

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant(s): ORN Enterprises LLC
3131 Democrat Building C
Memphis, TN 38118

Agent: Bob Query
PO Box 2573
Friday Harbor, WA 98250

File No.: PCUP00-13-0002

Request: Conditional Use Permit (CUP)

Parcel No: 271463012

Location: 18 Fishing Alley
Eastsound

Summary of Proposal: Application for a conditional use permit to allow
vacation rental of three living units in commercial building.

Land Use Designation: Village Residential

Public Hearing: March 13, 2013

Application Policies and Regulations: SJCC 18.80.100(D) CUP Criteria

Decision: Approved subject to conditions.

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

3 Phil Olbrechts, Hearing Examiner

4 RE: ORN Enterprises LLC 5 Conditional Use Permit 6 (PCUP00-13-0002)	7 FINDINGS OF FACT, CONCLUSIONS 8 OF LAW AND FINAL DECISION
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9 **INTRODUCTION**

10 The applicant has applied for approval of a conditional use permit to convert a commercial building into three separate living units to be used for vacation rental. The application is approved with conditions.

11 **TESTIMONY**

12 Lee McEnergy stated that the application is for a conditional use permit to convert a building into three separate rental units. These units would not be used as residences. The county received one comment letter which noted concerns over the units not being used as residences.

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15 Bob Query, representing ORN Enterprises, testified that the original application material has an error. The second floor will have three bedrooms, not two. This change results in a maximum of 12 guests for the units.

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17 **EXHIBITS**

- 18 Ex. 1: Staff report.
19 Ex. 2: Application materials.
20 Ex. 3: 2/25/13 comment letter from Sean DeMeritt

21 **FINDINGS OF FACT**

22 **Procedural:**

- 23 1. Applicant. The applicant is ORN Enterprises LLC.
24 2. Hearing. The Hearing Examiner conducted a hearing on the subject
25 application on March 13, 2013 at 10:00 am at the Islander Bank Annex, 225 Blair Ave, Friday Harbor.

Substantive:

Conditional Use Permit

1 3. Site and Proposal Description. The proposal is to convert an existing
2 commercial building into three separate units to be used for vacation rental. Each
3 would be rented separately on a short-term basis as a vacation rental. The existing
4 building will be remodeled so that the first floor has a 1-bedroom unit and a 2-
5 bedroom unit. The second floor will have a 3-bedroom unit. The 3 units have a total
of 6 bedrooms. The entire building is assigned 8 parking places composed of 3 on the
street and 5 in the shared parking area. No exterior alterations to the building are
proposed. The proposal is not adjacent to an airport.

6 4. Characteristics of the Area. The surrounding neighborhood is residential,
7 mixed use and commercial.

8 5. Adverse Impacts of Proposed Use. There are no adverse impacts caused
9 as a result of the proposed use. The proposal will use an existing commercial
10 building with no exterior alteration, so there will be no aesthetic impacts. The
11 applicant will also comply with the standards for vacation rentals, which are detailed
12 requirements adopted by the County Council that are designed to ensure that vacation
13 rental use is compatible with surrounding residential development. As outlined in the
14 staff report, conditions resulting from vacation rental standards include that the use
15 may not interfere with the residential use of neighboring properties, noise must be
16 kept to a minimum, a 24-hour phone number must be made available to neighbors in
case problems arise and outdoor signs are prohibited. Parking should not be a
problem because it satisfies the parking requirements imposed by SJCC 16.55.300
Table 300(A)(7), which requires one parking space per guest unit for hotels in the
Eastsound Subarea. The staff report notes that vacation rental projects do not
generate any traffic at levels requiring mitigation and no reasonable inference can be
made to the contrary.

17 A comment letter from Sean DeMeritt, Ex. 3, expressed support for the project but
18 also voiced concern over potential residential use. Mr. DeMerritt asserted that the
19 subdivision in which the subject commercial building is located has been assigned a
20 capped number of residential units and that he and other property owners within the
21 subdivision were concerned that if the proposal were allowed to accommodate
22 residential units as opposed to vacation rental/hotel units that this would reduce the
23 number of residential units available to other subdivision properties, which would
24 apparently violate the subdivision's conditions of approval. The conditions of
approval for the subdivision are not in evidence, so they are not something that can be
considered by the examiner. Further, the examiner's review of the project is limited
to compliance with the conditional use permit criteria and this does not extend to
compliance with the conditions of approval for the subdivision.

25 Normally, approval of the requested conditional use permit would not signify
compliance with subdivision conditions of approval and the property owner would be
expected to comply with both the conditions of the conditional use permit and the
subdivision. Even if the conditional use permit authorized residential use of the

1 subject property, the applicant could not proceed with that use if the subdivision
2 prohibited that use. However, in this case staff has apparently considered the
3 restrictions on residential use raised by Mr. DeMeritt. The staff report recommends
4 that residential use be restricted to one unit of the building. Since the applicant has
not objected to this condition and it will provide some certainty and peace of mind to
other property owners in the subdivision, the recommended condition will be
included in final decision for the conditional use permit.

5 CONCLUSIONS OF LAW

6 **Procedural:**

7 1. Authority of Hearing Examiner. The hearing examiner is authorized to
8 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).

9 **Substantive:**

10 2. Zoning Designations. Eastsound Village Residential.

11 3. Permit Review Criteria. SJCC 16.55.220(D)(5) provides that transient
12 lodging without an on-site residence for the principal operator requires a conditional
13 use permit. SJCC 16.55.040 defines transient lodging as "*a commercial enterprise
14 which provides lodgings for transient occupancy for any period of less than 30
15 consecutive days.*" The proposed use meets the definition of transient lodging but
16 does not include an on-site operator. Consequently, a conditional use permit is
required. The criteria for conditional use permits are governed by SJCC
18.80.100(D), which are quoted below in italics and applied via corresponding
conclusions of law.

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

19 4. The proposal complies with applicable parking standards as outlined in
20 Finding of Fact No. 5 and is authorized as a conditional use as concluded in
21 Conclusion of Law No. 3. Since the use involves an existing commercial building
22 with no exterior alterations, there are no other code compliance issues apparent from
23 the record and none have been found by staff. The vacation rental is consistent with
the San Juan County Comprehensive Plan, which allows for tourism-related
businesses and activities within the context of maintaining a diverse and balanced
economy while minimizing the related negative impacts.

24 **SJCC 18.80.100(D)(2):** *The proposal is appropriate in design, character and
25 appearance with the goals and policies for the land use designation in which the
proposed use is located;*

1 5. The proposal will not alter the exterior appearance of the building, so it
2 will not create any aesthetic impacts to other properties in the zoning district in which
3 the building is located. The architecture and site design standards for the Village
4 Residential district are governed by SJCC 16.55.160, which only applies to new
5 development. Since the proposal doesn't involve new development, it is not subject
6 to any design or similar aesthetic standards or policies.

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

10 6. As discussed in Finding of Fact No. 5, mitigation measures for vacation
11 rental impacts, such as noise and trespassing, have been added as conditions of
12 approval. Therefore, the use, as conditioned, will not cause significant or
13 unreasonable adverse impacts on neighbors or surrounding environment.

14 **SJCC 18.80.100(D)(4):** *The cumulative impact of additional requests for like actions*
15 *(the total of the conditional uses over time or space) will not produce significant*
16 *adverse effects to the environment that cannot be mitigated by conditions of approval;*

17 7. Given the minimal impacts of the proposal and its use of an existing
18 building that has gone through prior land use permit review for presumably more
19 intense use, no cumulative impacts for similar approval area anticipated.

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

22 8. The proposal is in an existing development and according to staff is still
23 served by adequate infrastructure.

24 **SJCC 18.80.100(D)(6):** *The location, size, and height of buildings, structures, walls*
25 *and fences, and screening vegetation associated with the proposed use shall not*
unreasonably interfere with allowable development or use of neighboring properties;

 9. 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;

 10. 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.

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

3 11. The proposal does not involve any new development that triggers the
4 requirements of Chapter 18.40 SJCC.

5 **SJCC 18.80.100(D)(9):** *The proposal does not include any use or activity that would*
6 *result in the siting of an incompatible use adjacent to an airport or airfield (RCW*
7 *36.70.547); and*

8 12. There is no airport or airfield adjacent to this property.

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

11 13. As an existing development, the proposal is consistent with Chapter 18.60
12 SJCC. The only standard that apparently applies to existing development is the
13 parking standards of Table 6.4, which requires one space per guest room for hotels.

14 The five off-street parking spaces of the proposal meet this requirement. There is
15 some ambiguity as to whether each of the six bedrooms of the proposal constitute a
16 separate “guest room” for purposes of the Table 6.4 parking standards, but given that
17 the parking standards applicable to Eastsound development authorize the use of on-
18 street parking to meet parking requirements, see SJCC 16.55.300(B)(5), and the
19 proposal includes three additional on-street parking space, this ambiguity will be
20 resolved in favor of the applicant to find compliance.

21 DECISION

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

24 1. This permit allows vacation rental of three separate commercial units (first
25 floor: 1 bedroom, 2 bedroom; second floor 3 bedroom). The regulations list transient
rental as a “commercial” use. Residential use of 1 unit is allowed in the future, as it
was approved in the subdivision and meets density. Residential use or long-term
rental of the 2 additional units is prohibited under the current regulations.

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

3. The units may be rented separately on a short term basis for periods less
than 30 days. A maximum of 3 guests per bedroom shall be accommodated.

4. No food service is to be provided. No outdoor advertising signs are
allowed. Adequate parking is required on the site.

1 5. The rentals must meet all local and state regulations, including those
2 pertaining to business licenses and taxes. Approval of this permit does not authorize
the owner to violate private covenants and restrictions.

3 6. No use of the property shall be made that produces unreasonable vibration,
4 noise, dust, smoke, odor or electrical interference to the detriment of adjoining
properties.

5 7. A 24-hour non-message, non-recording contact number shall be provided
6 to the Community Development and Planning Department (CDPD) and to all
7 neighbors within 300 feet of the property. A log of complaints shall be kept and a
copy provided to CDPD upon request.

8 8. Prior to any rental, a proposed written Rules of Conduct will be submitted
9 to and approved by CDPD. The Rules of Conduct shall specifically deal with
10 trespass, property boundaries, noise disturbances and any special items specific to the
rental unit or adjoining properties. Upon approval by CDPD a copy of the Rules of
11 Conduct shall be posted in the residence, given to all adult tenants and given to all
property owners within 300 feet of the residence.

12 9. The proposal shall meet all standards of SJCC 16.55.220 Village
13 Residential and 16.55.300 General Standards.

14 10. Authorization under this permit shall be void if the use is discontinued for
15 24 consecutive months.

16 11. Failure to comply with the conditions of this permit may result in
17 revocation.

18 12. Upon the determination by the Director of CDPD that any conditions
19 listed above have been violated, following issuance of a Notice of Violation, the
Director of CDPD may, in addition to its other code enforcement remedies, revoke
the conditional use permit.

20 Dated this 27th day of March, 2013.

21 
22 Phil A. Olbrechts

23 _____
24 County of San Juan Hearing Examiner
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Effective Date, Appeal Right, and Valuation Notices

Conditional Use Permit

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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.