SAN JUAN COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT
135 Rhone Street, PO Box 947, Friday Harbor, WA 98250
(360) 378-2354 | (360) 378-2116 | FAX (360) 378-3922
cdp@sanjuanco.com | www.sanjuanco.com

BEFORE THE HEARING EXAMINER FOR SAN JUAN COUNTY

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

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

FILE NUMBER:	PCUP00-16-0004
OWNER:	DAVID AND ANDREA LARSEN 61 MYTH ROAD EASTSOUND, WA 98245
APPLICATION:	CONDITIONAL USE PERMIT – TO AUTHORIZE VACATION RENTAL OF A 2-BEDROOM RESIDENCE
SITE ADDRESS:	61 MYTH ROAD, ORCAS ISLAND
TAX PARCEL NUMBER:	173150087
STAFF RECOMMENDATION:	APPROVAL WITH CONDITIONS
SUMMARY OF DECISION:	***APPROVED – SUBJECT TO CONDITIONS***
DATE OF DECISION:	JUNE 14, 2016

I. INTRODUCTION

David and Andrea Larsen, the owners of a 2-bedroom single family residence located on a lot that is designated "Rosario Activity Center", with a Shoreline "Rural Residential" designation, have applied for a Conditional Use Permit to authorize use of the house as a vacation rental. The house faces East Sound, on Orcas Island. *(Staff Report, Project Data, Description of Site).*

II. CONTENTS OF RECORD

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

TESTIMONY AT PUBLIC HEARING:

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

Cory Harrington, a private consultant from Permit Resources, appeared at the hearing on behalf of the applicants. He provided brief testimony under oath, explaining that he had no objections or concerns with the Staff Report and recommended conditions. *(See Agent Authorization form included on page 2 of Ex. 2).* Mr. Harrington testified – "We Agree!" – and submitted an additional exhibit, marked number 5, into the record, which was accepted without objection from the County, and is included in the record as listed below.

No one spoke at the hearing in opposition to the application.

EXHIBITS:

1. Staff Report, prepared by Project Planner, Lee McEnery, dated May 3, 2016;
2. Application materials, including cover sheet signed by applicant's agent on February 15, 2016, transmittal letter dated Feb. 15, 2016 providing copies of various items, including site and floor plans, water availability certificate, and sewer system details;
3. Legal ad;
4. Posting and notification materials;
5. Photos submitted by applicant's agent, Mr. Harrington, showing posting of notice on site.

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. Residential Activity Centers are "=" [the same as] "Rural Residential", for purposes of using the Allowable use table. (See SJCC 18.30.030, legend before table, and 18.30.040, which lists RR uses).

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 applicants have satisfied their 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 18, 2016. *(Exhibit 2, Staff Report at page 5).*

4. The application materials establish that the property at issue currently has only one, two-bedroom single family home on the site. *Staff Report; Ex. 2.*

5. In the Staff Report, Ms. Thompson 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 5.*

6. The County received no written comments regarding the Larsen application.

7. Septic service is provided by an onsite septic system, which was apparently permitted, developed, and satisfactorily inspected over the years. *Exhibit 2.* Water service is provided by the Washington Water Service Company. See *Exhibit 2, Jan. 2016 bill for water service from WWSC.*

8. Ms. Thompson noted that the recommended conditions of approval are intended to address the concerns expressed in public comments, including conditions meant to limit traffic in an area with small lots. Ms. Thompson recommended approval of the pending application, noting that it meets all applicable standards. Mr. Harrington explained that he agrees with the Staff Report and recommended conditions of approval. Summing up his remarks, he stated – "We Agree!"

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 - 4:

A. No more than three guests per bedroom shall be accommodated at any one time.
There are only two-bedrooms in the existing house addressed in the pending application. Accordingly, no more than six people may be accommodated at any one time as overnight guests. 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 6, 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 three cars on the property.

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 existing 2-bedroom house now located on the site, and not any subsequently-built home that might be located on the property at some point in the future. Construction of an additional home on the property will require compliance with any and all vacation rental and other development regulations in effect at the time.

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 no accessory dwelling unit on this parcel.

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 Rosario Activity Center land use designation. As explained in SJCC 18.30.030 and 18.30.040, Residential Activity Center uses are reviewed as if they are a Rural Residential designation. Under the same provisions, a CUP is required to obtain the right to operate a vacation rental on the property. The property was not used as a vacation rental at any point before June 1, 1997

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 and pay all taxes applicable to the vacation rental operation. NOTE: The County is not a party to private covenants, and is not able to enforce private covenants or agreements between private parties. The CUP granted in this Decision does not and should not be construed to authorize the owner to violate any applicable private restrictions or covenants between property owners.

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 3/16/2016.

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. Mr. Harrington submitted an additional exhibit, included in the record, reflecting notice posted on the project site. (Ex. 5).

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.
The property on which the proposed vacation rental is located appears to be within the County's regulated shoreline area, and requires issuance of a CUP, addressed in this Decision.

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 SJCC Chapters 18.40 and 18.60.

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 vehicular traffic associated with a vacation rental 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 Larsen 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

Larsen Vacation Rental CUP
61 Myth Road, Orcas Island
File No. PCUP00-16-0004

1. The existing 2-bedroom house may be operated as a vacation rental as described in the application materials, except as modified by these conditions.

2. The 2-bedroom house 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 (six guests total) shall occupy the residence at any one time.

3. Prior to operation, evidence shall be submitted for review and approval by the DCD Director, confirming that the driveway has been approved for emergency vehicle access.

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 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.

5. No food service is to be provided. No outdoor advertising signs are allowed. Adequate parking is required which is one space per bedroom, for two spaces.

6. The rental must meet all local and state regulations, including without limitation 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.

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 satisfied, 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.

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.