

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

3 Phil Olbrechts, Hearing Examiner

4 RE: Nourdine H. Jensen, LLC	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION
5 Conditional Use Permit 6 (PCUP00-09-0003)	

S.J.C. COMMUNITY

MAR 23 2010

7 **INTRODUCTION**

DEVELOPMENT & PLANNING

8 The applicant has applied for approval of a Conditional Use Permit to allow for
9 vacation rental of a one-bedroom residential dwelling. The Examiner approves the
10 permit subject to conditions.

11 **TESTIMONY**

12 No comments on the application were made at the hearing. Both the applicant and
13 staff declined to provide further comment on the staff report.

14 **EXHIBITS**

15 *See* Application Materials attached to the February 5, 2010 staff report.

16 **FINDINGS OF FACT**

17 **Procedural:**

- 18 1. Applicant. The applicant is Nourdine H. Jensen, LLC.
- 19 2. Hearing. The Hearing Examiner conducted a hearing on the subject
20 application on March 4, 2010.

21 **Substantive:**

22 3. Site and Proposal Description. The applicants request a conditional use
23 permit to allow short-term vacation rentals of their home. There is one bedroom,
24 which could house a total of three people. The site is a shoreline parcel located just
outside the Town of Friday Harbor on San Juan Island. It is developed with the
single-bedroom residence plus a couple of outbuildings.

25 4. Characteristics of the Area. The surrounding neighborhood contains a
mixture of uses. Shipyard Cove and Jensen's Shipyard are in the same cove. The
surrounding parcels are residential in nature.

1 5. Adverse Impacts of Proposed Use. The Examiner finds that the proposed
2 project will have no significant adverse impacts. The conditions recommended by
3 staff will minimize noise and other adverse impacts associated with short term rental
4 of the property.

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.
9 San Juan County Code ("SJCC") 18.80.020 Table 8.1

10 **Substantive:**

11 2. Comprehensive Plan and Zoning Designations. The subject property is
12 designated as Rural Residential, and the existing land use is Residential.

13 3. Permit Review Criteria. The SJCC governs the policies and criteria for
14 conditional use permit review. SJCC 18.80.110 establishes the criteria for approval,
15 which are quoted in italics below and addressed through conclusions of law.

16 4. Notice. SJCC 18.80.030(A)(2)(a) requires publication of a notice of
17 application. This application was published on January 13, 2010. SJCC
18 18.80.030(A)(2)(b) & (c) also require notification of the application to all property
19 owners within 300 feet of the subject property and posting of the notice of application
20 on the subject property. This was also completed. According to staff, the applicant
21 submitted a declaration of mailing stating that she had mailed the Notice of
22 Application on January 9, 2010 and posted the Notice of Application of Proposed
23 Development sign on January 8, 2010.

24 **Vacation Rentals of Residences Criteria**

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

5. There is a one-bedroom house, so no more than three guests shall be
allowed at any given time. This shall be a condition of approval.

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.*

6. Noise and trespassing impacts should be normal in comparison to the
normal residential use of the site. Conditions of approval of the permit have been

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1 included to mitigate any such impacts. These conditions include limitation of
2 occupants to three, required posting of rules of conduct which specifically mention
3 prohibition of trespassing, identification of property lines, provision of a 24-hour
4 contact phone number to neighbors in case problems may arise, and requiring the
5 maintenance of a written log of complaints.

6 **SJCC 18.40.270(C):** *At least one additional off-street parking space shall be
7 provided for the vacation rental use in addition to the parking required for the
8 residence or accessory dwelling unit.*

9 7. There are two parking spaces available, which is in excess of the number
10 required.

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

13 8. No food service is proposed in the application.

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

15 9. No outdoor advertising signs are proposed in the application.

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

19 10. There is no accessory dwelling unit on the site, and as such only the
20 residence will be rented.

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

24 11. There is no accessory dwelling unit on the site.

25 **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.*

12. This property is in the rural residential district and has never been rented
as a vacation rental in the past; therefore, a conditional use permit is being required
and requested.

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

3 13. Upon approval, the applicant will be required to obtain a business license
4 or work through a property management company.

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

7 14. This section has been included as a condition of approval of the permit.

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

14 15. This section has been included as a condition of approval of the permit.

15 **SJCC 18.40.270(L):** *Detached accessory dwelling units established under SJCC*
16 *18.40.240 cannot be separately leased or rented for less than 30 days.*

17 16. There is no other structure beside the single-family residence being
18 proposed for rental.

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

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

22 17. This proposal is conditioned to be consistent with the SJCC and the
23 Comprehensive Plan, as detailed above.

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;

18. The proposed use does not alter the general use of the structure as a
residence, and the character of the site will be maintained consistent with the
conditions of approval imposed hereunder. As such, the proposal site is already
consistent with this criteria.

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

4 19. Vacation rental impacts, such as noise, parking, and trespassing have been
5 added as conditions of approval. As such, the use will not cause significant adverse
6 impacts on neighbors or surrounding environment.

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

10 20. The property will continue to appear and function in a manner similar to
11 the existing single-family residential use, and further similar requests will not produce
12 significant adverse impacts.

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

15 21. The residence is in an existing development and has been shown to meet
16 these requirements.

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

20 22. During its use as a single-family residence, the property has not interfered
21 with allowable development or use of neighboring properties. Nothing on the
22 property will be altered from the outside, so no new interference should occur as a
23 result of the rental of the property.

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

26 23. Although vacation rentals generate pedestrian and vehicular traffic that
27 can be described as inconsiderate, it is generally not deemed to be hazardous.

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

30 24. As conditioned, and discussed above, the proposal will be in compliance
31 with SJCC 18.40.270.

1 **SJCC 18.80.100(D)(9):** *The proposal does not include any use or activity that would*
2 *result in the siting of an incompatible use adjacent to an airport or airfield (RCW*
3 *36.70.547); and*

4 25. There is no airport or airfield adjacent to this property.

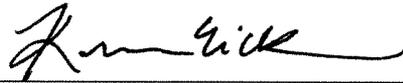
5 **SJCC 18.80.100(D)(10):** *The proposal conforms to the development standards in*
6 *Chapter 18.60 SJCC.*

7 26. As an existing development site, the proposal is consistent with SJCC
8 18.60.

9 **DECISION**

10 The proposed project is consistent with all the criteria for a conditional use permit.
11 The proposal is approved subject to the conditions listed in the staff report.

12 Dated this 23rd day of March, 2010.

13 

14 Kristin Eick, WSBA #40794 for
15 Phil Olbrechts
16 County of San Juan Hearing Examiner

17 **Right of Appeal**

18 This decision may be appealed to San Juan County Superior Court as governed by the
19 Land Use Petition Act, Chapter 36.70C RCW. As required by the Land Use Petition
20 Act, appeals must be filed with the superior court and served upon all required parties
21 within 21 days of the issuance of this decision.
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