

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS, AND DECISION

Applicant(s): Kristine Odle
339 Lighthouse Lane
Friday Harbor, WA 98250

File No.: PCUP000-16-0018

Request: Conditional Use Permit (CUP)

Parcel No.: 240853038

Location: 339 Lighthouse Lane, San Juan Island

Summary of Proposal: An application for a conditional use permit to allow vacation rental of a single-family home

Land Use Designation: Rural Residential

Public Hearing: July 21, 2016

Application Policies and Regulations: SJCC 18.40.270 Vacation Rentals
SJCC 18.80.100(D) CUP Criteria

Decision: Approved subject to conditions

**S.J.C. DEPARTMENT OF
AUG 11 2016
COMMUNITY DEVELOPMENT**

Exhibits:

The following exhibits were admitted in the record:

1. Department of Community Development Staff Report, dated July 1, 2016
2. Application Materials, received April 21, 2016
3. Comment Letter from Marilyn Ross and Robert Schwartzberg
4. Comment Letter from Earlene Routhage
5. Comment Letter from Jim and Marta Specht
6. Comment Letter from Pamela Finley
7. Applicant response to public comment letters, dated June 29, 2016, with attached Site Plan and County Code definitions
8. Legal Advertisement, published May 18, 2016
9. Posting and Notification Materials, posted and mailed June 8, 2016
10. San Juan County Policy: Creation of a Kitchen (Food Preparation Area), dated July 24, 2006
11. Washington State Court of Appeals decision, Ross v. Bennett, #61414-2-I, dated December 29, 2008
12. Wilkinson v. Chiwawa Communities Ass'n, 180 Wash.2d 421, (2014)
13. Comment Letter from Kurt McMillen, Cattle Point Estates Owners Association, dated July 18, 2016
14. Comment Letter from John Waters with attachments, dated July 21, 2016

Upon consideration of the testimony and exhibits submitted at the open record public hearing, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. The Applicant requested approval of a conditional use permit to authorize the use of the internal accessory dwelling unit, consisting of a one bedroom suite, within the residence located at 339 Lighthouse Lane, San Juan Island, as a vacation rental.¹ The 1.19-acre parcel is developed with a two bedroom, single-family residence and does not have shoreline access. *Exhibits 1 and 2; Odle Testimony*. The Applicant has requested an after-the-fact permit for the conversion of a one bedroom suite in the residence to an internal accessory dwelling unit (ADU). *Thompson Testimony*.
2. The subject property has a Rural Residential land use designation, and the surrounding neighborhood is rural and residential in nature. The parcel abuts residential development to the north and east and is adjacent to undeveloped residential land to the west. Directly to the south and noncontiguous to the east and west, the parcel is surrounded by National Park land. The subject property is not located near an airfield or airport. *Exhibits 1 and 2*.
3. The subject property has existing access from Lighthouse Lane, which connects with Cattle Point Road approximately 0.3 miles north of the site. No changes to the existing site access are proposed or required. *Exhibits 1 and 2*.
4. The existing residence is served by a community water system and an on-site septic system. *Exhibit 1*.
5. Planning Staff submitted that because the subject property is an existing developed site, the proposal would consistent with San Juan County Code (SJCC) Chapter 18.60 once the ADU is approved. *Thompson Testimony; Exhibit 1*.
6. The proposal would allow up to three persons at a time to rent the one bedroom suite proposed as an internal accessory dwelling unit, for a maximum of three overnight guests at once. The parcel has off-street parking for at least three vehicles shown on the site plan. No outdoor advertising signs or food service are proposed. *Exhibits 1 and 2; Odle Testimony*.
7. Planning Staff noted that noise and trespass impacts could be expected to mimic those associated with traditional residential use of the site, and that the potential for disturbance to surrounding properties from temporary occupants could be mitigated by the following measures: restricting the number of vacation rental occupants to three per bedroom; requiring rules of conduct to be posted that specifically prohibit trespass; identification of property lines; providing neighbors with a 24-hour contact phone number; and requiring the contact to keep a written log of complaints. Staff recommended conditions implementing the above measures. *Exhibit 1; Thompson Testimony*.

¹ The subject property is known as Assessor Parcel number 240853038. *Exhibit 1*.

8. The Applicant would be required to obtain a business license or work through a property management company. *Exhibit 1.*
9. In order to complete conversion of the existing bedroom to an accessory dwelling unit, one-hour fire walls, a closet, and a kitchen are required. Fire walls are created through installation of 5/8-inch sheet rock that is capable of withstanding fire for the specified duration. The Applicant testified that she is seeking a contractor to frame in the required closet and to install fire walls; however, no external alterations and no structural changes would be required to the existing residence. A microwave and a mini-refrigerator are provided in the proposed ADU. The Applicant intends to obtain ADU approval within the year. *Odle Testimony; Shaw Testimony.*
10. The application was submitted April 21, 2016 and determined to be complete on the same date. Notice of the application was published on May 18, 2016, and posted on-site and mailed to surrounding property owners on June 8, 2016. *Exhibits 1, 2, 8, and 9; Thompson Testimony.*
11. The County received several comments objecting to the proposed vacation rental. Marilyn Ross and Robert Schwartzberg, residents of the same subdivision, in written comments and further testimony from Ms. Ross, expressed opposition to the proposal for several reasons, including: the perceived inherent unfairness of the proceedings, in that the surrounding property owners did not receive notice of the Applicant's seeking to permit an internal accessory dwelling unit, the Applicant does not yet have the permit for the internal ADU, and the proposed use of the as-yet-unpermitted ADU conflicts with the intent of County code, because the sale of lodging is a commercial activity being conducted in an area zoned for single-family residential use. She felt that because the Applicant has been operating a use that requires a permit without first obtaining the permit, she should not be rewarded with said permit after the fact. Ms. Ross stated the Applicant advertises she offers breakfast, which renders the activity to be that of a bed and breakfast facility rather than a vacation rental, which is a commercial use. She testified she would have filed a complaint about the previous AirB&B use of this location if she had been aware of it. She expressed concern about the water usage generated by the proposed activity, and further said that the Applicant should not be allowed to rent any room in the residence while she continues to occupy said residence, and only an application for the short-term rental of the entire residence should be approved. *Exhibit 3; Ross Testimony.* John Waters, president of the Cattle Point Estates Owners Association (HOA), testified that the HOA is opposed to the vacation rental use, explaining HOA rules stipulate parcels may only be used to facilitate one single-family residence per parcel, and the commercial activity of a bed and breakfast or vacation rental falls outside of those parameters. *Exhibits 13 and 14; Waters Testimony.* Another neighboring resident, Earlene Rothauge, testified that she feels personally deceived by the Applicant, because the Applicant has served on the HOA board and participated in discussions pertaining to other transient rentals in the subdivision, while simultaneously renting a room in her residence through AirB&B "in secret." Ms. Rothauge thinks the manner in which this establishment is being operated would be classified as a bed and

breakfast, as only a room is being rented and breakfast foods are supplied. She asserted that because the County Code does not allow bed and breakfast establishments in areas designated for rural residential use, this application should be denied. *Exhibit 4; Rothauge Testimony.*

12. The County also received comments on the proposed internal accessory dwelling unit. Sandy Ryan, Cattle Point Water District Commissioner, testified that the water district has not received notice of the proposed internal accessory dwelling unit. *Ryan Testimony.* Doug Musgrove, HOA Board Architectural Control Committee member, noted that if there are changes to the structure of the subject property, those changes must be reviewed by the Architectural Review Board. *Musgrove Testimony.*
13. Additionally, the County received comments in support of the Applicant's permit. Jim and Marta Sprecht, next-door neighbors to the Applicant, have never experienced any problems as a result of the Applicant's renters and think the application should be approved. *Exhibit 5.* Pamela Finley, neighbor, indicated that she has no objection to the Applicant's continuing to rent the room to no more than two overnight guests at a time, as long as the Applicant is also on the premises. *Exhibit 6.*
14. As to the question of whether vacation rentals constitute commercial activity, Planning Staff testified that both the County Code and Washington courts have concluded that vacation rentals are a residential use. Regarding whether it is appropriate to issue an after-the-fact permit in a case where the use has been operating in the absence of a required permit, Staff indicated that there is no code enforcement action pending against the use, and that issuance of after-the-fact permits is a standard response to the discovery of unpermitted uses that can be permitted in the underlying zoning designation. Internal accessory dwelling units are allowed by County Code, and there are no vacation rental provisions that prohibit the use of internal ADUs as vacation rentals. *Thompson Testimony; Shook Testimony; Exhibit 12.*
15. In response to comments about unfair procedures, Planning Staff testified there is no public notice requirement and no public process for building permit applications. The only required notice to neighbors of the proposal was provided through notice of application and notice of hearing. *Thompson Testimony.*
16. Presently, the room for rent contains a private bathroom with laundry facilities, a sleeping area with a closet, and a sunroom area that contains a counter refrigerator and microwave. The Applicant testified that she had informed her immediate neighbors of the former AirB&B use out of courtesy, and that she did not intentionally conceal the use from anyone in the community. She believed they knew of it. Once she discovered that her use was more appropriately considered a vacation rental, she stopped providing food. Guests may prepare their own food. *Odle Testimony.*
17. Upon review of the complete application materials, Planning Staff determined that the proposal can comply with all applicable criteria and recommended approval with

conditions. *Thompson Testimony; Exhibit 1*. The Applicant waived objection to the recommended conditions. *Odle Testimony*.

CONCLUSIONS

Jurisdiction:

The Hearing Examiner is granted jurisdiction to hear and decide applications for conditional use permit pursuant to Chapter 36.70.970 of the Revised Code of Washington and Chapters 2.22 and 18.80 of the San Juan County Code.

Criteria for Review:

Conditional Use Permit

Pursuant to SJCC 18.80.100.D, a conditional use permit shall be granted by the County only if the following criteria are met:

1. The proposed use will not be contrary to the intent or purposes and regulations of this code or the Comprehensive Plan;
2. The proposal is appropriate in design, character, and appearance with the goals and policies for the land use designation in which the proposed use is located;
3. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval;
4. The cumulative impact of additional requests for like actions (the total of the conditional uses over time or space) will not produce significant adverse effects to the environment that cannot be mitigated by conditions of approval;
5. The proposal will be served by adequate facilities including access, fire protection, water, stormwater control, and sewage disposal facilities;
6. The location, size, and height of buildings, structures, walls and fences, and screening vegetation associated with the proposed use shall not unreasonably interfere with allowable development or use of neighboring properties;
7. The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood;
8. The proposal complies with the performance standards set forth in Chapter 18.40 SJCC;
9. The proposal does not include any use or activity that would result in the siting of an incompatible use adjacent to an airport or airfield (RCW 36.70.547); and
10. The proposal conforms to the development standards in Chapter 18.60 SJCC.

Vacation Rental Standards

Pursuant to SJCC 18.40.270, the following standards apply to all vacation rentals of single-family residential units and accessory dwelling units or portions thereof:

- A. No more than three overnight guests per bedroom shall be accommodated at any one time.
- B. The vacation rental of a principal residence or accessory dwelling unit shall be operated in a way that will prevent unreasonable disturbances to area residents.
- C. At least one additional off-street parking space shall be provided for the vacation rental use in addition to the parking required for the residence or accessory dwelling unit.
- D. If any food service is to be provided the requirements for a bed and breakfast residence must be met.
- E. No outdoor advertising signs are allowed.
- F. The owner or a long-term lessee may rent either the principal residence or the accessory dwelling unit on a short-term basis (vacation rental), but not both.
- G. Where there are both a principal residence and an accessory dwelling unit, the owner or long-term lessee must reside on the premises, or one of the living units must remain unrented.
- H. In all activity center land use districts, rural residential, and conservancy land use districts, the vacation rental of a residence or accessory dwelling unit may be allowed by provisional ("Prov") permit only if the owner or lessee demonstrates that the residence or accessory dwelling unit in question was used for vacation rental on or before June 1, 1997. When internal land use district boundaries are adopted for an activity center, this provision will apply to VR and HR districts but not to the activity center in general.
- I. Vacation rental accommodations must meet all local and state regulations, including those pertaining to business licenses and taxes.
- J. Owners of vacation rentals must file with the administrator a 24-hour contact phone number.
- K. The owner or lessee of the vacation rental shall provide notice to the tenants regarding rules of conduct and their responsibility not to trespass on private property or to create disturbances. If there is an easement that provides access to the shoreline, this shall be indicated on a map or the easement shall be marked; if there is no access, this shall be indicated together with a warning not to trespass.

- L. Detached accessory dwelling units established under SJCC 18.40.240 cannot be separately leased or rented for less than 30 days.

Conclusions Based on Findings:

1. There was adequate notice of application and of the public hearing consistent with requirements established in the County Code. No required procedure was omitted. *Findings 10 and 15.*
2. Conditioned to obtain prior approval of the internal ADU, the proposed vacation rental would be consistent with applicable provisions of the SJCC and the Comprehensive Plan. Pursuant to SJCC Table 18.30.040, Allowable and Prohibited Uses in Rural, Resource, and Special Land Use Designations, vacation rental of a residence or an accessory dwelling unit is classified as a residential use and is allowed in the Rural Residential land use designation upon conditional use permit approval. In providing a microwave and refrigerator and no food service, the proposal more is more appropriately considered a vacation rental use rather than a bed and breakfast use. The use would occupy an existing residence without altering the appearance of the structure. Conditions would ensure that when rented it continues to function like a residence; the residential character of the neighborhood would be unaffected. No adverse cumulative environmental impacts are suggested by the record in the event of additional vacation rental request approvals. As conditioned, the proposal would comply with the applicable standards of sections 18.40 and 18.60 of the SJCC, ensuring there are adequate public services and facilities to serve the proposal. Potential adverse impacts of the vacation rental on neighboring properties would be mitigated by conditions requiring rules of conduct prohibiting trespass, clear presentation of property boundaries to renters, and a 24-hour contact for neighbor complaints (among other requirements). Pedestrian and vehicular traffic would be consistent with that expected of a typical residence. There is no airfield adjacent to this property. *Findings 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, and 17.*
3. Regarding the use-specific requirements of SJCC 18.40.270, conditions of approval would limit rental occupancy of the one bedroom internal accessory dwelling unit to three people. The site is currently served by a community water system and an on-site septic system. The site would provide three off-street parking spaces. No outdoor advertising or food service are proposed. Potential noise, trespass, and parking impacts to surrounding parcels would be mitigated through conditions requiring posted rules of conduct, identification of property boundaries, provision of a 24-hour contact phone number, and the requirement for the contact to maintain a log of complaints. The rules of conduct would specifically be required to prohibit trespass. Conditions would ensure that the Applicant obtains a business license or works through a property management company. *Findings 1, 4, 6, 7, 8, 9, 16, and 17.*
4. Challenges to whether vacation rentals are prohibited by homeowner association rules or by covenants, conditions, and restrictions are outside the scope of the County's Hearing Examiner's authority. Such issues are private civil matters that cannot be considered in determining compliance with Code criteria for a given permit.

DECISION

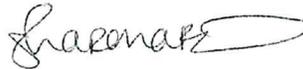
Based on the preceding findings and conclusions, conditioned to obtain prior approval of the proposed internal accessory dwelling unit, the request for conditional use permit to authorize the use of the one bedroom internal accessory dwelling unit within the residence at 339 Lighthouse Lane, San Juan Island as a vacation rental is **APPROVED** subject to the following conditions:

1. Provided that the ADU first receives all required County approvals, the one bedroom vacation rental shall be operated as described in the application materials except as modified by these conditions.
2. The residence may be rented as a single unit on a short term basis for periods of less than 30 days. A maximum of three overnight guests shall occupy the vacation rental at any one time.
3. Prior to operation, evidence shall be presented to the Department of Community Development that the driveway has been approved for emergency vehicle access.
4. The vacation rental shall be operated in a way that prevents unreasonable disturbances to area residents. To this end, the Applicant shall:
 - A. Provide copies of this decision to property owners within 300 feet of the subject property, along with a 24-hour local contact phone number, so that complaints can be dealt with in a timely manner. A log of complaints shall be kept by the contact.
 - B. Prominently mark the boundaries of the subject property so that it is clearly evident to guests where those boundaries are.
 - C. Provide notice to the tenants regarding rules of conduct and their responsibility not to trespass on private property or create disturbances. If there is an easement that provides access to the shoreline, this shall be indicated on a map or the easement shall be marked; if there is no access, this shall be indicated together with the warning not to trespass.
 - D. Provide copies to the Department of Community Development of the rules of conduct and the 24-hour local contact phone number.
5. No food service is to be provided. No outdoor advertising signs are allowed. At least two off-street parking spaces must be maintained on-site for the life of the vacation rental use.
6. The rental must meet all local and state regulations, including those pertaining to business licenses and taxes.

7. No use of the property shall be made that produces unreasonable vibration, noise, dust, smoke, odor, or electrical interference to the detriment of adjoining properties.
8. Written rules of conduct shall be submitted to the Department of Community Development before rentals commence. These rules shall be distributed to all renters and also sent to all owners of property within 300 feet of the site boundaries.
9. Since the County is not a party to private covenants, it is not in a position to enforce private covenants between property owners that may prohibit use of a residence as a vacation rental. However, issuance of a permit for a vacation rental does not license the owner to violate private restrictions.
10. If the conditions of approval are not complied with, the resulting impacts may change a typical residential area to one with frequent incidents of trespass, noise, and traffic from strangers who have no investment in maintaining civil relations with neighbors. For this reason, it is emphasized that failure to comply with conditions of approval is grounds for revocation of this permit.
11. Upon determination by the Director of the Department of Community Development that any condition listed above has been violated, following issuance of a Notice of Violation, the Director may, in addition to his other code enforcement remedies, revoke the conditional use permit.

Decided August 11, 2016.

By:



Sharon A. Rice
San Juan County Hearing Examiner

Effective Date, Appeal Right, and Valuation Notices

Hearing examiner decisions become effective when mailed or such later date in accordance with the laws and ordinance requirements governing the matter under consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be subject to review and approval by the Washington Department of Ecology pursuant to RCW 90.58.140, WAC 173-27-130 and SJCC 18.80.110.

This land use decision is final and in accordance with Section 3.70 of the San Juan County Charter. Such decisions are not subject to administrative appeal to the San Juan County Council. See also, SJCC 2.22.100.

Depending on the subject matter, this decision may be appealable to the San Juan County Superior Court or to the Washington State Shorelines Hearings Board. State law provides short deadlines and strict procedures for appeals and failure to timely comply with filing and service requirements may result in dismissal of the appeal. See RCW 36.70C and RCW 90.58. Persons seeking to file an appeal are encouraged to promptly review appeal deadlines and procedural requirements and consult with a private attorney.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.