

ORDINANCE _____ - 2009

ESTABLISHING A TEMPORARY PROGRAM TO APPROVE EXISTING ACCESSORY DWELLINGS IN POSSESSION OF INNOCENT PURCHASERS

WHEREAS, Kitsap County has regulated accessory dwellings units since 1977; and

WHEREAS, Kitsap County recognizes that unapproved accessory dwelling units exist throughout the county and believes there are approximately twenty-five; and

WHEREAS, Unapproved accessory dwelling units may now be in the possession of owners who did not create them, and

WHEREAS, Kitsap County recognizes that such owners after having completed due diligence in purchasing property containing an unapproved accessory dwelling units may be considered innocent purchasers, and

WHEREAS, The Board of County Commissioners for Kitsap County desires to create a process for such innocent purchasers to gain approval of existing accessory dwelling units on their property, and

WHEREAS, following timely and effective notice, this Ordinance came before the Planning Commission at a public hearing on _____ for which public testimony was heard and considered, after which a recommendation to the Board of County Commissioners was made; and

WHEREAS, following timely and effective notice, this Ordinance came before the Board at a public hearing on _____, 2009 for which public testimony was heard and considered.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF KITSAP COUNTY WASHINGTON:

Section 1. Purpose. The purpose of this ordinance is to create a temporary process to approve existing, previously unapproved accessory dwelling units in possession of innocent purchasers.

Section 2. KCC 17.381.060(B)(3), Special Use Provisions for Accessory Dwelling Units, adopted by Ordinance 367-2006, is amended as follows:

3. Accessory Dwelling Unit (ADU). In order to encourage the provision of affordable and independent housing for a variety of households, an accessory dwelling unit may be located in residential zones, subject to the following criteria:
 - 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;
- 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 (i.e., 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.

m. Existing, Unpermitted Accessory Dwelling Units.

(1) Applicability. The provisions of this subsection shall only apply to property and property owners who can establish all of the following criteria:

i. The property owner owns the parcel as of the effective date of this Ordinance;

ii. The parcel is within the unincorporated area of Kitsap County;

iii. An accessory dwelling unit (ADU), as defined in KCC 17.110.020 or similar dwelling previously defined as an accessory living quarters (ALQ) or an accessory rental unit (ARU), is located on the parcel;

iv. The accessory dwelling has not received any prior review and/or approval by Kitsap County;

v. The property owner did not construct or cause to have the accessory dwelling constructed;

vi. The property owner did not own the property when the accessory dwelling was constructed;

vii. The property owner exercised due diligence when purchasing the property with the existing accessory dwelling to discover whether or not the accessory dwelling was approved when purchasing the property. Due diligence is presumed to have occurred if the property owner:

(a) Examined county tax records or parcel records and was not put on inquiry notice that the accessory dwelling was unpermitted, and

(b) Requested and obtained a title report with no exceptions or restrictions concerning the accessory dwelling.

viii. The parcel has a history of property tax assessment and a history of continuous tax payments on the principal and the accessory dwelling.

(2) Application. Persons who meet the criteria of section (1) desiring to gain approval of their accessory dwelling shall make application to the Director of the Department of Community Development on forms provided by the Department, with fees to be paid at the time of application as provided in subsection (5) below. Such application shall be a Type II permit under KCC 21.04.

(3) Approval. The Director, or his designee, is authorized to approve submitted applications that satisfy all of the following:

i. All the requirements of this Ordinance;

ii. All the applicable zoning, health, fire safety and building construction requirements;

(a) The applicable requirements shall be those in effect when the accessory dwelling was constructed. The burden of proof of when the accessory dwelling was constructed shall be upon the applicant and may consist of dated aerial photography, tax assessments, surveys or similar documents.

(b) If the applicant cannot prove a date of construction, the applicable requirements shall be those currently in effect on the date of application.

(c) If the applicant can only show a date range for construction, the applicable requirements shall be the latest requirements of the range.

iii. Proof of adequate potable water;

iv. Proof of adequate sewage disposal systems for both the principal the accessory dwelling. Proof shall be shown by Kitsap County Health District Approval; and

v. Verification by Kitsap County inspection staff that the accessory dwelling is habitable.

Applications approved subject to these provisions shall be considered legal non-conforming uses.

(4) Variances.

i. When reviewing the application, the Director is authorized to grant an administrative variance to the requirements of subsection (3)(ii) above only when unusual circumstances relating to the property cause undue hardship in the application of subsection (3)(ii). The granting of an administrative variance shall be in the public interest. An administrative variance shall be granted at the Director's sole discretion only when the applicant has proven all of the following:

(a) There are practical difficulties in applying the regulations of subsection (3)(ii) above;

(b) The applicant did not create or the participate in creating the practical difficulties;

(c) A variance meets the intent and purpose of this Ordinance;

(d) The variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or zone in which property is located; and

(e) The variance is the minimum necessary to grant relief to the applicant.

ii. The Director is authorized to require mitigation in connection with the administrative variance to minimize the effect of the variance on surrounding properties.

iii. In reviewing a request for an administrative variance, the Director shall notify and solicit comments from surrounding property owners of the application and the intended variance and mitigation. The Director shall consider such comments when determining whether or not to approve the variance. The Director is further authorized to require mediation to resolve issues arising from the notification process and the costs of such mediation shall be paid by the applicant.

(5) Fees. Applicants shall pay a fee of \$400 at the time of application. Additionally, applicants shall pay notification costs, reinspection fees, additional review and other applicable fees in accordance with KCC 21.06. Applicants may initiate a Staff Consultation in considering or preparing an application under these provisions. The

Staff Consultation fee established in KCC 21.06 shall not, however, be credited towards any subsequent application submitted under these provisions.

(6) Land Use Binder. Following approval of the accessory dwelling and any administrative variance, the applicant shall record a Land Use Permit Binder with the County Auditor using forms provided by Kitsap County Department of Community Development.

(7) Expiration. This Ordinance shall automatically expire two years after its effective date. All complete applications submitted prior to the expiration date shall be reviewed under this subsection.

Section 3. KCC 17.381.060(B)(4), Special Use Provisions for Accessory Living Quarters, adopted by Ordinance 367-2006, is amended as follows:

4. Accessory Living Quarters. In order to encourage the provision of affordable housing, accessory living quarters may be located in residential zones, subject to the following criteria:
 - a. Accessory living quarters shall be located within an owner-occupied primary residence;
 - b. Accessory living quarters are limited in size to no greater than fifty percent of the habitable area of the primary residence;
 - c. The accessory living quarters are subject to applicable health district standards for water and sewage disposal;
 - d. Only one accessory living quarters shall be allowed per lot;
 - e. Accessory living quarters are to provide additional off-street parking with no additional street side entrance; and
 - f. Accessory living quarters are not allowed where an accessory dwelling unit exists.
- g. Existing Unpermitted Accessory Living Quarters. Existing Unpermitted Accessory Living Quarters may be approved under the provisions of KCC 17.381.060(B)(3)(m).

Section 4. Severability. If any one or more sections, subsections, or sentences of this Ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Ordinance and the same shall remain in full force and effect.

Section 5. Effective Date. This Ordinance shall take effect immediately and shall automatically expire two years after the effective date.

ADOPTED this _____ day of _____, 2009.

**BOARD OF COUNTY COMMISSIONERS
KITSAP COUNTY, WASHINGTON**

ATTEST:

CHARLOTTE GARRIDO, Chair

STEVE BAUER, Commissioner

Opal Robertson
Clerk of the Board

JOSH BROWN, Commissioner

Approved as to form by the Prosecuting Attorney's Office

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