

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS, AND DECISION

Applicant(s): Doug Miller and Eric Underwood
135 Ocean Mist Way
Eastsound, WA 98245

File No.: PCUP00-17-0001

Request: Conditional Use Permit (CUP)

Parcel No.: 173150051

Location: 135 Ocean Mist Way, Eastsound, WA

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: March 16, 2017

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

MAR 29 2017

COMMUNITY DEVELOPMENT

**BEFORE THE HEARING EXAMINER
FOR SAN JUAN COUNTY**

In the Matter of the Application of)
)
Doug Miller and Eric Underwood)
)
)
)
For approval of a conditional use permit)
to allow vacation rental of the three)
bedroom residence at 135 Ocean Mist Way,)
Eastsound, Washington)

NO. PCUP00-17-0001

S.J.C. DEPARTMENT OF
MAR 29 2017
COMMUNITY DEVELOPMENT

SUMMARY OF DECISION

The request for conditional use permit to authorize the use of the three bedroom residence at 135 Ocean Mist Way, Eastsound, Washington as a vacation rental is **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request:

Doug Miller and Eric Underwood (Applicants) requested a conditional use permit to authorize vacation rental use of the three bedroom residence located at 135 Ocean Mist Way, Eastsound, on Orcas Island.

Hearing Date:

The San Juan County Hearing Examiner held an open record public hearing on the request on March 16, 2017.

Testimony:

At the open record public hearing, the following individual presented testimony under oath:

Julie Thompson, Planner, San Juan County Department of Community Development

Exhibits:

The following exhibits were admitted in the record:

1. Department of Community Development Staff Report, dated March 1, 2017
2. Application cover sheet, received January 19, 2017
3. Applicable regulations, signed by Applicants
4. Vicinity map and aerial photo

5. Aerial photo showing site plan and parking
6. Floor plan
7. Septic Design Permit information from San Juan County Health Department
8. Posting and Notification Materials, posted January 28, 2017 and mailed January 30, 2017
9. Correspondence with Applicants re: notice

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 Applicants requested approval of a conditional use permit to authorize the use of their Orcas Island residence located at 135 Ocean Mist Way, Eastsound, Washington as a vacation rental.¹ The parcel is developed with a three bedroom, single-family residence, located in the Rosario Estates long subdivision. The property does not have shoreline access. *Exhibits 1 and 2; Thompson Testimony.*
2. The subject property has a Rural Residential land use designation, and the surrounding neighborhood is composed of smaller subdivision lots created prior to adoption of land use designation. The subject property is surrounded on all sides by residential development. Rosario Resort lies to the south. The subject property is not located adjacent to an airfield or airport. *Exhibits 1, 2, and 4.*
3. The subject property includes a basement. The Applicants initially proposed to rent the basement as a separate unit, categorized as a “bed and breakfast residence”; however, this use is not allowed in the Rural Residential land use designation. Further, the addition of a fourth bedroom which would result from renting the basement as a separate unit would have exceeded the three bedroom capacity of the on-site sewage system. The Applicants revised the application to a three bedroom “vacation rental” with the entire house rented as a single three bedroom unit. *Exhibits 1 and 2.*
4. The subject property has existing access from Ocean Mist Way, which connects with Rosario Road a. No changes to the existing site access are proposed or required. *Exhibits 1, 2 and 4.*
5. The existing residence is served by a community water system and an on-site sewage system. *Exhibits 1 and 7.*

¹ The subject property is known as Assessor Parcel number 173150051. *Exhibit 1.*

6. Planning Staff submitted that because the subject property is an existing developed site, the proposal is consistent with San Juan County Code (SJCC) Chapter 18.60. *Thompson Testimony; Exhibit 1.*
7. The proposal would allow up to three persons per bedroom to rent the three bedroom residence, for a maximum of nine overnight guests at once. The parcel has off-street parking for at least six vehicles, as shown on the site plan. Parking for four vehicles would be required. No outdoor advertising signs or food service are proposed. *Exhibits 1, 2, and 5; Thompson Testimony.*
8. 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, and the Applicants acknowledged these required mitigation measures. *Exhibits 1 and 3; Thompson Testimony.*
9. The Applicants would be required to obtain a business license or work through a property management company. *Exhibit 1.*
10. The application was submitted January 19, 2017 and determined to be complete on January 24, 2017. Notice of the application was posted on-site on January 28, 2017, mailed to surrounding property owners on January 30, 2017, and published on February 1, 2017. The County did not receive comments on the proposal. *Exhibits 1, 2, and 8; Thompson Testimony.*
11. 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.* In not sending an agent to the hearing, the Applicants waived objection to the recommended conditions of approval.

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. As conditioned, the proposed vacation rental would be consistent with applicable provisions of the SJCC and the Comprehensive Plan. The use would occupy an existing residence without altering the appearance of the structure. Conditions would ensure that even 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, 4, 5, 6, 7, 8, 10, and 11.*

2. Regarding the use-specific requirements of SJCC 18.40.270, conditions of approval would limit rental occupancy to nine people in this three-bedroom residence. The basement will not be characterized as a fourth bedroom or rented as a separate unit. The site is currently served by a community water system and an on-site sewage system. The provided six off-street parking spaces exceed the minimum required (four). No outdoor advertising, food service, or accessory dwelling unit 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 Applicants obtain a business license or work through a property management company. *Findings 1, 3, 5, 7, 8, 9, and 11.*

DECISION

Based on the preceding findings and conclusions, the request for conditional use permit to authorize the use of the three bedroom residence at 135 Ocean Mist Way, Eastsound, WA as a vacation rental is **APPROVED** subject to the following conditions:

1. The three 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 nine overnight guests shall occupy the vacation rental at any one time.
3. No food service is to be provided. No outdoor advertising signs are allowed. At least four off-street parking spaces must be maintained on-site for the life of the vacation rental use.
4. The rental must meet all local and state regulations, including those pertaining to business licenses and taxes. 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 covenants and restrictions.
5. 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.
6. The Applicants shall 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 and provided to the Department of Community Development upon request.

7. Written rules of conduct shall be submitted to the Department of Community Development before rentals commence. These rules shall be posted in the vacation rental, distributed to all renters, and sent to all owners of property within 300 feet of the site boundaries.
8. 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.
9. 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 March 29, 2017.

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.