



Kitsap County Hearing Examiner

COUNTY COURTHOUSE, 614 DIVISION STREET MS-36
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NOTICE OF HEARING EXAMINER DECISION

October 13, 2008

To: Interested Parties and Parties of Record

RE: Project Name: **Tonge – Accessory Dwelling Unit**
Applicant: **Carl & Wendy Tonge**
8661 Stavis Bay Road NW
Seabeck, WA 98380
Central Kitsap County, Commissioner District #3
Application: **Conditional Use Permit**
Case Number: **080925 – 071 (192501-3-033-1002) LIS#08 54143**

Enclosed is the Decision issued by the Kitsap County Hearing Examiner in the above-referenced matter.

THE DECISION OF THE HEARING EXAMINER IS FINAL, UNLESS APPEALED TO THE KITSAP COUNTY BOARD OF COMMISSIONERS, AS PROVIDED BY SECTION 120 OF THE KITSAP COUNTY LAND USE AND DEVELOPMENT PROCEDURES. **ANY APPEAL MUST BE FILED ON OR BEFORE THE CLOSE OF BUSINESS ON OCTOBER 27, 2008.**

Pursuant to the Kitsap County Land Use and Development Procedures, (KCC 21.04.120) an appeal may be filed objecting to the Hearing Examiner's Decision. An appeal must be made in writing, and filed with both the Department of Community Development (DCD) and the Board of County Commissioners (BCC) offices. At the time of filing the appeal, the appellant shall pay the sum of **five hundred dollars (\$500.00)**. This fee is non-refundable and subject to change. Make check payable to Kitsap County Department of Community Development (DCD).

The written appeal shall be made on or attached to an appeal form provided by DCD, and shall contain the following information.

1. The project name, project applicant, application type, and case number designated by the County:
2. The name, address, and signature of each appellant. If multiple parties file a single appeal, the appeal document shall designate, in writing, one party as the contract representative for all contact with the DCD Director and BCC. All contact between the County and the appellants regarding the appeal, including notices, shall be through this contact representative; and

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3. A written statement of the specific aspects(s) of the Decision and/or SEPA determination being appealed, the reasons why each is in error as a matter of fact or law, and the evidence relied upon to prove the error.

The complete case file will be available for review at the Department of Community Development, Monday through Friday, except holidays, 8:15 a.m. to 4:00 p.m.

If you have questions, please contact me at (360) 337-4487. If you have procedural questions regarding the appeal hearing before the Board of County Commissioners, please contact the Clerk of the Board at (360) 337-7146.

Sincerely,



Karen Ashcraft
Clerk of the Examiner

Enclosure

See attached transmittal

OCT 10 2008

KITSAP COUNTY DEPT. OF
COMMUNITY DEVELOPMENT

BEFORE THE HEARING EXAMINER
FOR KITSAP COUNTY

In the Matter of the Application of)	No. 080925-071
)	
Carl J. Tonge)	
)	
For Approval of a Conditional Use Permit)	FINDINGS, CONCLUSION,
<u>To Construct an Accessory Dwelling Unit</u>)	AND DECISION

SUMMARY OF DECISION

The request for a Conditional Use Permit to construct an Accessory Dwelling Unit on property located at 8661 Stavis Bay Road NW, in Seabeck, Washington, is **APPROVED**, subject to conditions.

SUMMARY OF RECORD

Request:

Carl J. Tonge requests a Conditional Use Permit to construct an Accessory Dwelling Unit on property located at 8661 Stavis Bay Road NW, in Seabeck, Washington.

Hearing Date:

The Hearing Examiner held an open record hearing on the request on September 25, 2008.

Testimony:

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

- Dennis Oost, County Senior Planner
- Carl Tonge, Applicant

Exhibits:

The following exhibits were admitted into the record:

1. Elevation of Single-Family Residence
2. Site Plan Single Family Residence
3. KCHD All On-Site Sewage
4. KC Assessor's Map
5. Site Photos (6)
6. Elevations Accessory Dwelling Unit, dated April 11, 2008
7. Site Plan ADU, dated April 11, 2008

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8. Notice of Pending Building Site Application – attachment, dated May 23, 2008
9. Request to Waiver Pre-Application Meeting, dated May 29, 2008
10. Project Narrative, dated May 29, 2008
11. Environmental (SEPA) Checklist, dated May 30, 2008
12. Conditional Use Permit Application, dated May 29, 2008
13. KCPW Application for Concurrency Test, dated June 2, 2008
14. Notice of Complete Application, dated July 8, 2008
15. GIS Zoning Map, dated July 11, 2008
16. GIS Building Limitations Map, dated July 11, 2008
17. GIS Critical Aquifer Recharge Areas Map, dated July 11, 2008
18. Memorandum from Nathan D Holburn KCHD, dated July 14, 2008
19. Notice of Application, dated July 15, 2008
20. Affidavit of Mailing Notice of Application, dated July 15, 2008
21. Memorandum from Shawn Alire, dated August 27, 2008
22. Determination of Non-significance, dated September 8, 2008
23. Notice of Public Hearing, dated September 8, 2008
24. Affidavit of Mailing Notice of Public Hearing, dated September 8, 2008
25. Email message from Chris Clark, dated September 9, 2008
26. Affidavit of Posting, dated September 10, 2008
27. County Staff Report, dated September 15, 2008
28. Tonge ADU Conditional Use Permit Power Point Presentation, dated September 25, 2008

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

FINDINGS

1. Carl J. Tonge (Applicant) requests approval of a Conditional Use Permit (CUP) to construct an Accessory Dwelling Unit (ADU) on property located at 8661 Stavis Bay Road NW, in Seabeck, Washington.¹ The 5.26 acre site currently contains one single Family Residence (SFR) and an attached garage. The CUP would allow construction of a two-bedroom, 900 square foot ADU adjacent to the SFR. The Applicant testified he intends to occupy the main house. There is a high degree of compatibility of design between the proposed ADU and the primary residence. *Exhibit 10; Exhibit 11, page 2; Exhibit 12; Exhibit 27, Staff Report, page 2; Testimony of Mr. Tonge; testimony of Mr. Oost.*
2. Kitsap County (County) determined the CUP application was complete on July 8, 2008. *Exhibit 14.* On July 15, 2008, the County mailed the notice of the application to all property owners within 400 feet of the subject property. *Exhibit 19; Exhibit 20.* On

¹ The property subject to the conditional use permit (CUP) application is identified by Assessor's Tax Account Number 192501-3-033-1002. *Exhibit 12.* A legal description of the property is provided within the CUP application. *Exhibit 12.*

September 8, 2008, the County mailed notice of the associated open record hearing to all property owners within 400 feet of the subject property. *Exhibit 23; Exhibit 24.* On September 10, 2008, the County posted notice of the hearing on the subject property. *Exhibit 26.*

3. The County acted as lead agency to analyze the environmental impacts of the CUP proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C of the Revised Code of Washington (RCW). The County determined that the proposal would not have a probable significant adverse impact on the environment and issued a Determination of Non-Significance (DNS) on September 8, 2008. The DNS was not appealed prior to the end of the appeal period on July 29, 2008. *Exhibit 22; Exhibit 27, Staff Report, page 1.*
4. Kitsap County Code (KCC) 17.381.060.B.3 provides that an ADU may be located in residential zoning districts, subject to KCC 17.381.060.B.3 criteria. *KCC 17.381.060.B.3.* KCC 17.381.060.B.3.b requires that an applicant obtain a CUP for an ADU in an area outside an urban growth boundary. *KCC 17.381.060.B.3.b.* Dennis Oost, County Planner, testified that the proposed ADU would be located outside an urban growth boundary. *Testimony of Mr. Oost.*
5. Upon review of the proposed ADU according to KCC 17.421.030 CUP review criteria, County staff recommended approval of the CUP application with eight conditions. Proposed conditions include conditions designed to mitigate impacts of the proposal as well as conditions required by County Code. Proposed conditions concern building permit requirements; water service; an on site septic system; building modification review and approval; use of the existing residence on the property; and recording of the Notice to Title with certain conditions. Mr. Oost testified that with conditions proposed by the County, the proposed conditional use would comply with applicable County ordinances, including KCC 17.381.060.B.3 criteria. The County received no public comment on the CUP proposal. *Exhibit 27, Staff Report, pages 4 and 8-9; Testimony of Mr. Oost.*
6. The Applicant testified that he has read, understands, and agrees with the conditions of CUP approval proposed by the County with no objections to the conditions or criteria for review identified by County staff as applicable to the CUP application. *Testimony of Mr. Tonge.*

CONCLUSIONS

Jurisdiction

The Kitsap County Hearing Examiner is authorized to hear and decide conditional use permit requests. *Kitsap County Code (KCC) 2.10.070; KCC 17.421.020.A; KCC Table 21.04.030.*

Criteria for Review

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The hearing examiner may approve, approve with conditions, or deny a hearing examiner conditional use permit. Approval or approval with conditions may be granted 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 this title;
3. The proposal will not be materially detrimental to 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.

As a condition of approval, the hearing examiner may:

1. Increase requirements in the standards, criteria, or policies established by this title;
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 17.382;
4. Include requirements to improve parity 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 this title as pertaining to any use nor otherwise reduce the requirements of this title in matters for which a variance is the remedy provided;
5. Assure that the degree of compatibility with the purpose of this title 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.

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 17.421.030.

Conclusion Based on Findings

1. **The application shall be approved as an uncontested application, with conditions recommended by the County and agreed to by the Applicant. The Hearing Examiner finds that the listed conditions mitigate impacts, and allow the application to be consistent with the criteria for approval.** Upon review of the CUP proposal and all associated exhibits according to Kitsap County Code (KCC) Section 17.421.030 CUP review criteria, County staff recommended approval of the CUP application with eight conditions. Proposed conditions include conditions designed to mitigate impacts of the proposal as well as conditions required by County Code. Proposed conditions concern building permit requirements; water service; an on site septic system; building modification review and approval; use of the existing residence on the property; and recording of the Notice to Title with certain conditions. County staff testified that with conditions proposed by the County, the proposed conditional use would comply with applicable County ordinances. Carl J. Tonge, Applicant, testified that he has read, understands, and agrees with the conditions of CUP approval proposed by the County with no objections to the conditions or criteria for review identified by County staff as applicable to the CUP application. The County did not receive any public comment on the proposal, and no one other than County staff and the Applicant testified at the open record hearing on the proposal. As County staff and the Applicant representative have agreed that the CUP proposal, with proposed conditions, would meet KCC Section 17.421.030 review criteria, and there are no objections to the application or proposed conditions, the CUP proposal is uncontested and KCC Section 17.421.030 review criteria are met. Conditions of approval are necessary to ensure mitigation of impacts of the proposal and compliance with applicable County Code provisions. *Findings 1 – 6.*

DECISION

Based upon the preceding Findings and Conclusion, the request for a Conditional Use Permit (CUP) to construct an Accessory Dwelling Unit (ADU) on property located at 8661 Stavis Bay Road NW, in Seabeck, Washington is **APPROVED**, subject to the following conditions:²

² This decision includes conditions designed to mitigate impacts of this proposed project as well as conditions required by County Code.

Land Use

1. 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.
2. A BSA (Building Site Application #403239) for this project has been approved. Drinking water will be provided by an approved two party private well. Continuing operation and maintenance is required for the on-site septic system.
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.
4. 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.
5. Applicant shall record a Notice to Title with the Kitsap County Auditor, if this ADU is approved. Prior to recording the Notice to Title, the applicant shall provide a draft to the Department of Community Development (DCD) for review and approval. A recorded copy of the approved Notice to Title must be submitted to DCD prior to Certificate of Occupancy issuance of this ADU. The Notice to Title shall include the following "a" through "j" statements:
 - a. This property has received land use approval for an Accessory Dwelling Unit (ADU) and is bound by the conditions of approval as stipulated in the Hearing Examiner's decision, ordered _____, Case No.: [TBA], (refer to Conditional Use Permit, DCD File # 08 54143) on file at the Department of Community Development.
 - b. A property with a primary residence and 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 subdivision application.
 - c. The ADU cannot be sold separately from the primary residence unless it has legally been segregated onto its own lot.
 - d. Only one ADU shall be allowed on this lot.
 - e. The owner of the property must reside in either the primary residence of the ADU and only one of the structures may be rented at any one time.
 - f. The ADU's habitable area shall not exceed 900 square feet as determined by exterior measurements.
 - g. The ADU shall use the same street entrance from Stavis Bay Road NW as the primary residence.

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- h. Accessory Living Quarters (ALQ) or a Guest House (GH) is not allowed on this lot if the ADU is approved by Kitsap County.
 - i. 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.
 - j. Any violation of the conditions of approval shall be grounds to initiate revocation of this Conditional Use Permit.
6. Any violation of the conditions of approval shall be grounds to initiate revocation of this Conditional Use Permit.


All requirements of the Development Engineering and Public Works for this project shall be adhered to, including the following:

STORMWATER

All minor developments creating greater than 2,000 square feet of new impervious surface and major developments creating less than 10,000 square feet of new impervious surface shall:

- 7. Implement either individual downspout infiltration or roof downspout dispersion per the Kitsap County Stormwater Design Manual to the maximum extent possible; or discharge to a regional water quantity control facility designed to receive the developed site runoff.
- 8. Should the proposal be modified from that shown on the July 8, 2008 submitted site plan, please forward to Development Engineering for review.

Decided this 8th day of October, 2008.



KIMBERLY A. ALLEN
Kitsap County Hearing Examiner