SAN JUAN COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT
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BEFORE THE HEARING EXAMINER FOR SAN JUAN COUNTY

FINDINGS, DECISION AND CONDITIONS OF APPROVAL FOR KING CONDITIONAL USE PERMIT

S.J.C. DEPARTMENT OF
AUG 22 2018
COMMUNITY DEVELOPMENT

FILE NUMBER:	PCUP000-18-0007
OWNER(S):	CASSIDY KING 94 BAYSHORE ROAD SAN JUAN ISLAND 98250
APPLICATION:	CONDITIONAL USE PERMIT – TO AUTHORIZE VACATION RENTAL OF A 1-BEDROOM ACCESSORY DWELLING UNIT BUILT AND PERMITTED BEFORE JUNE 29, 2007 (EX. 4)
SITE ADDRESS:	SAME AS OWNER
TAX PARCEL NUMBER:	353350024
STAFF RECOMMENDATION:	APPROVAL WITH CONDITIONS
SUMMARY OF DECISION:	***APPROVED – SUBJECT TO CONDITIONS***
DATE OF DECISION:	AUGUST 21, 2018

I. INTRODUCTION

Cassidy King own a property located at 94 Bayshore Road, on San Juan Island. The property is designated "Rural Residential" and the shoreline designation is "Rural Farm Forest/Natural". The property has a main residence and a detached 1-bedroom accessory dwelling unit ("ADU") on the site. The property is located along the west side of False Bay, on San Juan Island, with False Bay to the east, undeveloped residential uses to the north and south, and residential uses to the west. The property is identified as Lot 24 in the Kanaka Bay park subdivision. On March 29, 2018, the county received a complete application for a Conditional Use Permit to authorize use of the King ADU as a vacation rental. The property is served with an on-site septic system and receives water service from the Kanaka Bay Park Water System. *(Staff Report, Project Data; Testimony of Ms. Thompson).*

II. CONTENTS OF RECORD

TESTIMONY AT PUBLIC HEARING:

Julie Thompson, the County's Planner III assigned to review the pending application, provided testimony under oath, summarizing her review, proposed conditions, and recommendation of approval.

No one submitted written comments or spoke at the hearing in opposition to the application.

EXHIBITS:

A. Staff Report, prepared by Project Planner, Julie Thompson, dated July 10, 2018;
1. Application materials, 4 pages, dated March 29, 2018;
2. Septic Permit dated May 20, 2018;
3. Building permit including septic and water information, dated October 24, 2000;
4. Posting and mailing submittal by applicant, 4 pages, dated July 10, 2018;
5. Legal Notice, published May 2, 2018;
6. Kanaka Bay Park Subdivision, Auditor's File Number 55234;
7. Assessor's information for year 2016-2017, 4 pages;
8. Map of nearby Vacation Rental Permits 1990 – February 2018, 1 page;
9. Fees Receipt; and
10. Land use designation map.

III. APPLICABLE LAW

Jurisdiction.

Under SJCC 18.80.090(C), if a development application is processed as a Conditional Use Permit application, "the Hearing Examiner is the decisionmaker." SJCC 18.80.100(C), captioned "Decisionmaking Authority", provides that "[t]he hearing examiner has the authority to approve or deny conditional use permit … applications, and to impose conditions of approval on such permits."

Conditional Use Permit required for vacation rentals.

The "allowability" of various land uses, including "vacation rental of a residence or accessory dwelling unit" is found in a table codified as SJCC 18.30.040. Properties identified under the Rural Residential land use designation are required to obtain a Conditional Use Permit for a vacation rental. The ADU addressed by this permit is outside the 200' shoreline jurisdiction. *(See Ex. 11). See "Allowable and Prohibited Uses in Rural, Resource, and Special Land Use Designations Table,"* at SJCC 18.30.040.

Standards for vacation rentals; Criteria for CUP approval.

San Juan County's Unified Development Code includes specific standards that apply to all vacation (short-term, less than 30 days) rentals of single family residential units and accessory dwelling units or portions thereof. These standards are now found at SJCC 18.40.275, and include a lengthy list of items numbered A through M. The Criteria for approval of a Conditional Use Permit are found at SJCC 18.80.100(D), and include ten items that must be considered by the Examiner.

Burden and Nature of Proof.

Under SJCC 18.80.040(B), "[t]he burden of proof is on the project permit applicant. The project permit application must be supported by evidence that it is consistent with the applicable state law, County development regulations, the Comprehensive Plan, and the applicant meets his burden of proving that any significant adverse environmental impacts have been adequately analyzed and addressed."

IV. ISSUE PRESENTED

Whether a preponderance of evidence demonstrates that the applicant(s) satisfied their burden of proof to meet the criteria for Conditional Use Permit approval?

Short Answer: Yes, subject to conditions.

V. FINDINGS OF FACT

1. Upon consideration of all the evidence, exhibits, testimony, codes, policies, regulations, and other information contained in the file, the undersigned Examiner issues the following findings, conclusions and Decision approving the Conditional Use Permit as set forth below.

2. Any statements in previous or following sections of this document that are deemed findings are hereby adopted as such, including without limitation the Introduction provided above.

3. The applicant submitted a complete Vacation Rental Permit application to the San Juan County Community Development & Planning Department on or about March 29, 2018. *(Staff Report at page 1; and Exhibit 1).*

4. As noted above, this application and the permit issued herein is applicable to a one-bedroom ADU on the site, which is located at 94 Bayshore Road, along the west side of False Bay, on San Juan Island. The applicant's property is designated Rural Residential and it already has a 1-bedroom ADU and a main residence on the site. The ADU structure is located outside of the shoreline jurisdiction. *(Staff Report, Project Data; Testimony of Ms. Thompson).*

5. In the Staff Report, Ms. Thompson represented that notices and publication required for the application were provided in accord with applicable county requirements. County staff determined that the application is exempt from SEPA review. *(Staff Report, at page 7; Exhibits 5 and 6, Legal notice and posting/mailing notice verification materials).*

6. There were no written comments from neighbors or other members of the public, and no one appeared at the public hearing to offer comments opposing the pending application.

7. The property is served with an on-site septic system approved to serve 4 bedrooms, and receives water service from the Kanaka Bay Park Water System. *(Staff Report, Project Data; Ex. 3, Septic Permit).*

8. As with all permits issued by the County, this permit does not waive or excuse an applicant's obligation to comply with any utility service provider's lawful regulations or requirements, including without limitation electrical, telephone, cable, internet, sanitation, and water service providers.

Facts establishing compliance with Vacation Rental Standards.

9. SJCC 18.40.275 lists a number of standards that apply to all Vacation Rentals (short-term/less than 30 days) of single-family residential homes and accessory dwelling units, or portions thereof. The standards are numbered below as items "A" through "M", and their application and relevance to the pending CUP is discussed below. The following findings are written in *italics*, immediately after re-statement of the applicable standard. Each of the *italicized findings* are supported by previous Findings, and the Staff Report, on pages 2 - 5:

A. Outside of urban growth areas, one vacation rental is allowed on a property, either in the principal residence or an accessory dwelling. Detached accessory dwelling units permitted on or after June 29, 2007 are not allowed to be vacation rentals.

The property is located outside an urban growth area. Because the ADU was built and permitted before June 29, 2007, it may be used as a vacation rental.

B. No more than two (2) overnight guests per bedroom plus additional three (3) overnight guests shall be accommodated at any one time. The number of bedrooms is determined by the approved building permit for the structure. A guest is a person over two (2) years of age.

The building permit on file permits one bedroom in the ADU structure. Ex. 4. Accordingly, this permit authorizes no more than five (5) overnight guests in the ADU.

C. The vacation rental shall be operated according to rules of conduct approved by the County that prevent the following disturbances to area residents:

1. Trespassing;
2. Noise that violates Chapter 9.06 SJCC (Noise Ordinance);
3. Off-site parking issues;
4. Vehicle speeds of higher than the posted speed limit, or twenty (20) miles per hour (mph) on private paved roads and fifteen (15) mph on private non-paved roads; and
5. Outdoor burning that violates the requirements adopted pursuant to SJCC 15.04.070.F.c, including violations of a burn ban

Rules of conduct were not included with the application (see Exhibit 1). This requirement will be a condition of approval.

D. Solid waste must be removed from the vacation rental to an approved solid waste facility every two weeks. Solid waste shall be stored in completely enclosed and secured solid waste receptacles or stored completely indoors.

This requirement is included as a condition of approval.

E. Guests shall be made aware of the importance of water conservation. Best practices to conserve water shall be included in the rules of conduct.

This requirement is included as a condition of approval.

F. One (1) on-site parking space shall be provided for each bedroom within the vacation rental.

The proposal is for a one (1) bedroom ADU, requiring one (1) parking space. The site plan shows two (2) parking spaces, see Exhibit 1. This meets the criteria.

G. Meal service provided by the permit holder or their agents is not allowed.

Meal service is not proposed by this application.

H. All vacation rental permit holders are required to display the address of the residence so that it is clearly visible from the street or access road.

This requirement is included as a condition of approval.

I. Vacation rental accommodations must meet all applicable local and state regulations, including those pertaining to business licenses and taxes such as Washington State sales, lodging and business and occupation taxes.

This requirement is included as a condition of approval.

J. Vacation rental permits vested or approved after the effective date of this ordinance shall expire two (2) years after the date of approval unless the annual certificates of compliance meeting the requirements of subsection (K)(4) of this section are on file with the administrator.

The expiration and filing of annual certificates of compliance meeting SJCC 18.40.275(K)(4) are mandated by applicable law, and is/are included as a condition of approval for the convenience of the parties.

K. All owners of property used for vacation rental shall comply with the following operational requirements

1. Maintain an up-to-date property management plan on file with the administrator and property owners within three hundred (300) feet of the building within which the vacation rental is located. The property management plan must include the following:
a. Rules of conduct approved by the County;
b. Unified Business Identifier number, and the names and addresses of the property owner and agents authorized to act on the property owner's behalf;
c. A designated local property representative who lives on the island where the vacation rental is located and will respond to complaints and emergencies; and
d. A valid telephone number where the local property representative can be reached twenty-four (24) hours per day.

A property management plan that complies with this material was not submitted with the application. Submitting and maintaining an up-to-date property management plan is included as a condition of approval.

2. Prominently display in the rental the rules of conduct and a map clearly depicting the property boundaries of the vacation rental. The map shall indicate if there is an easement that provides access to the shoreline, if so, the boundaries of the easement shall be clearly defined; if there is no access, this shall be indicated together with a warning not to trespass.

Rules of conduct and map that clearly depict property boundaries, shoreline access, and a trespassing warning were not provided with the application. Including a property boundary map, information on shoreline access and trespassing must be a condition of approval.

3. Include the San Juan County permit number for the vacation rental in all advertisements and marketing materials such as brochures and websites.

This requirement must be a condition of approval.

4. Annually certify compliance with the conditions of permit approval and with the fire and life safety requirements of the International Fire Code (IFC) as identified by the department on forms specified by the administrator. The annual certification shall be prominently posted on-site; and

Annual certification of compliance with conditions of approval, the fire, and life safety requirements of the IFC must be a condition of approval.

5. Certify compliance with the conditions of permit approval within ninety (90) days after the closing date of the sale of the property. Written certification must be submitted to the department on forms specified by the administrator. Maintain an up-to-date property management plan on file with the administrator and property owners within three hundred (300) feet of the building within which the vacation rental is located. The property management plan must include the following:
a. Rules of conduct approved by the County;
b. Unified Business Identifier number, and the names and addresses of the property owner and agents authorized to act on the property owner's behalf;
c. A designated local property representative who lives on the island where the vacation rental is located and will respond to complaints and emergencies; and
d. A valid telephone number where the local property representative can be reached twenty-four (24) hours per day.

Filing a certificate of compliance (Ex. 12) within ninety (90) days after the close date of the sale of the property must be a condition of approval.

L. SJCC 18.80.030(A)(2)(a) requires publication of a notice of application.

A notice of application for Conditional Use permit for vacation rental was published in the Journal of the San Juan and the Island Sounder on May 2, 2018 (Exhibit 6). No comments were received about the proposal.

M. SJCC 18.80.030(A)(2)(b)&(c) require notification of the application to all property owners within 300 feet of the subject property and posting of the notice of application on the subject property.

The applicant performed the mailing and posting on May 5 and May 2, 2018. The Staff Report confirms that the requirements in this section were all satisfied. See Exhibit 5.

10. A conditional use permit for vacation rental in the RR designation is required by SJCC 18.30.040. Again, the ADU at issue is located outside the shoreline jurisdiction.

11. The Record establishes that the applicant has met their burden to satisfy the criteria for approval of a Conditional Use Permit, found in SJCC 18.80.100(D)(1-10). The 10 items listed as approval criteria are listed and discussed below. The following findings are written in *italics*, immediately after re-statement of the applicable requirement. Each of the *italicized findings* are supported by previous Findings, and the Staff Report, on pages 5 through 7:

1. The proposed use will not be contrary to the intent or purposes and regulations of this code or the Comprehensive Plan;

As conditioned, the requested CUP will be consistent with the SJCC and the Comprehensive Plan. See discussion in Staff Report, at page 6.

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;

According to the Staff Report, the proposed use would be in an existing dwelling unit on the site, so it would not change the appearance of the structure. Staff indicates that with conditions, the property would continue to function in a manner similar to the existing use of the 1-bedroom ADU structure on the site. Therefore, the residential character of the site would be maintained. Additionally, the proposal meets or can be conditioned to meet the applicable standards of SJCC Chapters 18.40 and 18.60.

3. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval;

Vacation rental applications occasionally generate complaints regarding trespassing, noise and parking, but staff has determined that such concerns can be dealt with through conditions of approval. The CUP is conditioned to enable neighbors to report problems and possible violations of any conditions of approval to the owner, or their required contact. These will be dealt with through enforcement of the permit conditions including submitting a property management plan as required by SJCC 18.40.275 (K) which includes rules of conduct, emergency contact information, and a designated local property representative. As conditioned, no adverse impacts are expected.

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;

The use would continue to appear and function in a manner similar to the existing single family residential use. Staff found that, although there are other existing vacation rental properties in the area, as shown on Ex, 9, the collection of such uses will not cause cumulative impacts if they are operated in compliance with vacation rental permit

conditions that are written to mitigate possible impacts associated with such use. There was no opposition to this proposal. There is nothing in the record that would justify denial of the pending application.

5. The proposal will be served by adequate facilities including access, fire protection, water, stormwater control, and sewage disposal facilities;

The proposed use is in an existing development site that currently appears to be served by adequate facilities, with an on-site septic system sized to serve 4-bedrooms, and drinking water from the local water system; provided, the permit issued by this decision does not and should not be construed to authorize the owner to violate any applicable utility service provider's requirements.

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;

The existing ADU structure that is on the site and is the subject of this application has not interfered with allowable development or use of neighboring properties. As long as occupants comply with applicable codes, no new interference with allowable development or use of neighboring properties should occur.

7. The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood;

Staff has determined that vehicular traffic associated with a vacation rental is not expected to be hazardous. Visitors and guests operating vehicles are subject to the same traffic regulations as other neighborhood residents.

8. The proposal complies with the performance standards set forth in Chapter 18.40 SJCC;

As conditioned, the proposal will be in compliance with SJCC 18.40.275.

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);

There is no airport or airfield adjacent to this property.

10. The proposal conforms to the development standards in Chapter 18.60 SJCC.

As an existing developed site, the proposal is consistent with SJCC 18.60.

VI. CONCLUSIONS of LAW

1. Based on the Findings as summarized above, the undersigned examiner concludes that the proposed Conditional Use Permit for a vacation rental conforms to all applicable land use requirements and appropriately mitigates adverse environmental impacts. Upon reaching such findings and conclusions as noted above, the CUP application meets the standards necessary to obtain approval by the County.

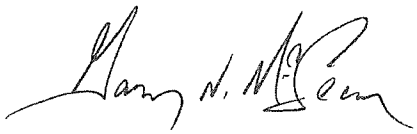
2. The Department's recommended conditions of approval as set forth in the Staff Report are reasonable, supported by the evidence, and capable of accomplishment. Each and every condition is adopted and incorporated herein by reference, except as modified below.

3. Any Finding or other statements in previous or following sections of this document that are deemed Conclusions are hereby adopted as such.

VII. DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, evidence presented through the course of the open record hearing, all materials contained in the record, and the Examiner's previous site visits to the neighborhood, the undersigned Examiner APPROVES the Conditional Use Permit for the Cassidy King vacation rental, subject to the attached Conditions of Approval as recommended by the County's staff and adopted herein.

ISSUED this 21st day of August, 2018



Gary N. McLean
Hearing Examiner

CONDITIONS OF APPROVAL

Cassidy King Vacation Rental CUP
94 Bayshore Road, San Juan Island
File No. PCUP00-18-0007

1. The 1-bedroom ADU structure described in the application materials may be operated as a vacation rental, subject to compliance with SJCC 18.40.275, except as modified by these conditions.

2. The 1-bedroom ADU structure on the site may be rented as a single unit on a short-term basis for periods less than 30 days. A maximum of two (2) people per bedroom plus an additional three (3) overnight guests [five (5) total guests] may occupy the residence at any one time.

3. No food service is allowed.

4. At least one (1) parking space shall be maintained and available for guests to use on the property.

5. The owner must meet all local and state regulations, including those pertaining to business licenses and taxes.

6. 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.

7. Prior to operation, the owner or agent shall request a driveway inspection from the San Juan County Fire Marshal or his designee and submit proof that the inspection was approved to the DCD Director, which proof shall reference the permit number.

8. The permit-holder/property owner shall:

   A. Maintain an up-to-date property management plan on file with the administrator and property owners within three hundred (300) feet of the building within which the vacation rental is located. The property management plan must include the following:

      1. Rules of conduct meeting the requirements of SJCC 18.40.275(C) and approved by the County;

      2. The Unified Business Identifier number for the vacation rental unit, and the names and addresses of the property owner and agents authorized to act on the property owner's behalf;

      3. A designated local property representative who lives on the island where the vacation rental is located and will respond to complaints and emergencies; and

4. A valid telephone number where the local property representative can be reached twenty-four (24) hours per day.

B. Prominently display in the rental the rules of conduct and a map clearly depicting the property boundaries of the vacation rental. The map shall indicate if there is an easement that provides access to the shoreline, if so, the boundaries of the easement shall be clearly defined; if there is no access, this shall be indicated together with a warning not to trespass.

C. Include the San Juan County permit number for the vacation rental in all advertisements and marketing materials such as brochures and websites.

D. Annually certify compliance with the conditions of permit approval and with the fire and life safety requirements of the International Fire Code (IFC) as identified by the Department of Community Development on forms specified by the administrator. The annual certification shall be prominently posted on-site.

E. Certify compliance with the conditions of permit approval within ninety (90) days after the closing date of the sale of the property. Written certification must be submitted to the Department of Community Development on forms specified by the administrator.

9. This permit shall expire two (2) years after the date of approval unless the annual certificates of compliance meeting the requirements of SJCC 18.40.275 (K)(4) are on file with the administrator.

10. Guests shall be made aware of the importance of water conservation. Best practices to conserve water shall be included in the rules of conduct.

11. Solid waste must be removed from the vacation rental to an approved solid waste facility every two weeks. Solid waste shall be stored in completely enclosed and secured solid waste receptacles or stored completely indoors.

12. Since the County is not a party to private covenants or utility service provider requirements, it is not in a position to enforce private covenants or similar limitations that may prohibit use of a residence as a vacation rental, or regulate activities of potential renters (like access to amenities, common areas and the like). However, the CUP granted in this Decision does not and should not be construed to authorize the owner to violate any applicable utility service provider's requirements, or private restrictions or covenants between property owners.

13. Upon determination by the Director of DCD that any condition listed above has been violated and following issuance of a Notice of Violation, the Director may, in addition to other code enforcement remedies, revoke the conditional use permit.

EFFECTIVE DATE, APPEALS, 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/or SJCC 18.80.110.

Decisions of the Hearing Examiner are final and not subject to administrative appeal to the San Juan County Council, unless the County council has adopted, by ordinance, written procedures for the discretionary review of such decisions. See Section 4.50 of the San Juan County Home Rule Charter and 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 any 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 confer with advisors of their choosing, possibly including a private attorney.

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