

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS, AND DECISION

Applicant(s): Barbara Fry
c/o Sybil Mager
PO Box 2763
Friday Harbor, WA 98250

File No.: PCUP00-15-0027

Request: Conditional Use Permit (CUP)

Parcel No: 450353024

Location: 941 Smugglers Cove Road, San Juan Island

Summary of Proposal: An application for a conditional use permit to allow vacation rental of a single-family home

Land Use Designation: Rural Residential

Public Hearing: January 21, 2016

Application Policies and Regulations: SJCC 18.40.270 Vacation Rentals
SJCC 18.80.100(D) CUP Criteria

Decision: Approved subject to conditions

S.J.C. DEPARTMENT OF
FEB 05 2016
COMMUNITY DEVELOPMENT

7. Site plan
8. Floor plan
9. Sewage permit
10. Posting, mailing and legal ad
11. Public Comment submitted by Fred and Kathy Doehring, 191 Spyglass Hill Road

Upon consideration of the testimony and exhibits submitted at the open record public hearing, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. The Applicant requested approval of a conditional use permit to authorize the use of the two bedroom residence located at 941 Smugglers Cove Road, San Juan Island as a vacation rental.¹ The parcel is developed with a single-family residence and a garage. Located on Lot 24 in the First Addition to North Sunset Point subdivision, the parcel has shoreline access. *Exhibits 1, 6, and 7; Mager Testimony.*
2. The subject property has a Rural Residential land use designation. To the north, south and east the parcel abuts residential development. To the west, it abuts shoreline. The subject property is not located near an airfield or airport. *Exhibit 1.*
3. The subject property has existing access from Smugglers Cove Road. No changes to the existing site access are proposed or required. *Exhibits 1 and 2.*
4. The existing residence is served by an individual well and on-site septic. *Exhibit 1.*
5. Planning Staff submitted that because the subject property is an existing developed site, the proposal is consistent with San Juan County Code (SJCC) Chapter 18.60. *McEnery Testimony; Exhibit 1.*
6. The proposal would allow up to three persons at a time to rent the two bedroom residence, for a maximum of 6 guests at once. The parcel has off-street parking for at least three vehicles on the property. No outdoor advertising signs or food service are proposed. *Exhibit 1; Mager Testimony.*
7. Planning Staff noted that noise and trespassing impacts could be expected to mimic those associated with traditional residential use of the site, and that the potential for disturbance to surrounding properties from temporary occupants could be mitigated by the following measures: restricting the number of vacation rental occupants to three per bedroom; requiring rules of conduct to be posted that specifically prohibit trespass; identification of property lines; providing neighbors with a 24-hour contact phone number; and requiring

¹ The subject property is known as Assessor Parcel number 450353024. *Exhibit 1.*

- the contact to keep a written log of complaints. Staff recommended conditions implementing the above measures. *Exhibit 1; McEnery Testimony.*
8. The Applicant would be required to obtain a business license or work through a property management company. *Exhibit 1.*
 9. The application was submitted November 17, 2015 and determined to be complete on the same date. Notice of the application was posted on-site on December 8, 2015 mailed to surrounding property owners on December 7, 2015, and published on December 9, 2015. *Exhibits 1, 2 and 10; McEnery Testimony.*
 10. The County received one public comment on the application from adjacent property owners. While they did not oppose approval they requested assurances that the conduct of renters would be controlled to prevent impacts on nearby residences. They described previous events at the subject property (calling them “vigorous” late night gatherings) that created disturbances for them, because their bedroom windows have a direct line of sight to the driveway entrance of the subject property. They also complained that guests at the subject property have parked in the commenters’ emergency access road. *Exhibit 11.*
 11. In response to public comment, the Applicant representative noted that the events complained of occurred in the past when the residence was not used as a vacation rental but rather was a primary residence. She noted that the recommended conditions would require rules of conduct to be posted and enforced and that the rental would be managed by a professional property management company on the island. *Mager Testimony.*
 12. Upon review of the complete file, including the public comment and the Applicant’s response, Planning Staff determined that the proposal can comply with all applicable criteria and recommended approval with conditions. *McEnery Testimony; Exhibit 1.* The Applicant waived objection to the recommended conditions. *Mager Testimony.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide applications for conditional use permit pursuant to Chapter 36.70.970 of the Revised Code of Washington and Chapters 2.22 and 18.80 of the San Juan County Code.

Criteria for Review

Conditional Use Permit

Pursuant to SJCC 18.80.100.D, a conditional use permit shall be granted by the County only if the following criteria are met:

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

2. The proposal is appropriate in design, character and appearance with the goals and policies for the land use designation in which the proposed use is located;
3. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval;
4. The cumulative impact of additional requests for like actions (the total of the conditional uses over time or space) will not produce significant adverse effects to the environment that cannot be mitigated by conditions of approval;
5. The proposal will be served by adequate facilities including access, fire protection, water, stormwater control, and sewage disposal facilities;
6. The location, size, and height of buildings, structures, walls and fences, and screening vegetation associated with the proposed use shall not unreasonably interfere with allowable development or use of neighboring properties;
7. The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood;
8. The proposal complies with the performance standards set forth in Chapter 18.40 SJCC;
9. The proposal does not include any use or activity that would result in the siting of an incompatible use adjacent to an airport or airfield (RCW 36.70.547); and
10. The proposal conforms to the development standards in Chapter 18.60 SJCC.

Vacation Rentals

Pursuant to SJCC 18.40.270, the following standards apply to all vacation rentals of single-family residential units and accessory dwelling units or portions thereof:

- A. No more than three guests per bedroom shall be accommodated at any one time.
- B. The vacation rental of a principal residence or accessory dwelling unit shall be operated in a way that will prevent unreasonable disturbances to area residents.
- C. At least one additional off-street parking space shall be provided for the vacation rental use in addition to the parking required for the residence or accessory dwelling unit.
- D. If any food service is to be provided the requirements for a bed and breakfast residence must be met.
- E. No outdoor advertising signs are allowed.
- F. The owner or a long-term lessee may rent either the principal residence or the accessory dwelling unit on a short-term basis (vacation rental), but not both.
- G. Where there are both a principal residence and an accessory dwelling unit, the owner or long-term lessee must reside on the premises, or one of the living units must remain unrented.
- H. In all activity center land use districts, rural residential, and conservancy land use districts, the vacation rental of a residence or accessory dwelling unit may be allowed by provisional ("Prov") permit only if the owner or lessee demonstrates that the residence or

accessory dwelling unit in question was used for vacation rental on or before June 1, 1997. When internal land use district boundaries are adopted for an activity center, this provision will apply to VR and HR districts but not to the activity center in general.

- I. Vacation rental accommodations must meet all local and state regulations, including those pertaining to business licenses and taxes.
- J. Owners of vacation rentals must file with the administrator a 24-hour contact phone number.
- K. The owner or lessee of the vacation rental shall provide notice to the tenants regarding rules of conduct and their responsibility not to trespass on private property or to create disturbances. If there is an easement that provides access to the shoreline, this shall be indicated on a map or the easement shall be marked; if there is no access, this shall be indicated together with a warning not to trespass.
- L. Detached accessory dwelling units established under SJCC 18.40.240 cannot be separately leased or rented for less than 30 days.

Conclusions Based on Findings

1. As conditioned, the proposed vacation rental would be consistent with applicable provisions of the SJCC and the Comprehensive Plan. The use would occupy an existing residence without altering the appearance of the structure. Conditions would ensure that even when rented it continues to function like a residence; the residential character of the neighborhood would be unaffected. No adverse cumulative environmental impacts are suggested by the record in the event of additional vacation rental request approvals. The proposal meets or can be conditioned to meet the applicable standards of sections 18.40 and 18.60 of the SJCC, ensuring there are adequate public services and facilities to serve the proposal. Potential adverse impacts of the vacation rental on neighboring properties would be mitigated by conditions requiring rules of conduct prohibiting trespass, clear presentation of property boundaries to renters, and a 24-hour contact for neighbor complaints (among other requirements). Pedestrian and vehicular traffic would be consistent with that expected of a typical residence. There is no airfield adjacent to this property. *Findings 1, 3, 4, 5, 10, 11, and 12.*
2. Regarding the use-specific requirements of SJCC 18.40.270, conditions of approval would limit rental occupancy to six people. The site is currently served by an individual well and on-site sewage connections. Potential noise, trespass, and parking impacts to surrounding parcels would be mitigated through conditions requiring posted rules of conduct, identification of property boundaries, provision of a 24 hour contact phone number, and the requirement for the contact to maintain a log of complaints. The rules of conduct would specifically be required to prohibit trespass. The site would provide three off-street parking spaces. No outdoor advertising, food service, or accessory dwelling unit are proposed. Conditions would ensure that the Applicant obtains a business license or works through a property management company. *Findings 1, 3, 4, 6, 7, 9, 10, 11, and 12.*

DECISION

Based on the preceding findings and conclusions, the request for conditional use permit to authorize the use of the two bedroom residence at 941 Smugglers Cove Road, San Juan Island as a vacation rental is **APPROVED** subject to the following conditions:

1. The two bedroom vacation rental shall be operated as described in the application materials except as modified by these conditions.
2. The residence may be rented as a single unit on a short term basis for periods less than 30 days. A maximum of three people per bedroom (six guests) shall occupy the residence at any one time.
3. No food service is to be provided. No outdoor advertising signs are allowed. Adequate parking is required.
4. The rentals 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.
5. No use of the property shall be made that produces unreasonable vibration, noise, dust, smoke, odor or electrical interference to the detriment of adjoining properties.
6. A 24-hour non-message, non-recording contact number shall be provided to Department of Community Development and to all neighbors within 300 feet of the property. A log of complaints shall be kept and a copy provided to DCD upon request.
7. Written rules of conduct shall be submitted to DCD prior to the first rental. Those rules of conduct shall be posted in the house and given to all the neighbors within 300 feet of the property boundary.
8. Failure to comply with the conditions of this permit may result in revocation.
9. Upon determination by the Director of DCD that any condition listed above has been violated, following issuance of a Notice of Violation, the Director may, in addition to his other code enforcement remedies, revoke the conditional use permit.

Decided February 4, 2016.

By:



Sharon A. Rice
San Juan County Hearing Examiner

Effective Date, Appeal Right, and Valuation Notices

Hearing examiner decisions become effective when mailed or such later date in accordance with the laws and ordinance requirements governing the matter under consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be subject to review and approval by the Washington Department of Ecology pursuant to RCW 90.58.140, WAC 173-27-130 and SJCC 18.80.110.

This land use decision is final and in accordance with Section 3.70 of the San Juan County Charter. Such decisions are not subject to administrative appeal to the San Juan County Council. See also, SJCC 2.22.100.

Depending on the subject matter, this decision may be appealable to the San Juan County Superior Court or to the Washington State Shorelines Hearings Board. State law provides short deadlines and strict procedures for appeals and failure to timely comply with filing and service requirements may result in dismissal of the appeal. See RCW 36.70C and RCW 90.58. Persons seeking to file an appeal are encouraged to promptly review appeal deadlines and procedural requirements and consult with a private attorney.

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