

**SAN JUAN COUNTY  
HEARING EXAMINER**

**FINDINGS, CONCLUSIONS, AND DECISION**

Applicant(s):	Barry and Jannice Rose 4503 108 <sup>th</sup> Avenue NE Kirkland, WA 98033 and PO Box 1538 Eastsound, WA 98245	S.J.C. DEPARTMENT OF MAR 22 2016 COMMUNITY DEVELOPMENT
File No.:	PCUP00-15-0030	
Request:	Conditional Use Permit (CUP)	
Parcel No:	173152027	
Location:	330 Cascade Way, Orcas Island	
Summary of Proposal:	An application for a conditional use permit to allow vacation rental of an accessory dwelling unit attached to a single-family residence	
Land Use Designation:	Rural Residential	
Public Hearing:	February 18, 2016	
Application Policies and Regulations:	SJCC 18.40.270 Vacation Rentals SJCC 18.80.100(D) CUP Criteria	
Decision:	Approved subject to conditions	

**BEFORE THE HEARING EXAMINER  
FOR SAN JUAN COUNTY**

In the Matter of the Application of

**Barry and Jannice Rose**

for approval of a conditional use permit  
to allow vacation rental at 330 Cascade  
Way, Orcas Island

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S.J.C. DEPARTMENT OF  
MAR 22 2016  
COMMUNITY DEVELOPMENT

**SUMMARY OF DECISION**

The request for conditional use permit to authorize vacation rental of a one bedroom attached accessory dwelling unit in conjunction with a two bedroom residence at 330 Cascade Way, Orcas Island as a vacation rental is **APPROVED** subject to conditions.

**SUMMARY OF RECORD**

**Request:**

Barry and Jannice Rose (Applicants) requested a conditional use permit to authorize vacation rental of a one bedroom accessory dwelling unit attached to their two bedroom residence at 330 Way, Orcas Island.

**Hearing Date:**

The San Juan County Hearing Examiner held an open record public hearing on the request on February 18, 2016. At the conclusion of the proceedings, the record was held open for additional information from neighboring property owners and the Applicant consistent with a schedule memorialized in a February 24, 2016 post-hearing order. Responsive information was timely submitted by the parties and admitted.

**Testimony:**

At the open record public hearing, the following individual presented testimony under oath:

Lee McEnery, Planner, San Juan County Department of Community Development  
Cory Harrington, Applicant Representative

**Exhibits:**

The following exhibits were admitted in the record:

1. Department of Community Development Staff Report, dated January 27, 2016

2. Application cover sheet
3. Application narrative
4. Site plan of proposed development
5. Aerial photo of vacant lot
6. Floor plans, two pages
7. Sewage information
8. January 11, 2016 comment letter from Gardner, with excerpts from recorded easement binding Gardner and Rose properties
9. January 15, 2016 acknowledgement from applicant
10. Notice information (certification of posting/ mailing; mailing list, letter, vicinity map, legal ad)
11. Agent authorization letters, signed by Applicants on December 2 and December 3, 2015
12. Gardner's post-hearing comments in response to the Order, dated February 26, 2016, with attached complete recorded easement (including two graphic figures not included in Exhibit 8)
13. Applicant representative comments in response to Gardner submittal, consistent with post-hearing order, dated March 5, 2016, with the following attachments:
  1. Gardner written comments dated January 26, 2016 (repeat of Exhibit 12)
  2. Email from Lee McEnery
  3. Applicant response to Gardner comments
  4. Re-recorded mutual grants of easement
  5. Letter from Mimi Wagner, i.e., Exhibit A
  6. Photos of improvements located within Rose property and Gardner property
  7. Revised Rose site plan
  8. Proposed Rules of conduct

Also included in the record is the February 24, 2016 post-hearing order.

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 Applicants requested approval of a conditional use permit to authorize vacation rental of a one bedroom accessory dwelling unit (ADU) attached to the two bedroom residence at 330 Cascade Way, Orcas Island located in the Rosario area.<sup>1</sup> The Applicants

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<sup>1</sup> The subject property is known as Assessor Parcel number 173152027. *Exhibit 1.*

- propose to reside in the residence and rent out the ADU as a vacation rental. The site is currently in development. *Exhibits 1, 2, 3, 5, 12, 13, 13.7; Harrington Testimony.*
2. The Staff report, at page 2, states that there is no accessory dwelling unit on-site. *Exhibit 1.* The application narrative states: “Property is currently under construction and intended for primary residence use in March 2016. The owners wish to rent the rooms in the house on a transient basis. There are 3 bedrooms/3 bathrooms in the proposed structure.” *Exhibit 3.*
  3. At hearing, Planning Staff clarified that renting rooms out of a primary dwelling unit could be more consistent with bed and breakfast use than with vacation rental, and that bed and breakfast use is not allowed in the rural residential land use designation. *McEnery Testimony.* The Applicant representative clarified that the proposed residence includes a one bedroom accessory dwelling unit on the ground floor. The Applicants would reside in the residence upstairs and rent the one bedroom ADU on a transient basis. *Harrington Testimony; Exhibit 13.*
  4. Planning Staff confirmed that an attached ADU may be used for vacation rental use. *McEnery Testimony.*
  5. The subject property has a Rural Residential land use designation. The parcel is surrounded by small residential lots predating regulations, and the neighborhood is rural residential in character. The subject property is not located near an airfield or airport. *Exhibits 1, 5.*
  6. The subject property has access from Cascade Way. *Exhibits 4, 5.*
  7. The residence is served by community water and on-site septic. *Exhibits 1, 7.*
  8. Planning Staff submitted that when a property is developed with an approved residence, proposed vacation rental use would be consistent with San Juan County Code (SJCC) Chapter 18.60. *McEnery Testimony; Exhibit 1.*
  9. The parcel has off-street parking for at least four vehicles on the site. No outdoor advertising signs or food service are proposed. *Exhibits 1, 3; Harrington Testimony.*
  10. Planning Staff noted that noise and trespassing impacts from vocational rental use 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 the contact to keep a written log of complaints. Staff recommended conditions implementing the above measures. *Exhibit 1; McEnery Testimony.*

11. The Applicant would be required to obtain a business license or work through a property management company. *Exhibit 1.*
12. The application was submitted December 7, 2015 and determined to be complete on the same date. Notice of the application was posted on-site and mailed to surrounding property owners on December 21, 2015. Notice of application and hearing was published on December 23, 2015. *Exhibits 1, 2, 3 and 10; McEnergy Testimony.*
13. Neighbors adjacent to the east (Gardner, Parcel No. 173152028) submitted comments on the proposal, dated January 11, 2016, expressing concern regarding vacation rental use of an existing, recorded easement between the two properties. The comment letter states:

Please see enclosed copy of a Mutual Grants of Easements, developed and agreed upon by the Rose and Gardner property owners. We took great care to protect both property owners from liability issues, going forward, with the use of a set of landscape steps, available to both properties.

If the Roses choose to use a portion of their home as vacation rental, our only concern is that the steps and driveway as described are located conveniently close to where renters will access the rental unit. It may become attractive for renters who see our driveway and the landscape steps as available to them.

Our easement document was expressly created to prevent such use by others. The liability issue was our chief concern then and with a rental unit next door to us, this issue becomes more troubling.

Please see especially the last highlighted area in our easement document when you consider this permit.

*Exhibit 8.*

14. The last highlighted portion of the attached easement states:
  - (f) Neither the easements granted hereby to the Gardners, nor the easements granted hereby to the Roses, convey any rights of use of easement over the burdened parcel [Gardner] (i) for commercial uses involving more than five round trips per day of traffic generated by customers and deliveries, or (ii) be transient renters of the benefitted parcel (defined as a person renting the benefitted parcel for less than 30 consecutive days). Long term renters may use the easements to the same extent as the owners.

*Exhibit 8.*

15. The Applicants' representative acknowledged the neighbors' concern by letter dated January 15, 2016, stating the Applicants' intention to comply with the easement and prevent use of the easement area by transient renters. *Exhibit 9.* However, at hearing, the

Applicant representative testified that anyone renting the unit would be required to traverse the easement by foot to enter the rental unit, indicating by hand drawn figures on the site plan at Exhibit 4 the area he understood the easement to occupy on-site, which included the location of the rental unit entry on the rear of the structure. In his testimony, Mr. Harrington testified that he understood that vacation rental guests would travel on foot across easement area to access the unit and that the Gardeners had authorized such foot traffic use of the easement despite the language of the easement, stating that the Gardeners' intent was to prohibit vehicular access by the easement. *Harrington Testimony.*

16. The Gardeners did not appear at hearing and thus could not then clarify their position; nor were the Roses present to clarify their proposal. Although easements are private legal agreements between landowners over which the County has no jurisdiction, the February 24<sup>th</sup> post-hearing order held the record open to clarify the Gardeners' position regarding foot traffic use of the easement by vacation rental guests for the record given the disharmony between testimony at hearing and their earlier written comment. *Post-Hearing Order, February 24, 2016.* Consistent with the order, the Gardeners submitted comments clarifying that at no time did the Applicants request to allow transient renters to access the vacation rental unit via the easement. They reiterated that short term renters are not allowed to use the easement by foot or by vehicle to access the unit, noting that there is adequate room on the north side of the structure for parking and room east of the structure on-site for foot access to the rental unit entry without need to resort to use of the easement area. They submitted for the record two maps that were part of the easement as agreed to that were apparently not submitted to the County when the easement was recorded in 2015. In conclusion, they stated: "Please know that we all [Gardners and Roses] expect this permit process to go forward with no further complications."<sup>2</sup> *Exhibit 12.*
17. The easement was subsequently re-recorded with the County with the two maps attached; it is not known why the maps were not included in the initial recording. *Exhibits 13.4 and 13.5.*
18. The Applicants personally submitted post-hearing comments. Among other information, they provided a revised site plan depicting both the easement described in the re-recorded document and a developed gravel footpath from the carport/parking area north of the now-built residence along the east side of the structure to the south side where the vacation rental entry would be. All of the gravel footpath and parking area are located wholly on the subject property and unencumbered by the recorded mutual grants of easement. *Exhibits 13.3 and 13.7.*
19. The Applicant representative submitted comments correcting his hearing testimony and apologizing for the confusion. He stated he meant to convey that the Gardeners did not

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<sup>2</sup> The Gardeners' comments indicated that they understood the permit had been denied as a result of the misunderstanding during testimony. *Exhibit 12.* No decision on the conditional use permit had yet been issued.

oppose use of the easement area by the Roses or by long term renters. He requested to retract from the record his handdrawn figure inaccurately depicting the easement and access to the rental unit, noting that had the record contained the two figures originally attached to the recorded easement (and now included in the re-recorded easement), the confusion would likely not have occurred. The Applicant representative respectfully requested corrections to the staff report. *Exhibit 13*. These requested corrections to the Staff report, detailed on the second and third pages of Exhibit 13, are adopted into these findings by this reference.

20. Upon review of the complete application materials at the conclusion of testimony, Planning Staff submitted that the proposal can comply with all applicable criteria and recommended approval with conditions. *McEnergy Testimony; Exhibit 1*. The Applicant waived objection to the recommended conditions. *Harrington 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 a one bedroom attached accessory dwelling unit. Conditions would ensure that even when rented, the structure would continue 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, 2, 3, 4, 5, 6, 10, 13, 14, 15, 16, 17, 18, 19, and 20.*
2. Regarding the use-specific requirements of SJCC 18.40.270, conditions of approval would limit rental occupancy to three people. The site is served by community water 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 provides four off-street parking spaces. No outdoor advertising or food service are proposed. Conditions would ensure that the Applicant obtains a business license or works through a property management company. *Findings 1, 3, 4, 6, 10, 13, 14, 15, 16, 17, 18, 19, and 20.*

### **DECISION**

Based on the preceding findings and conclusions, the request for conditional use permit to authorize vacation rental of a one bedroom attached accessory dwelling unit at 330 Cascade Way, Orcas Island as a vacation rental is **APPROVED** subject to the following conditions:

1. The one bedroom vacation rental shall be operated as described in the application materials except as modified by these conditions.
2. The accessory dwelling unit may be rented as a single unit on a short term basis for periods less than 30 days. A maximum of three guests total shall occupy the one bedroom accessory dwelling unit at any one time.
3. No food service is to be provided. No outdoor advertising signs are allowed. Adequate parking is required.

4. The rental 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 the 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 the Department of Community Development upon request.
7. Written rules of conduct shall be posted in the house and given to all the neighbors within 300 feet of the property boundary upon approval.
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 March 21, 2016.**

By: 

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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.