



## Notice of Hearing Examiner Decision

08/24/2021

To: Interested Parties and Parties of Record

RE:           Project Name: Folk Accessory Dwelling Unit  
                  Applicant: Daniel Folk  
                                  1890 SE Oak Road  
                                  Port Orchard, WA 98367  
                  Application: Conditional Use Permit – Accessory Dwelling Unit  
                                  (CUP-ADU)  
                  Permit Number: #19-02394

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **Permit #19-02394 Folk Accessory Dwelling Unit – Conditional Use Permit – Accessory Dwelling Unit (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://spf.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 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 [Help@Kitsap1.com](mailto:Help@Kitsap1.com) or (360) 337-5777.

CC: Applicant/Owner: FOLK DANIEL W & JULIE, [danielfolk253@gmail.com](mailto:danielfolk253@gmail.com)  
Health District  
Public Works  
Parks  
Navy  
DSE  
Kitsap Transit

South Kitsap  
Fire District  
South Kitsap School District  
Puget Sound Energy  
Water 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 Ecology-Wetland Review  
Interested Parties: None

**KITSAP COUNTY HEARING EXAMINER  
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

**Accessory Dwelling Unit Conditional Use Permit  
Folk, File No. 19-02394**

**August 23, 2021**

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**1. FINDINGS OF FACT**

**1.1 Proposal.** After the fact Conditional Use Permit (“CUP”) for conversion of the second story of an existing detached garage to an 832 square foot accessory dwelling unit (“ADU”) on a 12.3 acre lot.

**Applicant/Property Owner.** Daniel Folk, 1890 SE Oak Road, Port Orchard, WA 98367.

**Location.** 1890 SE Oak Road, Port Orchard, WA 98367. Assessor Parcel No. 4859-001-002-0109.

**1.2 Hearing.** An open record public hearing was held August 12, 2021. Due to COVID-19 restrictions, the hearing was conducted remotely, with the Applicant, Examiner and Kitsap County Department of Community Development (“DCD”) calling in. Access information was provided to the public to allow citizens to join via either a video link or telephone call-in. There were no reported technical difficulties during the call or afterwards. However, in case any citizens who wished to comment had difficulty calling in, the record was kept open through August 19.<sup>1</sup> No comment was received following the hearing. At the hearing, DCD, through Mr. Smith, described the project. DCD found it consistent with requirements, and recommended approval with conditions. The Applicant, through Mr. Folk, confirmed there were no concerns with DCD’s proposed conditions. No member of the public indicated a wish to speak.

**1.3 Administrative Record.** The Hearing Examiner admitted Exhibits 1-31, which included the amended Staff Report, application materials, documentation of agency consultation, public notice documents, and a DCD Power Point presentation.

**1.4 State Environmental Policy Act, Ch. 43.21C RCW.** DCD issued an unappealed Determination of Non-Significance,<sup>2</sup> with conditions requiring compliance with Title 12 to address stormwater control, Title 19 to address critical areas, and Title 17 to address land use impacts.

**1.5 Agency Comment.** The proposal was circulated within the County. As long as requirements are met, there were no objections to approval.

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<sup>1</sup> Temporary Emergency Rule to Address COVID-19 Situation (April 1, 2020).

<sup>2</sup> Exhibit 21; Exhibit 30 (Staff Report), p. 2.

**1.6 Notice.** Hearing and application notice was provided consistent with KCC requirements.<sup>3</sup>

**1.7 Zoning/Plan Designations and Critical Areas.** Outside the urban growth area, the site's Comprehensive Plan and zoning designation are Rural Protection (RP),<sup>4</sup> allowing one dwelling unit per ten acres. An ADU is authorized by CUP, with requirements specific to the use. Surrounding properties to the north, east, and south have the same zoning, with Rural Residential (RR) zoning to the west; all surrounding properties are developed with single-family residences.<sup>5</sup>

**1.8 Utility and Public Services.**

- **Water:** On-site two-party well
- **Power:** Puget Sound Energy
- **Sewer:** On-site septic
- **Police:** Kitsap County Sheriff
- **Fire:** South Kitsap Fire & Rescue
- **Schools:** South Kitsap School District #402

**1.9 Access.** Driveway onto SE Oak Road, a County maintained road. A separate driveway on the eastern portion of the property runs north-south along the forested area serving as access to the southern portion of the property, where the garage and proposed ADU site is located.<sup>6</sup> The second access onto SE Oak Road will be removed (fenced off), with the existing driveway to the single-family residence extended to access the ADU.

**1.10 Site Characteristics, Dimensions and Setbacks.** The L-shaped site is mostly flat but includes a gentle slope to the south with a moderate slope down toward the stream/wetland area located on the eastern portion of the property. The western half of the property is mainly open pasture; the eastern half, which contains the wetland area, is forested. The site is developed with a 2,472 square foot single-family residence on the northwest portion of the property, agricultural buildings, a detached garage (the proposed ADU) on the southern portion of the property, private well, driveways, and parking next to the single-family residence and ADU. The ADU meets the 35-foot height limit. The existing ADU building's setbacks are 560 feet on the front, approximately 169 on the east side, 32 on the west side, and 240 on the rear.<sup>7</sup>

**1.11 Building and Site Aesthetics.** The ADU is proposed within an existing structure. The single-family residence and ADU are similar in appearance, with horizontal wood siding, brown stain, pitched gable metal roofs, and similar windows for both structures.<sup>8</sup> Extensive setbacks provide visual mitigation.

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<sup>3</sup> Exhibits 17, 22, and 29; Exhibit 30 (Staff Report), p. 7; KCC 21.04.080, .210.

<sup>4</sup> Exhibits 23 and 27; Exhibit 30 (Staff Report), p. 3.

<sup>5</sup> Exhibit 30 (Staff Report), p. 4.

<sup>6</sup> Exhibit 19; Exhibit 30 (Staff Report), p. 4.

<sup>7</sup> Exhibit 30 (Staff Report), p. 3.

<sup>8</sup> Exhibits 1, 3, and 11; Exhibit 30 (Staff Report), p. 8.

**1.12 Environmental.** The site includes a Category-1 wetland on the eastern part of the property, and Type-F streams along the west and east property lines. The ADU is outside the 150-foot natural vegetation buffer and 15-foot building setback from a Type-F stream; and outside the 110-foot buffer and 15-foot building setback from a Category-1 wetland.<sup>9</sup>

**1.13 Development Engineering/Stormwater.** The proposal is a Small Project under KCC Title 12. The ADU building permit site plan will comply with Minimum Requirements.

**1.14 Conditions/Staff Report.** The Applicant accepted the proposed conditions, which are incorporated without substantive revision to ensure ADU consistency with the permitting criteria. Except as the Decision revises it, the Staff Report is incorporated.

## 2. CONCLUSIONS OF LAW

**2.1 Hearing Examiner Review Authority.** The Hearing Examiner has CUP review authority for this ADU.<sup>10</sup> The Examiner may approve, approve with conditions, or deny a CUP.<sup>11</sup>

**2.2 Code Requirements Specific to an ADU in the RP Zone.** An ADU outside the urban growth area, and within the RP zone, must obtain a CUP and comply with requirements specific to the use.<sup>12</sup> Only one ADU is allowed per lot, on which no accessory dwelling quarters are located, and the owner "must reside in either the primary residence or the ADU."<sup>13</sup> These requirements are met. Only one ADU is proposed for a lot outside the urban growth area, no accessory living quarters or other ADUs are on the lot, and the property owners will live in the single-family residence.

The ADU cannot "exceed fifty percent of the square footage of the habitable area of primary residence or nine hundred square feet, whichever is smaller."<sup>14</sup> The primary residence's habitable area is 2,472 square feet.<sup>15</sup> At 832, the ADU complies.

The ADU, which is the conversion of a detached garage approximately 350 feet from the primary residence,<sup>16</sup> complies with the requirement to be "within one hundred fifty feet of the primary residence or shall be the conversion of an existing detached structure (*e.g.*, garage)..."<sup>17</sup> The proposal complies with all other setback requirements.

As for design, as the findings address, the primary residence and ADU share similar features,<sup>18</sup> as the ADU has been "designed to maintain the appearance of the primary

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<sup>9</sup> Exhibit 24; Exhibit 30 (Staff Report), pp. 1 and 11.

<sup>10</sup> KCC 17.410.010, 21.04.100 (permit type #18), and 17.410.042 (use #100).

<sup>11</sup> KCC 17.550.030.

<sup>12</sup> KCC Table 17.410.042, FN 1, requiring KCC 17.410.060 compliance. *See* KCC 17.410.060(B)(3).

<sup>13</sup> KCC 17.410.060(B)(3).

<sup>14</sup> KCC 17.410.060(B)(3).

<sup>15</sup> Exhibit 30 (Staff Report), p. 8.

<sup>16</sup> Exhibit 19; Exhibit 30 (Staff Report), p. 8.

<sup>17</sup> KCC 17.410.060(B)(3).

<sup>18</sup> Exhibits 1, 3, and 11; Exhibit 30 (Staff Report), p. 8.

residence."<sup>19</sup> Also, the proposed ADU is stick-built, so is not a mobile home or recreational vehicle.<sup>20</sup>

The ADU will be supplied by well water and a septic system. Kitsap Public Health approved the ADU.<sup>21</sup> The ADU will "meet the applicable health district standards for water and sewage disposal."<sup>22</sup>

Parking and entry requirements are met. The ADU will use "the same side street entrance as the primary residence."<sup>23</sup> The existing driveway will serve the ADU and primary residence. With sufficient space to meet minimum parking requirements and with the "additional off-street parking,"<sup>24</sup> parking requirements are met. All requirements specific to the ADU use are met.

### **2.3 Conditional Use Permit Requirements.**

A CUP must meet four requirements.

1. The proposal is consistent with the Comprehensive Plan;
2. The proposal complies with applicable requirements of [Title 17];
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.<sup>25</sup>

These criteria are met. The Staff Report addressed Comprehensive Plan policies. They provide for development at low residential densities that can be sustained without urban levels of service, and which will cause minimal environmental degradation. The Plan supports residential uses consistent with the existing and planned rural character of the surrounding rural area, while minimizing housing costs and providing for a range of housing types. The ADU does not have significant environmental impacts, does not require urban infrastructure, and is consistent with the surrounding area's rural character. The proposal follows the Comprehensive Plan.

The proposal is conditioned to ensure compliance with Title 17 and other code requirements. No code provision was identified which would not be complied with. The proposal will not be materially detrimental to existing or future uses or property in the immediate vicinity. Impacts are addressed through project design, mitigation, and code.

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<sup>19</sup> KCC 17.410.060(B)(3).

<sup>20</sup> KCC 17.410.060(B)(3).

<sup>21</sup> Exhibits 8 and 9; Exhibit 30 (Staff Report), p. 9.

<sup>22</sup> KCC 17.410.060(B)(3).

<sup>23</sup> KCC 17.410.060(B)(3).

<sup>24</sup> KCC 17.410.060(B)(3).

<sup>25</sup> KCC 17.550.030(A).

The proposal is compatible with surrounding existing uses. It is aesthetically consistent with the existing single-family residence. The ADU's small size, existing vegetation, and setbacks all ensure it is consistent with the surrounding character, appearance, and quality of development on site and in the immediate vicinity. As conditioned and proposed, the ADU meets all CUP criteria and should be approved.

## **DECISION**

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the CUP for the proposed ADU, provided these conditions are adhered to:

### **Planning/Zoning**

1. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.
2. The 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 ADU building, regardless of whether a building permit is required, shall be reviewed by DCD and granted approval prior to such modification, expansion, construction and/or issuance of a building permit.
4. Only one ADU shall be permitted on the subject property.
5. 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.
6. The ADU's habitable area shall not exceed 50% of the primary residence or 900 square feet, whichever is smaller. The proposed size of the ADU is 832 square feet (Exhibit 6).
7. The ADU shall be located within 150 feet of the primary residence.
8. The ADU 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.
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 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 ADU is removed or converted and the ALQ or GH complies with all requirements imposed by the KCC.

13. A property with a primary residence and an 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 a complete subdivision application.

14. The ADU cannot be sold separately from the primary residence unless it has legally been segregated onto its own lot.

15. The recipient of any CUP 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 an agreement to abide by the terms and conditions of the CUP 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 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 be, 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 19-02394 Folk ADU CUP. 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 CUP approval shall automatically become void if no development permit application is accepted as complete by DCD 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 CUP.



## **Development Engineering**

21. This project is located within a critical area or critical area buffer and requires engineered drainage design that conforms with KCC Title 12 Stormwater, at the time of building permit application.

22. Stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with KCC Title 12 effective at the time the R-ADU application is deemed fully complete. 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 Code in effect at the time of SDAP application.

23. The design of the infiltration facilities shall be in accordance with Vol. II, Ch. 5.4 of the Kitsap County Stormwater Design Manual.

24. The infiltration facilities shall remain offline until the drainage areas are stabilized, and the water quality treatment facility is adequately established. In addition, retention ponds shall not be utilized as temporary erosion and sedimentation control ponds.

25. Immediately after excavation of the proposed infiltration facilities, the Project Engineer shall provide an inspection(s) to verify that the actual soil conditions encountered meet the design assumptions. The Project Engineer shall submit the inspection report(s), properly stamped and sealed to Development Services and Engineering.

26. Where slopes are steeper than 15% and flatter than 30%, infiltration facilities (excluding individual lot systems) shall be placed no closer to the top of slope than the distance equal to the total vertical height of the slope area. All retention facilities shall be a minimum of 200 feet from any slope steeper than 30%. This distance may be reduced based on a geotechnical engineering report. That analysis will be prepared by a Civil Engineer licensed in the State of Washington, knowledgeable in the practice of soils engineering and mechanics. The analysis will address the effects of groundwater infiltration, seepage, potential slip planes, and changes in soil bearing strength. The proposed facilities will be designed following the recommendations of the geotechnical analysis.

27. The owner shall be responsible for maintenance of the storm drainage facilities for this development following construction. Before (requesting final building inspection/recording the final plat/binding site plan) for this development, the person or persons holding title to the subject property for which the storm drainage facilities were required shall record a Declaration of Covenant that guarantees the County that the system will be properly maintained. Wording must be included in the covenant that will allow the County to inspect the system and perform the necessary maintenance in the event the system is not performing properly. This would be done only after notifying the owner and giving him a reasonable time to do the necessary work. Should County forces be required to do the work, the owner will be billed the maximum amount allowed by law.

## **Environmental**

28. Permit approval subject to Chapter 19.300.315 of KCC, which states that buffers or setbacks shall remain undisturbed natural vegetation areas except where the buffer can be enhanced to improve its functional attributes. Refuse shall not be placed in buffers.

29. Permit approval subject to Chapter 19.150.170 of KCC, which states that critical area ordinance (CAO) buffers shall remain undisturbed natural vegetation areas except where the buffer can be enhanced to improve its functional attributes. Refuse shall not be placed in buffers.

## **Traffic**

30. At building permit application, submit KCPW Form 1601 for issuance of a concurrency certificate, as required by KCC Section 20.04.030, Transportation Concurrency.

31. Private driveway approaches to existing County roads shall be reviewed and approved by Development Engineering.

32. 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 KCC. Existing approaches may need to be improved to meet current standards.

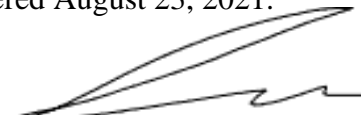
33. Work within the county right-of-way requires a permit to perform work in the right-of-way from Kitsap County Department of Public Works.

## **Kitsap Public Health District**

34. The Applicant shall comply with all applicable Kitsap Public Health District requirements.

Absent a timely appeal or grant of reconsideration, this Decision is final.<sup>26</sup>

DECISION entered August 23, 2021.



Kitsap County Hearing Examiner  
Susan Elizabeth Drummond

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<sup>26</sup> See Ch. 36.70C RCW (any appeal to be filed within 21 days to superior court).