

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
HARRELL-BROWNSTEIN CONDITIONAL USE PERMIT**

FILE NUMBER: LANDUSE-21-0178

S.J.C. DEPARTMENT OF

OWNER/APPLICANT: WALTER HARRELL & CHERYL BROWNSTEIN
681 SMUGGLERS COVE ROAD
FRIDAY HARBOR, WA 98250

DEC 01 2021

COMMUNITY DEVELOPMENT

APPLICATION: CONDITIONAL USE PERMIT –
TO AUTHORIZE VACATION RENTAL OF AN EXISTING 1-BEDROOM HOUSE

SITE ADDRESS: 681 SMUGGLERS COVE ROAD, SAN JUAN ISLAND

TAX PARCEL NUMBER: 450353010000

STAFF RECOMMENDATION: APPROVAL WITH CONDITIONS

SUMMARY OF DECISION: *APPROVED – SUBJECT TO CONDITIONS*

DATE OF DECISION: DECEMBER 1, 2021

I. INTRODUCTION

The applicants own a property located at 681 Smugglers Cove Road, located on the west shore of San Juan Island. The applicants' property is in the Rural Residential Land Use and Shoreline Designations. The applicants request Conditional Use Permit approval to operate their existing 1-bedroom single family 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

Copies of all materials in the record and a digital audio recording of the open-record hearing conducted for this application are maintained by the County and may be requested or reviewed by contacting the Community Development Department during regular business hours. Given the Covid-19 health proclamations issued by the Governor and local authorities, the hearing occurred on October 27, 2021, using teleconference equipment operated by county staff. Julie Thompson, the designated County Planner assigned to review the pending application, appeared and provided testimony under oath during the hearing. One of the applicants, Walter Harrell, appeared and offered testimony under oath on the applicants' behalf during the public hearing, accepting the Staff Report analysis and recommended conditions without objection. Mr. Harrell explained that he intends to be in-residence on the property much of the time, that he believes he has good relations with his neighbors, and summarized steps he and his property manager will undertake to help prevent trespassing by future guests. No one spoke at the public hearing in opposition to the pending application.

The Staff Report, prepared by Ms. Thompson, with 10 pages, dated October 7, 2021, and the 9 Exhibits attached to and described on pages 9 and 10 of such report, are included as part of the Record for this matter.

Upon consideration of all the evidence, testimony, codes, policies, regulations, and other information contained in the file, particularly the unchallenged Staff Report, the undersigned Examiner issues the following findings, conclusions and Decision.

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 applicant's property is located in the county's Rural Residential land use designation. The table found at SJCC 18.30.040 provides that Vacation rentals are allowed in the rural residential land use designation, subject to a Conditional Use Permit.

Shoreline considerations.

The applicant's property is located in the county's Rural Residential Shoreline designation. The requested permit would authorize vacation rental of an existing single-family home, deemed a residential use, and does not propose changes to the house itself that would be considered shoreline development activity (like construction, addition, or alteration of the house itself that lies within a designated Rural Residential shoreline area), which could trigger the requirement to obtain a Shoreline Substantial Development Permit ("SSDP"). *See SJCC 18.20.190, RCW 90.58.030, and WAC 173-27-030.*

The use table found at SJCC 18.50.600 provides that Vacation Rentals are subject to a substantial development permit in the Rural Residential shoreline designation. SJCC 18.50.040(D)(1) explains that any development, use, structure or activity with a total cost or fair market value, whichever is higher, that does not exceed the maximum exempt amount allowed by state law (\$7,047 in September 2017) in accordance with WAC 173-27-040(2)(a), generally requires a certificate of exemption, but SJCC 18.50.050(B)(4) states that a certificate of exemption is not required for residential development, including normal residential appurtenances when a project or development permit application is required. As noted above, this Conditional Use Permit is required to authorize the requested vacation rental use in the Rural Residential land use designation where this property is located. (*See SJCC 18.30.040*). Therefore, a certificate of exemption is not required for this vacation rental use, because the vacation rental use is the subject of this Conditional Use Permit and special conditions imposed by relevant codes and this Decision.

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."

Vacation Rental Operators must comply with all orders or proclamations issued regarding the ongoing COVID-19 Emergency.

Vacation rental operations, like that authorized by this permit, fall within the County’s definition of “Transient accommodations,” which means “a commercial or residential use involving the rental of any structure or portion thereof for the purpose of providing lodging for periods less than 30 days.” (SJCC 18.20.200, “T” definitions). The San Juan County Health Officer has authority to issue orders suspending vacation rentals and other transient accommodation operations when public health emergencies require such action. Though such orders are not in place at the time of this Decision, going forward, **this permit mandates full compliance with any and all orders or proclamations related to the ongoing COVID-19 public health emergency issued by County, State or Federal officials with jurisdiction over any aspect of vacation rental operations.**

IV. ISSUE PRESENTED

Whether a preponderance of evidence demonstrates that the applicant has satisfied his 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, the applicants, Walter Harrell and Cheryl Brownstein, own a .84-acre property located at 681 Smugglers Cove Road along the western shoreline of San Juan Island. The property is in the Rural Residential Land Use and Shoreline Designations. The applicant requests Conditional Use Permit approval to operate their existing one-bedroom accessory dwelling unit (ADU) on the site as a short-term vacation rental (less than 30 days).
3. This permit does not apply to the existing 2-bedroom house on the same property, which the applicants use as their primary residence. (*Ex. 2, aerial view of property, with notes showing two existing residential structures on the site; Application materials, Ex. 1; Testimony of Mr. Harrell*). The original application form mistakenly requested a permit to operate both the one-bedroom ADU and the 2-bedroom single family residence on the same parcel as a vacation rental, which is contrary to County codes that only allow one vacation rental on a property in either the principal residence or an ADU. (*See SJCC 18.40.275(A)*). Other than clarifying that this permit only applies to the ADU on the applicants’ property, the Staff Report does not raise any concerns about the ADU or property at issue, and notes that there are no open code investigations regarding this parcel.

4. The applicants' property is served by an on-site septic system, and water is provided by a community water system. *(Staff Report, Project Data on page 1)*. As with all properties served by on-site septic systems, County Health regulations require regular inspections and service as needed. The applicant is hereby advised and informed that compliance with such regulations is a requirement of this permit.
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 – 5)*; 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 6-7)*. Staff determined that the pending application is exempt from SEPA review under SJCC 18.80.050. *(Staff Report, page 7)*.
6. No one appeared during the public hearing to question or challenge the requested permit.
7. 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 and the application materials, with supporting exhibits, constitutes a preponderance of evidence demonstrating how the requested permit complies with all applicable approval criteria. If the applicant fails to comply with any conditions of approval, it could result in revocation of the permit addressed in this decision.
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.
9. 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. This includes operating a vacation rental property in a manner that violates any then-applicable order or similar restriction issued by any County, State, or other government official with jurisdiction over any aspect of vacation rental operations during this COVID-19 public health emergency.

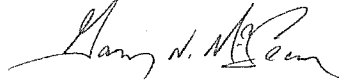
VI. CONCLUSIONS of LAW

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 visits, the undersigned Examiner APPROVES the Conditional Use Permit for the Harrell-Brownstein vacation rental of the existing one-bedroom ADU on their property, subject to the attached Conditions of Approval as recommended by the County's staff and modified herein.

ISSUED this 1st Day of December, 2021



Gary N. McLean
Hearing Examiner

CONDITIONS OF APPROVAL

***Harrell-Brownstein Vacation Rental CUP
681 Smugglers Cove Road, San Juan Island
Parcel No. 450353010000
File No. LANDUSE-21-0178***

1. The existing 1-bedroom accessory dwelling unit (ADU) on the property may be operated as a vacation rental as described in the application materials and site plans included in the record, subject to compliance with SJCC 18.40.275, except as modified by these conditions. This permit does not apply to the 2-bedroom primary residence on the same parcel.
2. The 1-bedroom ADU 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 [five (5) total guests] may occupy the residence at any one time.
3. No food service is allowed.
4. One (1) parking space must be provided as required by SJCC 18.40.275(F).
5. The permittee 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. 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. Trespassing by guests onto adjacent beaches or shoreline areas is expressly prohibited, violations of such condition serves as a basis to revoke this permit.

- 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.
8. 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.
 9. Guests shall be made aware of the importance of water conservation. Best practices to conserve water shall be included in the rules of conduct.
 10. 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.
 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. 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.
 13. **[New Condition Added by the Examiner]** – This permit shall not be read or construed to authorize any activity or operation in violation of any applicable order issued by government officials with jurisdiction over any aspect of the vacation rental use addressed herein. This expressly includes, without limitation, the permit holder’s obligation to remain informed and updated on the effect of any order, proclamation, or other directive issued to address the COVID-19 public health emergency.

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.