



Kitsap County Hearing Examiner

COUNTY COURTHOUSE, 614 DIVISION STREET MS-36
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OFFICE OF THE HEARING EXAMINER

KITSAP COUNTY

REPORT AND DECISION

CASE NO.: 080508-030
ZUMDIECK
CONDITIONAL USE PERMIT

**APPLICANT/
OWNER:** Paul Zumdieck
9141 Sunset Lane
Seabeck, WA 98380

SUMMARY OF REQUEST:

The applicant requests Conditional Use Permit approval to legalize an existing approximately 400 square foot accessory dwelling unit (ADU).

PROJECT LOCATION:

9141 Sunset Lane
Seabeck, Washington
Central Kitsap County
Commissioner District No. 3.

SUMMARY OF DECISION:

Request granted, subject to conditions.

PUBLIC HEARING:

After reviewing Department of Community Development Staff Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was conducted in the chambers of the Kitsap County Board of Commissioners on **May 8, 2008**.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

ITEM NO.	DOC. TYPE/SUBJECT	DATED	DATE REC'D.
1	KC Assessor's Parcel Map	No Date	N/A
2	KCHD Building Site Application – Rescind	7/18/06	No Rec'd Date
3	Pre-Application Meeting Request	No Date	3/8/07
4	Pre-Application Conference Confirmation Letter	3/18/07	N/A
5	GIS Comprehensive Plan Map	3/20/07	N/A
6	GIS Building Limitations Map	3/20/07	N/A
7	GIS Aerial Photo	3/20/07	N/A
8	GIS Aquifer Recharge Areas of Concern	3/20/07	N/A
9	GIS Shoreline Master Plan Environments	3/20/07	N/A
10	KC Assessor's Property Report	3/20/07	N/A
11	GIS Topo Map	3/20/07	N/A
12	KCHD Building Site Application	3/21/07	8/28/07
13	E-mail from Robbyn Myers	4/16/07	4/16/07
14	Pre-Application Summary Letter	6/26/07	N/A
15	KCPW Application for Concurrency Test	7/19/07	8/28/07
16	Environmental (SEPA) Checklist	7/19/07	8/28/07
17	Conditional Use Permit Application	8/20/07	8/28/07
18	Site Plan	No Date	8/28/07
19	ADU Counter Complete Submittal Checklist	8/27/07	N/A
20	Exterior Photos (2)	No Date	8/28/07
21	ADU Floor Plan	No Date	8/28/07
22	Project narrative	No Date	8/28/07
23	Note from Nancy Hanson	10/26/07	N/A
24	Notice of Incomplete Application	11/7/07	N/A
25	Site Plan – See Revised	No Date	1/23/08
26	Revised Site Plan	No Date	2/6/08
27	Notice of Complete Application	2/20/08	N/A

ITEM NO.	DOC. TYPE/SUBJECT	DATED	DATE REC'D.
28	Notice of Application	2/22/08	N/A
29	Affidavit of Mailing – NOA	2/22/08	N/A
30	Memo from Kerrie Crawford KCHD	3/7/08	N/A
31	Memo from Shawn Alire	3/20/08	N/A
32	Determination of Non-Significance	4/14/08	N/A
33	Notice of Public Hearing	4/21/08	N/A
34	Affidavit of Mailing	4/21/08	N/A
35	Garage Studio Floor Plan	4/23/08	4/23/08
36	Affidavit of Posting with Photos (2)	4/23/08	N/A
37	Staff Report	4/29/08	N/A
38	Power Point Presentation	5/8/08	5/8/08

MEG SANDS appeared, presented the Department of Community Development Staff Report, and introduced Exhibits “1” through “38” which included the power point presentation. The environmental official issued a DNS and received no appeals. The site is located in the Rural Shoreline Environment. The principal dwelling contains 2,040 square feet. A garage on the site has an upper floor which was equipped for a dwelling and Code Enforcement required removal of the stove, but allowed retention of a sink, bath, and microwave. The applicants will live in the main residence and rent the ADU. The Health Department and Development Engineering recommend approval. Staff finds the request consistent with the comprehensive plan and all code criteria.

PAUL ZUMDIECK appeared and testified that Ms. Sands had done a good job explaining the project. He questioned the need for a building permit as required by Condition No. 2. The County has all of the information regarding the property and he questioned the need for the permit since the structure has existed on the site for eight years. It would just constitute paperwork. Concerning Condition No. 15 and the annual inspection requirement, he could understand the inspection of the ADU, but believes the County would overstep the line as to inspecting his private residence. It is a personal security issue and he can't see the need. He sees no problem with an inspection of the attached garage and the ADU, but not his private residence. Almost nothing on the building permit applies to the existing structure.

MS. SANDS reappeared and testified that the building official advised that the permit is required due to the change of status of the structure. It is a different type of use. She requests Condition No. 15 because the applicant could modify the single family structure to provide accessory living quarter. People do remodels without permits and she needs to confirm the stipulation. They have no assurance now. Concerning Condition No. 4, modifications without a permit could invalidate the ADU, and she wants to ensure that the applicant does not violate building permit requirements.

MR. ZUMDIECK reappeared and questioned whether the building permit requirement was ordinance based.

No one spoke further in this matter and so the Examiner took the request under advisement.

NOTE: A complete record of this hearing is available in the office of Kitsap County Department of Community Development.

FINDINGS, CONCLUSIONS AND DECISION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, heard testimony, and taken this matter under advisement.
2. Appropriate notice was provided pursuant to the Kitsap County Code.
3. Pursuant to WAC 197-11-355, the optional DNS process was utilized for this project. The SEPA comment period previously occurred concurrent with the Notice of Application dated February 22, 2008. A Determination of Nonsignificance (DNS) was issued April 14, 2008. The SEPA appeal period expired April 28, 2008. No appeals were filed.
4. The applicant has a possessory ownership interest in a rectangular, 1.35 acre parcel of property extending from the west side of Sunset Lane to the ordinary high water mark of Hood Canal in the Seabeck area of unincorporated Kitsap County. The parcel measures 70 feet in width and varies in depth between 868 feet along the south property line and 843 feet along the north property line. Improvements on the site include a 2,040 square foot single family residential home located more than 50 feet from a shoreline. A cottage with kitchen and plumbing located landward of the house is proposed for an accessory dwelling unit (ADU). A two story garage is located landward of the cottage. A driveway extending west from Sunset Lane provides access to the garage and the single family home.
5. The applicant desires to convert the cottage into an ADU and has properly requested a conditional use permit in order to do so.
6. The site is located within the Rural Residential (RR) designation of the Kitsap County Comprehensive Plan and the RR zone classification of the Kitsap County Code (KCC). The proposed ADU is located more than 300 feet from the ordinary high water mark and therefore does not require a shoreline substantial development permit as it is outside of the jurisdiction of the Kitsap County Shoreline Management Master Program.

7. The project complies with policies of the comprehensive plan, especially Policy HS-11 which permits and encourages development of ADUs in all residential zones.
8. Section 17.381.060.B.3 KCC sets forth the criteria for ADUs in all zone classifications. Prior to obtaining approval of an ADU an applicant must satisfy all criteria set forth therein. Findings on each criteria are hereby made as follows:
 - A. The applicant's parcel is located outside of an urban growth boundary and therefore requires a conditional use permit. The applicant has properly requested such permit.
 - B. The applicant proposes only one ADU for the parcel.
 - C. The owner of the parcel currently resides in the primary residence and utilizes the ADU as a rental.
 - D. The ADU does not exceed 50% of the square footage of the habitable area of the primary residence or 900 square feet, whichever is smaller. The habitable area of the primary residence, according to the floor plan, measures 2,040 square feet. The ADU is thus limited to 900 square feet. According to the floor plans the ADU measures approximately 390 square feet, well within the allowed maximum.
 - E. The ADU measures approximately 75 feet from the primary residence, well within the maximum 150 feet.
 - F. The primary residence and ADU both have a pitched, composite roof; wood siding; and multi-paned windows. The architectural design and building materials are similar, and the structures complement each other in compliance with this criteria.
 - G. The RR classification requires setbacks of 50 feet front yard, five feet side yard, and 115 feet from the ordinary high water mark of Hood Canal. The setbacks for the ADU measure 560 feet from Sunset Lane (front yard), 35 feet from the north side property line and six feet from the south side property line. The structure measures more than 200 feet from the ordinary high water mark of Hood Canal. Therefore, the structure meets all required setbacks of the RR classification, the shoreline regulations, and the Critical Areas Ordinance.
 - H. The Health District has approved the site for water and sewage disposal.
 - I. The applicant does not propose a mobile home or recreational vehicle as an ADU.

- J. The ADU will access from the same driveway as the primary residence and has adequate on-site parking.
 - K. The final criteria prohibits an ADU on the same lot where accessory living quarters exist within the primary residence. Staff's site visit of April 14, 2008, found no accessory living quarters within the primary residence. However, a potential living space existed above the garage and Code Enforcement required removal of a stove/oven. Therefore, the area above the garage no longer meets the definition of an accessory dwelling unit.
9. Prior to obtaining a conditional use permit the applicant must show that the request satisfies the criteria set forth in KCC 17.421.030(A). Findings on each criteria are hereby made as follows:
- A. As previously found, the comprehensive plan supports and encourages ADUs in all residential zone classifications.
 - B. The proposal complies with all applicable requirements for an ADU as set forth in Title 17 KCC.
 - C. The proposal will not materially detrimentally impact uses or property in the immediately vicinity. The applicant has utilized the existing structure in the past as a rental.
 - D. The project is compatible with the area and responds appropriately to the area's existing character, appearance, and quality of development.
10. The applicant questioned the necessity of a building permit since the project already exists. However, a building permit is required to change the use of a structure. Therefore, the applicant needs to acquire whatever permit is required by the building code.
11. The applicant objects to Condition No. 15 which subjects the primary residence to an annual inspection to ensure compliance with all conditions. The applicant has no objection to an inspection of the ADU and garage, but objects to inspection of the primary residence. In every ADU application the Examiner has heard, staff has recommended a condition requiring inspections. No applicant prior to the present applicant has objected to said condition. The purpose of the inspection is to ensure compliance with the accessory living quarters prohibition. The Examiner is sensitive to Mr. Zumdieck's privacy concerns and does not believe the Board of Kitsap County Commissioners in its strong preference for ADUs intended to require that property owners open up their homes for inspections as a condition of ADU approval. Such condition could have a chilling affect on ADU applications which the Board encourages. As an alternative the Examiner has added a condition which requires

the applicant to provide a sworn affidavit or declaration that he has not established accessory living quarters within the primary residence. Should staff become aware of a potential violation a code enforcement investigation would be appropriate.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.
2. The applicant has shown that the request for a conditional use permit satisfies all criteria set forth in the Kitsap County Code and therefore should be approved subject to the following conditions:
 1. All required permits shall be obtained prior to construction and/or occupancy.
 2. An approved and issued building permit is required to convert the existing dwelling unit into a legal ADU.
 3. All building permits shall be subject to impact fees pursuant to the *Kitsap County Code* in effect on the date of a complete building permit application.
 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 the Department of Community Development 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 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.
 7. The ADU is limited in size to that proposed by the applicant in Exhibit 26 or no greater than 900 square feet.
 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 ADU shall use the same side street entrance as the primary residence and shall provide additional off-street parking.
12. An ADU is not permitted on the same lot where an accessory living quarters exists.
13. The second floor of the detached garage shall be used for personal use of the property owner and may be used for overnight guests. The detached garage with living space on the second floor shall not contain a stove/oven and it shall not be rented.
14. The entire detached garage building shall be subject to an annual inspection to ensure it is not a dwelling unit and compliance with all conditions. The Department of Community Development shall provide 24 hours notice prior to inspection, except for any filed complaint.
15. The applicant shall provide a sworn affidavit or declaration to the Department of Community Development on an annual basis stating that the site remains in compliance with conditions of approval to include no ALQ in the primary dwelling and no ADU on the second floor of the detached garage. Furthermore, the declaration must affirm that the applicant is not renting the space above the garage. Staff may either eliminate or reduce the time period for the affidavit/declaration at its discretion.
16. The ADU shall be subject to an annual inspection to ensure compliance with all conditions. The Department of Community Development shall provide 24 hours notice prior to inspection, except for any filed complaint.
17. The recipient of any conditional use permit shall file a 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 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.

18. 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 above 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.
19. The required building permit for the ADU shall be applied for within 30 days of the Hearing Examiner's final order.
20. The required building permit for the ADU shall be issued within 3 months of the Hearing Examiner's final order.
21. The required building permit for the ADU shall receive final inspection and permit approval and a Certificate of Occupancy within 6 months of issuance.
22. Any violation of the conditions of approval shall be grounds to initiate revocation of this Conditional Use Permit.
23. The decision set forth herein is based upon representations made and exhibits, including plans and proposals submitted at the hearing conducted by the hearing examiner. Any substantial change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to the approval of the hearing examiner and may require further and additional hearings.
24. 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 precedent 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.

DECISION:

The request for a conditional use permit to allow an existing structure to serve as an accessory dwelling unit on a site located at 9141 Sunset Lane, Seabeck, is hereby granted subject to the conditions contained in the conclusions above.

ORDERED this 17th day of June, 2008.

STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

TRANSMITTED this _____ day of _____, 2008, to the following:

APPLICANT/ Paul Zumdieck
OWNER: 9141 Sunset Lane
Seabeck, WA 98380

OTHERS:

- Kitsap County Board of Commissioners
- Kitsap County Department of Community Development
- Kitsap County Department of Public Works
- Kitsap County Prosecutor – Civil Division
- Kitsap County Department of Parks and Recreation
- Bremerton-Kitsap County Health Department
- The Sun Newspaper

Pursuant to Kitsap County Code Section 21.04.120 and the Land Use Hearing Examiner Rules of Procedure, an OBJECTION to the Examiner's Decision may be filed, in this matter, in writing, with the Clerk of the Board of County Commissioners, on or before _____, 2008. Prior to the filing of an Objection, the objector shall pay the sum of FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) to the Department of Community Development.