



Notice of Hearing Examiner Decision

3/1/2017

To: Interested Parties and Parties of Record

RE: Project Name: NICKELL/UPPINGHOUSE – Accessory Dwelling Unit
Applicant: NICKELL JOHN W & LINDSEY W
4001 SW HUNTER RD
PORT ORCHARD, WA 98367
Application: CONDITIONAL USE PERMIT
Permit Number: 16 04693

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-%20206-23-09.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 or (360) 337-5777.

CC: NICKELL JOHN W & LINDSEY W l.w.nickell@gmail.com
INDIGO ENTERPRISES LLC indigoenterprises@gmail.com
Interested Parties:
None

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

**Accessory Dwelling Unit Conditional Use Permit
File No. 16 04693**

February 28, 2017

The Kitsap County Hearing Examiner reviewed this accessory dwelling unit (ADU) proposal at an open record public hearing on February 23, 2017, and makes the following findings, conclusions, and decision:

1. FINDINGS OF FACT

1.1 Proposal. The Applicants request Conditional Use Permit approval for a 719 square foot accessory dwelling unit (ADU) with a 118 square foot covered porch. The Applicants/property owners and site location are:

Applicants/Property Owners: John W. and Lindsey W. Nickell, 4001 SW Hunter Road, Port Orchard, WA 98367.

Site Location: The site is located at 4001 SW Hunter Road, Port Orchard, WA 98367 (Assessor No. 082201-1-025-2000).

1.2 Administrative Record. The Hearing Examiner reviewed Exhibits 1-26 before the hearing, which included the Staff Report. At the hearing, the Department of Community Development (DCD) proposed adding a power point as Exhibit 27. The Examiner admitted all exhibits.

1.3 SEPA. The SEPA comment period occurred concurrent with the Notice of Application.¹ A Determination of Non-Significance (DNS) was issued on December 13, 2016.² No comments were received. The DNS included the following condition: "The proposal will be conditioned for Stormwater Control per Kitsap County Code Title 12."

1.4 Hearing. DCD, through Ms. Roberts, addressed how the ADU meets applicable code requirements. DCD recommended approval. The Applicant, through Ms. Nickell, after being sworn in, summarized the planning which has gone into this project. Ms. Nickell stated that that the proposal has taken several years (about four) to come to fruition, and the Applicants plan to put down roots in the community and establish an intergenerational farming use. With the project, the property's aesthetics will be improved, including through the removal of two dilapidated outbuildings. No person present indicated a wish to submit oral comment.

1.5 Public Comment. No public comments were received.

¹ Exhibit 11.

² Exhibit 12.

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

1.7 Zoning/Plan Designations. The Comprehensive Plan designation is Rural and the Zoning designation is Rural Residential (RR).³ RR zoning allows one dwelling unit per five acres. The immediate surrounding properties are also zoned RR. Parcels in the area are predominantly developed with single family residences or undeveloped.

1.8 Physical Characteristics. The 2.82-acre square parcel is currently developed with a 1,782 square foot single family residence/manufactured home and 900 square foot detached garage. The County critical areas map shows no areas of concern. The entire property lies within a Category I Critical Aquifer Recharge Area.⁴ The property is relatively flat, sloping slightly west to east.⁵ Hugu Creek is located over 1,000 feet to the east.

1.9 Utility and Public Services.

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

1.10 Access. Site access is off of SW Hunter Road, a County maintained, paved road.

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Review of ADU CUP.

The Hearing Examiner reviews this type of Conditional Use Permit application.⁶ The Hearing Examiner may approve, approve with conditions, or deny a Conditional Use Permit.⁷ 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 Conditional Use Permit and comply with requirements specific to the use.⁸ Only one ADU is

³ See Exhibits 17 and 20.

⁴ Exhibit 19.

⁵ Exhibit 21.

⁶ KCC Sections 17.410.010(C) and 21.04.100.

⁷ KCC 17.550.030(A).

⁸ 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).

allowed per lot, on which no accessory living quarters are located, and the owner "must reside in either the primary residence or the ADU."⁹ 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 live in the single family residence already on the property, these requirements are met.

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."¹⁰ The primary residence's habitable area is 1,782 square feet according to the Kitsap County Assessor data. Fifty percent of its habitable area (891 square feet) is less than 900 square feet, so the ADU would be limited to 891 square feet. The entire ADU building is proposed at 837 square feet according to the floor plans; habitable area is 719 square feet and the front porch is 118 square feet. In no case shall the habitable area of the ADU be greater than 891 square feet. As such, the proposed ADU complies with this code requirement.

The proposed ADU building is located approximately 75 feet from the primary residence¹¹, 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)...."¹²

As for design, the primary residence and ADU will be similar in appearance. Both buildings are manufactured homes and are constructed of similar materials.¹³ The ADU will be painted with a grey/green base color, charcoal trim, and a charcoal black roof. As a result, the ADU has been "designed to maintain the appearance of the primary residence."¹⁴ Also, the proposed ADU will be a manufactured home, so is not a "mobile home or recreational vehicle."¹⁵

The proposed ADU building will be required to comply with the standard RR setbacks. The subject property has two fronts – SW Hunter Lane along the west property line, and SW Hunter Road along the north property line – and two sides, the south property line and east property line. The ADU shall be a minimum of 50 feet at the closest point to the west and north property lines. The front yard setback, along the west property line and SW Hunter Lane, is delineated at 50 feet; the front yard setback along SW Hunter Road is delineated at 273 feet. The ADU shall be a minimum of five feet at the closest point to the east and south property lines. The side yard setback, along the south property line, is delineated at 20 feet and the other side yard, along the east property line, is shown at 289 feet.¹⁶ 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"¹⁷ is met.

⁹ KCC 17.410.060(B)(3).

¹⁰ *Id.*

¹¹ Exhibit 13.

¹² KCC 17.410.060(B)(3).

¹³ Exhibits 1 - 3.

¹⁴ KCC 17.410.060(B)(3).

¹⁵ *Id.*

¹⁶ Exhibit 13.

¹⁷ KCC 17.410.060(B)(3).

The Health District recommends approval of this project with no conditions, and has noted that a well will be drilled when the CUP is approved.¹⁸ As such, the proposed ADU will "meet the applicable health district standards for water and sewage disposal."¹⁹

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."²⁰ Both the primary residence and the ADU will use the same proposed driveway. Two parking spaces are required for the single family residence and one additional parking space is required for the ADU. There is ample room for parking.

Based on the single family residence floor plan, the structure does not have accessory living quarters,²¹ so the requirement that an "ADU is not permitted on the same lot where an accessory living quarters exists"²² 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 are no critical areas on-site; additionally, Kitsap County Environmental Planner Lisa Lewis reviewed the application and found no critical area concerns.

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 22-26.

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, appearance, quality or development, and physical characteristics of the subject property and the immediate vicinity.²³

¹⁸ Exhibit 16.

¹⁹ KCC 17.410.060(B)(3).

²⁰ *Id.*

²¹ Exhibit 6.

²² KCC 17.410.060(B)(3).

²³ KCC 17.550.030(A).

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 housing for extended family. 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, overall property aesthetics will be improved. 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 27 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 and issued building permit is required to place the proposed 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, 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 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 719 square feet with a covered porch of 118 square feet as indicated in Exhibit 7. Any future expansion of the ADU will require a minor revision to this CUP and a new building permit.

8. The ADU shall be designed to maintain the appearance of the primary residence.

9. The ADU shall meet the applicable health district standards for water and sewage disposal.

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

11. The portion of the required 25 foot native vegetation buffer located where the "existing drive (to be abandoned)" off of SW Hunter Lane is noted, shall be replanted in accordance with the revised site plan dated December 15, 2016 (Exhibit 13). Access shall be from SW Hunter Road only.

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

13. 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.

14. 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.

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

16. 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 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.

17. 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.

18. 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.

19. The decision set forth herein is based upon representations made and exhibits contained in the project application (16 04693). 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.

20. 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.

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

Development Engineering.

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

23. Erosion and sedimentation control shall be designed in accordance with Kitsap County Code Title 12 effective at the time the CUP application was deemed complete, October 17, 2016. The fees and submittal requirements shall be in accordance with Kitsap County Ordinances in effect at the time of building permit application.

24. Stormwater mitigation of the impervious surfaces shall be addressed via basic dispersion as proposed by the Applicants. Roof downspouts shall discharge via splash blocks; the dispersal system will simulate sheet flow conditions to the downstream vegetation on-site.

25. The proposal includes removal of an existing driveway approaching SW Hunter Lane. In addition to the buffer restoration, prior to requesting a Final Inspection on the required building permit, the driveway area outside of the buffer shall be scarified and restored to a natural condition.

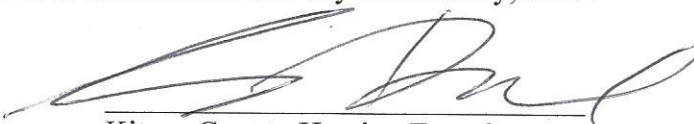
26. If the project proposal is modified from that shown on the submitted site plan

dated January 17, 2017, Development Services and Engineering will require additional review and potentially new conditions.

Fire.

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

THIS DECISION is entered this 28th day of February, 2017.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond