

**SAN JUAN COUNTY
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

Applicant(s): Lillian Harris
5B Wisconsin Lane
Whiting, NJ 08759

File No.: PCUP00-11-0020

Request: Conditional Use Permit (CUP)

Parcel No: 25222028

Location: 75 Killebrew Lake Road
Orcas Island

Summary of Proposal: An application for a conditional use permit to allow
vacation rental of a residential dwelling unit

Land Use Designation: Orcas Village Activity Center, Commercial

Public Hearing: January 11, 2012

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

FEB 13 2012

DEVELOPMENT & PLANNING

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

3 Phil Olbrechts, Hearing Examiner

4 RE: Lillian Harris 5 6 Conditional Use Permit 6 (PCUP00-11-0020)	7 8 9 10 FINDINGS OF FACT, CONCLUSIONS 11 OF LAW AND FINAL DECISION
---	--

12 **INTRODUCTION**

13 The Applicant has applied for approval of a conditional use permit for the vacation
14 rental of a single-family residence. The application is approved with conditions.

15 **EXHIBITS**

16 The December 21, 2011 staff report and attached “application materials” are
17 admitted as Exhibit 1.

18 **FINDINGS OF FACT**

19 **Procedural:**

- 20 1. Applicant. The Applicant is Lillian Harris.
- 21 2. Hearing. The Hearing Examiner conducted a hearing on the subject
22 application on January 11, 2012 at 10:00 am at the Islander Bank annex in Friday
23 Harbor.

24 **Substantive:**

- 25 3. Site and Proposal Description. The Applicant proposes the vacation rental
of a one bedroom single family home located at 75 Killebrew Lake Road.
4. Characteristics of the Area. The surrounding neighborhood is residential
and there is a post office to the east.
5. Adverse Impacts of Proposed Use. The Examiner concludes that there are
no adverse impacts caused as a result of 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.

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 Activity Center, Commercial.

3. Permit Review Criteria. Table 3.10, SJCC 18.30.430 authorizes transient rentals of single family homes in the Orcas Village Activity Center, Commercial, as a conditional use. SJCC 18.80.100(D) governs conditional use criteria. SJCC 18.80.100(D)(8) requires compliance with the performance standards of Chapter 18.40 SJCC. SJCC 18.40.270 contains detailed standards for vacation rentals. The criteria for conditional use permits (SJCC 18.80.100(D)) and vacation rentals (SJCC 18.40.270) are quoted below and applied through corresponding conclusions of law.

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 total number of guests for the one bedroom single family residence at 3.

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 include limitation of occupants to twelve guests, required posting of rules of conduct which specifically mention prohibition of trespassing and identify property lines, provision of a 24-hour contact phone number to neighbors in case problems may arise, and required 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. The staff report notes that there are at least two parking spaces on the Conditional Use Permit –

1 property Table 6.4 of SJCC 18.60.120 requires two off-street parking spaces for
2 single-family dwellings. The proposal will be conditioned to accommodate three off-
street parking spaces.

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

5 7. No food service is proposed in the application.

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

7 8. No outdoor advertising is proposed.

8 **SJCC 18.40.270(F):** *The owner or a long-term lessee may rent either the principal*
9 *residence or the accessory dwelling unit on a short-term basis (vacation rental), but*
10 *not both.*

11 9. There is no accessory dwelling unit.

12 **SJCC 18.40.270(G):** *Where there are both a principal residence and an accessory*
13 *dwelling unit, the owner or long-term lessee must reside on the premises, or one of the*
14 *living units must remain unrented.*

15 10. There is no accessory dwelling unit.

16 **SJCC 18.40.270(H):** *In all activity center land use districts, rural residential, and*
17 *conservancy land use districts, the vacation rental of a residence or accessory*
18 *dwelling unit may be allowed by provisional ("Prov") permit only if the owner or*
19 *lessee demonstrates that the residence or accessory dwelling unit in question was*
20 *used for vacation rental on or before June 1, 1997. When internal land use district*
21 *boundaries are adopted for an activity center, this provision will apply to VR and HR*
22 *districts but not to the activity center in general.*

23 11. The Applicant is applying for a conditional use permit as authorized by
24 Table 3.1 of SJCC 18.30.040 instead of a provisional use permit because the proposal
25 is the first vacation rental of the property.

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

28 12. This will be required as a condition of approval.

29 **SJCC 18.40.270(J):** *Owners of vacation rentals must file with the administrator a 24-*
30 *hour contact phone number.*

31 13. This will be required as a condition of approval.

1 **SJCC 18.40.270(K):** *The owner or lessee of the vacation rental shall provide notice*
2 *to the tenants regarding rules of conduct and their responsibility not to trespass on*
3 *private property or to create disturbances. If there is an easement that provides*
4 *access to the shoreline, this shall be indicated on a map or the easement shall be*
5 *marked; if there is no access, this shall be indicated together with a warning not to*
6 *trespass.*

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

8 **SJCC 18.40.270(L):** *Detached accessory dwelling units established under SJCC*
9 *18.40.240 cannot be separately leased or rented for less than 30 days.*

10 15. There is no accessory dwelling unit on the property.

11 **Conditional Use Permits – Criteria for Approval**

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

14 16. This proposal is consistent with the SJCC for the reasons stated above.
15 The vacation rental is consistent with the San Juan County Comprehensive Plan,
16 which allows for tourism-related businesses and activities within the context of
17 maintaining a diverse and balanced economy while minimizing the related negative
18 impacts.

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

22 17. The proposed use does not alter the general use of the structure as it was
23 originally a single-family residence and the proposed use will not result in any
24 exterior alterations or create any use impacts as conditioned that would differ from
25 single-family use. 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.

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

4 19. The property will continue to appear and function in a manner similar to
5 the existing use, and further similar requests will not produce significant adverse
6 impacts to the environment.

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

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

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

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

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

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

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

24 23. As conditioned, and discussed above, the proposal will be in compliance
25 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

23 24. There is no airport or airfield adjacent to this property.

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

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

1 **DECISION**

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

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

6 2. A maximum of three guests shall occupy a unit at any one time.

7 3. No food service is to be provided. No outdoor advertising signs are allowed.
8 Adequate parking is required.

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

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

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

15 7. Prior to any rental, a proposed written Rules of Conduct will be submitted to and
16 approved by CDPD. The Rules of Conduct shall specifically deal with trespass,
17 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 Conduct
18 shall be posted in the residence, given to all adult tenants and given to all property
owners within 300 feet of the residence.

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

21 9. Upon determination by the Director of CDPD that any condition listed above has
22 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.

23 10. Three off-street parking spaces shall serve the site. Reduced parking may be
24 administratively approved as authorized by SJCC 18.60.120(B)(3)(c) or other
25

1 SJCC provisions.

2 Dated this 9th day of February, 2012.

3 

4 Phil Olbrechts
5 County of San Juan Hearing Examiner

6
7 **Effective Date, Appeal Right, and Valuation Notices**

8
9 Hearing examiner decisions become effective when mailed or such later date in
10 accordance with the laws and ordinance requirements governing the matter under
11 consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be
12 subject to review and approval by the Washington Department of Ecology pursuant to
13 RCW 90.58.140, WAC 173-27-130, and SJCC 18.80.110.

14 This land use decision is final and in accordance with Section 3.70 of the San Juan
15 County Charter. Such decisions are not subject to administrative appeal to the San
16 Juan County Council. See also, SJCC 2.22.100.

17 Depending on the subject matter, this decision may be appealable to the San Juan
18 County Superior Court or to the Washington State Shorelines Hearings Board. State
19 law provides short deadlines and strict procedures for appeals, and failure to timely
20 comply with filing and service requirement may result in dismissal of the appeal. See
21 RCW 36.70C and RCW 90.58. Persons seeking to file an appeal are encouraged to
22 promptly review appeal deadlines and procedural requirements and consult with a
23 private attorney.

24 Affected property owners may request a change in valuation for property tax purposes
25 notwithstanding any program of revaluation.