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 LYONS CONDITIONAL USE PERMIT

S.J.C. DEPARTMENT OF
NOV 21 2019
COMMUNITY DEVELOPMENT

FILE NUMBER:	LANDUSE-19-0137
OWNER/APPLICANT:	MAX AND CAROL LYONS 14301 SE EVERGREEN HWY VANCOUVER, WA 98683
APPLICATION:	CONDITIONAL USE PERMIT – TO AUTHORIZE VACATION RENTAL OF A 2-BEDROOM HOUSE
SITE ADDRESS:	297 BAY HEAD ROAD, ORCAS ISLAND
TAX PARCEL NUMBER:	262250007000
STAFF RECOMMENDATION:	APPROVAL WITH CONDITIONS
SUMMARY OF DECISION:	***APPROVED – SUBJECT TO CONDITIONS***
DATE OF DECISION:	NOVEMBER 20, 2019

I. INTRODUCTION

The applicants own a 2-bedroom house located at 297 Bay Head Road, which is in the Orcas Village Residential land use designation on Lot 7 of the Bay Head subdivision on Orcas Island. The application explains that the house is located in a small cluster of approximately 11 homes within walking distance to/from the Orcas Ferry Landing. *(Ex. 1, application materials, Aug. 15, 2019 letter from Carol Lyons).* The homes in the plat abut an open, commonly owned field that is preserved as open space for the community and which allows for privacy between homes. *(Id.).* The applicants request Conditional Use Permit approval to operate their 2-bedroom house as a short-term vacation rental (less than 30 days). The Staff Report thoroughly summarizes the details associated with this application and demonstrates how it complies with applicable approval criteria, subject to conditions. As explained below, the pending application is approved, subject to conditions of approval.

II. CONTENTS OF RECORD

TESTIMONY AT PUBLIC HEARING:

All witnesses who offered testimony during the public hearing were placed under oath. Julie Thompson, the County's planner assigned to review the pending application, appeared at the hearing and briefly summarized her review and information in the Staff Report. No one appeared for the applicants, and no members of the public appeared to speak at the hearing. There was no opposition to the pending application, either at the hearing or in the form of written comments submitted before the hearing.

EXHIBITS:

A. Staff Report, prepared by Project Planner, Julie Thompson, dated October 8, 2019, with eight exhibits as numbered and described on page 10 of the Staff Report.

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 Table provided at SJCC 18.30.430-1 expressly allows vacation rentals in the Orcas Village Residential land use designation, subject to a Conditional Use Permit.

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. 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 [their] 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

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.

1. 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.

2. As noted above, Max and Carol Lyons, own a property located in the Bay Head subdivision on Orcas Island, with an existing 2-bedroom house on the site.

3. The applicants request approval to rent their 2-bedroom house as a single vacation-rental unit, for periods less than 30-days. There is no Accessory Dwelling Unit (ADU) on the property. The applicants are hereby fully advised and informed that vacation rental of both a principal residence and an ADU on the same property is expressly prohibited by current county codes. *(See SJCC 18.40.275(A)).*

4. The Lyons' house is connected to and served by the Eastsound Sewer and Water District's sewer system *(Ex. 5, Sewer Service Confirmation),* and receives water service from the Bay Head Water Users Association Inc. *(Staff Report, at page 7).*

5. The Staff Report thoroughly explains how: a) the applicants' proposed vacation rental can be operated and conditioned to satisfy all applicable performance standards for Vacation (short-term) rentals, found in SJCC 18.40.275 *(See Staff Report, pages 3 – 6);* and b) how the pending application satisfies all approval criteria for the requested Conditional Use Permit (SJCC 18.80.100(D)), subject to conditions *(See Staff Report, pages 6-8).*

6. There is no evidence in the record that would serve as a basis to deny the requested permit. Instead, the 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. If the applicants fail to comply with any conditions of approval, it could result in revocation of the permit addressed in this decision.

7. 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.

8. Again, violations of any condition of approval may be grounds for issuance of a Notice of Violation and possible revocation of the conditional use permit addressed herein.

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 and modified in this Decision 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 Lyons' vacation rental, subject to the attached Conditions of Approval as recommended by the County's staff and modified herein.

ISSUED this 20th Day of November, 2019

Gary N. McLean
Hearing Examiner

CONDITIONS OF APPROVAL

Lyons Vacation Rental CUP
297 Bay Head Road, Orcas Island
Parcel No. 26225007000
File No. LANDUSE-19-0137

1. The existing 2-bedroom house on the property may be operated as a vacation rental as described in the application materials and site plan included in the record as Exhibit 1, subject to compliance with SJCC 18.40.275, except as modified by these conditions.

2. The existing 2-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 [seven (7) total guests] may occupy the residence at any one time.

3. No food service is allowed.

4. Two (2) parking spaces must be provided as required by SJCC 18.40.275(F) and as shown on the site plan provided in the application materials.

5. 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.

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 applicant shall call the SJC Fire Marshal to have the driveway inspected for emergency vehicle access. Written confirmation of the Fire Marshal's inspection must be submitted to the San Juan County Department of Community Development, which must include the file number for this permit on such document.

8. The property owners shall:

   A. Prior to operation, submit and 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 house 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.

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. Outdoor burning of anything other than charcoal in a grill, or seasoned wood provided for use in a designated fire pit, is expressly prohibited. Guests shall be fully advised in writing of any applicable burn ban in effect for any portion of a vacation rental.

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.