shall not be placed in buffers.

25. Critical area buffer signs are required for the non-fish bearing stream. The signs shall be placed at the edge of the 50 foot buffer. This can be inspected at the time of the building permit.

Traffic and Roads

26. The Applicants 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

THIS DECISION is entered this 26th day of March, 2019.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond