SAN JUAN COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT
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BEFORE THE HEARING EXAMINER FOR SAN JUAN COUNTY

FINDINGS, DECISION AND CONDITIONS OF APPROVAL FOR SAMUELSON CONDITIONAL USE PERMIT

S.J.C. DEPARTMENT OF
JUN 14 2016
COMMUNITY DEVELOPMENT

FILE NUMBER: PCUP00-16-0006

OWNER: KEVIN SAMUELSON,
1776 PARK AVE, 4-215
PARK CITY, UT 84060

APPLICATION: CONDITIONAL USE PERMIT –
TO AUTHORIZE VACATION RENTAL OF A 3-BEDROOM RESIDENCE

SITE ADDRESS: 3709 PEAR POINT ROAD, SAN JUAN ISLAND

TAX PARCEL NUMBER: 251924001

STAFF RECOMMENDATION: APPROVAL WITH CONDITIONS

SUMMARY OF DECISION: ***APPROVED – SUBJECT TO CONDITIONS***

DATE OF DECISION: JUNE 14, 2016

I. INTRODUCTION

Kevin Samuelson, the owner of a 3.3-acre property with a 3-bedroom single family house and an accessory dwelling unit (ADU) on the site, has applied for a Conditional Use Permit to authorize vacation rental of the house. The CUP granted in this Decision only applies to the 3-bedroom house on the site, and not the ADU. The site is zoned "Rural Residential". Residential and Shoreline uses surround the site. While the Samuelson property is located along the shoreline, the house addressed by this CUP is located outside the shoreline designated area. *(Staff Report, Project Data, Description of Site).*

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II. CONTENTS OF RECORD

TESTIMONY AT PUBLIC HEARING:

Lee McEnery, the County's planner assigned to review the pending application, provided testimony under oath, summarizing her review, proposed conditions, and recommendation of approval.

No one spoke or submitted any written comments opposing the application.

EXHIBITS:

1. Staff Report, prepared by Project Planner, Lee McEnery, dated May 2, 2016;
2. Land Use Permit Application cover sheet, reflecting receipt stamp, dated Feb. 24, 2016;
3. Vicinity map, Short Plat of Pear Point;
4. Site plan, aerial photograph marked to show Main House (to be rented);
5. Floorplan Sketch, marked to show that garage/ADU is "not part of this application";
6. Septic System Design, Permit, and Wastewater Inspections for the site;
7. Acknowledgement of applicable regulations, initialed by applicant;
8. Posting/mailing materials, submitted by applicant, 7 pages.

III. APPLICABLE LAW

Jurisdiction.

Under SJCC 18.80.090(C), if a development application is processed as a Conditional Use Permit application, "the Hearing Examiner is the decisionmaker." SJCC 18.80.100(C), captioned "Decisionmaking Authority", provides that "[t]he hearing examiner has the authority to approve or deny conditional use permit … applications, and to impose conditions of approval on such permits."

Conditional Use Permit required for vacation rentals.

The "allowability" of various land uses, including "vacation rental of a residence or accessory dwelling unit" is found in a table codified as SJCC 18.30.040. Properties identified under the Rural Residential land use designation are required to obtain a Conditional Use Permit for a vacation

rental. *See "Allowable and Prohibited Uses in Rural, Resource, and Special Land Use Designations Table"*, at SJCC 18.30.040.

Standards for vacation rentals; Criteria for CUP approval.

San Juan County's Unified Development Code includes specific standards that apply to all vacation (short-term, less than 30 days) rentals of single family residential units and accessory dwelling units or portions thereof. These standards are found at SJCC 18.40.270, and include a lengthy list of items numbered A through N. The Criteria for approval of a Conditional Use Permit are found at SJCC 18.80.100(D), and include ten items that must be considered by the Examiner.

Burden and Nature of Proof.

Under SJCC 18.80.040(B), "[t]he burden of proof is on the project permit applicant. The project permit application must be supported by evidence that it is consistent with the applicable state law, County development regulations, the Comprehensive Plan, and the applicant meets his burden of proving that any significant adverse environmental impacts have been adequately analyzed and addressed."

IV. ISSUE PRESENTED

Whether a preponderance of evidence demonstrates that the applicant has satisfied his burden of proof to satisfy the criteria for Conditional Use Permit approval?

Short Answer: Yes.

V. FINDINGS OF FACT

1. Upon consideration of all the evidence, exhibits, testimony, codes, policies, regulations, and other information contained in the file, the undersigned Examiner issues the following findings, conclusions and Decision approving the Conditional Use Permit as set forth below.

2. Any statements in previous or following sections of this document that are deemed findings are hereby adopted as such, including without limitation the Introduction provided above.

3. The applicant submitted a Vacation Rental Permit application to the San Juan County Community Development & Planning Department on or about February 24, 2016. *Exhibit 2.*

4. The application materials establish that the property at issue is 3.3 acres, and includes two buildings on the site, a 3-bedroom single family home, and a garage building/Accessory Dwelling Unit that includes a sleeping loft, bathroom and living area. *Staff Report; Ex. 5.*

5. In the Staff Report, Ms. McEnery represented that notices and publication required for the application were provided in accord with applicable county requirements. County staff determined that the application is exempt from SEPA review. *Staff Report, at page 4.*

6. The County received no written comments regarding the pending application. *Testimony of Ms. McEnery; Staff Report, at page 4.*

7. At the hearing, County staff described how the property is served by a well for potable water, but also included a water connection that could provide service from the Town of Friday Harbor. Upon learning of the connection, and that the water service connection was not used or needed on the property, (and because the Town does not permit use of its water system to support vacation rentals located in the County), the Friday Harbor water system connection was recently removed by the Town of Friday Harbor, and all water service for the property, including the vacation rental use approved in this CUP, will be provided by the well that is currently used on site. *Testimony of Ms. McEnery.*

8. Septic service is provided by an onsite septic system, which was apparently permitted, developed, and satisfactorily inspected over the years. *Exhibit 6.*

Facts establishing compliance with Vacation Rental Standards.

9. SJCC 18.40.270 lists a number of standards that apply to all Vacation Rentals (short-term/less than 30 days) of single family residential homes and accessory dwelling units, or portions thereof. The standards are numbered "A" through "N", and their application and relevance to the pending CUP is discussed below. The following findings are written in *italics*, immediately after re-statement of the applicable standard. Each of the *italicized findings* are supported by previous Findings, and the Staff Report, on pages 2 and 3:

A. No more than three guests per bedroom shall be accommodated at any one time.
There are three bedrooms in this house, so no more than nine people may be accommodated at any one time. Conditions of Approval are included to require compliance with this standard.

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.
Noise and trespassing impacts could be as much as that associated with normal residential use of the site. Possible disturbances should be adequately mitigated by conditions limiting the number of occupants to 9, requiring the posting of rules of conduct specifically mentioning that trespassing is not allowed, the identification of property lines, and providing neighbors with a 24-hour contact phone number as well as requiring the contact to keep a written log of complaints.

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.
Parking is available for at least four cars on the property. See Exhibit 4, depicting space for 6+ cars on the site.

D. If any food service is to be provided the requirements for a bed and breakfast residence must be met.

No food service is proposed.

E. No outdoor advertising signs are allowed.
No outdoor advertising signs are proposed.

F. The owner or a long-term lessee may either rent the principal residence or the accessory dwelling unit on a short-term basis (vacation rental), but not both;
The CUP approved in this Decision shall only allow for rental of the 3-bedroom house, and not the ADU located on the property.

G. Where there are both a principal residence and an accessory dwelling unit, the owner or a long-term lessee must reside on the premises, or one of the living units must remain un-rented.
There is an accessory dwelling unit on this parcel. The application and this CUP do not apply to the ADU on the site.

H. In all activity center land use districts, rural residential, and conservancy land use districts, the transient rental of a residence or guest house may be allowed by provisional ("Prov") permit only if the owner or lessee demonstrates that the residence or guest house 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.
This property is in the Rural Residential land use district which requires a conditional use permit. It has not been rented previously.

I. Vacation rental accommodations must meet all local and state regulations, including those pertaining to business licenses and taxes.
If this application is approved, the applicant will be required to obtain a business license or work through a property management company.

J. Owners of vacation rentals must file with the Administrator a 24-hour contact phone number.
A 24-hour contact phone number will be included in the rules of conduct when the unit is rented.

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.
This standard is specifically addressed in the conditions of approval.

L. SJCC 18.80.030(A)(2)(a) requires publication of a notice of application.
A notice of application for Conditional use permit for vacation rental was published on 3/30/2016. No comments were received.

M. SJCC 18.80.030(A)(2)(b)&(c) require notification of the application to all property owners within 300 feet of the subject property and posting of the notice of application on the subject property.
The applicant submitted notice of mailing and posting as required by this standard.

N. SJCC 18.50.330.E.5 says that shoreline vacation rentals are subject to the permit process set in Table 3.2, SJCC 18.30.040.
This vacation rental proposal is not located within the County's regulated shoreline area.

10. The Record establishes that the applicant has met its burden to satisfy the criteria for approval of a Conditional Use Permit, found in SJCC 18.80.100(D)(1-10). The 10 items listed as approval criteria are listed and discussed below. The following findings are written in *italics*, immediately after re-statement of the applicable requirement. Each of the *italicized findings* are supported by previous Findings, and the Staff Report, on pages 3 and 4:

1. The proposed use will not be contrary to the intent or purposes and regulations of this code or the Comprehensive Plan;
As conditioned, the requested CUP will be consistent with the SJCC and 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;

The proposed use would be in an existing dwelling unit, would not change the appearance of the structure, and with conditions would continue to function in a manner similar to the existing use of the building. Therefore, the residential character of the site would be maintained. Additionally, the proposal meets or can be conditioned to meet the applicable standards of sections 18.40 and 18.60 of the SJCC.

3. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval;

Vacation rental applications often generate complaints regarding trespassing, noise and parking, but staff has determined that such concerns can be dealt with through conditions of approval. The CUP is conditioned to enable neighbors to report problems and possible violations of any conditions of approval to the owner, or their required contact.

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;

The use would continue to appear and function in a manner similar to the existing single family residential use.

5. The proposal will be served by adequate facilities including access, fire protection, water, stormwater control, and sewage disposal facilities;

The proposed use is in an existing structure that has been shown to meet these requirements.

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;

As a single-family residence it has not interfered with allowable development or use of neighboring properties. Nothing will change from the outside so no new interference should occur.

7. The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood;

Staff has determined that vacation rentals can generate pedestrian and vehicular traffic that is often described as "inconsiderate" of the existing residents, but it is not often described as hazardous.

8. The proposal complies with the performance standards set forth in Chapter 18.40 SJCC;

As conditioned, the proposal will be in compliance with SJCC 18.40.270.

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);

There is no airport or airfield adjacent to this property.

10. The proposal conforms to the development standards in Chapter 18.60 SJCC.

As an existing developed site, the proposal is consistent with SJCC 18.60.

VI. CONCLUSIONS of LAW

1. Based on the Findings as summarized above, the undersigned examiner concludes that the proposed Conditional Use Permit for a vacation rental conforms to all applicable land use requirements and appropriately mitigates adverse environmental impacts. Upon reaching such findings and conclusions as noted above, CUP application meets the standards necessary to obtain approval by the County.

2. The Department's recommended conditions of approval as set forth in the Staff Report are reasonable, supported by the evidence, and capable of accomplishment. Each and every condition is adopted and incorporated herein by reference, except as modified below.

3. Any Finding or other statements in previous or following sections of this document that are deemed Conclusions are hereby adopted as such.

VII. DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, evidence presented through the course of the open record hearing, all materials contained in the record, and the Examiner's site visit, the undersigned Examiner APPROVES the Conditional Use Permit for the Samuelson vacation rental, subject to the attached Conditions of Approval as recommended by the County's staff and adopted herein.

ISSUED this 14th Day of June, 2016

Gary N. McLean
Hearing Examiner

CONDITIONS OF APPROVAL

Samuelson Vacation Rental CUP
3709 Pear Point Road, San Juan Island
File No. PCUP00-16-0006

1. The 3-bedroom house may be operated as a vacation rental as described in the application materials, except as modified by these conditions.

2. The 3-bedroom/main residence on the site may be rented as a single unit on a short term basis for periods less than 30 days. A maximum of three people per bedroom (nine guests total) shall occupy the residence at any one time.

3. Where there are both a principal residence and an accessory dwelling unit, the owner or a long-term lessee must reside on the premises, or one of the living units must remain un-rented.

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

5. The rentals 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.

6. 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.

7. A 24-hour non-message, non-recording contact number shall be provided to 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 DCD upon request.

8. Written rules of conduct shall be submitted to DCD prior to the first rental. Those rules of conduct shall be posted in the house and given to all the neighbors within 300 feet of the property boundary.

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

10. 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.

EFFECTIVE DATE, APPEALS, 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/or SJCC 18.80.110.

Decisions of the Hearing Examiner are final and not subject to administrative appeal to the San Juan County Council, unless the County council has adopted, by ordinance, written procedures for the discretionary review of such decisions. See Section 4.50 of the San Juan County Home Rule Charter and 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 any 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 confer with advisors of their choosing, possibly including a private attorney.

Affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation.