



## Notice of Hearing Examiner Decision

06/10/2020

To: Interested Parties and Parties of Record

RE:           Project Name: Dakan Accessory Dwelling Unit (ADU)  
                  Applicant: Eve and Douglas Dakan  
                                12991 Wicks End Lane SW  
                                Port Orchard, WA 98367  
                  Application: Conditional Use Permit – Accessory Dwelling Unit  
                                (CUP-ADU)  
                  Permit Number: 19-04275

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **19-04275 Dakan Accessory Dwelling Unit, 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: Eve & Douglas Dakan, [xena1000@hotmail.com](mailto:xena1000@hotmail.com)  
Authorized Agent: Paul Neuman; [paul@nwasphalt.com](mailto:paul@nwasphalt.com)  
Project Representative: Emily Wold, [info@belledesignseattle.com](mailto:info@belledesignseattle.com)  
Health District  
Public Works  
DSE  
Kitsap Transit  
South Kitsap Fire District

South Kitsap School District  
Puget Sound Energy  
Water Purveyor: Washington Water Service  
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  
WA State Dept of Ecology-Wetland Review  
WA State Dept of Transportation  
Interested Parties:  
Selene Heath, [evilsisterc@aol.com](mailto:evilsisterc@aol.com)

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

**Accessory Dwelling Unit Conditional Use Permit  
Dakan, File No. 19-04275**

**June 9, 2020**

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**1. FINDINGS OF FACT**

**1.1 Proposal.** Construction of a 900 square foot accessory dwelling unit (“ADU”) on a 2.51 acre lot.

**Applicant/Property Owner.** Eve and Douglas Dakan, 12991 Wicks End Lane SW, Port Orchard, WA 98367.

**Location.** 12991 Wicks End Lane SW, Port Orchard, WA 98367. Assessor Parcel No. 052201-2-050-2009.

**1.2 Hearing.** An open record public hearing was held May 28, 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 June 4.<sup>1</sup> One additional comment was received on May 28. At the hearing, DCD, through Ms. Barnhart, described the project. DCD found it consistent with requirements, and recommended approval with conditions. The Applicant 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 1-26, which included the Staff Report, application materials, documentation of agency consultation, public notice documents, and a DCD Power Point presentation. Exhibit 26 is the comment received just after the hearing from a neighbor, Ms. Lively, supporting the ADU.

**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 20; Exhibit 23 (Staff Report), p. 2.

**1.6 Notice.** Hearing and application notice was provided consistent with KCC requirements.<sup>3</sup>

**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),<sup>4</sup> allowing one dwelling unit per five acres. An ADU is authorized by CUP, with requirements specific to the use. Surrounding properties are also zoned Rural Residential. Single-family residences surround the site on the south, east, and west, with a manufactured home to the north.<sup>5</sup>

**1.8 Utility and Public Services.**

- **Water:** Washington Water Service
- **Power:** Puget Sound Energy
- **Sewer:** Septic
- **Police:** Kitsap County Sheriff
- **Fire:** South Kitsap Fire & Rescue
- **Schools:** South Kitsap School District

**1.9 Access.** Private 30-foot access and utility easement that runs along the parcel's south end. The driveway enters at the southwest corner. A small driveway will extend north to the ADU off the existing driveway.

**1.10 Dimensions and Setbacks.** The site is developed with a 1,880 square foot single family residence and septic system; the ADU will be about 50 feet away, and meet the 35-foot height limit.<sup>6</sup> Setbacks meet or exceed requirements, with 20 feet on the west side, 155 on the front, 200 on the rear and 258 on the east side.<sup>7</sup>

**1.11 Building and Site Aesthetics.** The primary residence and ADU will be similar in appearance. The ADU and residence will share similar siding, roofing, windows and color, as well as matching covered porches.<sup>8</sup> The extensive setbacks provide visual mitigation.

**1.12 Environmental.** A Category III wetland is on the site's northwest corner. A 60-foot buffer and 15-foot setback was delineated. Buffering averaging is proposed to accommodate the new drainfield. 225-square feet of buffer will be reduced for the drainfield and added onto the buffer along the site's western edge, nearest the ADU.<sup>9</sup> No clearing is proposed and there are no other critical areas.

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<sup>3</sup> Exhibits 15, 21 and 22; KCC 21.04.080, .210.

<sup>4</sup> Exhibit 23 (Staff Report), p. 2.

<sup>5</sup> Exhibit 23 (Staff Report), p. 3.

<sup>6</sup> Exhibit 23 (Staff Report), pp. 3 and 7.

<sup>7</sup> Exhibit 23 (Staff Report), p. 3.

<sup>8</sup> Exhibit 23 (Staff Report), p. 7; Exhibits 2, and 5-8.

<sup>9</sup> Exhibit 23 (Staff Report), p. 9; KCC 19.200.220(B)(1); Exhibit 18.

**1.13 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>10</sup> The Examiner may approve, approve with conditions, or deny a CUP.<sup>11</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>12</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>13</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.

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>14</sup> The primary residence's habitable area is 1,880 square feet.<sup>15</sup> At 900, the ADU complies.

The ADU, at 50 feet from the primary residence,<sup>16</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>17</sup> The proposal complies with all other setback requirements.

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

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

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

<sup>11</sup> KCC 17.550.030.

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

<sup>13</sup> KCC 17.410.060(B)(3).

<sup>14</sup> KCC 17.410.060(B)(3).

<sup>15</sup> Exhibit 23 (Staff Report), p. 7.

<sup>16</sup> Exhibit 23 (Staff Report), p. 7.

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

<sup>18</sup> Exhibit 23 (Staff Report), p. 7; Exhibits 2, and 5-8.

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

<sup>20</sup> KCC 17.410.060(B)(3).

<sup>21</sup> Exhibit 23 (Staff Report), p. 8; Exhibits 9 and 14.

<sup>22</sup> 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."<sup>23</sup> Two additional parking spaces will be provided for the ADU.<sup>24</sup> With sufficient space to meet minimum parking requirements and with the "additional off-street parking,"<sup>25</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
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>26</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 have significant 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 extensive setbacks which exceed code requirements 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.

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<sup>23</sup> KCC 17.410.060(B)(3).

<sup>24</sup> Exhibit 23 (Staff Report), p. 8; KCC 17.490.030.

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

<sup>26</sup> KCC 17.550.030(A).

## 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.
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 900 square feet.
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 a minimum of 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 (KCC).
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 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.

15. The uses of the property are limited to the uses proposed by the applicant; any other uses will be subject to further review pursuant to the requirements of the Kitsap County Code (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, and is not, to be construed as approval for more extensive or other utilization of the 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 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.

17. The decision set forth herein is based upon representations made and exhibits contained in the project application (19-04275). 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 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.

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

### **Development Engineering**

20. New and/or replaced hard surfaces do not exceed the 2,000 square foot threshold; nor does the project exceed 7,000 square feet of disturbed area. While a formal plan is not required, the applicant must consider all elements required of a stormwater pollution prevention plan and make allowances for managing erosion and sediment discharge on site. Per KCC Title 12, if the project exceeds either threshold above, then additional review for stormwater management is required.



21. Erosion and sedimentation control shall be designed in accordance with Kitsap County Code Title 12 effective at the time the Conditional Use Permit application was deemed complete, October 31, 2019.

### **Environmental**

22. A 60-foot averaged wetland buffer and 15-foot building setback shall be maintained from the Category III wetland in the northwest corner of the parcel, per the Single-Family Wetland Certification by Ecological Land Services, dated 2/19/20. The outer edge of the averaged wetland buffer shall be flagged prior to start of construction. Permanent wetland buffer signs shall be placed prior to final building permit inspection by the wetland specialist, spaced 50-feet apart and visible from sign-to sign.

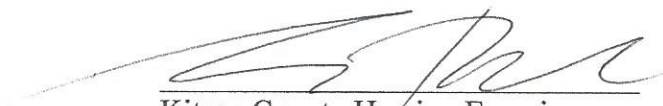
### **Traffic and Roads**

23. 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.

24. 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.

Absent a timely appeal, this Decision is final.<sup>27</sup>

DECISION entered June 9, 2020.



Kitsap County Hearing Examiner  
Susan Elizabeth Drummond

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<sup>27</sup> See Ch. 36.70C RCW (any appeal to be filed within 21 days to superior court).