

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant(s): Steve Mittendorf and Lynn Royle

Agent: Francine Shaw
Law Office of Stephanie Johnson O'Day
P.O. Box 2112
Friday Harbor, WA 98250

File No.: PCUP00-10-0008

Request: Conditional Use Permit (CUP)

Parcel No: 452513004

Location: 71 Upper Deer Harbor Road
Orcas Island, WA

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

Land Use Designation: Rural Residential

Public Hearing Date: December 2, 2010

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

DEC 20 2010

DEVELOPMENT & PLANNING

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FINDINGS OF FACT

Procedural:

1. Applicant. The applicants are Steve Mittendorf and Lynn Royle.
2. Hearing. The Hearing Examiner conducted a hearing on the subject application on December 2, 2010.

Substantive:

3. Site and Proposal Description. The applicant requests a conditional use permit to allow short-term vacation rentals (less than 30 days) of their three bedroom single-family residence located on the west side of San Juan Island at 260 West Side Road. As amply demonstrated in Ex. 2, there are five parking spaces available on the site's driveway and in the garage. The site is vegetated with shrubs and trees, except for the area around the house. It is developed with the single family home and an accessory structure. The accessory structure can be used for a bedroom, but there is no septic approval for that use.
4. Characteristics of the Area. The surrounding neighborhood is rural and residential in nature.
5. Adverse Impacts of Proposed Use. The Examiner concludes that there are no adverse impacts caused as a result of the proposed use for a single-family residential vacation rental unit. As conditioned, the proposed use should not interfere with the neighboring properties' residential use. Noise must be kept to a minimum, and a 24-hour phone number must be provided in case there are problems that arise. Because the site is already developed with a three-bedroom single-family residence, the proposed use for a vacation rental should be in character with the surrounding area. Concerns were apparently raised by a neighbor regarding fire safety issues, but the San Juan Fire Marshal conducted a life safety and fire inspection and determined that "good conditions prevail". See Ex. 4. The Fire Marshal recommended that emergency information be provided to guests, which will be made a condition of approval.

CONCLUSIONS OF LAW

Procedural:

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

Substantive:

1 2. Comprehensive Plan and Zoning Designations. The subject property is
designated as Rural Residential .

2 3. Permit Review Criteria. Under Table 3.2 of SJCC 18.30.040 vacation
3 rentals established after June 1, 1997 are allowed as conditional uses in the Rural
4 Residential zone. SJCC 18.80.100(D) governs conditional use criteria. SJCC
5 18.80.100(D)(8) requires compliance with the performance standards of Chapter
6 18.40 SJCC. SJCC18.40.270 contains detailed standards for vacation rentals. The
criteria for conditional use permits (SJCC 18.80.100(D)) and vacation rentals (SJCC
18.40.270) are quoted below and applied through corresponding conclusions of law.

7 4. Notice. SJCC 18.80.030(A)(2)(a) requires publication of a notice of
application. This application was published on June 30, 2010. SJCC
8 18.80.030(A)(2)(b) and (c) also require notification of the application to all property
9 owners within 300 feet of the subject property and posting of the notice of application
10 on the subject property. According to staff, the applicant submitted an affidavit
verifying compliance with the aforementioned notice requirements.

11 **Vacation Rentals of Residences Criteria**

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

14 5. This shall be a condition of approval. No guests will be allowed in the
15 bedroom of the accessory dwelling unit, since it does not have septic approval for this
use.

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

19 6. Conditions of approval of the permit have been imposed to prevent any
20 unreasonable disturbance. These conditions include limitation of occupants to three
21 per bedroom, required posting of rules of conduct which specifically mention
prohibition of trespassing, identification of property lines, provision of a 24-hour
contact phone number to neighbors in case problems may arise, and requiring the
maintenance of a written log of complaints.

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

25 7. There is parking available for five cars on the property.

SJCC 18.40.270(D): *If any food service is to be provided the requirements for a bed*

and breakfast residence must be met.

8. No food service is proposed in the application.

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

9. No outdoor advertising signs are proposed in the application.

SJCC 18.40.270(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.*

10. Only the residence is approved for vacation rental.

SJCC 18.40.270(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.*

11. Only the residence is approved for vacation rental.

SJCC 18.40.270(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.*

12. 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.

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

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

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

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

SJCC 18.40.270(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*

1 access to the shoreline, this shall be indicated on a map or the easement shall be
2 marked; if there is no access, this shall be indicated together with a warning not to
3 trespass.

4 15. This will be required as a condition of approval.

5 **SJCC 18.40.270(L):** *Detached accessory dwelling units established under SJCC*
6 *18.40.240 cannot be separately leased or rented for less than 30 days.*

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

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

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

11 17. This proposal is consistent with the SJCC for the reasons stated above.
12 The vacation rental is consistent with the Comprehensive Plan, which allows for
13 tourism-related businesses and activities within the context of maintaining a diverse
14 and balanced economy while minimizing the related negative impacts.

15 **SJCC 18.80.100(D)(2):** *The proposal is appropriate in design, character and*
16 *appearance with the goals and policies for the land use designation in which the*
17 *proposed use is located;*

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

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

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

SJCC 18.80.100(D)(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;

1 20. The property will continue to appear and function in a manner similar to
2 the existing single-family residential use, and further similar requests will not produce
3 significant adverse impacts to the environment.

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

6 21. The residence is in an existing development and according to staff has
7 been shown to meet these requirements. The applicant has had the property inspected
8 by the San Juan County Fire Marshall for fire safety, who determined that “good
9 conditions prevail”. See Ex. 4. The Fire Marshal recommended that emergency
10 information be provided to guests, which will be made a condition of approval.

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

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

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

19 23. According to staff, the pedestrian and vehicular traffic associated with the
20 use will not be hazardous to the neighborhood and there is nothing in the record to
21 suggest anything to the contrary. The criterion is satisfied.

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

24 24. As conditioned, and discussed above, the proposal will be in compliance
25 with SJCC 18.40.270.

SJCC 18.80.100(D)(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

26 25. There is no airport or airfield adjacent to this property.

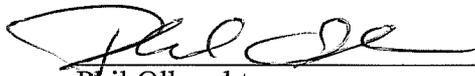
SJCC 18.80.100(D)(10): *The proposal conforms to the development standards in*
Chapter 18.60 SJCC.

27 26. As an existing development site, the proposal is consistent with Chapter
28 18.60 SJCC.

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2 **DECISION**

3 The proposed project is consistent with all the criteria for a conditional use permit.
4 The proposal is approved subject to the conditions listed in the staff report in addition
5 to the requirement that emergency information be provided to guests as recommended
6 by the Fire Marshal in Exhibit 4.

7
8 Dated this 15th day of December, 2010.

9 
10 Phil Olbrechts
11 County of San Juan Hearing Examiner

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

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

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

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