



Notice of Hearing Examiner Decision

07/20/2021

To: Interested Parties and Parties of Record

RE: Project Name: Hill Accessory Dwelling Unit
Applicant: Allen and Karen Hill
4060 SE Scofield Road
Port Orchard, WA 98367
Application: Conditional Use Permit – Accessory Dwelling Unit (CUP-ADU)
Permit Number: #20-04271

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **Permit #20-04271 Hill – Conditional Use Permit – 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 or (360) 337-5777.

CC: Applicant/Owner: allenshill@hotmail.com
Health District
Public Works
DSE
Kitsap Transit
South Kitsap Fire District
South Kitsap School District
Puget Sound Energy
Water Purveyor – Horizon's West
WA State Dept of Ecology-SEPA
WA State Dept of Ecology-Wetland Review
Interested Parties: None

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

**Accessory Dwelling Unit Conditional Use Permit
Hill, File No. 20-04271**

July 16, 2021

1. FINDINGS OF FACT

1.1 Proposal. Construct an 875 square foot accessory dwelling unit (“ADU”) on a 2.52 acre lot.

Applicant/Property Owner. Allen and Karen Hill, 4060 SE Scofield Road, Port Orchard, WA 98367.

Location. 4060 SE Scofield Road, Port Orchard, WA 98367. Assessor Parcel No. 192302-4-001-2007.

1.2 Hearing. An open record public hearing was held July 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 July 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, through Mr. Hill, 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 1-33, 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, with this comment:

The proposal will be conditioned for Stormwater Control per KCC Title 12, Critical Areas per KCC Title 19, and Zoning per KCC Title 17. This includes, but is not limited to, the Development Services and Engineering Preliminary Conditions Memorandum, dated June 2, 2021 and the Wetland Mitigation Plan dated May 4, 2020 by BGE Environmental, LLC.²

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

² Exhibit 30; Exhibit 31 (Staff Report), p. 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

1.7 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 north, east, and south, but undeveloped to the west.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. Private driveway to SE Scofield Road, a private road which connects to Phillips Road SE, a County maintained right of way.

1.10 Building and Site Aesthetics. The primary residence and ADU will be similar in appearance. The Applicant is proposing the same horizontal siding, and similar roof pitch, windows and garage doors for both structures.⁶ Setbacks provide visual mitigation.

1.11 Site Characteristics, Dimensions and Setbacks. The southwest portion of the site is developed with a single-family residence, an accessory structure/shop, septic system and two-party well. The ADU meets the 35-foot height limit and exceeds setback requirements, with 50 feet on the front (east), about 175 on the second front (north), 125 on the west side, and 187 on the south side.⁷

1.12 Environmental. There is a Type N stream and Category III wetland on the site's northwest area. The ADU meets the stream's 50-foot buffer and 15-foot setback requirement, but a 25% wetland buffer reduction (from a 110-foot buffer requirement) and five-foot setback reduction is requested. To mitigate for impacts, a 3,000 square-foot of buffer restoration would be completed. A Wetland Delineation and Mitigation Report from BGE Environmental, LLC details the mitigation.

³ Exhibits 14, 23, and 32; Exhibit 31 (Staff Report), p. 7; KCC 21.04.080, .210.

⁴ Exhibits 26 and 29; Exhibit 31 (Staff Report), p. 2.

⁵ Exhibit 31 (Staff Report), p. 3.

⁶ Exhibits 2 and 3; Exhibit 31 (Staff Report), p. 8.

⁷ Exhibit 31 (Staff Report), p. 3.

The required buffer is 110-feet, with a 15-foot building setback. The Applicants requested an administrative buffer reduction of 25% to reduce the buffer to 82.5 feet, with buffer averaging (66-feet at the closest point). With 3,000 square feet of buffer restoration improving buffer functioning in a degraded area, KCC 19.100.135 criteria are met, as the Department determined based on the BGE Environmental analysis. The necessity for the buffer reduction is created by an easement which adds to the setback distance and a need to avoid forested areas. These constitute special circumstances the owner did not create. The reduction creates no detrimental impacts to the wetland or public welfare, and does not injure property or improvements in the vicinity. No practicable or reasonable alternative exists and a mitigation plan is required. Also, the reduction is the “minimum necessary to accommodate the permitted use” and “clearly provide[s] as great or greater functions and values as” standard buffering would, as “enhancement of a degraded buffer” is provided.⁸ Critical areas administrative variance criteria are met.⁹

1.13 Development Engineering/Stormwater. Development Services and Engineering reviewed the proposal, finds the concept supportable in its approach to civil site development and recommended approval with conditions.

1.14 Conditions/Staff Report. The Applicant accepted the proposed conditions, which are incorporated without substantive 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 2,736 square feet.¹⁵ At 875, the ADU complies.

⁸ KCC 19.200.220(B)(2).

⁹ As this is an administrative variance, the Department typically would issue the decision, but if consolidated with the ADU CUP, the Examiner makes the final decision. KCC 21.04.180.

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 31 (Staff Report), p 8.

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

Parking and entry requirements are met. The ADU will use "the same side street entrance as the primary residence."²³ The existing driveway will 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

¹⁶ Exhibit 31 (Staff Report), p. 8.

¹⁷ KCC 17.410.060(B)(3).

¹⁸ Exhibits 2 and 3; Exhibit 31 (Staff Report), p. 8.

¹⁹ KCC 17.410.060(B)(3).

²⁰ KCC 17.410.060(B)(3).

²¹ Exhibits 6 and 7; Exhibit 31 (Staff Report), p. 9.

²² KCC 17.410.060(B)(3).

²³ KCC 17.410.060(B)(3).

²⁴ KCC 17.410.060(B)(3).

²⁵ KCC 17.550.030(A).

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. As addressed in Finding 1.12, administrative variance criteria were met.²⁶ 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 will be aesthetically consistent with the existing single-family residence. The ADU's small size, existing vegetation, and setbacks which meet or 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.

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. 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 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. The ADU's habitable area shall not

²⁶ KCC 19.200.220(B)(2); KCC 19.100.135.

exceed 50% of the primary residence or 900 square feet, whichever is smaller. The proposed size of the ADU is 875 square feet (Exhibit 4). 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.

6. The ADU shall be located within 150 feet of the primary residence.

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 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 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.

15. 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.

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 Permit #20-04271. 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.

Development Engineering

20. Construction plans and profiles for all roads, storm drainage facilities and appurtenances prepared by the developer's engineer shall be submitted to Kitsap County for review and acceptance. No construction shall be started prior to said plan acceptance.

21. The information provided demonstrates this proposal is a Small Project as defined in KCC Title 12, and is located within 200 feet of a critical area. As such the required building permit shall include an on-site stormwater management design that demonstrates compliance with Minimum Requirements #1-5, as outlined in the Kitsap County Stormwater Design Manual.

22. Stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with KCC Title 12 effective at the time the CUP application was deemed complete, October 7, 2020. The submittal documents shall be prepared by a civil engineer licensed in the State of Washington.

23. The Washington State Department of Ecology (Ecology) may require registration of the infiltration trench as an Underground Injection Control Program (Chapter 173-218 WAC). The Applicant shall contact Ecology to determine if the facility is regulated under the UIC program.

24. The design of the infiltration facilities will be in accordance with Vol. II, Chapter 5 of the Kitsap County Stormwater Design Manual.

25. The infiltration facilities shall remain off line until the drainage areas are stabilized and the water quality treatment facility is adequately established. Temporary erosion and sedimentation ponds shall not be located over infiltration facilities.

26. During construction of the proposed infiltration facilities, the Project Engineer shall provide an inspection to verify that the facilities are installed in accordance with the design

documents and that actual soil conditions encountered meet the design assumptions. The Project Engineer shall submit the inspection report properly stamped and sealed with a professional engineer's stamp to Development Services and Engineering.

27. At the time of submittal of a building permit, soil amendment is required for all disturbed areas not covered by hard surface.

28. The owner shall be responsible for maintenance of the storm drainage facilities for this development following construction. Before issuance of Occupancy Permits for this development, the person or persons holding title to the subject property for which the storm drainage facilities were required shall record a Declaration of Covenant that guarantees the County that the system will be properly maintained. Wording must be included in the covenant that will allow the County to inspect the system and perform the necessary maintenance in the event the system is not performing properly. This would be done only after notifying the owner and giving him a reasonable time to do the necessary work. Should County forces be required to do the work, the owner will be billed the maximum allowed by law.

29. If the project proposal is modified from that shown on the submitted site plan accepted for review April 2, 2021, Development Services and Engineering will require additional review and potentially new conditions.

Environmental

30. The proposal shall follow the mitigation, maintenance and monitoring plan as identified in the Wetland Report by BGE Environmental, dated May 4, 2020.

Traffic and Roads

31. 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.

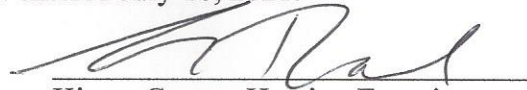
32. Any work within the County right-of-way shall require a Public Works permit and possibly a maintenance or performance bond. This application to perform work in the right-of-way shall be submitted as part of the building permit. The need for and scope of bonding will be determined at that time.

Fire Safety

33. A fire suppression system is required under a separate permit.

Absent a timely appeal or grant of reconsideration, this Decision is final.²⁷

DECISION entered July 16, 2021.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond

²⁷ See Ch. 36.70C RCW (any appeal to be filed within 21 days to superior court); HER 1.9.1.