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DSE  
DCD  
South Kitsap Fire District  
Kitsap School District  
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Puget Sound Energy  
Water Purveyor  
Point No Point Treaty Council  
Suquamish Tribe  
Squaxin Island Tribe  
Puyallup Tribe  
WA Dept of Fish & Wildlife  
WA State Dept of Ecology-SEPA  
WA State Dept of Ecology-Wetland Review

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

**Accessory Dwelling Unit Conditional Use Permit  
Killon, File No. 20-01888**

**April 21, 2021**

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**1. FINDINGS OF FACT**

**1.1 Proposal.** Convert an existing single-family residence into a 612 square foot accessory dwelling unit (“ADU”) with an unfinished daylight basement on a 10.29 acre lot.

**Applicant/Property Owner.** Michael Killon, 230 SW Dogwood Road, Port Orchard, WA 98367.

**Location.** 230 SW Dogwood Road, Port Orchard, WA 98367. Assessor Parcel No. 142301-2-010-2006.

**1.2 Hearing.** An open record public hearing was held April 8, 2021. Due to COVID-19 restrictions, the hearing was conducted remotely, with the Examiner, Kitsap County Department of Community Development (“DCD”), and 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 through April 15.<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. Killon, and Mr. McPherson, 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 1-28, 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, with these conditions:

1. The proposal to retain the existing dwelling as an accessory dwelling unit and construct a primary dwelling will create only moderate impacts.
2. The project will be conditioned for stormwater controls pursuant to KCC Title 12.
3. The proposal contains wetland and a seasonal creek and will be conditioned for critical area buffers and setbacks per KCC Title 19.200 and 19.300.<sup>2</sup>

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

<sup>2</sup> Exhibit 19; Exhibit 26 (Staff Report), pp. 1-2.

**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 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 have the same zoning and are developed with single-family residences, including farms, or undeveloped.<sup>5</sup>

**1.8 Utility and Public Services.**

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

**1.9 Access.** SW Dogwood Road, a County maintained right-of-way.

**1.10 Site Characteristics, Dimensions and Setbacks.** The northern part of the property is developed with a single-family residence (the proposed ADU conversion), gravel driveway, fenced pastures, and livestock pens. A new 1,744 square foot single-family residence is proposed to be built near the ADU. The western part of the property is a mapped erosion and seismic hazard area. The eastern side of the property includes hydric soils and wetland. The site includes open pasture/lawn area on most of the property with some conifers and shrubs on the south end of the property. The ADU meets the 35-foot height limit and exceeds setback requirements, with 55 feet on the front, 693 on the rear, 158 on the west side, and 307 on the east side.<sup>6</sup>

**1.11 Building and Site Aesthetics.** The primary residence and ADU will be similar in appearance. The Applicant is proposing horizontal fiber cement/wood siding, white vinyl windows, pitched gable composite shingle roofing, and green paint with white trim for the ADU and new house.<sup>7</sup> Setbacks provide visual mitigation.

**1.12 Environmental.** BGE Environmental, LLC prepared a wetland report and determined a forested wetland is located on the southern portion of the property and continues

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<sup>3</sup> Exhibits 17, 18, and 25; Exhibit 26 (Staff Report), p. 6; KCC 21.04.080, .210.

<sup>4</sup> Exhibits 21 and 24; Exhibit 26 (Staff Report), p. 3.

<sup>5</sup> Exhibit 26 (Staff Report), p. 3.

<sup>6</sup> Exhibit 26 (Staff Report), p. 3.

<sup>7</sup> Exhibit 1; Exhibit 26 (Staff Report), p. 8.

off-site to the south and east. The wetland has been identified as a mosaic system which was previously used for agricultural activities. The wetland contains a Type-N stream that terminates east of the site. The existing wetland is a Category-III wetland, located in the southeast region of the property and covering approximately four acres. The standard buffer width is 110 feet and the Type-N stream requires a 50-foot buffer with a 15-foot construction setback.<sup>8</sup> No further environmental review is needed.

**1.13 Development Engineering/Stormwater.** Development Services and Engineering determined the proposal is a Small Project as defined in KCC Title 12 and will require the ADU building permit site plan to comply with Minimum Requirements.

**1.14 Conditions/Staff Report.** The Applicant accepted the proposed conditions, which are incorporated without substantive revision. Condition 6 is clarified to correct ADU square feet from 420 to 612. 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>9</sup> The Examiner may approve, approve with conditions, or deny a CUP.<sup>10</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>11</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>12</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 owner will live in the new 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>13</sup> The primary residence's habitable area will be 1,744 square feet.<sup>14</sup> At 612, the ADU complies.

The ADU, at approximately 10 feet from the primary residence,<sup>15</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>16</sup> The proposal complies with all other setback requirements.

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<sup>8</sup> Exhibit 15; Exhibit 26 (Staff Report), p. 10.

<sup>9</sup> KCC 17.410.010, 21.04.100 (permit type #18), and 17.410.042 (use #100).

<sup>10</sup> KCC 17.550.030.

<sup>11</sup> KCC Table 17.410.042, FN 1, requiring KCC 17.410.060 compliance. *See* KCC 17.410.060(B)(3).

<sup>12</sup> KCC 17.410.060(B)(3).

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

<sup>14</sup> Exhibit 26 (Staff Report), pp. 1 and 8.

<sup>15</sup> Exhibit 1; Exhibit 26 (Staff Report), p. 8.

<sup>16</sup> KCC 17.410.060(B)(3).

As for design, as the findings address, the primary residence and ADU share similar features,<sup>17</sup> as the ADU has been "designed to maintain the appearance of the primary residence."<sup>18</sup> Also, the proposed ADU is stick-built, so is not a mobile home or recreational vehicle.<sup>19</sup>

The ADU will be supplied by well water and a septic system. Kitsap Public Health approved the ADU.<sup>20</sup> The ADU will "meet the applicable health district standards for water and sewage disposal."<sup>21</sup>

Parking and entry requirements are met. The ADU will use "the same side street entrance as the primary residence."<sup>22</sup> The existing driveway will serve the ADU and new single-family residence. With sufficient space to meet minimum parking requirements and with the "additional off-street parking,"<sup>23</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>24</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 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.

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<sup>17</sup> Exhibit 1; Exhibit 26 (Staff Report), p. 8.

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

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

<sup>20</sup> Exhibits 4 and 6; Exhibit 26 (Staff Report), p. 8.

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

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

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

<sup>24</sup> 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 uses. It will be aesthetically consistent with the new single-family residence. The ADU's small size, existing vegetation, and setbacks which meet or 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 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 612 square feet.
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 20-01888 Killon 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. 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 submitted site plan accepted for review August 24, 2020, Development Services and Engineering will require additional review and potentially new conditions.

### **Environmental**

23. 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.

24. 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.

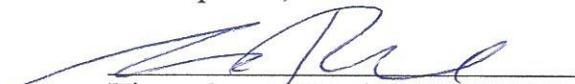
25. A 110-foot native vegetation buffer must be maintained along the delineated wetland boundary as depicted on the approved site plant. In addition, a building or impervious surface setback line of 15 feet is required from the edge of the buffer.

### **Kitsap Public Health District**

26. This permit shall comply with all Kitsap Public Health District regulations and conditions of approval.

Absent a timely appeal or grant of reconsideration, this Decision is final.<sup>25</sup>

DECISION entered April 21, 2021.

  
Kitsap County Hearing Examiner  
Susan Elizabeth Drummond

<sup>25</sup> See Ch. 36.70C RCW (any appeal to be filed within 21 days to superior court); HER 1.9.1.