

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS, AND DECISION

Applicant(s): Shauna Riely
PO Box 1755
Issaquah, WA 98027

File No.: PCUP00-15-0015

Request: Conditional Use Permit (CUP)

Parcel No: 362023003

Location: 178 San Juan Drive, San Juan Island

Summary of Proposal: An application for a conditional use permit to allow vacation rental of a single-family residence or an accessory dwelling unit

Land Use Designation: Rural Residential

Public Hearing: July 16, 2015

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
JUL 31 2015
COMMUNITY DEVELOPMENT**

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

In the Matter of the Application of)
Shauna Riely)
)
)
)
for approval of a conditional use permit)
to allow vacation rental of either the)
two bedroom residence or the one bedroom)
accessory dwelling unit at 178 San Juan Dr.,)
San Juan Island)

NO. PCUP-15-0015

S.J.C. DEPARTMENT OF
JUL 31 2015
COMMUNITY DEVELOPMENT

SUMMARY OF DECISION

The request for conditional use permit to authorize the use of either the two bedroom residence or the one bedroom accessory dwelling unit at 178 San Juan Drive, San Juan Island as a vacation rental is APPROVED subject to conditions.

SUMMARY OF RECORD

Request:
Shauna Riely (Applicant) requested a conditional use permit to authorize vacation rental use of either the two bedroom residence or the one bedroom accessory dwelling unit at 178 San Juan Drive, San Juan Island.

Hearing Date:
The San Juan County Hearing Examiner held an open record public hearing on the request on July 16, 2015.

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

- Julie Thompson, Planner, San Juan County Department of Community Development
- Shauna Riely, Applicant

Exhibits:
The following exhibits were admitted in the record:

1. Department of Community Development Staff Report to the Examiner, dated June 29, 2015, with the following attachments:
 - a. Application form
 - b. Emailed narrative information from the Applicant
 - c. Site Plan
 - d. San Juan County septic permitting information

2. Public comments received prior to hearing, including:
 - a. Dave Hylton, July 7, 2015
 - b. Patrick & Blue Middleton, July 2, 2015
 - c. Rebecca Johnston & William Lemon, June 30, 2015
 - d. Eric Schuler, July 6, 2015
3. Comments from James Truman and Lynn Riddiford, received July 9, 2015
4. Applicant responses to public comments, Cover letter and four attachments, including:
 - a. Response to Hylton comments
 - b. Response to Middleton comments
 - c. Response to Johnston and Lemon comments
 - d. Response to Schuler comments
 - e. Response to Truman/Riddiford comments

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 either the two bedroom residence or the one bedroom accessory dwelling unit, but not both, at 178 San Juan Drive as a vacation rental.¹ The shoreline parcel, situated on San Juan Channel, is developed with a two bedroom main residence, a one bedroom accessory dwelling unit, a two car garage, a boat house, and a barn. The site is accessed by San Juan Drive, a public County road. *Exhibits 1 and 2; Thompson Testimony.*
2. The subject property has a Rural Residential land use designation. It is surrounded to the north, south, and west by rural residential development. San Juan Channel is to the east. The site is heavily vegetated. It is not located near an airfield or airport. *Exhibit 1.*
3. The existing residence and accessory dwelling unit are served by two independent on-site septic systems. Both receive domestic water service from the Limestone Point community water system. *Exhibits 1 and 1.d; Thompson Testimony.*
4. 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. *Thompson Testimony; Exhibits 1 and 1.d.*
5. The proposal would allow up to six persons at a time to rent the two bedroom residence, or up to three persons at a time to rent the accessory dwelling unit. The Applicant or a long term tenant would be allowed to rent the other dwelling unit while vacation rentals occur. The parcel has off-street parking for approximately ten vehicles, two of which would be inside the garage. No outdoor advertising signs or food service are proposed. *Exhibits 1, 1.b, and 1.c; Riely Testimony; Thompson Testimony.* Planning Staff submitted the position that the either/or proposal allowing both the residence and

¹ The subject property is known as Assessor Parcel number 362023003. *Exhibit 1.*

accessory dwelling unit to be rented as vacation rental, but not at the same time, is consistent with SJCC 18.40.270.F. *Thompson Testimony*.

6. Planning Staff submitted that noise and trespassing impacts could be expected to mimic those associated with traditional residential use of the site. Staff noted that potential disturbance to surrounding properties that could result from temporary occupants could be mitigated by the following measures: restricting the number of vacation rental occupants to six for the residence and three for the accessory dwelling unit; 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 that would require the above measures. *Exhibit 1; Thompson Testimony*.
7. If approved, the Applicant would be required to obtain a business license or work through a property management company. *Exhibit 1*.
8. The application was submitted May 27, 2015 and determined to be complete on June 11, 2015. Notice of the application and hearing was mailed to surrounding property owners and published on June 17, 2015. Notice of hearing was posted on-site on June 19, 2015. *Exhibits 1 and 2; Thompson Testimony*.
9. Written public comments were submitted on the application expressing the following (paraphrased) concerns: that vacation rental is a commercial use and approval would effectuate a rezone; approval would increase traffic to the site; that renters would engage in trespassing, litter, vandalism, and waterfront activities harmful to wildlife and habitat; new renters would mean more speeding traffic, more potential crime, and more noise; renters' pets would do damage to the environment and frighten wildlife; and all of these would constitute adverse impacts to quality of life for residents. *Exhibits 2a, 2b, 2c, 2d, and 3*.
10. In response to the public comments, the Applicant offered the following information. There is an existing approved vacation rental three houses down at 27 San Juan Drive. Based on information obtained from property rental professionals, the vacation rental can expect to be rented out (if approved) up to 12 weeks per year; a permanent tenant would result in more traffic than vacation rental tenancy. The Applicant intends to screen all rentals carefully to protect her own residence. Regarding concerns about increase in crime, the Applicant stated that the vacation rental at 27 San Juan Drive has been approved for more than five years. The Applicant has met several of their tenants, who were professionals. The Applicant notes that in order to afford a vacation rental on the San Juan Islands, a prospective renter would generally need to be employed, and disputes that a vacation renter is any more likely to engage in criminal activity than a longer term renter. Regarding litter, the owners would provide adequate garbage facilities and information for renters about where refuse should be disposed. The subject property does not have a dock or mooring buoy, so the only boating from vacation rentals on-site would be kayaking, which is not noisy or harmful to wildlife. There is a high bank that prevents

people on the subject property from walking onto the beach on the adjacent property at 282 San Juan Drive. Regarding noise impacts, the Applicant noted that the adjoining parcels on either side are 27 and three acres respectively and with dense vegetation and that much space, it is unlikely for noise to be a significant impact. When the Applicant recently spent Fourth of July on-site, the only noise her family experienced in the neighborhood was from an owner-resident. The Applicant intends to use a rental contract that clearly prohibits outdoor noise or music between 10:00 pm and 8:00 am. There will be no pets allowed for renters, with no exceptions. *Exhibits 4, 4a, 4b, 4c, 4d, and 4e; Riely Testimony.*

11. In response to the public comment about vacation rentals constituting a “rezone”, Planning Staff noted that Comprehensive Plan Section B.2.2(A)(12) states that short term rental (i.e., of less than thirty days) of a principal, single-family residential unit or an accessory dwelling unit should be subject to standards similar to those for hospitality commercial establishments but should be classified as a residential use for purposes of land use regulation. Staff testified that vacation rentals have consistently been considered and treated as residential uses by the County, in accordance with this provision. *Exhibit 1; Thompson Testimony.*
12. Upon review of the complete application materials and all submitted comments, Planning Staff determined that the proposal can comply with all applicable criteria and recommended approval with conditions. *Thompson Testimony; Exhibit 1.* In her testimony, the Applicant waived objection to the recommended conditions. *Riely 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 single-family residence or its existing accessory dwelling unit without altering the appearance of the structures. Conditions would ensure that even when rented, the property would continue to function like a residence, resulting in little if any impact to the residential character of the neighborhood. No adverse cumulative environmental impacts are suggested by the record in the event of additional vacation rental request approvals. 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. The proposal meets or can be conditioned to meet the applicable standards of sections 18.60 of the SJCC, ensuring the use would not generate unmet demand for public services and facilities. There is no airfield adjacent to this property. *Findings 1, 2, 3, 4, 5, 6, and 8.*
2. Regarding the use-specific requirements of SJCC 18.40.270, conditions of approval would limit rental occupancy to three persons per bedroom regardless of which structure is rented. Each structure is served by an approved septic system and by connection to a public water system. 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 prohibit trespass. The site provides approximately ten off-street parking spaces more than adequately addressing vacation rental use in addition to owner- or long term tenant-occupancy. 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, 5, 6, 7, and 10.*

3. The Comprehensive Plan specifically identifies short term vacation rentals as residential land uses for the purposes of land use regulations, and vacation rentals are allowed in the Rural Residential land use designation upon conditional use permit approval. Approval does not constitute a rezone. Neighboring property owners are understandably concerned about changes to their pleasant, quiet area. However, aside from their statements of concern, there is no evidence in the record to support a conclusion that temporary vacation renters would engage in more trespass, speeding, vandalism, or other criminal activities, or interference with the shoreline ecosystem, than would owner-occupants or long term tenants. Conditions of approval require the Applicant to provide a 24 hour contact number with a live person answering in order to receive neighbor complaints, to track such complaints, and to provide a log of complaints to the County on request. The County code's vacation rental provisions specifically reserve the right to the Director of Community Development to revoke a vacation rental permit if circumstances merit such action. While the opposition of the community may be given substantial weight, Washington courts have repeatedly held that it cannot alone justify a local land use decision.² The application materials demonstrate compliance with the criteria for conditional use permit approval as well as with the use-specific criteria for vacation rentals. The application must be approved. *Findings 6, 9, 10, 11, and 12.*

DECISION

Based on the preceding findings and conclusions, the request for conditional use permit to authorize the use of either the two bedroom residence or the one bedroom accessory dwelling units at 178 San Juan Drive, San Juan Island as a vacation rental is **APPROVED** subject to the following conditions:

1. The two bedroom main residence or the one bedroom accessory dwelling unit may be used as vacation rentals so long as the use is operated as described in the application materials as modified by these conditions.
2. The main residence may be rented as a single unit on a short term basis for periods less than 30 days. A maximum of six guests shall occupy the residence at any one time.
3. The accessory dwelling unit may be rented as a single unit on a short term basis for periods less than 30 days, but not at the same time the main residence is rented as a short term rental. A maximum of three guests shall occupy the accessory dwelling unit at any one time.
4. Prior to operation, evidence shall be presented to the Department of Community Development that the driveway has been approved for emergency vehicle access.

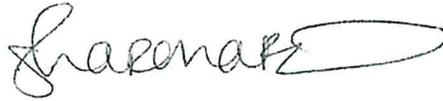
² *Sunderland Servs. v. Pasco*, 127 Wn.2d 782, 797 (1995); *Maranatha Mining, Inc. v. Pierce County*, 59 Wn. App. 795, 805 (1990); *Kenart & Assocs. v. Skagit County*, 37 Wn. App. 295, 303, review denied, 101 Wn.2d 1021 (1984).

5. The vacation rental shall be operated in a way that prevents unreasonable disturbances to area residents. To this end, the Applicant shall:
 - A. Provide copies of this decision to property owners within 300 feet of the subject property, along with a 24 hour local contact phone number, so that complaints can be dealt with in a timely manner. A log of complaints shall be kept by the contact.
 - B. Prominently mark the boundaries of the subject property so that it is clearly evident to guests where those boundaries are.
 - C. Provide notice to the tenants regarding rules of conduct and their responsibility not to trespass on private property or 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 the warning not to trespass.
 - D. Provide copies to the Department of Community Development of the rules of conduct and the 24 hour local contact phone number.
6. No food service is to be provided. No outdoor advertising signs are allowed. At the time of hearing, ten off-street parking spaces were available on-site. Adequate off-street parking must be maintained on-site for the life of the vacation rental use.
7. The rental must meet all local and state regulations, including those pertaining to business licenses and taxes.
8. 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.
9. Written rules of conduct, to be distributed to all renters, shall be submitted to Department of Community Development before rentals commence. These rules shall also be sent to all property owners within 300 feet of the property boundaries.
10. Since the County is not a party to private covenants, it is not in a position to enforce private covenants between property owners that may prohibit use of a residence as a vacation rental. However, issuance of a permit for a vacation rental does not license the owner to violate private restrictions.
11. If the conditions of approval are not complied with, the resulting impacts may change a typical residential area to one with frequent incidents of trespass, noise, and traffic from strangers who have no investment in maintaining civil relations with neighbors. For this reason, it is emphasized that failure to comply with conditions of approval is grounds for revocation of this permit.
12. Upon determination by the Director of the Department of Community Development 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 July 30, 2015.

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.