



## Notice of Hearing Examiner Decision

05/08/2020

To: Interested Parties and Parties of Record

RE:           Project Name: Jetter Accessory Dwelling Unit  
                  Applicant: Amy & James Jetter  
                                11134 NE Tulin Road  
                                Kingston, WA 98346  
                  Application: Conditional Use Permit – Accessory Dwelling Unit  
                                (CUP-ADU)  
                  Permit Number: 19-04860

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **19-04860 Jetter 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:   Owner: Amy and James Jetter, 11134 Tulin Rd NE Kingston, WA 98346-9206  
      Authorized Representative: Jessica Jetter, [Jetterjessica@gmail.com](mailto:Jetterjessica@gmail.com)  
      Interested Parties: None  
      Health District  
      Public Works  
      Parks  
      Navy  
      DSE  
      Kitsap Transit

North Kitsap Fire District  
North Kitsap School District  
Kingston CAC  
Puget Sound Energy  
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  
WA State Dept of Transportation  
Kingston CAC  
Interested Parties: None

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

**Accessory Dwelling Unit Conditional Use Permit  
Jetter, File No. 19-04860**

**May 5, 2020**

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**1. FINDINGS OF FACT**

**1.1 Proposal.** Conversion of a portion of an existing accessory structure to an 896 square foot accessory dwelling unit (“ADU”) on a 2.5 acre lot.

**Applicant/Property Owner.** Amy M. and James Jetter, 11134 NE Tulin Road, Kingston, WA 98346-9206.

**Location.** 11134 NE Tulin Road, Kingston, WA 98346-9206. Assessor Parcel No. 012602-3-037-2004.

**1.2 Hearing.** An open record public hearing was held April 23, 2020. Due to COVID-19 restrictions, the hearing was conducted remotely, with the Examiner, Kitsap County Department of Community Development (“DCD”), and the Applicant 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 for a week, through April 30.<sup>1</sup> No additional written comments were received. At the hearing, DCD, through Ms. Santos, described the project. DCD found it consistent with requirements, and recommended approval with conditions. The Applicant's agent, Jessica Jetter, 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 1-33, 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 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 zoning.

**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 18; Exhibit 32 (Staff Report), p. 2.

**1.6 Notice.** Hearing and application notice was provided consistent with KCC requirements.<sup>3</sup> No objections to notice or opportunities for input were raised.

**1.7 Zoning/Plan Designations and Critical Areas.** Outside the urban growth area, the site's Comprehensive Plan and zoning designations are Rural Residential (RR),<sup>4</sup> allowing one dwelling unit per five acres. An ADU is authorized by CUP, with requirements specific to the use. Surrounding properties are also zoned Rural Residential, and are developed with single-family residences to the north, west and south; and undeveloped land to the east.<sup>5</sup> The site includes a Category IV wetland (pond), Moderate Erosion and Landslide Areas, and a Category II Critical Aquifer Area.<sup>6</sup>

**1.8 Utility and Public Services.**

- **Water:** On-site well
- **Power:** Puget Sound Energy
- **Sewer:** Septic
- **Police:** Kitsap County Sheriff
- **Fire:** North Kitsap Fire & Rescue
- **Schools:** North Kitsap School District #400

**1.9 Access.** NE Tulin Road, a WSDOT unclassified road on the site's southwest corner. A secondary access north of the single-family residence will be removed (Condition 11).

**1.10 Dimensions and Setbacks.** The site includes a 3,276 square foot single-family residence, accessory structure, septic system and drain fields, and a private two-party well.<sup>7</sup> The ADU will be 74 feet from the primary residence.<sup>8</sup> Setbacks exceed requirements, ranging from 30 to about 300 feet.<sup>9</sup>

**1.11 Building and Site Aesthetics.** The ADU will be constructed within an existing structure, the exterior of which will be updated with windows and cedar siding painted green with dark green trim to match the single-family residence.<sup>10</sup> "The roof of the ADU and ... the SFR are visually similar and made of the same material. ... The ADU will also have a deck that will match the style and design of the decks on the SFR."<sup>11</sup> The extensive setbacks provide visual mitigation.<sup>12</sup>

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<sup>3</sup> Exhibits 15, 24 and 25; *see* KCC 21.04.080.

<sup>4</sup> Exhibits 27 and 29; Exhibit 32 (Staff Report), p. 2.

<sup>5</sup> Exhibit 32 (Staff Report), p. 3.

<sup>6</sup> Exhibits 22, 23 and 28; Exhibit 32 (Staff Report), pp. 2, 10.

<sup>7</sup> Exhibits 5 and 23; Exhibit 32 (Staff Report), pp. 4, 7.

<sup>8</sup> Exhibit 32 (Staff Report), p. 7.

<sup>9</sup> Exhibit 23; Exhibit 32 (Staff Report), p. 3.

<sup>10</sup> Exhibits 7 and 8; Exhibit 32 (Staff Report), p. 7.

<sup>11</sup> Exhibits 7 and 8.

<sup>12</sup> Exhibit 32 (Staff Report), p. 3.

**1.12 Environmental.** C3 Habitat provided a single-family wetland certification consistent with KCC 19.200.<sup>13</sup> A Category IV wetland or seasonal pond that is dry in the summer is present. Per KCC 19.200, Category IV wetlands require a 40-foot buffer and 15-foot building setback, which the ADU complies with. The site is also within a mapped Moderate Erosion Hazard. The proposal is for interior conversion of an existing structure. Kitsap Public Health has reviewed the septic and well proposal and determined that the soil conditions and well site location meet current requirements of Local Board of Health Ordinances. No other ground disturbing activity is proposed at this time. At the time of building permit, if foundation work or any other work outside of the existing footprint is proposed or required, a geological assessment may be required per KCC 19.400 (Condition 23).

**1.13 Conditions/Staff Report.** The Applicant accepted the proposed conditions, which are incorporated without revision. Except as the Decision revises it, the Staff Report is incorporated by reference.

## **2. CONCLUSIONS OF LAW**

**2.1 Hearing Examiner Review Authority.** The Hearing Examiner has CUP review authority for this ADU.<sup>14</sup> The Examiner may approve, approve with conditions, or deny a CUP.<sup>15</sup>

**2.2 Code Requirements Specific to an ADU in the RR Zone.** An ADU outside the urban growth area, and within the RR zone, must obtain a CUP and comply with requirements specific to the use.<sup>16</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>17</sup> These requirements are met. Only one ADU is proposed for a lot outside the urban growth area, no accessory dwelling quarters or other ADUs are on the lot, and the property owners 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>18</sup> The primary residence's habitable area is 3,276 square feet.<sup>19</sup> Regardless, the ADU is limited to 900 square feet; at 896 square feet, the ADU complies.

The ADU, 74 feet from the primary residence,<sup>20</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>21</sup> The proposal complies with all other setback requirements.

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<sup>13</sup> Exhibit 22.

<sup>14</sup> KCC 17.410.010, 21.04.100 (permit type #18), and 17.410.042 (use #100).

<sup>15</sup> KCC 17.550.030.

<sup>16</sup> KCC Table 17.410.042, FN 1, requiring KCC 17.410.060 compliance. See KCC 17.410.060(B)(3).

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

<sup>18</sup> KCC 17.410.060(B)(3).

<sup>19</sup> Exhibit 5; Exhibit 32 (Staff Report), p. 7.

<sup>20</sup> Exhibit 32 (Staff Report), p. 7.

<sup>21</sup> KCC 17.410.060(B)(3).

As for design, as the findings address, the primary residence and ADU will be similar in appearance,<sup>22</sup> as the ADU has been "designed to maintain the appearance of the primary residence."<sup>23</sup> Also, the proposed ADU is stick-built, so is not a mobile home or recreational vehicle.<sup>24</sup>

The ADU will be supplied by well water and a septic system. Kitsap Public Health approved the ADU.<sup>25</sup> The ADU will "meet the applicable health district standards for water and sewage disposal."<sup>26</sup>

Parking and entry requirements are met. The ADU will use "the same side street entrance as the primary residence."<sup>27</sup> The site has five existing off-street parking spaces, satisfying the requirement of four. There is one off-street parking space adjacent to the single-family residence and an additional parking area adjacent to the ADU, which can accommodate four off-street parking spaces.<sup>28</sup> With sufficient space to meet minimum parking requirements and with the "additional off-street parking,"<sup>29</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>30</sup>

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 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

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<sup>22</sup> Exhibits 3, 4, 7 and 8; Exhibit 32 (Staff Report), p. 7.

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

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

<sup>25</sup> Exhibits 2, 6 and 11; Exhibit 32 (Staff Report), pp. 8, 10.

<sup>26</sup> KCC 17.410.060(B)(3).

<sup>27</sup> KCC 17.410.060(B)(3).

<sup>28</sup> Exhibit 23; Exhibit 32 (Staff Report), pp. 8-9; KCC 17.490.030.

<sup>29</sup> KCC 17.410.060(B)(3).

<sup>30</sup> KCC 17.550.030(A).

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.

The proposal is conditioned to ensure compliance with Titles 12, 17, and 19, 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 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.

### **DECISION**

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested 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 896 square feet. 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 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. The additional entrance to the primary residence that is not serving the ADU shall be removed.
12. 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 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 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.
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 Permit 19-04860. 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. New and/or replaced hard surfaces do not exceed the 2,000 square foot threshold; nor does the project exceed 7,000 square feet of disturbed area. While a formal plan is not required, the Applicant must consider all elements required of a stormwater pollution prevention plan and make allowances for managing erosion and sediment discharge on site. Per KCC Title 12, if the project exceeds either of the thresholds noted above, then additional review for stormwater management will be required.

22. If the project proposal is modified from that shown on the site plan submitted October 21, 2019, Development Services and Engineering will require additional review and potentially new conditions.

### **Environmental**

23. A geologic assessment may be required to be submitted with the building permit if any modifications are made to the proposal that include foundation work or work beyond the existing footprint.

### **Traffic and Roads**

24. Submit an Application for Concurrency Test (KCPW Form 1601) as required by Chapter 20.04.030, Transportation Concurrency, of the KCC. The KCPW 1601 form reserves road capacity for the project.

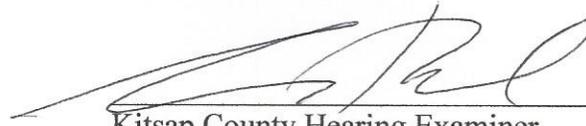
25. Any work within the County right-of-way shall require a Public Works permit and possibly a maintenance or performance bond. This application to perform work in the right-of-way shall be submitted as part of the building permit process. The need for and scope of bonding will be determined at that time.

**Kitsap Public Health District**

26. An approved Building Site Application shall be submitted with the building permit for the proposed ADU.

Absent a timely appeal, this Decision is final.<sup>31</sup>

DECISION entered May 5, 2020.



Kitsap County Hearing Examiner  
Susan Elizabeth Drummond

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<sup>31</sup> See Ch. 36.70C RCW (any appeal to be filed within 21 days to superior court).