



Notice of Hearing Examiner Decision

05/25/2021

To: Interested Parties and Parties of Record

RE: Project Name: Doerr Accessory Dwelling Unit
 Applicant: Eric and Samantha Doerr
 5989 Watauga Beach Drive East
 Port Orchard, WA 98366
 Application: Conditional Use Permit – Accessory Dwelling Unit
 (CUP-ADU)
 Permit Number: #20-04538

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **Permit #: 20-04538 Doerr Conditional Use Permit – Accessory Dwelling Unit, 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: Eric and Samantha Doerr, 909 15TH AVE E SEATTLE, WA 98112
Project Representative: Axiom Design Build: mkapoyos@axiomdesignbuild.com
Health District
Public Works
Parks
Navy
DSE

Kitsap Transit
South Kitsap Fire District
South Kitsap School District
Puget Sound Energy
West Sound Utility District
Point No Point Treaty Council
Suquamish Tribe
Port Gamble S'Klallam Tribe
Squaxin Island Tribe
Puyallup Tribe
WA Dept of Fish & Wildlife
WA Dept of Transportation/Aviation
WA State Dept of Ecology-Shoreline Planner
WA State Dept of Ecology-SEPA
Interested Parties:
None

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

**Accessory Dwelling Unit Conditional Use Permit
Doerr, File No. 20-04538**

May 24, 2021

1. FINDINGS OF FACT

1.1 Proposal. Convert 870 square feet of the unfinished second story of an existing detached structure to an accessory dwelling unit (“ADU”) on a .45 acre lot. A portion of the second story will remain as unfinished/unheated attic space and is not included in the ADU.

Applicant/Property Owner. Eric and Samantha Doerr, 5989 Watauga Beach Drive East, Port Orchard, WA 98366.

Location. 5989 Watauga Beach Drive East, Port Orchard, WA 98366. Assessor Parcel No. 4664-000-023-0002.

1.2 Hearing. An open record public hearing was held May 13, 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 for a week, through May 20.¹ No comment was received following the hearing. At the hearing, DCD, through Mr. Poff, described the project. DCD found it consistent with requirements, and recommended approval with conditions. The Applicant, through Mr. and Ms. Doerr, 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 1-24, 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,² with a comment 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.

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

² Exhibit 20; Exhibit 23 (Staff Report), p. 2.

1.6 Notice. Hearing and application notice was provided consistent with KCC requirements.³

1.7 Zoning/Plan Designations. Outside the urban growth area, the site's Comprehensive Plan and zoning designation are Rural Residential (RR),⁴ allowing one dwelling unit per five acres. An ADU is authorized by CUP, with requirements specific to the use. Surrounding properties to the north, south, and west are zoned RR and are developed with single-family residences or vacant; with Puget Sound to the east.⁵ The property is located within the Shoreline Residential shoreline designation. The building was previously constructed, so a shoreline substantial development permit is not required.

1.8 Utility and Public Services.

- **Water:** West Sound Utility District
- **Power:** Puget Sound Energy
- **Sewer:** West Sound Utility District
- **Police:** Kitsap County Sheriff
- **Fire:** South Kitsap Fire & Rescue
- **Schools:** South Kitsap School District

1.9 Access. Private driveway from Watuga Beach Drive East.

1.10 Site Characteristics, Dimensions and Setbacks. The site is shoreline property that slopes gently to the northeast toward the water. The site is developed with a 3,996 square foot single-family residence, two-story detached garage (the proposed ADU conversion), and bulkhead. The ADU will be about 19 feet away from the single-family residence and meet the 35-foot height limit.⁶ The existing structure is nonconforming to the required side (south) and front (west) setbacks; and to the standard 85-foot shoreline buffer. No exterior changes or expansions of the footprint are allowed or proposed; aside from the addition of a dormer, no alteration or enlargement of the structure is proposed as the work will be interior only.⁷

1.11 Building and Site Aesthetics. The ADU is the partial conversion of an existing detached garage. The primary residence and ADU are similar in appearance, using an architectural style, materials, and colors that are matching or similar.⁸

1.12 Environmental. A small portion of the property is within a moderate erosion hazard area; the proposed ADU is partially within this area but does not require a geological assessment as the work is interior only. The shoreline area is a FEMA flood hazard area, but the structure is outside this area. There are no mapped steep slopes in the vicinity.

³ Exhibits 19, 21, and 22; KCC 21.04.080, .210.

⁴ Exhibit 23 (Staff Report), p. 2 and Attachment A.

⁵ Exhibit 23 (Staff Report), p. 4.

⁶ Exhibit 23 (Staff Report), pp. 2 and 9.

⁷ Exhibit 23 (Staff Report), p. 3. The structures are legally nonconforming, and the non-conformities are not being enlarged, so they may remain. KCC 17.570.040(A), KCC 22.400.100(B)(1)(b).

⁸ Exhibits 15 and 16; Exhibit 23 (Staff Report), p. 9.

The existing detached garage and ADU conversion is within the shoreline jurisdiction and subject to Title 22, Shoreline Master Program (SMP). The existing structure is partially within the standard 85-foot shoreline buffer; however, no expansion to the footprint is proposed. Structures existing on the effective date of the SMP that do not meet the setback or buffer requirements may be remodeled or reconstructed provide the new construction does not exceed the standard height limit and does not further intrude into the standard buffer.⁹ No new development impacts are proposed within the shoreline buffer as the proposed ADU conversion is limited to interior work.

1.13 Development Engineering/Stormwater. Development Services and Engineering reviewed the proposal and finds the concept supportable in its approach to civil site development.

1.14 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.

2. CONCLUSIONS OF LAW

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

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.¹² 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."¹³ 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 lives 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."¹⁴ The primary residence's habitable area is 3,996 square feet.¹⁵ At 870, the ADU complies.

The ADU, at 19 feet from the primary residence,¹⁶ 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)..."¹⁷ The proposal complies with all other setback requirements.

⁹ KCC 22.400.120(C)(2)(b).

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

¹¹ KCC 17.550.030.

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

¹³ KCC 17.410.060(B)(3).

¹⁴ KCC 17.410.060(B)(3).

¹⁵ Exhibit 23 (Staff Report), pp. 4 and 8.

¹⁶ Exhibit 23 (Staff Report), p. 9.

¹⁷ KCC 17.410.060(B)(3).

As for design, as the findings address, the primary residence and ADU share similar features,¹⁸ as the ADU has been "designed to maintain the appearance of the primary residence."¹⁹ Also, the proposed ADU is stick-built, so is not a mobile home or recreational vehicle.²⁰

The ADU will be served for water and sewer by West Sound Utility District.²¹ Kitsap Public Health approved the ADU.²² The ADU will "meet the applicable health district standards for water and sewage disposal."²³

Parking and entry requirements are met. The ADU will use "the same side street entrance as the primary residence."²⁴ The existing driveway will serve the ADU and single-family home and adequate parking is available.²⁵ With sufficient space to meet minimum parking requirements and with the "additional off-street parking,"²⁶ 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.²⁷

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

¹⁸ Exhibits 15 and 16; Exhibit 23 (Staff Report), p. 9.

¹⁹ KCC 17.410.060(B)(3).

²⁰ KCC 17.410.060(B)(3).

²¹ Exhibits 6 and 7.

²² Exhibit 8.

²³ KCC 17.410.060(B)(3).

²⁴ KCC 17.410.060(B)(3).

²⁵ Exhibit 14; Exhibit 23 (Staff Report), p. 10; KCC 17.490.030.

²⁶ KCC 17.410.060(B)(3).

²⁷ 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 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. 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 and existing vegetation 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, tree removal, 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. 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 870 square feet. A 220-square-foot area of the second floor must be kept as unconditioned, unfinished attic space at all times to keep the ADU below the maximum size requirement. 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.
6. The ADU shall be located within 150 feet of the primary residence.

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 or guest house 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.
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 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 Permit #20-04538. 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.

Development Engineering

20. 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.

21. If the project proposal is modified from that shown on the submitted site plan accepted for review October 27, 2020, Development Services and Engineering will require additional review and potentially new conditions.

Traffic and Roads

22. 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.

23. 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 SDAP process (or building permit if no SDAP is required). The need for and scope of bonding will be determined at that time.

Absent a timely appeal or grant of reconsideration, this Decision is final.²⁸

DECISION entered May 24, 2021.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond

²⁸ Ch. 36.70C RCW (providing requirements for appeal within 21 days to superior court); HE Rule 1.9.1.