



## Notice of Hearing Examiner Decision

12/13/2022

To: Interested Parties and Parties of Record

RE:           Project Name: Brandes Accessory Dwelling Unit (ADU)  
                  Applicant: Stacy T & Karin M Brandes  
                                  2676 NW Birkenfeld Way  
                                  Poulsbo, WA 98370-8096  
                  Application: Conditional Use Permit (CUP) – ADU  
                  Permit Number: 22-02874

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **Permit #22-02874** Brandes Accessory Dwelling Unit (ADU) – **Conditional Use Permit (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://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 by contacting the Department of Community Development; 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: Stacy T & Karin M Brandes, [stacybrandes@gmail.com](mailto:stacybrandes@gmail.com)  
Engineer: N.L. Olson & Associates Inc, [nlolson2@nlolson.com](mailto:nlolson2@nlolson.com)  
Health District  
Public Works  
Parks  
Navy  
DSE  
Kitsap Transit  
North Kitsap Fire District

North Kitsap School District  
Puget Sound Energy  
Water Purveyor  
Sewer Purveyor  
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 Transportation  
Interested Parties: None

**BEFORE THE HEARING EXAMINER  
FOR KITSAP COUNTY**

In the Matter of the Application of	)	No. 22-02874
	)	
<b>Karin and Stacy Brandes</b>	)	<b>Brandes Accessory Dwelling Unit CUP</b>
	)	
	)	
	)	
<u>For Approval of a Conditional Use Permit</u>	)	FINDINGS, CONCLUSIONS, AND DECISION

**SUMMARY OF DECISION**

The request for a conditional use permit to allow construction of a 569 square foot detached accessory dwelling unit on a 5.33-acre property, located at 2676 NW Birkenfeld Way, in the Poulsbo area of unincorporated Kitsap County, is **APPROVED**. Conditions are necessary to address specific impacts of the proposal.

**SUMMARY OF RECORD**

Hearing Date:

The Hearing Examiner held an open record hearing on the request on November 17, 2022, utilizing a hybrid approach allowing for participation in person or through remote access technology. The record was left open until November 28, 2022, to allow any member of the public having difficulty participating at the hearing through remote access to provide written comments in lieu of live testimony. No additional comments were submitted and, accordingly, the record closed on November 28, 2022.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Carla Lundgren, County Planner  
Stacy Brandes, Applicant

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated November 10, 2022
2. Submittal Form, received July 15, 2022
3. SEPA Environmental Checklist, dated May 22, 2022
4. ADU Construction Plans (4 Sheets), received July 15, 2022
5. Single-Family Residence Floor Plans (2 Sheets), received July 15, 2022
6. Building Site Application, dated May 9, 2022
7. Binding Water Availability Letter, dated April 26, 2022
8. Stormwater Worksheet, received July 15, 2022

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9. Structural Analysis and Calculations, N.L. Olson and Associates, Inc., dated May 6, 2022
10. Four Single-Family Residence Photographs, received July 15, 2022
11. Notice of Application, dated August 24, 2022
12. Site Plan, received October 6, 2022
13. Applicant Response to Information Request, dated October 4, 2022
14. SEPA Determination of Nonsignificance, dated October 6, 2022
15. Stormwater Conditions Memorandum, dated September 23, 2022
16. Notice of Public Hearing, published November 2, 2022
17. Certification of Public Notice, dated November 4, 2022
18. Staff Presentation
19. Hearing Sign-In
20. Existing Single-Family Residence Floor Plan Drawing, received November 17, 2022
21. Existing Detached Garage Floor Plan Drawing, received November 17, 2022

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

## **FINDINGS**

### Application and Notice

1. Karin and Stacy Brandes (Applicant) request a conditional use permit (CUP) to allow construction of a 569 square foot detached accessory dwelling unit (ADU) on a 5.53-acre property that is developed with a 2,102 square foot single-family residence, with a 705 square foot attached garage; a 952 square foot detached garage, with 760 square feet of recreation space above; a paved driveway; and a septic system. The proposed ADU would utilize the existing paved driveway providing access to the primary residence from NW Birkenfeld Way, and the existing septic system would serve both the existing primary residence and the proposed ADU. The property is located at 2676 NW Birkenfeld Way.<sup>1</sup> *Exhibit 1, Staff Report, pages 1 and 2; Exhibit 2; Exhibits 4 through 6; Exhibit 9; Exhibit 10; Exhibit 12; Exhibit 13; Exhibit 20; Exhibit 21.*
2. Kitsap County (County) determined that the application was complete on July 15, 2022. On August 24, 2022, the County provided notice of the application consistent with the requirements of Kitsap County Code (KCC) 21.04.210 by publishing notice in the County's publishing newspaper of record and by mailing or emailing notice to property owners within 800 feet of the site and to reviewing departments and agencies. The County's notice materials stated that written comments on the proposal could be submitted up until seven days before the date of the open record hearing associated with the application.

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<sup>1</sup> The property is identified by Kitsap County Assessor's Tax Account No. 212601-1-060-2005. *Exhibit 1, Staff Report, page 1.*

On November 2, 2022, the County mailed notice of the open record hearing associated with the application to property owners within 800 feet of the site, published notice in the County's publishing newspaper of record, and posted notice on the property. The County did not receive any comments on the proposal in response to its notice materials. *Exhibit 1, Staff Report, pages 1 and 6; Exhibit 11; Exhibit 16; Exhibit 17.*

#### State Environmental Policy Act

3. The County acted as lead agency and analyzed the environmental impacts of the project as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The County consolidated notice of the SEPA review and application comment periods under the optional process provided for by Washington Administrative Code (WAC) 197-11-355. The County did not receive any comments on the environmental review of the proposal. The County reviewed the Applicant's environmental checklist and other information on file and determined that the proposal would not have a probable significant adverse impact on the environment. Accordingly, the County issued a Determination of Nonsignificance (DNS) on October 6, 2022, with an appeal deadline of October 20, 2022. The DNS was not appealed. *Exhibit 1, Staff Report, page 2; Exhibit 3; Exhibit 11; Exhibit 14.*

#### Comprehensive Plan and Zoning

4. The property is designated "Rural Residential" by the County Comprehensive Plan. County staff identified the following Comprehensive Plan policies as relevant to the proposal:
  - Limit the designated rural area to low residential densities that can be sustained by minimal infrastructure improvements, that cause minimal environmental degradation, and that will not cumulatively create the future necessity or expectation of urban levels of service. [Land Use Policy 50]
  - Permit residential uses in rural areas consistent with the planned rural character of the surrounding area. [Land Use Policy 51]
  - Outside of the Type III Limited Area of More Intensive Rural Development (LAMIRD), limit development only to that which serves rural residential or resource needs and does not draw population from Urban Growth Areas. This policy is implemented through Comprehensive Plan Land Use designations, zoning designations, and zoning code provisions. [Land Use Policy 53]
  - Use regulatory strategies to incentivize and provide flexibility for development of affordable and special needs housing. [Housing, Human Services Policy 5]
  - Adopt regulatory changes to allow non-traditional housing types. [Housing, Human Services Policy 7]

- Promote fair housing to ensure that all residents of Kitsap County have an equal and fair opportunity to obtain safe and sanitary housing suitable to their needs and financial resources, regardless of race, religion, gender, sexual orientation, age, national origin, family status, income, disability, or other protected class. [Housing, Human Services Policy 11]
- Identify and remove regulatory barriers and limits access to or the provision of a diverse affordable housing supply. [Housing, Human Services Policy 12]
- Identify and remove impediments to creating housing for harder to house populations. [Housing, Human Services Policy 13]
- Disperse affordable housing opportunities throughout the County. [Housing, Human Services Policy 14]

*Exhibit 1, Staff Report, pages 3 through 5.*

5. The subject property and surrounding properties to the south, east, and west are zoned “Rural Residential” (RR). Property to the north is zoned “Parks” (P) and is undeveloped. The RR zone “promotes low-density residential development consistent with rural character. It is applied to areas that are relatively unconstrained by environmentally sensitive areas or other significant landscape features. These areas are provided with limited public services.” *KCC 17.130.010*. Detached ADUs are allowed in the RR zone with a conditional use permit. *KCC 17.410.042*. ADUs in the RR zone are required to have front yard setbacks of 50 feet, and side and rear yard setbacks of 5 feet. *KCC 17.420.052*. In accord with these requirements, the proposed ADU structure would be set back 65 feet from the front property line to the south, 331 feet from the side property line to the west, 1,160 feet from the side property line to the east, and 102 feet from the rear property line to the north. Additionally, ADUs are subject to the special use provisions of former *KCC 17.410.060*.<sup>2</sup> The proposed ADU’s compliance with these special use provisions is discussed in detail below. *Exhibit 1, Staff Report, pages 1 and 3; Exhibit 5; Exhibit 11; Exhibit 16; Exhibit 18.*

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<sup>2</sup> *KCC 17.410.060* was repealed pursuant to Ordinance No. 611-2002, which became effective on June 28, 2022. City staff analyzed the proposal for compliance with the special use provisions of former *KCC 17.410.060*, upon the apparent determination that the application had vested to the former code provisions. The application, however, was deemed complete on July 15, 2022, after the ordinance repealing former *KCC 17.410.060* became effective on June 28, 2022. It therefore appears that the proposal is subject to the current allowed use standards of *KCC 17.415.015*, which was enacted under the same ordinance. Regardless of this apparent oversight, the current allowed use standards for detached ADUs located outside of an urban growth area under *KCC 17.415.015* are substantially similar to the ADU special use requirements under former *KCC 17.410.060*. Therefore, as discussed further in this decision’s conclusions, City staff’s analysis and the record as a whole would support approval of a conditional use permit under both the former and the current code criteria. Because City staff’s analysis would support permit approval under either code provision, this decision’s findings, for clarity, refer to the former code provisions. *Exhibit 1, Staff Report, pages 1 and 2.*

### Existing Property and Proposed Development

6. The 5.53-acre property consists of an irregularly shaped parcel with a narrow strip along the north that connects a rectangular portion of the property at the west with a triangular portion of the property at the east. The western, rectangular portion of the property is currently developed with a 2,102 square foot single-family residence, with a 705 square foot attached garage; a 952 square foot detached garage, with 760 square feet of recreation space above; a septic system; and a paved driveway providing access to the property from NW Birkenfeld Way. The recreation space located above the detached garage is not considered an ADU or accessory living quarters because it does not contain kitchen or bathroom facilities. An existing primary septic drain field and reserve drain field serving the primary residence is located at the northwest corner of the property. The eastern, triangular portion of the property is largely wooded and is limited from development due to the presence of a fish-bearing stream, moderate seismic hazards, high erosion hazards, and moderate to high landslide hazards, as well as a 100-foot electrical transmission easement.

The proposed ADU would be located in the western, rectangular portion of the property, approximately 130 feet to the east of the primary residence and over 388 feet away from the nearest critical area. The proposed ADU would be accessed from the existing paved driveway serving the primary residence and would have available parking space within an existing 15-foot by 45-foot gravel parking area located to the south of the primary residence. County Development Services and Engineering reviewed and approved the proposal for compliance with stormwater regulations and traffic and road standards, with conditions that have been incorporated with County staff's recommended conditions of CUP approval. A new Kitsap Public Utility District and new Puget Sound Energy meter would provide water and power to the proposed ADU. The Kitsap County Health District reviewed and approved the proposal with no conditions. The Kitsap County Fire Marshal's Office also reviewed and approved the proposal, with a condition requiring approval of a fire sprinkler permit. *Exhibit 1, Staff Report, pages 1 through 4 and 8 through 13; Exhibits 4 through 10; Exhibit 12; Exhibit 13; Exhibit 15; Exhibit 18; Exhibit 20; Exhibit 21.*

### Conditional Use Permit

7. The County zoning code makes some uses conditional in certain zoning districts. A *conditional use* is an activity specified by the zoning code "as a principal or accessory use that may be approved or denied based on consistency with specific criteria." *KCC 17.110.175*. As noted above, the Applicant requests a CUP to construct a detached ADU, which is listed as a conditional use in the RR zoning district. *KCC 17.410.042*. ADUs in the RR zone are required to satisfy the ADU special use provisions of former KCC

17.410.060.<sup>3</sup> County staff reviewed the proposal and determined that it would satisfy these provisions. The ADU special use provisions are listed below, together with County staff's analysis (in italics):

- a. An ADU shall be allowed as a permitted use in those areas contained within an urban growth boundary. *The subject property is not located within an urban growth boundary*
- b. An ADU shall be subject to a conditional use permit in those areas outside an urban growth boundary. *The subject property is located outside of the urban growth boundary. The Applicant requests approval of a CUP to allow an ADU.*
- c. Only one ADU shall be allowed per lot. *The Applicant proposes only one ADU. There are no other ADUs present or proposed on the property.*
- d. Owner of the property must reside in either the primary residence or the ADU. *The owner currently resides in the existing single-family residence.*
- e. The ADU shall not exceed 50 percent of the square footage of the habitable area of the primary residence or 900 square feet, whichever is smaller. Dimensions are determined by exterior measurements. *The existing residence is 2,102 square feet. 50 percent of 2,102 square feet is 1,051 square feet and, therefore, the ADU would be limited to 900 square feet.*
- f. The ADU shall be located within 150 feet of the primary residence or shall be the conversion of an existing detached structure. *The existing single-family residence and proposed ADU would be located approximately 130 feet apart, satisfying this requirement.*
- g. The ADU shall be designed to maintain the appearance of the primary residence. *The structure and siding of the proposed ADU would match the aesthetic of the existing house.*
- h. All setback requirements for the zone in which the ADU would be located shall apply. *The proposed ADU would comply with all setback requirements applicable to the RR zone.*
- i. The ADU shall meet applicable health district standards for water and sewage disposal. *The Kitsap County Health District reviewed and approved the ADU.*
- j. No mobile homes or recreational vehicles shall be allowed as an ADU. *There are no mobile homes or recreational vehicles present or proposed to be located on the subject property.*
- k. An ADU shall use the same side street entrance as the primary residence and shall provide additional off-street parking. *The submitted site plan shows that the proposed ADU would use an existing driveway utilized by the single-family residence. Additional parking required for the ADU would be located south of the primary residence.*

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<sup>3</sup> As noted above in footnote 2, the special use provisions under former KCC 17.410.060 are substantially similar to the current allowed use standards for detached ADUs located outside of an urban growth area under KCC 17.415.015.



1. An ADU is not permitted on the same lot where accessory living quarters exist.  
*There are no present or proposed accessory living quarters.*  
*Exhibit 1, Staff Report, pages 6 through 8.*

#### Testimony

8. County Planner Carla Lundgren testified generally about the proposal and how it would meet the specific requirements for approval of a conditional use permit to allow construction of a detached ADU in the RR zone. She noted that the proposed 569 square foot detached ADU would be located on an irregularly shaped 5.33-acre lot that has an existing 2,102 square foot single family residence that is occupied by the Applicant. Ms. Lundgren stated that the proposed ADU would be consistent with existing residential development in the vicinity of the site and would meet all setback requirements for the RR zone. She explained that the eastern, undeveloped portion of the property contains landslide hazards, moderate erosion hazards, and a fish-bearing stream but stressed that the proposed ADU would be located on the western portion of the property, over 388 feet from the nearest critical area. She detailed how, with conditions, the proposal would be consistent with the goals and policies of the County Comprehensive Plan and would meet all the special-use criteria under former KCC 17.410.060.B.3. *Testimony of Ms. Lundgren.*
9. Applicant Stacy Brandes testified that he worked with County staff to ensure that the proposed ADU would meet all applicable code requirements. He noted that the space located above the existing detached garage on the property is utilized mostly for storage and does not contain the amenities necessary to be considered an ADU or accessory living quarters. *Testimony of Mr. Brandes.*

#### Staff Recommendation

10. Ms. Lundgren testified that County staff recommends approval of the application, with conditions. Mr. Brandes testified that he understands and would comply with County staff's recommended conditions. *Testimony of Ms. Lundgren; Testimony of Mr. Brandes; Exhibit 1, Staff Report, pages 10 through 13.*

### **CONCLUSIONS**

#### Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide requests for a conditional use permit. *KCC 2.10.070; KCC 17.550.020.*

#### Criteria for Review

The Hearing Examiner may approve, approve with conditions, or deny a conditional use permit. Approval or approval with conditions may be granted by the Hearing Examiner only when all the

following criteria are met:

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

*KCC 17.550.030.A.*

As a condition of CUP approval, the Hearing Examiner may:

1. Increase requirements in the standards, criteria, or policies established by [the zoning code];
2. Stipulate the exact location as a means of minimizing hazards to life, limb, property damage, erosion, landslides, or traffic;
3. Require structural features or equipment essential to serve the same purpose set forth in Chapter 17.420;
4. Include requirements to improve compatibility with other uses permitted in the same zone, protecting them from nuisance generating features in matters of noise, odors, air pollution, wastes, vibration, traffic, physical hazards, and similar matters. The hearing examiner may not, in connection with action on a conditional use permit, reduce the requirements specified by [the zoning code] as pertaining to any use nor otherwise reduce the requirements of [the zoning code] in matters for which a variance is the remedy provided;
5. Assure that the degree of compatibility with the purpose of [the zoning code] shall be maintained with respect to the particular use on the particular site and in consideration of other existing and potential uses, within the general area in which the use is proposed to be located;
6. Recognize and compensate for variations and degree of technological processes and equipment as related to the factors of noise, smoke, dust, fumes, vibration, odors, and hazard or public need;
7. Require the posting of construction and maintenance bonds or other security sufficient to secure to the county the estimated cost of construction and/or installation and maintenance of required improvements; and
8. Impose any requirement that will protect the public health, safety, and welfare.

*KCC 17.550.030.B.*

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“If the approval criteria are not met or conditions cannot be imposed to ensure compliance with the approval criteria, the conditional use permit shall be denied.” *KCC 17.550.030.C.*

In addition to the criteria listed above, for applications deemed complete prior to June 28, 2022, ADUs are subject to the following special use provisions of former KCC 17.410.060.B.3:

- a. An ADU shall be allowed as a permitted use in those areas contained within an urban growth boundary;
- b. An ADU shall be subject to a conditional use permit in those areas outside an urban growth boundary;
- c. Only one ADU shall be allowed per lot;
- d. Owner of the property must reside in either the primary residence or the ADU;
- e. The ADU shall not exceed fifty percent of the square footage of the habitable area of primary residence or nine hundred square feet, whichever is smaller. Dimensions are determined by exterior measurements.
- f. The ADU shall be located within one hundred fifty feet of the primary residence or shall be the conversion of an existing detached structure (e.g., garage);
- g. The ADU shall be designed to maintain the appearance of the primary residence;
- h. All setback requirements for the zone in which the ADU is located shall apply;
- i. The ADU shall meet the applicable health district standards for water and sewage disposal;
- j. No mobile homes or recreational vehicles shall be allowed as an ADU;
- k. An ADU shall use the same side-street entrance as the primary residence and shall provide additional off-street parking; and
- l. An ADU is not permitted on the same lot where an accessory living quarters exists.

Pursuant to Ordinance No. 611-2002, which became effective on June 28, 2022, the special use provisions of former KCC 17.410.060.B.3 have been repealed and replaced with the allowed use standards of KCC 17.415.010, for ADUs located in an urban growth area, and KCC 17.415.015, for ADUs located outside of an urban growth area.

The current allowed use standards for detached ADUs located outside of an urban growth area are as follows:

1. Only one ADU shall be allowed per lot;
2. Owner of the property must reside in either the primary residence or the ADU;

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3. The ADU shall not exceed fifty percent of the square footage of the habitable area of the primary residence or nine hundred square feet, whichever is smaller. Dimensions are determined by interior measurements;
4. The ADU shall be located within one hundred fifty feet of the primary residence or shall be the conversion of an existing detached structure (e.g., garage);
5. The ADU shall be designed to maintain the appearance of the primary residence;
6. All setback requirements for the zone in which the ADU is located shall apply;
7. The ADU shall meet the applicable health district standards for water and sewage disposal;
8. No mobile homes or recreational vehicles shall be allowed as an ADU;
9. An ADU shall use the same side-street entrance as the primary residence and shall provide additional off-street parking; and
10. An ADU is not permitted on the same lot where an accessory dwelling unit, attached (ADU-A), exists.

*KCC 17.415.015.B.*

The criteria for review adopted by the Kitsap County Board of Commissioners are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with County development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusion Based on Findings

1. **With conditions, the proposed detached ADU would be consistent with both the special use provisions of former KCC 17.410.060.B.3 and the current allowed use standards of KCC 17.415.015.B.** As noted in the findings above, County staff analyzed the proposal for consistency with the special use provisions of former KCC 17.410.060.B.3, which has recently been repealed and replaced with new allowed use standards pursuant to Ordinance No. 611-2002, which became effective on June 28, 2022. The application was deemed complete on July 15, 2022, after Ordinance No. 611-2002 became effective. It therefore appears that the proposal is subject to the current allowed use standards for detached ADUs located outside of an urban growth area under KCC 17.415.015.B. Regardless, the current allowed use standards applicable to the proposal are substantially similar to the former special use provisions, with the only apparent substantive difference being that the new standards utilize interior measurements to determine a proposed ADU's dimensions rather than utilizing exterior measurements. Accordingly, County staff's analysis of the proposal under the former special use provisions is sufficient to make a determination of whether the proposal would satisfy the current allowed use standards, and as detailed further in this conclusion, the Hearing Examiner determines that the proposal would meet the detached ADU requirements under both the former special use provisions and the current allowed use standards of the municipal code.

The proposed ADU would be located within the RR zoning district, outside the boundary of an urban growth area, and would therefore be allowed with a conditional use permit. The Applicant proposes to construct only one ADU, and there are no other ADUs, accessory living quarters, mobile homes, or recreational vehicles currently located or proposed to be located on the property. The Applicant property owner would continue to reside in the existing 2,102 square foot single-family residence on the property. The proposed ADU would measure 569 square feet—or smaller when determining dimensions through interior measurements—and would be limited to the 900 square foot maximum permitted for an ADU associated with a 2,102 square foot primary residence. The proposed ADU would be sited approximately 130 feet from the existing single-family residence, and the structure and siding of the ADU would be designed to match the aesthetic of the primary residence. The proposed ADU would meet all applicable setback requirements for the RR zone and would be accessed by the existing driveway serving the single-family residence. Additional parking space for the ADU would be provided by an existing parking area located to the south of the primary residence. The proposed ADU would be served by an on-site septic system, and potable water would be provided by municipal water. The Kitsap County Health District has approved, without conditions, the water and septic systems proposed for the project. The Kitsap County Fire Marshal's Office reviewed and approved the proposal with a condition requiring approval of a fire sprinkler permit. Conditions, as detailed below, are necessary to mitigate project impacts and to ensure compliance with applicable statutes, ordinances, and regulations. *Findings 1, 5 – 10.*

2. **With conditions, the proposed project would meet the criteria for CUP approval under KCC 17.550.030.A.** The County provided reasonable notice and opportunity to comment on the proposal. The County did not receive any comments on the proposal in response to its notice materials. The County analyzed the environmental impacts of the proposal, determined that the proposed use would not have a probable significant adverse impact on the environment, and issued a Determination of Nonsignificance on October 6, 2022. That determination was not appealed. The proposed ADU would be consistent with the County Comprehensive Plan policies that permit low-density residential uses in rural areas and generally encourage diverse, affordable housing options suitable to meet the needs of county residents. The Kitsap County Health District approved the proposed water and septic systems without conditions. As conditioned, the proposed ADU would comply with all applicable provisions of the County zoning code, including setback requirements for the RR zone, the specific ADU special use provisions of former KCC 17.410.060.B.3, and the current allowed use standards for detached ADUs located outside of an urban growth area under KCC 17.415.015.B. The project's compliance with both the former special use provisions and the current allowed use standards would ensure that the project would not be materially detrimental to other uses or property in the vicinity and would be compatible with the existing character of the subject property and property

in the vicinity. Conditions, as detailed below, are necessary to mitigate project impacts and to ensure compliance with relevant federal, state, and local statutes, ordinances, and regulations. *Findings 1 – 10.*

### DECISION

Based on the preceding findings and conclusions, the request for a conditional use permit to allow construction of a 569 square foot detached accessory dwelling unit on a 5.33-acre property, located at 2676 NW Birkenfeld Way, in the Poulsbo area of unincorporated Kitsap County, is **APPROVED**, subject to the following conditions:<sup>4</sup>

1. All required permits shall be obtained prior to commencement of land clearing, construction, and/or occupancy.
2. The accessory dwelling unit (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 accessory dwelling unit 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 accessory dwelling unit shall be permitted on the subject property.
5. The owner of the property must reside in either the primary residence or the accessory dwelling unit, and only one of the structures may be rented at any one time.
6. The ADU's habitable area shall not exceed 50 percent of the primary residence or 900 square feet, whichever is smaller. The proposed size of the ADU is 569 square feet. 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 accessory dwelling unit shall be located within 150 feet of the primary residence.
8. The accessory dwelling unit shall be designed to maintain the appearance of the primary residence.
9. This permit shall comply with all Kitsap Public Health District regulations and conditions of approval.

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<sup>4</sup> This decision includes conditions designed to mitigate impacts of this proposed project as well as conditions required by the County code.

10. No mobile home or recreational vehicle shall be allowed as an accessory dwelling unit.
11. The accessory dwelling unit shall use the same side street entrance as the primary residence and shall provide one additional off-street parking space.
12. An accessory living quarters or guest house is not permitted on the same lot unless the accessory dwelling unit is removed and the accessory living quarters or guest house complies with all requirements imposed by the Kitsap County Code.
13. A property with a primary residence and an accessory dwelling unit 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.
14. The accessory dwelling unit cannot be sold separately from the primary residence unless it has legally been segregated onto its own lot.
15. 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.
16. 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.
17. 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.

18. The decision set forth herein is based upon representations made and exhibits contained in the project application. 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.
19. 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.
20. Any violation of the conditions of approval shall be grounds to initiate revocation of this Conditional Use Permit.
21. Required building permits shall include construction plans and profiles for all new or revised roads, driveways, storm drainage facilities, and appurtenances. No construction shall be started prior to said plan acceptance.
22. 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 of the thresholds noted above, then additional review for stormwater management will be required via subsequent permit application.
23. Stormwater quantity control, quality treatment, and erosion and sedimentation control, as required for the development, shall be designed in accordance with Kitsap County Code Title 12 effective at the time this permit application was deemed fully complete. If development meets the thresholds for engineered drainage design, the submittal documents shall be prepared by a civil engineer licensed in the State of Washington. The fees and submittal requirements shall be in accordance with Kitsap County Ordinances in effect at the time of Building Permit Application.
24. If the project proposal is modified from that shown on the submitted site plan accepted for review September 20, 2022, Development Services and Engineering will require additional review and potentially new conditions.
25. 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.



26. At the time of building permit application, submit Kitsap County Public Works Form 1601 for issuance of a concurrency certificate, as required by KCC 20.04.030, Transportation Concurrency.
27. A fire sprinkler permit is required for the approval of this project. The sprinkler system is to be submitted under a separate permit. The installation/approval of the fire suppression system will meet the exceptions for access.

**DECIDED** this 12<sup>th</sup> day of December 2022.



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ANDREW M. REEVES  
Hearing Examiner  
Sound Law Center