

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS, AND DECISION

Applicant(s): Marilyn Rabura, Charles Rabura, John Rabura
PO Box 182
Port Gamble, WA 98364

File No.: PCUP00-15-0014

Request: Conditional Use Permit (CUP)

Parcel No: 250150004

Location: 401 Port Stanley Road, Lopez 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: 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
AUG 06 2015
COMMUNITY DEVELOPMENT

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

In the Matter of the Application of

Marilyn Rabura

for approval of a conditional use permit
to allow vacation rental of the residence at
401 Port Stanley Road, Lopez Island

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NO. PCUP-15-0014

S.J.C. DEPARTMENT OF
AUG 06 2015
COMMUNITY DEVELOPMENT

SUMMARY OF DECISION

The request for conditional use permit to authorize the use of the residence at 401 Port Stanley Road, Lopez Island as a vacation rental is APPROVED subject to conditions.

SUMMARY OF RECORD

Request:

Marilyn Rabura (Applicant) and her brothers Charles and John Rabura (agents) requested a conditional use permit to authorize vacation rental use of the residence located at 401 Port Stanley Road, Lopez Island.

Hearing Date:

The San Juan County Hearing Examiner held an open record public hearing on the request on July 16, 2015. At the conclusion of the hearing, the record was held open until July 23, 2015 to provide the full public comment period for members of the public. On the record, arrangements were made to allow the Applicant Agent John Rabura through close of business on July 24, 2015 to respond to public comment submitted at and after the public hearing. The record closed on July 24, 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
- John Rabura, Applicant's Agent
- Paul Berg
- Barbara Gonce
- Kay Berg
- Norda Brimley

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Exhibits:

The following exhibits were admitted in the record:

1. Department of Community Development Staff Report to the Examiner, dated July 2, 2015
2. Application, received May 26, 2015, with attached site plan (showing adjacent residences on both sides), property profile, floor plan (all three hand drawn), and Applicant narrative
3. San Juan County On-site Sewage System Inspection Form, dated received April 25, 2014
4. Public Comment received prior to hearing, including:
 - a. Stanley Piha comments, July 9, 2015
 - b. Stanley Piha comments, July 8, 2015
 - c. Paul Berg comments, July 8, 2015
 - d. Pete and Elizabeth Potter comments, July 8, 2015
 - e. Bruce and Shiela Simpson-Creps comments, July 8, 2015
 - f. Steven and Annie Chock comments, July 9, 2015
5. Public Comment received after the close of the record consistent with process established on the record at hearing:
 - a. Norda Brimley comments, July 21, 2015
 - b. Paul and Key Berg comments, July 20, 2015
 - c. Steven and Annie Chock comments, July 22, 2015
 - d. Jerrold Gonce, July 23, 2015
6. Applicant Responses to public comments, as follows:
 - a. Response by John Rabura, July 24, 2015, 11:20 am
 - b. Response to Brimley comments, John Rabura, July 24, 2015 3:50 pm, text and photo
 - c. Response to Brimley comments, John Rabura, July 24, 2015 3:54 pm, text and photo

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 bedroom residence located at 401 Port Stanley Road, Lopez Island as a vacation rental.¹ The parcel is developed with the single-family residence and a detached garage. The parcel has shoreline access to Shoal Bay. *Exhibits 1 and 2.*

¹ The subject property is known as Assessor Parcel number 250150004; it is Lot 4, Shoal and Swifts Bay Tracts. *Exhibit 1.*

2. The subject property has a Rural Residential land use designation.² It is surrounded to the south, east, and west by rural residential development. The parcel is landscaped with trees, shrubs, and grass. The property is not located near an airfield or airport. There is no accessory dwelling unit on-site. *Exhibit 1.*
3. The subject property abuts Shoal Bay to the north and Port Stanley Road to the south, taking access from an existing driveway off of Port Stanley Road. No changes to the existing site access are proposed or required. *Exhibit 1.*
4. The residence is served by an on-site septic system, apparently inspected in April 2014; however, there is no approved septic permit in the County files. *Exhibit 3.* It receives domestic water service from a community water system. *Exhibit 1; Thompson Testimony.*
5. Planning Staff submitted that the proposed use would occur within the existing dwelling unit without changing the appearance of the structure and could be conditioned to ensure that it would continue to function in a manner similar to the existing residential use of the building. As an approved residence, the proposal meets or with conditions would meet the applicable standards of San Juan County Code (SJCC) Chapters 18.40 and 18.60. *Thompson Testimony; Exhibits 1 and 3.*
6. The submitted floor plan shows four bedrooms; however, in testimony, there was some discussion of the residence only having, or the Applicant only intending to use, three rooms for vacation rental purposes. The Applicant Agent stated that the maximum number of guests allowed in the rental agreement would be eight or nine. *John Rabura Testimony; Exhibit 5b.*
7. The Planning Staff indicated that the parcel has off-street parking for at least four vehicles. No outdoor advertising signs or food service are proposed. *Exhibit 1.* The Applicant indicated that there are two parking spaces in the garage and room in the driveway for an additional five or six cars. *John Rabura Testimony.*
8. 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 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 that would require the above measures. *Exhibit 1; Thompson Testimony.*

² The reference to Rural Farm Forest land use designation on the first page of Exhibit 1 appears to be in error, as the remainder of the Staff Report and much public comment discusses a Rural Residential land use designation.

9. If approved, the Applicant would be required to obtain a business license or work through a property management company. *Exhibit 1.*
10. The application was submitted May 26, 2015 and determined to be complete on June 8, 2015. Notice of the application and hearing date was published on June 17th and posted on-site June 20, 2015. The Applicant informed County Staff that notice was mailed to surrounding property owners on June 20, 2015, which information was reflected in the Staff report. However, several owners of surrounding parcels subsequently contacted the County with concerns about the application and the short comment period resulting from having received notices post-marked July 2, 2015. Members of the public who appeared at hearing testified that they did not receive notice until July 6th. Pursuant to San Juan County Code (SJCC) 18.80.030(A)(2), notice of the application must be mailed at least 15 days prior to the public hearing on the application. In addition, SJCC 18.80.030(B)(1) requires a 21-day comment period following the date of notice of application. Therefore, the record was held open through July 23, 2015 for public comment on the application. *SJCC 18.80.030; Berg Testimony.* The Applicant apologized on the record for the errors in mailing of notice of application, stating they were inadvertent, and agreed to the full public comment period. *John Rabura Testimony.*
11. The County received several public comments opposing the proposal. The following summarizes the concerns expressed therein.

Disputing that the use is allowed in the Rural Residential land use designation: Neighbors noted that the area was designated Rural Residential by a comprehensive plan amendment instigated in 1998 by petition of area property owners including Marilyn Rabura. They asserted that vacation rentals are commercial uses because they generate revenues and sales taxes, require a business license, and do not comprise long term residency, and that like hotels and cottage industries, they should not be allowed in the Rural Residential designation. One neighbor noted that they were surprised to discover that the current Comprehensive Plan allows vacation rentals in the Rural Residential designation, and asked why that change was made and why they were not given notice.

Impacts to neighborhood character: Neighbors noted that the lots are only 100 feet wide, and that even if limited to six to eight renters, festive vacationing activities would significantly impede the quiet enjoyment of surrounding parcel owners. During the summers, neighbors spend a lot of time outdoors (on decks and in yards) where they can hear conversations and telephones from adjacent parcels; they are concerned about privacy impacts. They are an engaged, cohesive community, looking out for each other and cherishing the neighborhood's residential character; they fear rentals would adversely impact this character. They express dissatisfaction with having to call the sheriff for enforcement of noise nuisance ordinances and fear the lack of responsiveness that would be afforded if the applicants were local resident owners.

Impacts to the shoreline area: Neighbors noted that the beaches are privately owned and that local property owners are extremely concerned with preservation of the shoreline ecosystem. They asserted that vacation rental guests would comb the beaches free of shells, disturb wildlife, trespass onto adjacent beaches, and generally not be conducive to preservation of the pristine shoreline environment.

Adequacy of on-site amenities: Neighbors contended that the fourth bedroom in the basement is small and possibly not to code, that the garage is full and unavailable for parking, and that the boat stored in the driveway permanently occupies a parking place. They stated that the well is within 200 feet of the shoreline and is only 35 feet deep. One neighbor commented that the stairs are small and dark and may not be to code. Another questioned whether the septic system is adequately sized to serve eight persons.

Testimony of Paul Berg, Barbara Gonce, Kay Berg, and Norda Brimley; Exhibits 4a, 4b, 4c, 4d, 4e, 4f, 5a, 5b, 5c, and 5d.

12. In response to the public comment about vacation rentals constituting a commercial use, 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.*
13. In response to public comment, the Applicant offered the following. The intent is to restrict the number of guests to eight and to rent the residence for weekly and monthly rentals in the months of May through September. A property manager has been hired to manage the rental. Submitting photographs of the stairway, an upstairs room, and a basement bedroom, the Applicant Agent stated that the stairs are to code and are lighted. He submitted a photo of the downstairs bedroom which has two full size beds, a bureau, and lamp in it. He stated that the Applicant would be willing to put in a fence, to require a curfew of 9:00 pm for outdoor activities, and to prohibit parties and excessive outdoor noise. No pets would be allowed. He stated that that rental guests would be charged a high price and they anticipate most clientele would be repeat guests. *John Rabura Testimony; Exhibits 6a, 6b, and 6c.*
14. Upon review of the complete application materials and all comments submitted up to adjournment of the hearing, Planning Staff determined that the proposal can comply with all applicable CUP and vacation rental criteria and recommended approval with conditions. *Thompson Testimony; Exhibit 1.* In his testimony, the Applicant Agent waived objection to the recommended conditions. *John Rabura 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. Vacation rentals are allowed in the Rural Residential designation subject to conditional use approval. The proposed use would occupy an existing, functioning residence without altering the structure. Because there is no septic permit on file with the County, a condition is required to ensure the septic system is adequate to serve three persons per bedroom. Based on uncertainty in the record regarding whether there are three or four bedrooms, a condition would limit vacation rental occupancy to a maximum of nine persons unless the Applicant demonstrates to appropriate County staff by a site visit that a fourth bedroom satisfying building code requirements exists in the house. With these conditions, the vacation rental use of the existing residence meets the applicable standards of SJCC 18.40 and 18.60. 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). No evidence in the record suggests that the use would result in pedestrian and vehicular traffic inconsistent with that expected of a typical residence. No adverse cumulative environmental impacts are suggested by the record in the event of additional vacation rental request approvals. There is no airfield adjacent to this property. As conditioned, the property would continue to function like a residence would even when rented. *Findings 1, 2, 3, 4, 5, 6, 8, 12, 13, and 14.*

2. Regarding the use-specific requirements of SJCC 18.40.270, conditions of approval would limit rental occupancy to three people per bedroom. 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 has adequate off-street parking. 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 2, 4, 5, 7, 8, 9, 12, 13, and 14.*

3. The Comprehensive Plan specifically identifies short term vacation rentals as residential land uses for the purposes of land use regulations. Vacation rentals are allowed in the Rural Residential land use designation upon conditional use permit approval. Approval does not constitute the permitting of an unpermitted commercial activity in a residential zone. Neighboring property owners are understandably concerned about changes to the neighborhood. However, aside from their statements of concern, there is no evidence in the record to support a conclusion that temporary vacation renters would create more interference with the shoreline ecosystem and the quiet neighborhood character than would owner-occupants or long term tenants. Conditions of approval would require the Applicant to provide a 24 hour contact number 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.³ 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 5, 8, 11, 12, 13, and 14.*

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³ *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).

DECISION

Based on the preceding findings and conclusions, the request for conditional use permit to authorize the use of the residence at 401 Port Stanley Road, Lopez Island as a vacation rental is **APPROVED** subject to the following conditions:

1. The residence may be rented as vacation rental on a short term basis for periods of less than 30 days.
2. A maximum of three guests per bedroom is allowed. The total maximum vacation rental occupancy is limited to nine persons unless the Applicant demonstrates to appropriate County personnel that a fourth bedroom meeting building code requirements exists.
3. Prior to commencement of vacation rentals, evidence satisfactory to the appropriate County personnel shall be presented to the Department of Community Development showing: that the driveway has been approved for emergency vehicle access and that the existing septic system is adequate to serve full occupancy of the existing bedrooms.
4. The vacation residence shall be operated in a way that will prevent 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 to tenants the rules of conduct and notice of 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.
5. No food service is to be provided. No outdoor advertising signs are allowed. Adequate off-street parking is required, which is at least one space per bedroom, for the life of the vacation rental.
6. The rental must meet all local and state regulations, including those pertaining to business licenses and taxes.

7. 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.
8. Written rules of conduct shall be submitted to Department of Community Development before rentals commence. Said rules shall also be sent to all property owners within 300 feet of the property boundaries and provided to all vacation rental guests.
9. 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.
10. 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.
11. 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 August 5, 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.