



Notice of Hearing Examiner Decision

11/20/18

To: Interested Parties and Parties of Record

RE: Project Name: Sanson Accessory Dwelling Unit Conditional Use Permit and Shoreline Substantial Development Permit
 Applicant: Kerrie and Jeffrey Sanson
 6333 Buckskin Lane
 Bainbridge Island, WA 98110
 Application: Accessory Dwelling Unit Conditional Use Permit and Shoreline Substantial Development Permit
 Permit Number: #18-01513 (CUP) and 18-01852 (SSDP)

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: Applicant: Kerrie Sanson, kksanson@aol.com
Owner: Jeffrey L & Kerrie K Sanson, kerriesanson@gmail.com
Project Representatives: Roger Katz, roger@rogerkatz.com; Daniel Dennon dakotadesign@msn.com; daniel@rogerkatz.com
Health District
Public Works
Parks
Navy

Kitsap Transit
North Kitsap Fire District
North Kitsap School District
Puget Sound Energy Water Purveyor - KPUD
Sewer Purveyor – Public Works
Point No Point Treaty Council
Suquamish Tribe
WA Dept of Fish & Wildlife
WA State Dept of Ecology-SEPA
Kitsap County Prosecutors Office
Kitsap County Accessors Office
DCD Director
Kitsap Sun

Interested Parties:

None

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

**Accessory Dwelling Unit Conditional Use Permit and
Shoreline Substantial Development Permit**

Sanson, File Nos. 18-01513 (CUP) and 18-01852 (SSDP)

November 20, 2018

1. FINDINGS OF FACT

1.1 Proposal Description. The requested Conditional Use Permit would allow an 899 square foot Accessory Dwelling Unit above a three-car detached garage, which will be joined with a 2,549 square foot single family residence on a vacant, 0.22-acre waterfront parcel. The site will be landscaped, and includes parking and stairs to the beach.

- **Applicants/Property Owners.** Kerrie and Jeffrey Sanson, 6333 Buckskin Lane, Bainbridge Island WA, 98110.
- **Location.** 17706 Angeline Ave South NE, Suquamish, WA 98392, Parcel No. 4355-002-010-0007

1.2 Administrative Record. The Hearing Examiner admitted Exhibits SSDP 1-28 and Exhibits ADU 1-29 at the hearing.¹ The exhibits include comment from the Applicant's architect clarifying lot coverage and Kitsap County Department of Community of Development's ("DCD") power point.

1.3 SEPA. DCD issued a Determination of Non-Significance,² which was not appealed. The DNS requires Title 12 (stormwater) and Title 19 (critical areas) compliance.

1.4 Hearing.

1.4.1 The open record public hearing was held on November 8, 2018. Hearings are typically held in the Commissioners' Chambers, but due to technical issues, the hearing location had to be changed. The agenda was amended and Chamber doors posted with notices directing parties to the room next door, and in the same building. No party had difficulty finding the alternative location, but as a precaution, the Examiner held the record open through 5 PM on November 9, 2018.

¹ There are two exhibit lists, one for each permit, although many exhibits are identical.

² Exhibits ADU 22 and SSDP 21.

1.4.2 At the hearing, DCD, through Ms. Barnhart, summarized the proposal. As DCD found the proposal consistent with code requirements, it recommended approval with mitigation. The Applicant's architect, after being sworn in, expressed agreement with DCD's recommendation. No person present indicated a wish to comment, and no written comment was received after the hearing.

1.5 Agency Comment. The proposal was circulated within the County, and comment was received regarding regulatory compliance. As long as requirements are met, there were no objections to approval. Kitsap County Public Works, Kitsap Public Health District, and Kitsap PUD #1 reviewed the project and had no concerns. Water and sewer availability has been confirmed. The Fire District also reviewed the project. Conditions may be approved with the building permit, but need not be added at this stage.

1.6 Notice. Hearing notice was provided through publishing and mailing, as was application notice.³ No concerns on notice were raised.

1.7 Zoning/Plan Designations. Located outside the urban growth area, the Comprehensive Plan designation is Limited Area of More Intensive Rural Development, which is implemented through the Suquamish Village Low Residential zone.⁴ The south side is on the water, but the other surrounding properties have the same zoning and are developed with a single-family residences, with some vacant lots to the north.

1.8 Shoreline/Critical Areas. The vacant lot is 50 feet wide by 200 feet long, within a residential neighborhood on Agate Passage. The site has been cleared for construction. At the shoreline, is a vertical concrete bulkhead. The property slopes gently towards Agate Pass, becoming steep with high hazard slopes near the shoreline, where mapped FEMA flood hazard areas are present. The High Geologic Hazard Area near the shoreline⁵ required a Geotechnical Report. The report and addendum concluded that the primary residence and ADU are sufficiently set-back from the top of the slope and that drainage design will not increase or create a landslide or erosion hazard. No other critical areas are present.

1.9 Setbacks. The ADU/garage front yard is set back 20 feet, side yard setbacks are five feet, and the ADU is set back 132 feet from the shoreline high water mark, which exceeds the standard 85 foot buffer. The ADU is 55 feet from the main residence.

1.10 Utility and Public Services.

- **Water:** Kitsap PUD No. 1
- **Power:** Puget Sound Energy
- **Sewer:** Kitsap County Public Works
- **Police:** Kitsap County Sheriff

³ Exhibits ADU 25 and SSDP 24.

⁴ Exhibits ADU 26 and SSDP 25 (Staff Report), pg. 2.

⁵ Ch. 19.400 KCC.

- **Fire:** North Kitsap Fire & Rescue
- **Schools:** North Kitsap School District #400

1.11 Access. Access is from Angeline Avenue South NE, a County maintained public right-of-way.

1.12 Setbacks/Height. Height limits are 30 feet, with a maximum of two habitable floors. The ADU complies, and meets setback requirements. There are no view blockage concerns.

1.13 Aesthetics. The primary residence and ADU will be similar in appearance. Both buildings will have a pitched, composite-shingle roof, Hardi-Plank fiber cement siding, and cedar fascia. The ADU's planned residential architectural design and building materials will be similar and complementary to the appearance of the primary residence.⁶

1.14 Cultural Resources. This project is proximate to known cultural sites and resources, but none are identified on site. The CUP and SSDP will be conditioned to notify the Suquamish Tribe prior to the start of construction to monitor for archeological findings.

1.15 Conditions. DCD proposed 31 conditions. No concerns were raised with the proposed conditions. To ensure code compliance and consistency with the findings, DCD's proposed conditions should be imposed without substantive revision. On Condition 26, the Geotechnical Addendum date was corrected (4/18/17 to 9/4/18). Also, for ease of review, instead of spelling out "ADU" and including the acronym, only the term "ADU" is used.

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Review Authority. Single family residences are exempt from shoreline substantial development permitting, but the ADU is not, and is reviewed by the Hearing Examiner.⁷ While this ADU CUP could be approved administratively,⁸ review with the shoreline permit was combined for efficiency.

The Hearing Examiner may approve, approve with conditions, or deny the requested permits. The Hearing Examiner may also continue the hearing to allow for additional information to make the proper decision.⁹ The Examiner kept the record open for an additional day due to the hearing room change, just in case any confusion arose, which it did not.

2.2 Code Requirements Specific to an ADU in the Suquamish Village Low Residential Zone. An ADU located outside the urban growth area, and within the Suquamish Village Low Residential zone, must obtain a CUP, and comply with requirements specific to the

⁶ Exhibit ADU 3.

⁷ KCC 22.500.100(B); KCC 22.600.170(A)(3); Ch. 21.04 KCC.

⁸ KCC Sections 17.410.010(B) and (C), KCC 21.04.100 (permit types #17 and #18); and KCC 17.410.046 (SVLR zoning, permit type #100).

⁹ KCC 17.550.030.

use.¹⁰ 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."¹¹ These requirements are met. Only one ADU is being proposed on a lot located outside the urban growth area, no accessory dwelling quarters or other ADU's are on the lot, and the property owners will live in the new 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."¹² The primary residence's habitable area is 2,549 square feet, so the ADU is limited to 900 square feet. At 899 square feet, the ADU complies.

The proposed ADU building is 55 feet from the primary residence and above a garage, so complies with the requirement that it be located "within one hundred fifty feet of the primary residence or shall be the conversion of an existing detached structure (i.e., garage)...."¹³ 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,¹⁴ as the ADU has been "designed to maintain the appearance of the primary residence."¹⁵ Also, the proposed ADU is stick-built, so is not a "mobile home or recreational vehicle."¹⁶

The ADU will be supplied by public water and sewer, and will "meet the applicable health district standards for water and sewage disposal."¹⁷

Parking and entry requirements are met. The ADU will use "the same side street entrance as the primary residence" and with four parking spaces "provide[s] additional off-street parking."¹⁸ All requirements specific to the ADU use are met.

2.3 Conditional Use Permit Requirements.

A CUP must comply with:

1. The proposal is consistent with the Comprehensive Plan;
2. The proposal complies with applicable requirements of [Title 17];

¹⁰ KCC 17.410.046; KCC Table 17.410.050(A), and Footnote 1, requiring ADU compliance with KCC 17.410.060. See KCC 17.410.060(B)(3).

¹¹ KCC 17.410.060(B)(3).

¹² KCC 17.410.060(B)(3).

¹³ KCC 17.410.060(B)(3).

¹⁴ Exhibit ADU 3.

¹⁵ KCC 17.410.060(B)(3).

¹⁶ KCC 17.410.060(B)(3).

¹⁷ KCC 17.410.060(B)(3).

¹⁸ KCC 17.410.060(B)(3); see also KCC 17.490.030 (parking requirements).

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.¹⁹

These criteria are met. The Staff Report detailed relevant comprehensive plan policies. Plan policies provide for residential development in a way which will cause minimal environmental degradation, and provide for residential uses consistent with the existing and planned character of the surrounding area, while minimizing housing costs and providing for a range of housing types. The ADU does not have significant environmental impacts, is supported by public water and sewer, provides an important housing source, and follows 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 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 mitigation and/or code requirements.

The proposal is compatible with surrounding existing and planned rural uses. It aesthetically follows the existing residence. The ADU's small size, design, and setbacks 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.

2.4 Shoreline Substantial Development Permit.

An SSDP is granted if consistent with SMA and SMP policies and procedures, and WAC 173-27-150.²⁰ These criteria are met.

The project is located consistent with shoreline regulations. Set back 132 feet, it is well outside the standard 85 foot shoreline buffer.²¹ The project is mitigated per code, complies with buffer requirements, stormwater will flow to the main system, and there will be no net loss of habitat.²² The steep slopes at the shoreline were reviewed through a Geotechnical Report, and the ADU is sufficiently set back from the top of the slope, and drainage design will not increase erosion hazards or contribute to landslide risks.²³ There are no other critical areas.²⁴

¹⁹ KCC 17.550.030(A)

²⁰ KCC 22.500.100(B)(3).

²¹ KCC 22.400.120(B)(1)(b).

²² KCC 22.400.110.

²³ KCC 22.400.105; Exhibits ADU 10 and 21 and SSDP 6 and 19.

²⁴ KCC 22.400.115; KCC Ch. 19.400.

Shoreline development standards are complied with.²⁵ There will be no net loss of shoreline ecological function given setbacks and drainage design. Sewer and water systems comply with regulation, and has been approved by Kitsap County Public Works Sewer. No new shoreline structural improvements are required, the project is not over the water; stormwater management complies with Title 12 requirements; flood hazard requirements are met and there is no net loss of shoreline ecological function; this is not a multi-family project; lot area was calculated using only the area landward of the ordinary high water mark; and, the residential use has been developed consistent with regulations addressing control of pollution and prevention of damage to the natural environment.

No other shoreline concerns have been identified. No cultural resources have been identified on site, but notification is required with construction.²⁶ With compliance with setback and height requirements, there are no view blockage concerns.²⁷ Bulk and dimension requirements are met.²⁸

The ADU is a component of the preferred shoreline residential uses at this location. The proposal follows shoreline policies and regulations. The ADU, whether viewed on its own, or combined with the primary residence, will not cause a net loss to shoreline functioning and will not have significant environmental impacts on the shoreline. The proposal follows the policies and procedures of the SMA, Ch. 90.58, and the County's SMP, and should be approved consistent with WAC 173-27-150.

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 31 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.

²⁵ KCC 22.600.170(B)(1-10).

²⁶ KCC 22.400.130.

²⁷ KCC 22.400.135.

²⁸ KCC 22.400.140.

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 899 square feet as indicated in Exhibit 14 of the ACUP-ADU (18-01513).
7. The ADU shall be designed to maintain the appearance of the primary residence.
8. No mobile home or recreational vehicle shall be allowed as an ADU.
9. The ADU shall use the same side street entrance as the primary residence and shall provide one additional off-street parking space.
10. 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.
11. 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.
12. The ADU cannot be sold separately from the primary residence unless it has legally been segregated onto its own lot.
13. 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.
14. 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 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, and is not, to be construed as approval for more extensive or other utilization of the subject property.
15. 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.

16. The decision set forth herein is based upon representations made and exhibits contained in the project application 18-01513. 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.

17. This Administrative 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.

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

Development Engineering

19. 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.

20. The information provided demonstrates this proposal is a Small Project as defined in Kitsap County Code Title 12, and as such will require on-site stormwater management, designed by a civil engineer licensed in the State of Washington and demonstrating compliance with Minimum Requirements #1-5 as outlined in the Kitsap County Stormwater Design Manual. The on-site stormwater management design shall be submitted as part of the required building permit(s).

21. Onsite stormwater management, and erosion and sedimentation control shall be designed in accordance with Kitsap County Code Title 12 effective at the time the Administrative Conditional Use Permit application was deemed complete, April 26, 2018. The submittal documents shall be prepared by a civil engineer licensed in the State of Washington, and submitted with the required building permit. The fees and submittal requirements shall be in accordance with Kitsap County Ordinances in effect at the time of building permit application.

22. The Washington State Department of Fish and Wildlife may require a Hydraulic Project Approval for the work required at the proposed outfall.

23. If the project proposal is modified from that shown on the submitted Preliminary Drainage Plans dated September 5, 2018, Development Services and Engineering will require additional review and potentially new conditions.

24. Owner must obtain a sewer permit from KCPW Sewer Utility Division prior to commencing work on the new sewer connection.

Environmental

25. The ADU CUP (18-01513) approval is conditioned for approval of the associated Shoreline Substantial Development Permit (18-01852).

26. This project shall comply with the Geotechnical Report (Perrone Consulting; 8/4/15) and Addendum Letter (EnviroSound Consultants; 9/4/18).²⁹

27. The Suquamish Tribe shall be notified of the start of construction to monitor for archaeological findings. Contact Dennis Lewarch, Tribal Historic Preservation Officer, Suquamish Tribe. Dlewarch@suquamish.nsn.us.

Traffic and Roads

28. 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.

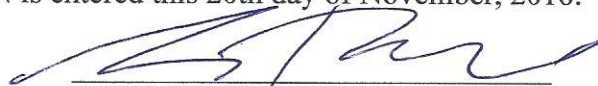
29. Submit plans for construction of the road approach between the edge of the existing pavement and the right-of-way lines at all intersections with county rights-of-way. Approaches shall be designed in accordance with the Kitsap County Code. Existing approaches may need to be improved to meet current standards.

30. 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 SDAP process (or building permit if no SDAP is required). The need for and scope of bonding will be determined at that time.

Kitsap Public Health District

31. This permit shall comply with all Kitsap Public Health District regulations and conditions of approval.

THIS DECISION is entered this 20th day of November, 2018.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond

²⁹ The staff report notes an April 18, 2017 date. The document provided has a more recent date.