

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant(s): Merrill and Brian Leonard
6403 Norma Beach Rd.
Edmonds, WA 98026

File No.: PCUP00-11-0006

Request: Conditional Use Permit (CUP)

Parcel No: 173152023

Location: 171 Ocean Mist Way
Orcas Island

Summary of Proposal: An application for a conditional use permit to allow
vacation rental of a residential dwelling unit

Land Use Designation: Rosario Activity Center (Rural Residential)

Public Hearing: Held May 11, 2011

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

Decision: The application is approved subject to conditions.

S.J.C. COMMUNITY

JUN - 1 2011

DEVELOPMENT & PLANNING

1 **BEFORE THE HEARING EXAMINER FOR THE COUNTY**
2 **OF SAN JUAN**

3 Phil Olbrechts, Hearing Examiner

4 RE: Merrill and Brian Leonard 5 6 Conditional Use Permit (PCUP00-11-0006)	7 FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION
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8 **INTRODUCTION**

9 The Applicants have applied for approval of a conditional use permit for the vacation
10 rental of a two bedroom residential dwelling. The application is approved with
11 conditions.

12 **TESTIMONY**

13 No comments were provided beyond staff's recommendation for approval.

14 **EXHIBITS**

15 The 3/26/11 staff report and attached "application materials" are admitted as Exhibit
16 1.

17 **FINDINGS OF FACT**

18 **Procedural:**

- 19 1. Applicant. The Applicants are Merrill and Brian Leonard.
20
21 2. Hearing. The Hearing Examiner conducted a hearing on the subject
22 application on May 11, 2011 at 10:15 am in the San Juan County Council meeting
23 chambers.

24 **Substantive:**

- 25 3. Site and Proposal Description. The Applicant proposes the vacation rental
of a two bedroom single family residence located at 171 Ocean Mist Way on Orcas
Island. There is no accessory dwelling unit on the property.

1 4. Characteristics of the Area. As suggested in the first site plan in the
2 application materials, the home is located in a developed single-family neighborhood.
The property is not adjacent to an airport.

3 5. Adverse Impacts of Proposed Use. The Examiner concludes that there are
4 no adverse impacts caused as a result of the proposed use. As conditioned, the
5 proposed use should not interfere with the residential use of neighboring properties.
6 Noise must be kept to a minimum and a 24-hour phone number must be provided in
7 case there are problems that arise. Because the surrounding area is characterized by
8 single family development, proposed use for a vacation rental should be in character
9 with the surrounding area.

10 **CONCLUSIONS OF LAW**

11 **Procedural:**

12 1. Authority of Hearing Examiner. The hearing examiner is authorized to
13 conduct hearings and issue final decisions on conditional use permit applications.
14 San Juan County Code (“SJCC”) 18.80.020 Table 8.1; 18.80.100(C).

15 **Substantive:**

16 2. Zoning Designations. Rosario Activity Center.

17 3. Permit Review Criteria. SJCC 18.30.220©(2) provides that the rural
18 residential land use district in Table 3.2 of SJCC 18.30.040 governs allowed and
19 prohibited uses in all activity centers. Vacation rentals are allowed as a conditional
20 use in Table 2 for rural residential districts. SJCC 18.80.100(D) governs conditional
21 use criteria. SJCC 18.80.100(D)(8) requires compliance with the performance
22 standards of Chapter 18.40 SJCC. SJCC 18.40.270 contains detailed standards for
23 vacation rentals. The criteria for conditional use permits (SJCC 18.80.100(D)) and
24 vacation rentals (SJCC 18.40.270) are quoted below and applied through
25 corresponding conclusions of law.

26 **Vacation Rentals of Residences Criteria**

27 **SJCC 18.40.270(A):** *No more than three guests per bedroom shall be accommodated
28 at any one time.*

29 4. The project is conditioned as limited to a total of six guests for its two
30 bedrooms.

31 **SJCC 18.40.270(B):** *The vacation rental of a principal residence or accessory
32 dwelling unit shall be operated in a way that will prevent unreasonable disturbances
33 to area residents.*

34 5. Conditions of approval of the permit have been imposed to prevent any

1 unreasonable disturbance. These conditions include limitation of occupants to six
2 guests, required posting of rules of conduct which specifically mention prohibition of
3 trespassing and identify property lines, provision of a 24-hour contact phone number
to neighbors in case problems may arise, and required maintenance of a written log of
complaints.

4 **SJCC 18.40.270(C):** *At least one additional off-street parking space shall be*
5 *provided for the vacation rental use in addition to the parking required for the*
residence or accessory dwelling unit.

6 6. San Juan County requires two parking spaces for single family residences.
7 The staff report provides that there are at least three parking spaces at the site.

8 **SJCC 18.40.270(D):** *If any food service is to be provided the requirements for a bed*
9 *and breakfast residence must be met.*

10 7. No food service is proposed in the application.

11 **SJCC 18.40.270(E):** *No outdoor advertising signs are allowed.*

12 8. No outdoor advertising signs are proposed in the application.

13 **SJCC 18.40.270(F):** *The owner or a long-term lessee may rent either the principal*
14 *residence or the accessory dwelling unit on a short-term basis (vacation rental), but*
15 *not both.*

16 9. There is no accessory dwelling unit.

17 **SJCC 18.40.270(G):** *Where there are both a principal residence and an accessory*
18 *dwelling unit, the owner or long-term lessee must reside on the premises, or one of the*
living units must remain unrented.

19 10. There is no accessory dwelling unit.

20 **SJCC 18.40.270(H):** *In all activity center land use districts, rural residential, and*
21 *conservancy land use districts, the vacation rental of a residence or accessory*
22 *dwelling unit may be allowed by provisional ("Prov") permit only if the owner or*
23 *lessee demonstrates that the residence or accessory dwelling unit in question was*
24 *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.

25 11. The Applicant is applying for a conditional use permit as authorized by
Table 3.2 of SJCC 18.30.040 instead of a provisional use permit because the proposal
is the first vacation rental of the property.

1 **SJCC 18.40.270(I):** *Vacation rental accommodations must meet all local and state*
2 *regulations, including those pertaining to business licenses and taxes.*

3 12. This will be required as a condition of approval.

4 **SJCC 18.40.270(J):** *Owners of vacation rentals must file with the administrator a 24-*
5 *hour contact phone number.*

6 13. This will be required as a condition of approval.

7 **SJCC 18.40.270(K):** *The owner or lessee of the vacation rental shall provide notice*
8 *to the tenants regarding rules of conduct and their responsibility not to trespass on*
9 *private property or to create disturbances. If there is an easement that provides*
10 *access to the shoreline, this shall be indicated on a map or the easement shall be*
11 *marked; if there is no access, this shall be indicated together with a warning not to*
12 *trespass.*

13 14. This will be required as a condition of approval.

14 **SJCC 18.40.270(L):** *Detached accessory dwelling units established under SJCC*
15 *18.40.240 cannot be separately leased or rented for less than 30 days.*

16 15. There is no accessory dwelling unit on the property.

17 **Conditional Use Permits – Criteria for Approval**

18 **SJCC 18.80.100(D)(1):** *The proposed use will not be contrary to the intent or*
19 *purposes and regulations of this code or the Comprehensive Plan;*

20 16. This proposal is consistent with the SJCC for the reasons stated above.
21 The vacation rental is consistent with the San Juan County Comprehensive Plan,
22 which allows for tourism-related businesses and activities within the context of
23 maintaining a diverse and balanced economy while minimizing the related negative
24 impacts.

25 **SJCC 18.80.100(D)(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;

17. The proposed use does not alter the general use of the structure as a
residence, and the character of the site will be maintained consistent with the
conditions of approval imposed hereunder. Adverse impacts are minimized and
compatibility is maximized through the conditions of approval. The criterion is
satisfied.

1 **SJCC 18.80.100(D)(3):** *The proposed use will not cause significant adverse impacts*
2 *on the human or natural environments that cannot be mitigated by conditions of*
3 *approval;*

4 18. Mitigation measures for vacation rental impacts, such as noise and
5 trespassing, have been added as conditions of approval. Therefore, the use, as
6 conditioned, should not cause significant or unreasonable adverse impacts on
7 neighbors or surrounding environment.

8 **SJCC 18.80.100(D)(4):** *The cumulative impact of additional requests for like actions*
9 *(the total of the conditional uses over time or space) will not produce significant*
10 *adverse effects to the environment that cannot be mitigated by conditions of approval;*

11 19. The property will continue to appear and function in a manner similar to
12 the existing single-family residential use, and further similar requests will not produce
13 significant adverse impacts to the environment.

14 **SJCC 18.80.100(D)(5):** *The proposal will be served by adequate facilities including*
15 *access, fire protection, water, stormwater control, and sewage disposal facilities;*

16 20. The residence is in an existing development and according to staff has
17 been shown to meet these requirements.

18 **SJCC 18.80.100(D)(6):** *The location, size, and height of buildings, structures, walls*
19 *and fences, and screening vegetation associated with the proposed use shall not*
20 *unreasonably interfere with allowable development or use of neighboring properties;*

21 21. There will be no alteration to location, size, or any other “outside” feature
22 of the existing property, so no new interference should occur as a result.

23 **SJCC 18.80.100(D)(7):** *The pedestrian and vehicular traffic associated with the*
24 *conditional use will not be hazardous to existing and anticipated traffic in the*
25 *neighborhood;*

26 22. According to the staff report, the pedestrian and vehicular traffic
27 associated with the use will not be hazardous to the neighborhood and there is nothing
28 in the record to suggest anything to the contrary. The criterion is satisfied.

29 **SJCC 18.80.100(D)(8):** *The proposal complies with the performance standards set*
30 *forth in Chapter 18.40 SJCC;*

31 23. As conditioned, and discussed above, the proposal will be in compliance
32 with SJCC 18.40.270.

1 **SJCC 18.80.100(D)(9):** *The proposal does not include any use or activity that would*
2 *result in the siting of an incompatible use adjacent to an airport or airfield (RCW*
3 *36.70.547); and*

4 24. There is no airport or airfield adjacent to this property.

5 **SJCC 18.80.100(D)(10):** *The proposal conforms to the development standards in*
6 *Chapter 18.60 SJCC.*

7 25. As an existing development site, the proposal is consistent with Chapter
8 18.60 SJCC.

9 **DECISION**

10 The application is approved as conditioned below. As conditioned below, the
11 proposal is consistent with all the criteria for a conditional use permit:

12 1. This permit allows a 2-bedroom vacation rental in the main residential dwelling
13 unit as noted on the attached approved site plan and as conditioned herein.

14 2. The rental shall be operated as described in the application materials except as
15 modified by these conditions.

16 3. The residence may be rented as a single unit on a short term basis for periods less
17 than 30 days. A maximum of 6 guests shall occupy the residence at any one time.

18 4. No food service is to be provided. No outdoor advertising signs are allowed.
19 Adequate parking is required.

20 5. The rentals must meet all local and state regulations, including those pertaining to
21 business licenses and taxes. Approval of this permit does not authorize the owner to
22 violate private covenants and restrictions.

23 6. No use of the property shall be made that produces unreasonable vibration, noise,
24 dust, smoke, odor or electrical interference to the detriment of adjoining properties.

25 7. A 24-hour non-message, non-recording contact number shall be provided to the
Community Development and Planning Department (CDPD) and to all neighbors
within 300 feet of the property. A log of complaints shall be kept and a copy provided
to CDPD upon request.

8. Prior to any rental, a proposed written Rules of Conduct will be submitted to and
approved by CDPD. The Rules of Conduct shall specifically deal with trespass,
property boundaries, noise disturbances and any special items specific to the rental
unit or adjoining properties. Upon approval by CDPD a copy of the Rules of Conduct

1 shall be posted in the residence, given to all adult tenants and given to all property
2 owners within 300 feet of the residence.

3 9. Authorization under this permit shall be void if the use is discontinued for 24
4 consecutive months.

5 10. Failure to comply with the conditions of this permit may result in revocation.

6 Dated this 25th day of May, 2011.

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8 Phil Olbrechts
9 County of San Juan Hearing Examiner

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11 **Effective Date, Appeal Right, and Valuation Notices**

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

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

20 Depending on the subject matter, this decision may be appealable to the San Juan
21 County Superior Court or to the Washington State Shorelines Hearings Board. State
22 law provides short deadlines and strict procedures for appeals, and failure to timely
23 comply with filing and service requirement may result in dismissal of the appeal. See
24 RCW 36.70C and RCW 90.58. Persons seeking to file an appeal are encouraged to
25 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.