



Notice of Hearing Examiner Decision

12/30/2024

To: Interested Parties and Parties of Record

RE: Project Name: CALDWELL - Conditional Use Permit for Accessory Dwelling Unit
Applicant: Sunnye Caldwell
5150 SE Foss Rd
Port Orchard, WA 98366
Application: CUP-ADU
Permit Number: 24-02426

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **Permit 24-02426: CALDWELL - Conditional Use Permit for Accessory Dwelling Unit – CUP-ADU, subject to the conditions outlined in this Notice and included Decision.**

THE DECISION OF THE HEARING EXAMINER IS FINAL, UNLESS TIMELY APPEALED, AS PROVIDED UNDER WASHINGTON LAW.

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at:

<https://www.kitsap.gov/dcd/HEDocs/HE-Rules-for-Kitsap-County.pdf>.

Please note affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation. Please contact the Assessor's Office at 360-337-5777 to determine if a change in valuation is applicable due to the issued Decision.

The complete case file is available for review by contacting the Department of Community Development; if you wish to view the case file or have other questions, please contact help@kitsap1.com or (360) 337-5777.

CC: Applicant/Owner: Sunnye Caldwell, icaldwell6467@msn.com
Authorized Agent: Candace Vickery, clvpermits@gmail.com
Interested Parties:
None
Prosecutor's Office
Assessor's Office
DCD
Kitsap Sun

Health District
Public Works
Parks
Navy
DSE
Kitsap Transit
South Kitsap Fire District
South Kitsap School District
Puget Sound Energy
Water Purveyor - UTILITY DIST WESTSOUND
Sewer Purveyor - UTILITY DIST WESTSOUND
Point No Point Treaty Council
Suquamish Tribe
Port Gamble S'Klallam Tribe
Squaxin Island Tribe
Puyallup Tribe
Skokomish Tribe
WA Dept of Fish & Wildlife
WA Dept of Transportation/Aviation
WA State Dept of Ecology-SEPA
WA State Dept of Ecology-Wetland Review
WA State Dept of Transportation
WA Dept of Archaeological Historic Preservation
WA Dept of Natural Resources

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BEFORE THE HEARING EXAMINER FOR KITSAP COUNTY

Phil Olbrechts, Hearing Examiner

RE: Sunnye Caldwell Accessory Dwelling Unit (CUP – ADU) File No. 24-02426	FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION.
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INTRODUCTION

Sunnys Caldwell request a Conditional Use Permit to construct an 836sf detached Accessory Dwelling Unit (ADU) at 5150 SE Foss Road, Port Orchard. The application is approved subject to conditions.

ORAL TESTIMONY

A computer-generated transcript of the hearing has been prepared to provide an overview of the hearing testimony. The transcript is provided for informational purposes only as Appendix A.

EXHIBITS

Exhibits 1-16 listed in the Index to the Record prepared by County staff were admitted during the hearing. After the hearing the Examiner admitted Ex. 17 a provided revision of recommended condition of approval #21.

FINDINGS OF FACT

Procedural:

1. Applicants. Sunnye Caldwell, 5150 SE Foss Road, Port Orchard, WA 98366.
2. Hearing. The Hearing Examiner conducted a remote/hybrid hearing on the application at 9:00 am on December 19, 2024.

Substantive:

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2 3. Site/Proposal Description. Sunnye Caldwell requests a Conditional Use
3 Permit to construct an 836sf detached Accessory Dwelling Unit (ADU) at 5150 SE
4 Foss Road, Port Orchard. The ADU will be located approximately 100 feet from the
5 primary residence where it will be accessed using the existing driveway. The project
6 site is located outside of a UGA. The ADU will reflect the appearance of the primary
7 residence with their shared rambler style, pitched gable roof, and composite shingles.
8 The ADU main color and trim color will both be similar to those of the primary
9 residence. The Kitsap Public Health District has approved a new 2-bedroom On-Site
10 Septic System for the ADU and will provide water for the project. The ADU will use
11 the same entrance as noted on the Site Plan. The secondary entrance will be
12 permanently closed with a fence and the two driveways connected internally.

13 4. Characteristics of the Area. The subject property is bordered on all sides by
14 lots that are developed with single-family residences.

15 5. Adverse Impacts. No significant adverse impacts are anticipated from the
16 proposal. Impacts are more directly addressed as follows:

- 17 a. Off-Street Parking. KCC 17.490.030 requires three (3) off-street parking spaces
18 per single-family residence and one (1) parking space for an ADU. The
19 Applicant proposes four off-street parking spaces as required.
- 20 b. Stormwater. Development Services and Engineering reviewed and accepts the
21 concepts contained in this preliminary submittal and requires the conditions
22 stated in Section 13 of the staff report as an element of the land use approval.
- 23 c. Critical Areas. There are no critical areas associated with the subject parcel.
- 24 d. Access, Traffic, Roads. The proposed ADU will use the same driveway entering
25 the property that the primary residences uses.
- 26 e. Fire Safety. Kitsap County Building and Fire Safety Division reviewed and the
27 ADU and found no need for any conditions.
- 28 f. Water/Septic. The Kitsap County Health District approved the site for
29 additional sewage and water supply.
- 30 g. Compatibility. The proposal is compatible with surrounding uses. As identified
31 in Finding of Fact No. 4, surrounding uses are all single-family residential. The
32 proposed design is similar to the primary residence so no adverse aesthetic
33 impacts are anticipated.

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CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. KCC 17.550.030 authorizes the hearing examiner to issue decisions on applications for conditional use permits.

Substantive:

2. Zoning Designation. The property is currently zoned Rural Residential (RR).

3. Review Criteria. KCC 17.410.042 requires a conditional use permit for detached ADUs in the RR zone. KCC 17.550.030A governs the criteria for conditional use permits. Pertinent criteria are quoted below and applied via corresponding conclusions of law.

KCC 17.550.030.A: *The hearing examiner may approve, approve with conditions, or deny a hearing examiner conditional use permit. Approval or approval with conditions may be granted only when all the following criteria are met:*

KCC 17.550.030.A.1: *The proposal is consistent with the Comprehensive Plan;*

4. Criterion met. The criterion is met. The proposed ADU provides the ability to create an affordable housing unit which is a goal supported by several policies in the Comprehensive Plan in a manner consistent with the zoning established for the subject property. The proposal is also found consistent with the Comprehensive Plan for the reasons identified in Section 7 of the staff report (Exhibit 1).

KCC 17.550.030.A.2: *The proposal complies with applicable requirements of this title;*

5. Criterion met. The criterion is met. The proposal conforms to the County’s zoning code as detailed in Section 4 and 10 of the staff report (Exhibit 1). Staff planning and public works staff have reviewed the proposal to ensure conformance to the County’s zoning code for this level of review. The results of that work have been implemented in detailed conditions of approval, adopted by this decision. Nothing in the record suggests any outstanding compliance issues. More detailed compliance will be required during the building and civil permit review.

The primary issue of zoning compliance is adherence to KCC 17.415.015B, which adopts standards tailored to detached ADUs outside urban growth areas. Pursuant to those standards, only one ADU is allowed per lot, the owner of the property must reside in the primary residence or the ADU, the ADU shall not exceed 50% of the habitable area of the primary residence, the ADU shall be located within 150 feet of the primary

1 residence unless involving a conversion of an existing structure such as that proposed,
2 the ADU shall be designed to maintain the appearance of the primary residence, all
3 setback requirements shall be met, all health district standards shall be met, ADUs may
4 not be mobile homes or recreational vehicles, and the ADU shall use the same access
5 as the primary residence and shall provide an additional parking space. The conditions
6 of approval recommended by staff require conformance to all of these standards. The
7 proposed design and site characteristics further establish conformance as detailed in
8 Findings of Fact No. 3 and 5.

9 **KCC 17.550.030.A.3.:** *The proposal will not be materially detrimental to existing or*
10 *future uses or property in the immediate vicinity; and*

11 6. Criterion met. The criterion is met for the reasons identified in Finding of Fact No.
12 5.

13 **KCC 17.550.030.A.4:** *The proposal is compatible with and incorporates specific*
14 *features, conditions, or revisions that ensure it responds appropriately to the existing*
15 *character, appearance, quality or development, and physical characteristics of the*
16 *subject property and the immediate vicinity.*

17 7. Criterion met. The criterion is met for the reasons identified in Finding of Fact No.
18 5g and via its required conformance to the ADU standards of KCC 17.415.015B.

19 **DECISION**

20 Based upon the conclusions of law above, the conditional use permit application is
21 approved subject to the following conditions:

22 **Planning/Zoning**

- 23 1. All required permits shall be obtained prior to commencement of land
24 clearing, construction and/or occupancy.
- 25 2. The accessory dwelling unit is subject to the payment of impact fees.
Impact fees must be paid at time of permit issuance, or if deferred, must
be paid prior to final inspection. No certificate of occupancy will be
granted until all impact fees are paid.
3. Any proposed modification (not including cosmetic work such as
painting, papering and similar finish work), remodel or expansion of the
accessory dwelling unit building, regardless of whether a building permit
is required, shall be reviewed by the Department of Community
Development and granted approval prior to such modification, expansion,
construction and/or issuance of a building permit.
4. Only one accessory dwelling unit shall be permitted on the subject

property.

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5. The owner of the property must reside in either the primary residence or the accessory dwelling unit and only one of the structures may be rented at any one time.
 6. The accessory dwelling unit's (ADU) habitable area shall not exceed 50% of the primary residence or 900 square feet, whichever is smaller. The proposed size of the ADU is 836 square feet. Any future expansion of the ADU will require a building permit and would have to comply with all code requirements in place at the time of the new building permit application.
 7. The accessory dwelling unit (ADU) shall be located within 150 feet of the primary residence.
 8. The accessory dwelling unit shall be designed to maintain the appearance of the primary residence.
 9. No mobile home or recreational vehicle shall be allowed as an accessory dwelling unit.
 10. The accessory dwelling unit shall use the same side street entrance as the primary residence and shall provide one additional off-street parking space.
 11. An attached accessory dwelling unit (formerly called accessory living quarters) or guest house is not permitted on the same lot unless the accessory dwelling unit is removed and the ADU-attached or GH complies with all requirements imposed by the Kitsap County Code.
 12. A property with a primary residence and an accessory dwelling unit cannot be segregated to create two separate legal lots unless it complies with all subdivision, zoning and density requirements in place at the time of a complete subdivision application.
 13. The accessory dwelling unit cannot be sold separately from the primary residence unless it has legally been segregated onto its own lot.
 14. The recipient of any conditional use permit shall file a Notice of Land Use Binder with the county auditor prior to any of the following: initiation of any further site work, issuance of any development/construction permits by the county, or occupancy/use of the subject property or buildings thereon for the use or activity authorized. The Notice of Land Use Binder shall serve both as an acknowledgment of and agreement to abide by the terms and conditions of the conditional use permit and as a notice to

1 prospective purchasers of the existence of the permit. The Binder shall be
2 prepared and recorded by the Department at the applicant's expense.

3 15. The uses of the subject property are limited to the uses proposed by the
4 applicant and any other uses will be subject to further review pursuant to
5 the requirements of the Kitsap County Code. Unless in conflict with the
6 conditions stated and/or any regulations, all terms and specifications of
7 the application shall be binding conditions of approval. Approval of this
8 project shall not, and is not, to be construed as approval for more extensive
9 or other utilization of the subject property.

10 16. The authorization granted herein is subject to all applicable federal, state,
11 and local laws, regulations, and ordinances. Compliance with such laws,
12 regulations, and ordinances is a condition to the approvals granted and is
13 a continuing requirement of such approvals. By accepting this/these
14 approvals, the applicant represents that the development and activities
15 allowed will comply with such laws, regulations, and ordinances. If,
16 during the term of the approval granted, the development and activities
17 permitted do not comply with such laws, regulations, or ordinances, the
18 applicant agrees to promptly bring such development or activities into
19 compliance.

20 17. The decision set forth herein is based upon representations made and
21 exhibits contained in the project application. Any change(s) or
22 deviation(s) in such plans, proposals, or conditions of approval imposed
23 shall be subject to further review and approval of the County and
24 potentially the Hearing Examiner.

25 18. This Conditional Use Permit approval shall automatically become void if
no development permit application is accepted as complete by the
Department of Community Development within four years of the Notice
of Decision date or the resolution of any appeals.

19 Any violation of the conditions of approval shall be grounds to initiate
20 revocation of this Conditional Use Permit.

21 **Development Engineering**

22 20. Building permits submitted for this development shall include
23 construction plans and profiles for all roads, driveways, storm drainage
24 facilities and appurtenances. No construction shall be started prior to said
25 plan acceptance.

21. Stormwater quantity control, quality treatment, and erosion and
sedimentation control, as required for the development, shall be designed
in accordance with Kitsap County Code Title 12 effective at the time the
Building Permit is deemed fully complete. If development meets the

1 thresholds for engineered drainage design, the submittal documents shall
2 be prepared by a civil engineer licensed in the State of Washington. The
3 fees and submittal requirements shall be in accordance with Kitsap County
4 Ordinances in effect at the time of Building Permit Application.

5 22. Any project that includes off-site improvements that create additional hard
6 surface such as lane widening, sidewalk or shoulder installation or
7 intersection channelization shall provide stormwater mitigation in
8 accordance with Kitsap County Code Title 12.

9 23. Any work within the County right-of-way shall require a Public Works
10 permit and possibly a maintenance or performance bond. This application
11 to perform work in the right-of-way shall be submitted as part of the SDAP
12 process, or Building Permit process, if a SDAP is not required. The need
13 for and scope of bonding will be determined at that time.

14 Dated this 30th day of December 2024.

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Phil Olbrechts,
17 Kitsap County Hearing Examiner

18 **Appeal Right and Valuation Notices**

19 Pursuant to KCC 21.04.100 and KCC 21.04.110, this conditional use permit decision is
20 a final land use decision of Kitsap County and may be appealed to superior court within
21 21 days as governed by the Washington State Land Use Petition Act, Chapter 36.70C
22 RCW.

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