SAN JUAN COUNTY
HEARING EXAMINER

FINDINGS, CONCLUSIONS, AND DECISION

Applicant(s):	Cheryl Herndon PO Box 1734 Friday Harbor, WA 98250
File No.:	PCUP000-16-0023
Request:	Conditional Use Permit (CUP)
Parcel No.:	341150011
Location:	411 Eagle Cove Drive, San Juan 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:	August 18, 2016
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
SEP 01 2016
COMMUNITY DEVELOPMENT

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BEFORE THE HEARING EXAMINER
FOR SAN JUAN COUNTY

In the Matter of the Application of	)	
	)	NO. PCUP000-16-0023
Cheryl Herndon	)	
	)	
	)	
For approval of a conditional use permit	)	
to allow vacation rental of the two	)	
bedroom residence at 411 Eagle Cove Drive	)	
San Juan Island	)	

SUMMARY OF DECISION

The request for conditional use permit to authorize the use of the two bedroom residence at 411 Eagle Cove Drive, San Juan Island as a vacation rental is **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request:
Cheryl Herndon (Applicant) requested a conditional use permit to authorize vacation rental use of the two bedroom residence located at 411 Eagle Cove Drive, San Juan Island.

Hearing Date:
The San Juan County Hearing Examiner held an open record public hearing on the request on August 18, 2016.

Testimony:
At the open record public hearing, the following individuals presented testimony under oath:

Julie Thompson, Planner, San Juan County Department of Community Development
Cheryl Herndon, Applicant

Exhibits:
The following exhibits were admitted in the record:

1. Department of Community Development Staff Report, dated August 3, 2016
2. Application materials, submitted June 13, 2016
3. Legal advertisement, published July 13, 2016
4. Posting and notification materials, mailed on July 12, 2013 and posted on July 13, 2013

5. Public comment letter from Eagle Cove Drive residents Budwill and Gilbert

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 two bedroom residence located at 411 Eagle Cove Drive, San Juan Island as a vacation rental.[1] The 1.12-acre parcel is developed with a single-family residence and a garage. *Exhibits 1 and 2; Herndon Testimony.*

2. The subject property has a Rural Residential land use designation, and the surrounding neighborhood is rural and residential in nature. To the north and east, the parcel abuts residential development. The parcel fronts Eagle Cove and enjoys shoreline access. Adjacent to the west is Eagle Cove County Day Park. The subject property is not located near an airfield or airport. *Exhibits 1 and 2.*

3. The subject property has existing access from Eagle Cove Drive, which connects with Cattle Point Road approximately 0.3 miles northeast of the site. No changes to the existing site access are proposed or required. *Exhibits 1 and 2.*

4. The existing residence is served by an individual well and an on-site septic system. *Exhibit 1.*

5. Planning Staff submitted that because the subject property is an existing developed site, the proposal is consistent with San Juan County Code (SJCC) Chapter 18.60. *Thompson Testimony; Exhibit 1.*

6. The proposal would allow up to three persons per bedroom at a time to rent the two bedroom residence, for a maximum of six overnight guests at once. The parcel has off-street parking for at least three vehicles. No outdoor advertising signs or food service are proposed. *Exhibits 1 and 2; Herndon Testimony, Thompson Testimony.*

7. Planning Staff noted that noise and trespass impacts could be expected to mimic those associated with traditional residential use of the site, and that the potential for disturbance to surrounding properties 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 implementing the above measures. *Exhibit 1; Thompson Testimony.*

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[1] The subject property is known as Assessor Parcel number 341150011. *Exhibit 1.*

8. The Applicant would be required to obtain a business license or work through a property management company. *Exhibit 1.*

9. The application was submitted June 13, 2016 and determined to be complete on the same date. Notice of the application was mailed to surrounding property owners on July 12, 2016 and posted on-site and published on July 13, 2016. *Exhibits 1, 2, 3, and 4; Thompson Testimony.*

10. The County received one public comment letter from residents who live near the subject property and are concerned about what they perceive as an excess of vacation rentals in a given neighborhood. They stated there are already several vacation rental properties on Eagle Cove Drive, citing at least four specific properties in close proximity. These neighbors question how many vacation rentals in a single neighborhood is enough; they fear that the growing number of vacation rentals in Eagle Cove will gradually take over the community and hope the County will take this concern into consideration. *Exhibit 5.* In response, the Applicant stated that, when vacation rentals were first proposed in this neighborhood, she also had concerns about the potential impacts of too many rentals. Residing at 449 Eagle Cove Drive for many years, she has since experienced that they are not disruptive. *Herndon Testimony.* County code currently has no provisions that require consideration of how many vacation rentals are present in a neighborhood when reviewing an application for a new vacation rental. *Thompson Testimony.*

11. Upon review of the complete application materials, Planning Staff determined that the proposal can comply with all applicable criteria and recommended approval with conditions. *Thompson Testimony; Exhibit 1.* The Applicant waived objection to the recommended conditions. *Herndon 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 Rental Standards
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 overnight 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. The use would occupy an existing residence without altering the appearance of the structure. Conditions would ensure that even when rented it continues to function like a residence; the residential character of the neighborhood would be unaffected. No adverse cumulative environmental impacts are suggested by the record in the event of additional vacation rental request approvals. As conditioned, the proposal would comply with the applicable standards of sections 18.40 and 18.60 of the SJCC, ensuring there are adequate public services and facilities to serve the proposal. 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). Pedestrian and vehicular traffic would be consistent with that expected of a typical residence. There is no airfield adjacent to this property. *Findings 1, 2, 3, 4, 5, 6, 7, 9, and 11.*

2. Regarding the use-specific requirements of SJCC 18.40.270, conditions of approval would limit rental occupancy to six people. The site is currently served by an individual well and an on-site septic system. The site would provide three off-street parking spaces.

No outdoor advertising, food service, or accessory dwelling unit are proposed. 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. Conditions would ensure that the Applicant obtains a business license or works through a property management company. The County Code does not contain restrictions on the number of vacation rentals that may be approved in a given neighborhood. *Findings 1, 4, 6, 7, 8, 10, and 11.*

DECISION

Based on the preceding findings and conclusions, the request for conditional use permit to authorize the use of the two bedroom residence at 411 Eagle Cove Drive, San Juan Island as a vacation rental is **APPROVED** subject to the following conditions:

1. The two bedroom vacation rental shall be operated as described in the application materials except as modified by these conditions.

2. The residence may be rented as a single unit on a short term basis for periods of less than 30 days. A maximum of six overnight guests shall occupy the vacation rental at any one time.

3. Prior to operation, evidence shall be presented to the Department of Community Development that the driveway has been approved for emergency vehicle access.

4. The vacation rental shall be operated in a way that prevents 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. At least two off-street parking spaces must be maintained on-site for the life of the vacation rental use.

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 the Department of Community Development before rentals commence. These rules shall be distributed to all renters and also sent to all owners of property within 300 feet of the site 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 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 September 1, 2016.

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.