

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS, AND DECISION

Applicant(s): Patricia Kesling-Wood
1741 Ala Moana Blvd., No. 58
Honolulu, HI 96815

File No.: PCUP00-15-0017

Request: Conditional Use Permit (CUP)

Parcel No: 461452038

Location: 188 Davison Head Drive, Roche Harbor, 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: September 17, 2015

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
OCT 01 2015
COMMUNITY DEVELOPMENT

**BEFORE THE HEARING EXAMINER
FOR SAN JUAN COUNTY**

In the Matter of the Application of

Patricia Kesling-Wood

for approval of a conditional use permit
to allow vacation rental of the one
bedroom residence at 188 Davison Head Dr.
San Juan Island

) NO. PCUP-15-0017
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S.J.C. DEPARTMENT OF

OCT 01 2015

COMMUNITY DEVELOPMENT

SUMMARY OF DECISION

The request for conditional use permit to authorize the use of the one bedroom residence at 188 Davison Head Drive, San Juan Island as a vacation rental is **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request:

Patricia Kesling-Wood (Applicant) requested a conditional use permit to authorize vacation rental use of the one bedroom residence located at 188 Davison Head Drive, San Juan Island.

Hearing Date:

The San Juan County Hearing Examiner held an open record public hearing on the request on September 17, 2015.

Testimony:

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

Lee McEnery, Planner, San Juan County Department of Community Development

No Applicant representative was present.

Exhibits:

The following exhibits were admitted in the record:

1. Department of Community Development Staff Report, dated August 18, 2015
2. Application, received June 16, 2015
3. Applicant Correspondence, dated June 9, 2015
4. Site Plan
5. Floor plans (detached and main buildings)
6. San Juan County Septic Design Permit information
7. Email from Gordon Wood, September 1, 2015
8. Notice of hearing, mailing list, and affidavits of mailing

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 one bedroom residence located at 188 Davison Head Drive, San Juan Island as a vacation rental.¹ The subject property is a waterfront parcel on Neil Bay developed with a main building containing living/dining/kitchen/bath and a loft with decks front and back. It also contains a detached structure with a bed and bath suite. *Exhibits 1, 2, 4, and 5.*
2. The subject property has a Rural Residential land use designation. To the east and west, the parcel abuts residentially zoned parcels' there is a residence to the east while the adjacent lot to the west is vacant. Neil Bay is to the south and Davison Head Drive to the north. The subject property is not located near an airfield or airport. *Exhibits 1 and 4.*
3. The subject property has existing access from Davison Head Drive, a public road. No changes to the existing site access are proposed or required. *Exhibits 1 and 4.*
4. The existing residence is served by community water and a pressure distribution sewage system. *Exhibit 6.*
5. Planning Staff submitted that because the subject property is an existing developed site, the proposal is or can be conditioned to be consistent with San Juan County Code (SJCC) Chapter 18.60. *McEnery Testimony; Exhibit 1.*
6. The proposal would allow up to three persons at a time to rent the one bedroom residence, for a maximum of three guests at once. The parcel has off-street parking for at least three vehicles in a paved area at the top of the driveway, with additional possible parking along the driveway. No outdoor advertising signs or food service are proposed. The detached building is not considered an accessory dwelling unit. *Exhibit 1; McEnery Testimony.*
7. The Applicant submitted comments upon review of the staff report regarding the number of bedrooms²; the Applicant asserted that it in fact has two bedrooms: one in the loft of the main building and one in the detached bed and bath suite. Planning Staff noted that Building Official confirmation that the loft in the main building satisfies building code requirements for bedrooms would be required prior to operation of the vacation rental as a two-bedroom facility. The septic system is approved to serve two bedrooms. *Exhibits 1 and 6; McEnery Testimony.*
8. 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

¹ The subject property is known as Assessor Parcel number 461452038000. *Exhibit 1.*

² The Staff report alternatively notes the residence as having either one or three bedrooms. *Exhibit 1.*

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; McEnergy Testimony.*

9. The Applicant would be required to obtain a business license or work through a property management company. *Exhibit 1.*
10. The application was submitted June 16, 2015 and determined to be complete on the same date. Notice of the application was published on July 22, 2015. Notice was posted on-site and mailed to surrounding property owners on July 27, 2015. The County did not receive comments on the proposal. *Exhibits 1, 2, and 8; McEnergy 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. *McEnergy Testimony; Exhibit 1.* In not sending a representative to the hearing, the Applicant waived objection to the recommended conditions.

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 Rentals

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 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. The proposal meets or can be conditioned to meet 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, 8, 10, and 11.*
2. Regarding the use-specific requirements of SJCC 18.40.270, conditions of approval would limit rental occupancy to three people per bedroom. The site is currently served by community water and sewage connections. 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. The site would provide at least three off-street parking spaces. No outdoor advertising, food service, or accessory dwelling unit are proposed. Conditions would ensure that the Applicant obtains a business license or works through a property management company. *Findings 1, 2, 6, 7, 8, 9, 10, and 11.*

DECISION

Based on the preceding findings and conclusions, the request for conditional use permit to authorize the use of the one-bedroom residence at 188 Davison Head Drive, San Juan Island as a vacation rental is **APPROVED** subject to the following conditions:

1. Approval is for a one bedroom vacation rental to be operated as described in the application materials except as modified by these conditions, provided that if the Applicant submits information to the Department of Community Development from the San Juan County Building Official confirming that the sleeping area in the loft of the

main building satisfies building code requirements for bedrooms, approval for a two-bedroom rental is granted.

2. The residence may be rented as a single unit on a short term basis for periods less than 30 days. A maximum of three guests per bedroom shall occupy the residence at any one time.
3. No food service is to be provided. No outdoor advertising signs are allowed. Adequate off-street parking must be provided for the life of the vacation rental use.
4. 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.
5. 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.
6. 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.
7. 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. It is the Applicant's responsibility to make sure the rules accurately reflect the number of Building Official-approved bedrooms and therefore the maximum number of allowed guests.
8. Failure to comply with the conditions of this permit may result in revocation.
9. 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.

Decided October 1, 2015.

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.