



Notice of Hearing Examiner Decision

01/02/2020

To: Interested Parties and Parties of Record

RE: Project Name: Abair Accessory Dwelling Unit – CUP & SCUP
 Applicant: Rebecca Abair
 4199 Locker Rd SE
 Port Orchard WA
 Application: Conditional Use Permit (CUP) & Shoreline Conditional
 Use Permit (SCUP)
 Permit Number: 19-02852 & 19-03027

The Kitsap County Hearing Examiner has **APPROVED** the land use application for: **19-02852 & 19-03027: Abair Accessory Dwelling Unit, Conditional Use Permit (CUP-ADU) & Shoreline Conditional Use Permit (SCUP), 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 or (360) 337-5777.

CC: Applicant/Owner: Rebecca D. Abair, rabair@wavecable.com
Health District
Public Works
Parks
Navy
DSE
DCD

Prosecutor
Assessor
Kitsap Sun
Kitsap Transit
South Kitsap Fire District
South Kitsap School District
Puget Sound Energy
Water Purveyor
Sewer 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
and Shoreline Conditional Use Permit**

Abair

File Nos. 19-02852 (ADU CUP) and 19-03027 (SCUP)

December 26, 2019

1. FINDINGS OF FACT

1.1 Proposal. The project converts an existing single-family residence into a 429 square foot accessory dwelling unit (“ADU”) and an existing 896 square foot garage/accessory building into the primary residence. Both structures were permitted and constructed several years ago. It is the use change from single family residence to ADU which triggered the County’s ADU permitting criteria, as well as shoreline CUP requirements, as the ADU is within shoreline jurisdiction. As the ADU had been previously used as the primary residence, there are no new impacts within the shoreline area.

Applicant/Property Owner. Rebecca Abair, 4199 Locker Road SE, Port Orchard, WA 98366.

Location. 4199 Locker Road SE, Port Orchard, WA 98366. Assessor No. 4766-000-005-0100.

1.2 Hearing. An open record public hearing was held December 19, 2019. Kitsap County Department of Community Development (“DCD”), through Ms. Sands and Mr. Heacock, described the project. DCD found it consistent with requirements and recommended approval with conditions. The Applicant, Ms. Abair, had concerns with DCD’s proposed Condition 22, as she objected to removing the toilet and stove. The stove is heavy (about 450 pounds), so would be difficult to move. It is also needed for heat as the shed is used as a painter’s studio. The Applicant would also prefer to not remove the toilet. She had no other objections. No member of the public indicated a wish to speak.

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

1.4 SEPA. DCD issued a Determination of Non-Significance,¹ with conditions requiring compliance with Title 12 (stormwater control), Title 19 (critical areas), Title 22 (shorelines), and Title 17 (land use). The DNS was not appealed.

¹ Exhibit 20; Exhibit 30 (Staff Report), p. 2.

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

1.6 Notice. Hearing notice was provided through posting, publishing, and mailing, and application notice through mailing and publishing.² KCC notice requirements were complied with.

1.7 Project. The forested 2.87 acre parcel is developed with an existing single family residence near the property's center, which will be converted to the 429 square foot ADU. An 896 square foot garage/accessory building will be converted to be the primary residence. Of the other accessory buildings on site, one is a shed with living, sleeping, cooking, and sanitation provisions. Modification is required so it does not qualify as a second ADU or a guest house.

1.8 Zoning/Plan Designations. Located outside the urban growth area, the Comprehensive Plan and zoning designations are Rural Protection,³ which allows one dwelling unit per ten acres. The zone allows an ADU, subject to both a CUP and separate requirements specific to the use. The ADU is set back from all property lines by 130-180 feet, so exceeds the zoning code's 50-foot front yard setback, and five-foot setbacks for ADUs on all other sides. Surrounding sites have the same zoning and are similarly developed with single family residences, except the undeveloped property to the east.

1.9 Critical Areas. Curley Creek, a Type S stream, is classified as a shoreline due to flow volume, and has an associated floodplain. The shoreline designation is Rural Conservancy, with a 200-foot Type S setback, plus 15-foot building setback.⁴ The ADU is 185 feet from the Creek's high-water mark. The structure was permitted, and no expansion is proposed, with locational impacts mitigated through the 2012 permitting. As a previously permitted structure, no variance is required.⁵

A shoreline conditional use permit is requested as the existing structure is being reclassified from a single-family residence to an ADU. Because single-family residences are permitted outright, but an ADU requires a shoreline conditional use permit, the ADU CUP was requested.⁶ A qualified professional reviewed the use conversion for cumulative shoreline impacts and determined there were no significant environmental impacts and no net loss of shoreline functions.⁷

The site includes moderate Landslide Hazard Areas and high Erosion Hazard Areas, but the project is outside these areas. Also, while a portion of the site is located over a Category II Aquifer Recharge Area, the use is not identified as presenting a potential threat to groundwater, so a hydrogeological report is not required.⁸

² Exhibits 18, 28, and 29; *see* KCC 21.04.080.

³ Exhibit 23; Exhibit 30 (Staff Report), p. 3 and Attachment E.

⁴ KCC 22.400.115(G)(1), 120(B)(1)(f) ("The standard buffer for shoreline jurisdictional freshwater streams and rivers is two hundred feet."), and (B)(4) (15 foot building setback).

⁵ KCC 22.400.100(B)(1)(b).

⁶ Exhibit 30 (Staff Report), p. 20; Testimony, Mr. Heacock.

⁷ Exhibit 12.

⁸ KCC 19.600.620.

1.10 Utility and Public Services.

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

1.11 Access. Locker Road SE, a paved county-maintained road classified as rural local access.

1.12 Dimensions and Setbacks. The ADU (existing single-family residence) would be 429 square feet, and the single-family residence (existing garage/accessory building) would be 896 square feet. The ADU would be about 155-160 feet from the single-family residence.⁹ Existing setbacks exceed requirements, with over 130 feet on the front, over 100 feet on the north side, over 120 on the south side, and over 180 on the rear.¹⁰ The 35-foot height limit will be complied with.

1.13 Aesthetics. The proposed primary residence and ADU are similar in appearance.¹¹ As detailed in the Staff Report and application materials, both buildings have natural wood siding, brown trim, pitched roofs, similar windows, and are complementary in design. The ADU, a traditionally styled log cabin with a well-maintained outer appearance, is a near perfect aesthetic fit with the forested setting.

1.14 Conditions/Staff Report. Excepting Condition 22, which would require cast iron stove and toilet removal, the Applicant accepted the proposed conditions. Given the stove's size and weight (450 pounds), it is reasonable to allow it to remain in place. This would not result in the shed being classified as a living facility. Habitable area is "the entire area of a dwelling unit or living quarters used for living, sleeping, eating and/or cooking. Storage areas and garages are excluded from calculations of habitable area."¹² Typically, cooking facilities/areas count towards habitable area calculations. At the hearing, it was clarified that the stove is used for heat rather than cooking, and given its weight makes removal difficult, it is reasonable to allow it to remain. While half bath facilities, such as toilets/sinks, can be permissible, the Health District has proposed conditions inconsistent with keeping the toilet, so that portion of the condition should remain. This is also consistent with the structure remaining as non-habitable. Otherwise, the proposed conditions should be included without substantive revision to ensure code requirements are met, and the project is consistent with these findings. Except as the Decision revises it, the Staff Report is incorporated by reference.

⁹ Exhibit 30 (Staff Report), p. 9.

¹⁰ Exhibit 30 (Staff Report), p. 3.

¹¹ Exhibit 1 (Application); Exhibit 30 (Staff Report), p. 9.

¹² KCC 17.110.319.

2. CONCLUSIONS OF LAW

2.1 Hearing Examiner Review Authority. The Hearing Examiner has CUP review authority for this ADU.¹³ The Examiner may approve, approve with conditions, or deny a CUP.¹⁴ As a Type III application, the Examiner also has shoreline CUP review authority.¹⁵ As the shoreline designation is Rural Conservancy, a shoreline CUP is required to construct an ADU.¹⁶

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.¹⁷ Only one ADU is allowed per lot, on which no accessory dwelling quarters are located.¹⁸ There is an existing shed on the site with provisions which could support habitable use. The toilet will be removed and it will not be used for overnight accommodations (Conditions 22 and 23). Compliance with these requirements will result in no guest house and only one ADU on the property.

The owner "must reside in either the primary residence or the ADU."¹⁹ This requirement is met. The property owner will live in the ADU and the existing single-family residence will be occupied occasionally by her children.

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."²⁰ The proposed ADU is 429 square feet and will not exceed 50% of the habitable area of the primary residence, which will be 896 square feet upon completion. The ADU has a 126 square foot loft that is accessible only by a ladder and will be used only for storage. Because the loft area is not part of the habitable area of the ADU, the ADU complies with the size requirement.

The ADU is to be "within one hundred fifty feet of the primary residence or shall be the conversion of an existing detached structure (e.g, garage)...."²¹ The ADU is 155-160 feet from the primary residence,²² but as an existing single-family detached structure,²³ its conversion to an ADU meets code. The ADU complies with all other setback requirements.

As for design, as the findings address, the primary residence and ADU will be similar in appearance,²⁴ as the ADU has been "designed to maintain the appearance of the primary

¹³ KCC 17.410.010(C), 21.04.100 (*see* permit type No. 18), 17.410.042.

¹⁴ KCC 17.550.030.

¹⁵ KCC 22.500.100(D)(2).

¹⁶ KCC 22.600.105.

¹⁷ KCC Table 17.410.042, FN 1, requiring KCC 17.410.060 compliance. *See* KCC 17.410.060(B)(3).

¹⁸ KCC 17.410.060(B)(3).

¹⁹ KCC 17.410.060(B)(3).

²⁰ KCC 17.410.060(B)(3).

²¹ KCC 17.410.060(B)(3).

²² Exhibit 30 (Staff Report), p. 9.

²³ KCC 17.110.242.

²⁴ Exhibit 1 (Application); Exhibit 30 (Staff Report), p. 9.

residence."²⁵ Also, the proposed ADU is stick-built, so is not a mobile home or recreational vehicle.²⁶

The ADU will be supplied by well water and a septic system. The Health District approved the Building Site Application with a condition on residential occupancy, so the ADU will "meet the applicable health district standards for water and sewage disposal."²⁷

Parking and entry requirements are met. The ADU is conditioned to use "the same side street entrance as the primary residence."²⁸ The separate existing south driveway access will be removed and the area revegetated to prevent future access. Three parking spaces are required for the main house; one for the ADU.²⁹ At least five are proposed. With sufficient space to meet minimum parking requirements and with the "additional off-street parking,"³⁰ 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.³¹

These criteria are met. The Staff Report provided detail on Comprehensive Plan policies. They provide for development at low residential densities that can be sustained without urban levels of service, and will cause minimal environmental degradation. The Plan supports residential use 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 is consistent with the Comprehensive Plan.

²⁵ KCC 17.410.060(B)(3).

²⁶ KCC 17.410.060(B)(3).

²⁷ KCC 17.410.060(B)(3); Exhibit 30 (Staff Report), p. 9; Exhibit 11; Conditions 31 and 32.

²⁸ KCC 17.410.060(B)(3); Conditions 10 and 24.

²⁹ Exhibit 30 (Staff Report), p. 10; KCC 17.490.030.

³⁰ KCC 17.410.060(B)(3).

³¹ KCC 17.550.030(A).

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. Also, the proposal will not be materially detrimental to existing or future uses or property in the immediate vicinity. All impacts identified have been addressed through project design, additional mitigation, and/or code requirements.

The proposal is compatible with surrounding existing and planned rural uses. It is aesthetically consistent with the existing residence. The ADU's small size, existing vegetation, and extensive setbacks which exceed code requirements 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.

2.4 Shoreline Conditional Use Permit

A shoreline CUP must meet shoreline substantial development criteria, WAC 173-27-160, and these criteria:

- a. That the proposed use is consistent with the policies of RCW 90.58.020 and this program;
- b. That the proposed use will not interfere with the normal public use of public shorelines and does not conflict with existing water-dependent uses;
- c. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and this program;
- d. That the proposed use will not result in significant adverse effects or a net loss to the shoreline ecosystem functions in which it is to be located;
- e. That the public interest suffers no substantial detrimental effect;
- f. That consideration has been given to the cumulative impact of additional requests for like actions in the area and shall not result in substantial adverse effects or net loss of shoreline ecosystem functions. For example, if CUPs were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the use preference policies and shall not produce substantial adverse impacts to the shoreline environment. Consideration shall be demonstrated through preparation of a cumulative impacts report, if requested, that substantially conforms to the applicable provisions of Chapter 22.700 (Special Reports);
- g. Other uses which are not classified or set forth in this program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program;

h. Uses which are specifically prohibited by this master program may not be authorized pursuant to this section.³²

These criteria are met. RCW 90.58.020 policies support ADU development. The policies support residential uses and protect "private property rights consistent with the public interest," while also ensuring the shoreline functions and values are protected.³³ As detailed in the Staff Report and cumulative impacts report, and elaborated on at the hearing, the proposal is consistent with SMP policies, including those protecting residential development, the environment, and property rights.

The ADU does not interfere with public shoreline use or conflict with water-dependent uses. The quaint, tiny cabin is consistent with the surrounding rural character and low-density residential uses, including planned uses. There are no significant effects. There is no net loss of shoreline ecosystem function and no substantial detrimental effect, including from cumulative impacts, as the cumulative impacts report details (Exhibit 12). A qualified professional prepared the report, which conforms to Ch. 22.700 KCC requirements. There is "no reasonable [and practical] alternative use" which also meets requirements, and the ADU is "at least as consistent with the policies and provisions of this program and the Act and as the uses in the area as the preexisting use."³⁴ The shoreline code conditionally authorizes the ADU and should be approved.

By meeting the County's Title 22 CUP criteria, the proposal has also demonstrated its consistency with WAC 173-27-160, and the County's shoreline substantial development criteria.³⁵ The project is consistent with Ch. 90.58 RCW and KCC Title 22 policies and procedures, which support this cabin, which has shown it has little environmental impact and results in no net loss of shoreline ecological functions and values on its own or cumulatively.

DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested ADU CUP and Shoreline CUP, 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.

³² KCC 22.500.100(D)(3).

³³ RCW 90.58.020.

³⁴ KCC 22.400.100(A)(3).

³⁵ KCC 22.500.100(B).

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 primary residence is 896 square feet as indicated in Exhibit 4. The ADU is 429 square feet as indicated in Exhibits 15 and 16. 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.
7. The ADU shall be designed to maintain the appearance of the primary residence.
8. This permit shall comply with all Kitsap Public Health District regulations and conditions of approval.
9. No mobile home or recreational vehicle shall be allowed as an ADU.
10. The ADU shall use the same side street entrance as the primary residence and shall provide one additional off-street parking space.
11. An accessory living quarters (ALQ) or guest house (GH) is not permitted on the same lot unless the ADU is removed and the ALQ or GH complies with all requirements imposed by the Kitsap County Code (KCC).
12. 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.
13. The ADU cannot be sold separately from the primary residence unless it has legally been segregated onto its own lot.
14. 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 and 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.

15. 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 be, and is not to be, construed as approval for more extensive or other utilization of the subject property.
16. 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.
17. The decision set forth herein is based upon representations made and exhibits contained in the project application 19-02852 Abair ADU CUP and 19-03027 Abair ADU Shoreline 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.
18. 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.
19. Any violation of the conditions of approval shall be grounds to initiate revocation of this CUP.
20. The applicant shall submit a building permit to convert the existing SFR built under Building Permit (BP) 12-105209 and the addition built under BP 17-04591 into an ADU.
21. The applicant shall submit a building permit to convert the garage built under BP 18-03762 into a single-family residence. The previous first floor garage area and the second floor are both required to meet building code requirements for habitable space.
22. The applicant shall obtain a demolition (demo) permit to remove the toilet from the building labeled existing shed and request a final inspection from the Code Compliance division to verify compliance prior to final approval of the ADU building permit.
23. The building labeled existing shed shall not be used for any overnight accommodations.
24. Remove the southerly driveway access that leads to the proposed single-family residence and plant at least one tree and several shrubs to prevent future access.

Development Engineering

25. If the project proposal is modified from that shown on the submitted site plan received August 19, 2019, Development Services and Engineering will require additional review and potentially new conditions.

Environmental

26. No uses that are identified as "activities with potential threat to groundwater" at Kitsap County Code 19.600.620 shall occur prior to obtaining the required approval from DCD and/or the Hearing Examiner.

27. No new shoreline armoring shall be allowed or constructed for residential protection purposes.

28. If any activities on the property uncover middens or remains, the property owner or their representative shall immediately notify Kitsap County Department of Community Development environmental staff and the Suquamish Tribe. The project shall comply with Kitsap County Contract KC 442-07 (Agreement with Department of Archaeology and Historic Preservation), Chapter 25-48 WAC (Archaeological Excavation and Removal Permit), Chapter 27.44 RCW (Indian Graves and Records), and Chapter 27.53 RCW (Archaeological Sites and Resources).

29. The project shall comply with the recommendations of the Cumulative Impact Analysis report prepared by Soundview Consultants, dated August 14, 2019 (Exhibit 12).

Traffic and Roads

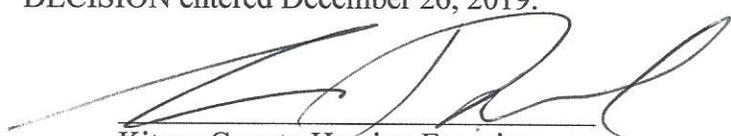
30. Any work within the County right-of-way shall require a Public Works permit and possibly a maintenance or performance bond.

Kitsap Public Health District

31. The sewer line from the shed shall be cut and capped prior to final building permit approval for the ADU.

32. All fuel and yard chemicals shall be removed from the wellhouse prior to final building permit approval for the ADU.

DECISION entered December 26, 2019.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond