SAN JUAN COUNTY
HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant(s):	Troy and Kristen Buckley 6525 19th Ave. NE, Seattle, WA 98115
File No.:	PCUP00-14-0005
Request:	Conditional Use Permit (CUP)
Parcel No:	262114007
Location:	8286 Orcas Road Orcas Island
Summary of Proposal:	An application for a conditional use permit to allow vacation rental of a single-family residence.
Land Use Designation:	Orcas Village Residential
Public Hearing:	June 9, 2014
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
JUN 26 2014
DEVELOPMENT & PLANNING

BEFORE THE HEARING EXAMINER FOR THE COUNTY OF SAN JUAN

Phil Olbrechts, Hearing Examiner

RE: Troy and Kristin Buckley Conditional Use Permit (PCUP00-14-0005)	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION**

INTRODUCTION

The applicants have applied for approval of a conditional use permit for the vacation rental of a single-family residence and its accessory dwelling unit. The application for the vacation rental of the principal residence is approved with conditions. The application for the vacation rental of the accessory dwelling unit is approved with conditions if the accessory dwelling unit was not established under SJCC 18.40.240, as required by SJCC 18.40.270(L).

TESTIMONY

Ms. McEnery stated that the Buckley vacation rental application was for a conditional use permit to rent the one-bedroom guest room or the one-bedroom main house on a property in Orcas Village on Orcas Island; however, both would not be rented at the same time, and there is parking on the site. The Orcas Village plan requires a conditional use permit, and Ms. McHenry stated that staff recommends approval.

Kristin Buckley, the applicant, stated that when they purchased the property, the promotional, marking material they received stated that the property had previously been permitted for a vacation rental, and she asked whether that was relevant to the hearing. She stated that her understanding is that the property does not currently have a permit, but it did previously.

EXHIBITS

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Ex. 1: Staff report
Ex. 2: Application materials

FINDINGS OF FACT

Procedural:

1. Applicant. The applicants are Troy and Kristin Buckley.

2. Hearing. The Hearing Examiner conducted a hearing on the subject application on June 9, 2014 at 10:00 am at the Islander Bank Annex, 225 Blair Ave, Friday Harbor.

Substantive:

3. Site and Proposal Description. The applicant proposes the vacation rental of a one bedroom single family home, or in the alternative its accessory dwelling unit, located at 8986 Orcas Road, Orcas Island. On-site parking is available for at least four automobiles. There is a cottage without a kitchen located on site. No outdoor advertising or food service is proposed.

4. Characteristics of the Area. The site is adjacent to the Orcas Ferry landing and surrounding lots contain a mix of residential and commercial uses.

5. Adverse Impacts of Proposed Use. There are no adverse impacts resulting from the proposed use. As conditioned, the proposed use should not interfere with the residential use of neighboring properties. Noise must be kept to a minimum and a 24-hour phone number must be provided in case problems arise. Since no exterior alterations are proposed and no change in use, the proposal is not incompatible with any airport activity.

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:

2. Zoning Designations. Orcas Village Residential

3. Permit Review Criteria. SJCC 18.30.430 requires a conditional use permit for the transient rental of single-family residences or their accessory dwelling units. SJCC 18.80.100(D) governs the criteria for conditional use permits, which are quoted below and applied through corresponding conclusions of law. The conditional use permit require conformity to applicable zoning code standards, so the zoning code criteria for vacation rentals are quoted and applied as well

Vacation Rentals of Residences Criteria

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

4. The project is conditioned to limit the total number of guests to three per

bedroom.

SJCC 18.40.270(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.*

5. The conditions of approval of the permit have been imposed to prevent any unreasonable disturbances. These conditions limit the number of guests; require posting of rules of conduct which specifically mention prohibition of trespassing and identifying property lines; require provision of a 24-hour contact phone number to neighbors in case problems may arise; and require maintenance of a written log of complaints.

SJCC 18.40.270(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.*

6. Table 6.4 of SJCC 18.60.120 requires one parking space for single-family homes under 550 square feet and two spaces for homes 550 square feet and greater, which translates into 2 and 3 parking spaces respectively under the criterion quoted above. The applicant is providing three on-site parking spaces in conformance with this requirement.

SJCC 18.40.270(D): *If any food service is to be provided the requirements for a bed and breakfast residence must be met.*

7. No food service is proposed in the application.

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

8. No outdoor advertising is proposed.

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.*

9. The conditions of approval prohibit the rental of both the ADU and the principal residence at the same time.

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.*

10. The conditions of approval prohibit the renting of both the ADU and the principal residence at the same time.

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.*

11. Not applicable because the proposal is the first vacation rental of the premises.

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

12. 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.*

13. 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 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.*

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

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

15. As conditioned. This is a somewhat difficult criterion to understand given that the other vacation rental criteria above contemplate the short term rental of accessory dwelling units. It appears that the criterion was designed to only apply to vacation rentals constructed after the adoption of SJCC 18.40.270(L), perhaps to give some vested rights to previously existing vacation rentals. Since the criterion was not addressed in the staff report or in any other portion of the administrative record, the conditions of approval will authorize staff to make its own interpretation of SJCC 18.40.270(L) in order to ensure that this definition does not interfere with any historical application of the criterion.

<u>Conditional Use Permits – Criteria for Approval</u>

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

16. The proposal is consistent with the SJCC for the reasons stated above. The proposal is consistent with the San Juan County Comprehensive Plan, which provides that vacation rentals should be classified as residential uses and subject to standards similar to those that apply to hospitality commercial establishments. See Land Use Element, Section 2.2A(10). The detailed standards adopted into the SJCC for vacation rentals provide protections to residential uses that are more detailed than those typically associated with hospitality establishments located in residential areas.

SJCC 18.80.100(D)(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;*

17. The proposal will not alter the exterior appearance of the home, which is a single family home and is thus compatible and appropriate in design, character and appearance with the surrounding single family homes and applicable goals and policies thereto. The criterion is satisfied.

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

18. 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;*

19. The property will continue to appear and function in a manner similar to the existing use with no significant adverse impacts, and further similar requests will not produce significant adverse impacts to the environment.

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

20. The proposal is in an existing development and according to staff has been shown to meet these requirements.

SJCC 18.80.100(D)(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;*

21. There will be no alteration to location, size, or any other "outside" feature of the existing property, so no new interference should occur as a result.

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

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

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

23. As conditioned, and discussed above, the proposal will be in compliance 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*

24. Since no exterior alterations or changes in use are proposed, the proposal is not incompatible with any airport or airfield.

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

25. As an existing development site, the proposal is consistent with Chapter 18.60 SJCC.

DECISION

The application is approved as conditioned below. As conditioned below, the proposal is consistent with all the criteria for a conditional use permit:

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

2. A maximum of three quests may occupy the principle residence or accessory dwelling units. Only one of the buildings may be rented at any time. The accessory dwelling unit may not be rented if it fails to comply with SJCC 18.40.270(L) as determined by staff.

3. No food service is to be provided. No outdoor advertising signs are allowed.

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 Community Development and Planning Department (CDPD) and to all neighbors within 300 feet of the property along with a copy of this decision. A log of complaints shall be kept and a copy provided to CDPD upon request.

7. Prior to any rental, a proposed written Rules of Conduct will be submitted to and approved by CDPD. The Rules of Conduct shall specifically deal with trespass, property boundaries, noise disturbances and any special items specific to the rental unit or adjoining properties. 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 indicated together with the warning not to trespass. Upon approval by CDPD a copy of the Rules of Conduct shall be posted in the residence, given to all adult tenants and given to all property owners within 300 feet of the residence.

8. Authorization under this permit shall be void if the use is discontinued for 24 consecutive months.

9. Upon determination by the Director of CDPD that any condition listed above has been violated, following issuance of a Notice of Violation, the Director may, in addition to other code enforcement remedies, revoke the conditional use permit.

Dated this 22nd day of June, 2014.

Phil A. Olbrechts

County of San Juan 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 requirement 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.