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 JEROME CONDITIONAL USE PERMIT

SJC DEPARTMENT OF
MAR 27 2019
COMMUNITY DEVELOPMENT

FILE NUMBER:	PCUP00-18-0029
OWNER/APPLICANT:	KEITH AND CATHERINE JEROME 10316 RIVIERA PLACE NE SEATTLE, WA 98125
APPLICATION:	CONDITIONAL USE PERMIT – TO AUTHORIZE VACATION RENTAL OF A 3-BEDROOM HOUSE
SITE ADDRESS:	251 WHITE POINT ROAD, SAN JUAN ISLAND
TAX PARCEL NUMBER:	462450014000
STAFF RECOMMENDATION:	APPROVAL WITH CONDITIONS
SUMMARY OF DECISION:	***APPROVED – SUBJECT TO CONDITIONS***
DATE OF DECISION:	MARCH 27, 2019

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I. INTRODUCTION

Keith and Catherine Jerome own a property located on San Juan Island with a 3-bedroom home as well as an accessory swelling unit (ADU) on the site. In December of 2018, staff deemed the pending application for a conditional use permit to be complete for purposes of vesting and review. The applicants seek a conditional use permit to rent their 3-bedroom house as a short-term vacation rental, and the ADU is not covered by this permit. The house is located on Westcott Bay, at 251 White Point Road, in the Westcott Bay Park subdivision, which is in the Rural Residential (RR) land use designation on San Juan Island. The site is in the county's shoreline jurisdiction, in the Rural Residential (RR) shoreline designation. The property is served with an on-site septic system, with water supply provided by the Roche Harbor Water System. *(Staff Report, Project Data; Testimony of Mr. Zack; Ex. 1, Application materials; Ex. 13, Westcott Bay Park plat map).*

II. CONTENTS OF RECORD

TESTIMONY AT PUBLIC HEARING:

All witnesses who offered testimony during the public hearing were placed under oath. Adam Zack, the County's planner assigned to review the pending application, appeared at the hearing and summarized his review, noting that the project site is in the shoreline jurisdiction, that water and sewer/septic service are sufficient, that parking is sufficient, and that all procedural and notice requirements have been satisfied. He noted that there were no public comments following public notices regarding the requested permit. He explained that the application merits approval, subject to conditions. No one appeared at the hearing to question or oppose the pending application.

EXHIBITS:

A. Staff Report, prepared by Project Planner, Adam Zack, dated January 29, 2019;
1. Application materials, dated October 2, 2018;
2. Sewage Design Application, approved April 7, 2017;
3. Legal Notice, published Jan. 16, 2019;
4. Assessor's information for site for 2018-19;
5. Staff communication with applicant re: status, dated Dec. 21, 2018;
6. Building permit for site, issued July 31, 2002;
7. Aerial map of tax parcel at issue;
8. Vicinity map;
9. Certificate of Water Availability, dated May 11, 2000;
10. Vacation Rental Annual Certificate of Compliance;
11. Posting and mailing certification submitted by the applicant, received Jan. 31, 2019;
12. Map of vacation rentals in the surrounding area;
13. Westcott Bay Park plat 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. *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 applicants have 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 Vacation Rental Permit application to the San Juan County Community Development & Planning Department on or about October 12, 2018. The pending application was deemed complete for purposes of vesting and review on December 21, 2018 *(Staff Report at page 4; and Exhibits 1 and 5).*

4. As noted above, this application and the permit issued herein is applicable to a three-bedroom home on the site, which is located in the Westcott Bay Park subdivision on land that is within the County's Rural Residential (RR) land use designation area, at 251 White Point Road on San Juan Island. *(Staff Report; Ex. 1, application materials).* A conditional use permit it required for vacation rentals in the RR land use designation. *(See SJCC 18.30.040).*

5. In the Staff Report, Mr. Zack 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, citing SJCC 18.80.050. *(Testimony of Mr. Zach; Staff Report, at page 10; Exhibits 2 and 13, Legal ad and posting/notice verification materials).*

6. There were no written comments submitted during the review process. No one appeared at the duly notice public hearing to question or oppose the requested permit. There is no evidence in the record that would serve as a basis to deny the requested permit. Instead, the unchallenged analysis and explanation provided in the Staff Report, with its supporting exhibits, constitutes a preponderance of evidence demonstrating how the requested permit complies with all applicable approval criteria.

7. The Staff Report explains that the property is served with an on-site septic system and receives water service from the Roche Harbor Water System. *(Staff Report, Project Data; Exhibits 2 and 9, re: sewer/septic and water service for the site).*

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. These standards 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 5 - 8:

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. The house at issue is the only dwelling unit on the property. The ADU is not part of this permit and may not 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.

There are three bedrooms in this residence so no more than nine (9) people may be accommodated at any time. This is a condition of approval.

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

The applicant's draft rules appear to satisfy all requirements set forth above.

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 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 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 three bedroom home, requiring 3 parking spaces. The submitted site plan shows three (3) 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 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 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) is a condition of approval. A Vacation Rental Certificate of Compliance is included in the record as Exhibit 10.

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.

This is 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.

The rules of conduct to be submitted for review and approval by the Department must include language to address all relevant topics. Prominent display of the rules and a map meeting this requirement is imposed as a condition of approval for this permit.

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 is 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, and the fire and life safety requirements of the IFC is 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.

The requirement to file a certificate of compliance (see Ex. 10) within ninety (90) days after the close date of the sale of the property is 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 Juans and the Island Sounder on or about January 16, 2019 (Exhibit 3). No comments were received following such public notice.

M. SJCC 18.80.030(A)(2)(b) and (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 applicants satisfied applicable notice, mailing and posting requirements, certifying same in January of 2019. See Ex. 11.

10. The Record establishes that the applicants have 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 6 through 8:

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, pages 8 and 9.

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 function in a manner similar to the existing use of the 3-bedroom structure already 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. Obviously, owners' failure to operate the vacation rental in compliance with applicable codes, rules and regulations can and should result in revocation of the permit addressed herein.

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

Staff has determined that various 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. Such issues can be dealt with through enforcement of the conditions of permit approval 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. Violations of rules can result in revocation of the permit issued herein.

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. Permitted vacation rentals that operate in compliance with conditions of approval should pose no cumulative impacts. Although there are other approved vacation rentals operating in the area (see Ex. 12), there is no evidence in the record to show that they pose any cumulative impacts to the environment when limited and mitigated by permit conditions.

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, and/or to receive adequate services (See Exhibits 2 and 9, re: septic and water for site); 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 single-family residence on the site that 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 and rules, 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 often described as hazardous. Guests and visitors are subject to the same traffic regulations as others who live in the area. Rules of conduct will mandate that the vacation rental shall not be operated in a manner where guests or visitors pose a hazard to pedestrian or vehicular traffic in the area.

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. See discussion on pages 5-8 of the Staff Report.

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.

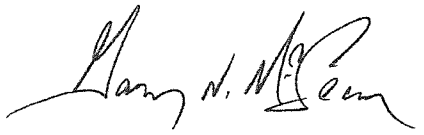
2. The Department's recommended conditions of approval as set forth in the Staff Report are reasonable, supported by the evidence, and capable of accomplishment. Each and every condition is adopted and incorporated herein by reference, except as modified below.

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 online site visit, the undersigned Examiner APPROVES the Conditional Use Permit for the Jerome vacation rental, subject to the attached Conditions of Approval as recommended by the County's staff and adopted herein.

ISSUED this 27th Day of March, 2019



Gary N. McLean
Hearing Examiner

CONDITIONS OF APPROVAL

Jerome Vacation Rental CUP
251 White Point Road, San Juan Island
File No. PCUP00-18-0029

1. The 3-bedroom house described in the application materials and site plan *(Ex. 1)* may be operated as a vacation rental, subject to compliance with SJCC 18.40.275, except as modified by these conditions.

2. The primary residence on the site (the 3-bedroom house) may be rented as a single unit on a short-term basis for periods less than thirty (30) days. A maximum of two (2) people per bedroom plus an additional three (3) overnight guests [nine (9) total guests] may occupy the residence at any one time.

3. The accessory dwelling unit is not covered by this permit and may not be rented for periods of less than thirty (30) days and shall not be used in conjunction with the short-term vacation rental of some of all of the primary residence. In other words, the only 3-bedrooms that can be used for vacation rental purposes are those located in the primary residence, i.e. the 3-bedroom house on the site.

4. No food service is allowed.

5. Three (3) parking spaces must be provided as required by SJCC 18.40.275(F) and as shown on the approved site plan.

6. The owner must meet all local and state regulations, including those pertaining to business licenses and taxes. Approval of this permit does not authorize the owner to violate private covenants and restrictions.

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. Prior to operation, the applicant shall call the SJC Fire Marshal to have the driveway inspected for emergency vehicle access. Evidence of the Fire Marshal's inspection must be submitted to the San Juan County Department of Community Development.

9. The property owners 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, including without limitation provisions addressing the following;

a) Trespassing;
b) Noise that violates Ch. 9.06 SJCC (Noise Code);
c) Off-site parking issues;
d) Vehicle speeds higher than the posted speed limit; and
e) Outdoor burning that violates the requirements found in SJCC 15.04.070(F), including violations of any burn ban.

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. Display the address of the residence so that it is clearly evident from the street or access road.

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

E. 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.

F. 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 and must reference the permit number.

10. 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.

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

12. 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.

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.