



Kitsap County Hearing Examiner

ADMINISTRATION BUILDING, 619 DIVISION ST, MS-36
http://www.kitsapgov.com/dcd/lu_env/he/

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NOTICE OF HEARING EXAMINER DECISION

August 22, 2016

To: Interested Parties and Parties of Record

RE: Project Name: Hoffman – Accessory Dwelling Unit – After the fact
Applicant: David and Paulette Hoffman
3640 Green Mountain Road NW
Bremerton, WA 98312
Application: Conditional Use Permit
Permit Number: 16 01919

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

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at: http://www.kitsapgov.com/dcd/lu_env/he/HE%20Rules%20for%20Kitsap%20County%20-%20206-23-09.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 Constance Blackburn at cblackburn@co.kitsap.wa.us or (360) 337-5777.

Cc Applicant and/or Rep:

Paulette Hoffman: paulette_hoffman@msn.com

Cc Interested Parties:

None

**BEFORE THE HEARING EXAMINER
FOR KITSAP COUNTY**

In the Matter of the Application of)	No. 16 01919
)	
David and Paulette Hoffman)	Hoffman Accessory Dwelling Unit CUP
)	
For Approval of an After-the-Fact)	FINDINGS, CONCLUSIONS,
<u>Conditional Use Permit</u>)	AND DECISION

SUMMARY OF DECISION

The request for an after-the-fact conditional use permit to legalize an existing 750 square foot accessory dwelling unit at 3640 Green Mountain Road NW is **APPROVED**. Conditions are necessary to mitigate project impacts and to ensure the proposal complies with relevant statutes, ordinances, and regulations.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on July 28, 2016. The record was kept open until August 5, 2016, to allow the Applicant to submit additional information.

Testimony:

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

Katharine Shaffer, County Planner
Paulette Hoffman

Exhibits:

The following exhibits were admitted into the record:

1. Project Application, signed August 1, 2016
2. Supplemental Application, received May 5, 2016
3. SEPA Environmental Checklist, signed August 1, 2016¹
4. Supplemental Application, Concurrency Test, received May 5, 2016
5. Project Narrative, received May 5, 2016
6. Parking Plan, dated April 21, 2016
7. Lot Plan, dated April 21, 2016
8. Drainage Information and Plan, dated May 5, 2016

¹ The Applicant originally submitted an unsigned Project Application and unsigned SEPA Environmental Checklist, received May 5, 2016. Following a discussion at the open record hearing, the Applicant submitted signed, versions of these documents.

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9. Floor Plans, dated April 21, 2016
10. Health District Septic and Water Supply Approval, dated April 27, 2016
11. Sewer Availability, dated March 16, 2016
12. Zoning Map, dated June 28, 2016
13. Critical Areas Map, dated June 28, 2016
14. Aquifer Recharge Map, dated June 28, 2016
15. Comprehensive Plan Map, dated June 28, 2016
16. Notice of Application, dated May 16, 2016
17. Notice of Public Hearing, dated July 14, 2016
18. Determination of Nonsignificance, dated June 14, 2016
19. Site Photograph, dated July 14, 2016
20. Health District Site Plan, dated April 8, 2016
21. Staff Report, dated July 20, 2016
22. Certification of Public Notice, dated July 14, 2016
23. Staff PowerPoint (11 Slides), dated July 28, 2016

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. David and Paulette Hoffman (Applicant) request an after-the-fact conditional use permit (CUP) to legalize an existing 750 square foot accessory dwelling unit (ADU) on their 0.67-acre property at 3640 Green Mountain Road NW.² The Applicant originally received approval in 2005 for an art studio on the property, which was built above the garage associated with the primary residence. Later, however, the Applicant installed a bathroom and converted the space into an ADU without altering the outward appearance of the structure, necessitating the after-the-fact CUP. *Exhibit 1; Exhibit 2; Exhibit 5; Exhibit 19; Exhibit 21, Staff Report, page 2; Exhibit 23.*
2. Kitsap County (County) determined that the application was complete on May 6, 2016. On May 19, 2016, the County published notice of the application in the *Kitsap Sun* and mailed notice of the application to the Applicant, persons owning property within 800 feet of the subject property, and interested parties. On July 13, 2016, the County posted notice of the open record hearing associated with the application at the property. The next day, the County published notice of the open record hearing in the *Kitsap Sun* and mailed notice of the open record hearing to interested parties and persons owning property within 800 feet of the property. County Planner Katharine Shaffer testified that

² The Assessor Tax Parcel Number associated with the parcel is 4542-000-014-0407. *Exhibit 21, Staff Report, page 2.* The ADU has its own mailing address, 3638 Mountain Road NW. *Exhibit 21, Staff Report, page 1.*

the County did not receive any public comments in response to its notice materials. *Exhibit 16; Exhibit 17; Exhibit 22; Testimony of Ms. Shaffer.*

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 used the optional Determination of Nonsignificance (DNS) process under Washington Administrative Code (WAC) 197-11-355. Accordingly, on May 19, 2016, the County published notice of the SEPA comment period in the *Kitsap Sun* and mailed notice of the SEPA comment period to the Applicant, property owners within 800 feet, and interested parties. The SEPA comment period occurred concurrently with the notice of application. The County received no comments. The County analyzed the Applicant's SEPA Checklist and other available information and issued a Determination of Nonsignificance (DNS) on June 14, 2016. Ms. Shaffer testified that the DNS was not appealed. *Exhibit 3; Exhibit 16; Exhibit 18; Exhibit 22; Testimony of Ms. Shaffer.*

Comprehensive Plan, Zoning, and Surrounding Property

4. The property is designated Rural Residential under the Kitsap County Comprehensive Plan (Comprehensive Plan) and is zoned Rural Residential. The County uses the Rural Residential designation and the Rural Residential zone to promote low-density residential development consistent with rural character. *Kitsap County Comprehensive Plan (December 2012), page 3-24; Kitsap County Code (KCC) 17.310.010.* Surrounding properties to the north, east, and west are also designated Rural Residential in the County Comprehensive Plan and zoned Rural Residential; these parcels are primarily developed with single-family residences. The property to the south is designated Rural Wooded under the Comprehensive Plan and the County's zoning ordinance and is densely wooded. *Exhibit 12; Exhibit 15; Exhibit 21, Staff Report, pages 2 and 3.*
5. County staff identified as relevant to the proposed project Comprehensive Plan policies that: limit designated rural areas to low residential densities that can be sustained by minimal infrastructure improvements, cause minimal environmental degradation, and will not create the future necessity or expectation of urban levels of service; provide a variety of densities in rural areas to make efficient use of land, maximize the return on public investment, and provide affordable housing; permit residential uses in rural areas consistent with the existing and planned rural character of the surrounding area; limit development to that which serves rural residential or resource needs and which will not draw people from urban growth areas; provide road and access standards that permit all-weather access for emergency vehicles while preserving and enhancing rural character; ensure proper installation, use, and maintenance of on-site septic systems; ensure that a broad range of housing types are available through innovative planning; encourage and facilitate development of a variety of housing types; permit and encourage the

development of residential accessory dwelling units; and encourage innovative land use practices and development standards that minimize housing costs.³ *Exhibit 21, Staff Report, page 4.*

Existing Property

6. The property is approximately 0.67 acres, or 29,185 square feet. The lot is shaped like an irregular rectangle and is fairly level, with slopes to the west and east of the parcel. The site has mature existing vegetation and trees around the main entrance and front yard. Ms. Shaffer testified that there are steep slopes on parts of the property, but they are further than 35 feet from the ADU, as required by Chapter 19.400 KCC, and, accordingly, a geotechnical report was not required. She noted that the part of the property with the existing single-family residence and ADU is level. The primary residence on the property has approximately 2,715 square feet of habitable area. *Exhibit 12; Exhibit 20; Exhibit 21, Staff Report, pages 2 and 8; Testimony of Ms. Shaffer.*

Conditional Use Permit

7. County zoning ordinances make some uses conditional in certain zones. *KCC 17.110.175. A conditional use is an activity specified by Title 17 KCC as a principal or accessory use that may be approved or denied based on consistency with specific criteria. KCC 17.110.175. An ADU is a conditional use outside urban growth area boundaries and permitted only with a CUP. KCC 17.381.060.3.b; KCC Table 17.381.040(E).* The Applicant seeks after-the-fact approval for an ADU on property located outside an Urban Growth Area. *Exhibit 21, Staff Report, page 6.*
8. The KCC permits ADUs where: there are no other ADUs on the lot; the owner resides in the ADU or primary residence; the ADU's footprint does not exceed half of the primary residence's habitable area or 900 square feet, whichever is smaller; the ADU is located within 150 feet of the primary residence or within an existing converted detached structure; the ADU maintains the appearance of the primary residence; the ADU complies with the setback requirements applicable to the zone it would be built in; the ADU meets applicable health district standards for water and sewage disposal; the ADU is not comprised of a mobile home or recreational vehicle; the ADU uses the same side street entrance as the primary residence and is provided with additional off-street parking; and no accessory living quarters are also located on the lot. *KCC 17.381.060.3.c-1.*
9. Ms. Shaffer testified that the Applicant lives in the primary residence; that no other ADUs are proposed for the site; that no accessory living quarters exist on-site; and that the existing ADU is built above the primary residence's attached garage, is 750 square feet, and is similar in appearance to the primary residence. She noted that, because of the

³ Staff specifically identified Comprehensive Plan Policies RL-1, RL-2, RL-3, RL-4, RL-14, RL-15, HS-6, HS-8, HS-9, and HS-11 as relevant to the project. *Exhibit 21, Staff Report, page 4.*

property's size, the Kitsap County Code allows for setbacks that correspond to the Urban Restrictive zone and that the ADU meets all required setbacks.⁴ Ms. Shaffer testified that the property is accessed from an existing driveway off of Green Mountain Road NW and meets all required parking requirements. She also noted that the Kitsap Public Health District and Kitsap Public Utility Districts both approved the ADU's continued use of the on-site sewage and water systems.⁵ Ms. Shaffer testified that the Applicant previously received a building permit for the structure (when it was an art studio) but has applied for a building permit for the ADU. *Testimony of Ms. Shaffer.*

10. Paulette Hoffman testified that she built her home in 2005 and that the structure above the garage (the ADU) has always been there. She explained that, after having back surgery and falling ill, she could no longer use the space as an art studio and decided to convert it into an ADU. She explained that her brother currently lives in the ADU. *Testimony of Ms. Hoffman.*

Staff Recommendation

11. Ms. Shaffer testified that County staff recommends approval of the application, with 22 conditions. These conditions generally require the Applicant to: obtain all necessary permits and seek all required review before clearing land, building, or beginning occupancy; pay all necessary impact fees; seek additional approvals prior to remodeling or expanding the ADU; refrain from adding any additional ADUs to the property; reside in the ADU or primary residence; comply with all Kitsap Public Health District regulations; refrain from subdividing the lot to separate the ADU and primary residence; refrain from selling the ADU separately from the primary residence; file a Notice of Land Use Binder with the County Auditor; and submit a complete development permit application, an application for Concurrency Test, and road-approach information. Ms. Hoffman testified that she read and has no issue with the approval conditions proposed by the County. *Exhibit 21, Staff Report, pages 8 to 12; Testimony of Ms. Shaffer; Testimony of Ms. Hoffman.*

⁴ KCC 17.382.110.A.42.b states that any single-family residential lot of record that is less than one acre may use "that residential zoning classification that most closely corresponds to the dimension or dimensions of the lot of record, for the purpose of establishing setbacks from the property lines."

⁵ Exhibit 11, a letter from Kitsap Public Utility District, notes that the water connection for the property may serve one "equivalent residential unit" (ERU). Ms. Shaffer testified that the primary residence and ADU combined constitute one ERU because of the size of the primary residence. *Testimony of Ms. Shaffer.*

CONCLUSIONS

Jurisdiction

The Kitsap County Hearing Examiner is authorized to hear and decide conditional use permit requests. *KCC 2.10.070; KCC 17.421.020.A; KCC Table 21.04.100.*

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 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.

KCC 17.421.030.A

If the approval criteria are not met, or if conditions cannot be imposed to ensure compliance with the approval criteria, the conditional use permit shall be denied. *KCC 17.421.030.C.*

An ADU must also meet the requirements of *KCC 17.381.060.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 900 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;

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- 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 accessory living quarters exist.

KCC 17.381.060.B.3.

The criteria for review adopted by the Kitsap County Board of County 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 existing ADU would be consistent with the criteria for approval specified in KCC 17.381.060.B.3.** The existing ADU is located within the Rural Residential zoning district, outside the boundary of an Urban Growth Area. Consequently, the ADU is a conditional use. The Applicant has built a single ADU on a lot with no other ADUs or accessory living quarters. The Applicant resides in the primary residence on the property and a family member lives in the ADU. The Applicant has built a 750 square-foot ADU, which is smaller than half of the habitable square footage of the primary residence and is also less than 900 square feet. The ADU is built above the garage on-site, which is attached to the primary residence. The ADU complies with setback provisions of the zoning code. The ADU was built to maintain the appearance of the primary residence. The health district has approved, without conditions, the water and sewer systems proposed for the project. The ADU uses the same street access as the primary residence, and two parking spaces are available for the primary residence, and one for the ADU.

Conditions are necessary to mitigate project impacts and ensure compliance with relevant statutes, ordinances, and regulations. These conditions generally require the Applicant to: obtain all necessary permits and seek all required review before clearing land, building, or beginning occupancy; pay all necessary impact fees; seek additional approvals prior to remodeling or expanding the ADU; refrain from adding any additional ADUs to the property; reside in the ADU or primary residence; comply with all Kitsap Public Health District regulations; refrain from subdividing the lot to separate the ADU and primary residence; refrain from selling the ADU separately from the primary residence; file a Notice of Land Use Binder with the County Auditor; and submit a complete development

permit application, an application for Concurrency Test, and road-approach information.
Findings 1, 6-11.

- 2. With conditions, the existing ADU would be consistent with the CUP approval criteria specified in KCC 17.421.030.A.** The ADU is consistent with the Comprehensive Plan in relation to encouraging affordable housing in a rural area, increasing land use efficiency, encouraging ADUs, and creating a variety of housing. The property is not within an urban growth boundary, and an ADU requires a CUP. The proposal meets all applicable requirements of Title 17 KCC, and it would not be detrimental to other properties nearby. The County provided an opportunity for comment and testimony on the application. The County reviewed the Applicant's Environmental Checklist and other information on file and issued a Determination of Nonsignificance. The County received no public comments on the application, and the SEPA determination was not appealed.

Conditions are necessary to mitigate project impacts and ensure compliance with relevant statutes, ordinances, and regulations. These conditions generally require the Applicant to: obtain all necessary permits and seek all required review before clearing land, building, or beginning occupancy; pay all necessary impact fees; seek additional approvals prior to remodeling or expanding the ADU; refrain from adding any additional ADUs to the property; reside in the ADU or primary residence; comply with all Kitsap Public Health District regulations; refrain from subdividing the lot to separate the ADU and primary residence; refrain from selling the ADU separately from the primary residence; file a Notice of Land Use Binder with the County Auditor; and submit a complete development permit application, an application for Concurrency Test, and road approach-information.
Findings 1-11.

DECISION

Based on the preceding Findings and Conclusions, the request for an after-the-fact conditional use permit to legalize an existing 750 square foot accessory dwelling unit at 3640 Green Mountain Road NW is **APPROVED**. Conditions are necessary to mitigate specific impacts of the proposed development and to ensure compliance with existing County ordinances:⁶

1. [blank]⁷

⁶ This decision includes conditions designed to mitigate impacts of this proposed project as well as conditions required by County Code.


⁷ Condition 1, as proposed, was not specific to the proposal and detailed the jurisdiction and authority of the Hearing Examiner. Ms. Shaffer acknowledged at the open record hearing that it would be appropriate to remove this condition. *Testimony of Ms. Shaffer.*

2. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.
3. The accessory dwelling unit 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.
4. 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.
5. Only one accessory dwelling unit shall be permitted on the subject property.
6. 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.
7. The accessory dwelling unit's habitable area shall not exceed 50% of the primary residence or 900 square feet, whichever is smaller. The size of the ADU is 750 square feet (Exhibit 9). 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.
8. The accessory dwelling unit shall maintain the appearance of the primary residence.
9. This permit shall comply with all Kitsap Public Health District regulations and conditions of approval.
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 (ALQ) or guest house (GH) is not permitted on the same lot unless the accessory dwelling unit is removed and the ALQ or GH complies with all requirements imposed by the Kitsap County Code (KCC).
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 by the Department and recorded at the Applicant's expense. The Applicant shall provide recorded copies of the Binder to the Department immediately after recording. The Binder shall be recorded within 30 days of notification from the Department that the Binder is ready to be recorded.
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 (KCC). 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 (No. 16 01919). 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 three 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. The Applicant shall submit an Application for Concurrency Test (KCPW Form 1601) as required by Section 20.04.030, Transportation Concurrency, of the Kitsap County Code. The KCPW 1601 form reserves road capacity for the project.
22. The Applicant shall submit plans for construction of the road approach between the edge of existing pavement and the right-of-way line at all intersections with county rights-of-way. Approaches shall be designed in accordance with the Kitsap County Road Standards as established in Chapter 11.22 of the Kitsap County Code. Existing approaches may need to be improved to meet current standards.

DECIDED this 19th day of August 2016.

A handwritten signature in black ink, appearing to read "Andrew M. Reeves", is written over a horizontal line. The signature is fluid and cursive.

Andrew M. Reeves
Hearing Examiner
Sound Law Center