**SAN JUAN COUNTY**
**HEARING EXAMINER**

# FINDINGS, CONCLUSIONS AND DECISION

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| Applicant(s): | Tina Grace<br>1404 38th St.<br>Bellingham, WA 98229 |
| File No.: | PCUP00-14-0008 |
| Request: | Conditional Use Permit (CUP) |
| Parcel No: | 271457506 |
| Location: | 336 Greer Lane<br>Orcas Island |
| Summary of Proposal: | An application for a conditional use permit to allow vacation rental of a single-family residence. |
| Land Use Designation: | Eastsound Residential 2 du/acre |
| Public Hearing: | July 14, 2014 |
| Application Policies and Regulations: | SJCC 18.40.270 Vacation Rentals<br>SJCC 18.80.100(D) CUP Criteria |
| Decision: | The application is approved subject to conditions. |

S.J.C. COMMUNITY
JUL 29 2014
DEVELOPMENT & PLANNING

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

Phil Olbrechts, Hearing Examiner

| RE: Tina Grace<br><br>Conditional Use Permit<br>(PCUP00-14-0008) | **FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION** |
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## INTRODUCTION

The applicants have applied for approval of a conditional use permit for the vacation rental of a single-family residence. The application for the conditional use permit is approved with conditions.

## TESTIMONY

Tina Grace, applicant, testified that the parking hasn't been an issue. The easement next to the parking spot is a small easement. A fence would limit ingress/egress to the Boyd property. The property line next to the parking line is marked with a white line. It's only a two bedroom home so most people will only have a single car. Ms. Grace stated she wouldn't have a problem with putting up a sign directing the location of parking.

## EXHIBITS

Ex. 1: Staff report
Ex. 2: Application checklist
Ex. 3: Application materials
Ex. 4: Sean DeMeritt comment letter
Ex. 5: 6/9/14 email from Tina Grace to Julie Thompson.
Ex. 6: 6/26/14 Margaret Wild comment letter
Ex. 7: Robert Boyd comment letter.

## FINDINGS OF FACT

**Procedural:**

1. Applicant. The applicant is Tina Grace.

2. Hearing. The Hearing Examiner conducted a hearing on the subject application on July 14, 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 two bedroom single family home, or in the alternative its accessory dwelling unit, located at 336 Geer Lane, Orcas Island. On-site parking is available for two vehicles. 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.

Neighbors have expressed concern that tenants may park upon their adjoining property. As demonstrated in Ex. 6, there is sufficient space upon the applicant's property to park two cars. The conditions of approval will require that the parking area be marked and that a sign be posted and the rules identify that parking is to be limited to the marked area.

## 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. Eastsound Residential 2/du acre

3. Permit Review Criteria. SJCC 16.55.240(D)(5) authorizes transient housing in the ESR/2 district with site plan review if guest rooms are limited to two in number and located in the primary residence of the operator. SJCC 16.55.240(D)(6) provides that other allowable nonresidential uses shall be subject to conditional use permit approval. SJCC 16.55.045 defines transient lodging "*as a commercial enterprise which provides lodgings for transient occupancy for any period of less than 30 consecutive days*." Since the proposal involves more than two guests, the applicant must acquire a conditional use permit.

**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 300-1(A)(7) requires one parking space per guest unit for transient housing. The single-family home at issue appears to have only one kitchen, so it is construed as having only one guest unit[1]. As determined in Finding of Fact No. 3, the proposed vacation rental has sufficient space for two parking spaces. The criterion is met.

**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.

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[1] The staff report takes the position that the vacation rental includes two guest units. Guest units are not defined in Title 16. As in most jurisdictions, however, the SJCC defines a "dwelling unit" as a unit containing independent cooking facilities. See SJCC 18.20.040. The proposed vacation rental presumably only has one kitchen. This interpretation is consistent with the understanding of what often constitutes a "unit" as referenced in zoning codes and also with common practice, since most users of a vacation rental will constitute one family. However, it is understood that on occasion vacation rentals are leased to more than one family. In this sense the units are more like hotel rooms than residences. This is presumably why SJCC 18.40.270(C) requires "one additional" parking space to that required for the accessory dwelling unit or primary residence. Consequently, two parking spaces are required for the proposal – one for the single-family residence use and one for the vacation rental use.

**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. There is no ADU.

**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. There is no ADU.

**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. There is no ADU.

**Conditional Use Permits – Criteria for Approval**

**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 does not create any compatibility issues with airports or airfields.

**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 six quests may occupy the principle residence.

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

4. The rental 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. The Rules shall identify that parking is strictly limited to the designated parking area. 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.

10. The parking area shall be clearly marked and a sign shall be posted at the parking area that requires parking to be limited to the marked area.

Dated this 28th day of July, 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.