



KITTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES

411 N. Ruby St., Suite 2, Ellensburg, WA 98926

CDS@CO.KITTITAS.WA.US

Office (509) 962-7506

Fax (509) 962-7682

"Building Partnerships – Building Communities"

July 9, 2009

From: Jeff Watson

To: Parties of Interest for the Specialty Accessory Dwelling Unit Application (AU-09-00003)

RE: Notice of Decision and Findings of Fact

Dear Concerned Neighbors and Citizens,

Due to the degree of interest and the nature of this particular application I felt it appropriate to provide this additional level of explanation and clarification regarding Kittitas County Community Development Services' decision to approve the Specialty ADU permit application. Your participation is appreciated, and I tried my best to address each of the concerns which were expressed in the various letters, phone calls, and conversations I have received from, and had with, all of you. I have spent many hours doing research and even made a rare site visit to determine the merits and nature of this discussion. The process and subsequent decision were collective from the onset, involving all levels of planning staff, consultation and confirmation with the Prosecuting Attorney's Office, and extensive conversations with staff from the Washington State Department of Social and Health Services. Administrative processes such as this require the planning official to evaluate the individual variables and characteristics of each application and how they apply in relation to current federal, state, and local laws, codes, practices, and precedents. In any code interpretation and analysis, careful attention must be paid to the lexicon of the codes, law, and legislation; care must be taken when utilizing otherwise common terms and phrases to insure that their definitions are clear and common to all concerned. Bearing this in mind, the decision to approve the Specialty ADU was based on the following:

1. The Administrative Use Permit Application references, in a variety of places, the "proposed use" of the proposed project, but never asks the question "What is the proposed use?" This has led to a great deal of confusion and consternation regarding this application, and perhaps will warrant some form of revision for future clarity. The subtitle of the application form provides definition however; "*(Proposing an Accessory Dwelling Unit outside of a designated Urban Growth Area or Urban Growth Node)*". Kittitas County Code (KCC) defines an Accessory Dwelling Unit as "...*separate living quarters detached from the primary residence*" in 17.08.022. The next step is to turn to the applicable zoning code (Agriculture 20; KCC 17.29.020) for permitted living quarters; which shows
 - 1. One-family or two-family dwellings;
 - 4. Single family homes not including mobile homes or trailer houses;
 - 5. Duplexes and residential accessory buildings;
 - 20. Accessory Living Quarters
 - 21. Special Care Dwelling

By virtue of the building plans submitted by the applicant related to this project (a detached "stick built" structure with one kitchen), the proposed use of this proposal becomes defined as a single family home. This then becomes the basis upon which the application is evaluated for compliance and consistency with County Code and all other applicable laws and statutes. Any pursuit of the applicant's motive, intent, or desire for the future use of the structure, is pure speculation, and not germane to the review process. Code enforcement cannot be a preemptive process; you cannot punish a person for what they may do. One more element of KCC 17.08.022 should be addressed at this time for clarity. Subsection "B" states that "*ADU's shall be subject to obtaining a conditional use permit in areas outside of UGAs and UGNs*" which is clearly in conflict with 17.29.130 which states that ADUs are an administrative use in the AG-20 zone and subject to the process and procedures laid down in Title 17.60B. Such direct conflicts are rare, but they do occur, the mechanism in place to provide guidance is found at the end of each

title; the ordinance number and date. In this instance, the *Definitions* title 17.08.022 referring to the conditional use requirement of the ADU, is footnoted (*Ord. O-2006-01, 2006*); title 17.29.130 and 17.60B, which define the ADU as an administrative use, and outline it's process, are footnoted (*Ord. 2007-22, 2007*). By definition, the new code on any particular subject overwrites the old code, and when there is a conflict, the newest code prevails. In short; ADUs do not require a conditional use permit, they are subject to the Administrative use process codified in Chapter 17.60B. Community Development Services staff have taken note of this conflict, and docketed it for the next "Code Scrub", a periodic code revision for scrivener's errors and conflicts, to avoid future conflicts.

2. A second point of concern raised within letters and conversations dealt with the language found in title 17.08.022 subsection "E" which states "*The ADU shall not exceed the square footage of the habitable area of primary residence.*" This is precisely the issue which came into the light with the Doolittle application of August of 2008, which proposed a larger new structure. Because this conflict was surfacing, then director of Community Development Services Darryl Piercy utilized the administrative prerogative outlined in title 17.60B.030, and referred the proposal to the Board of Adjustment to render a decision. They in turn requested administrative clarification from Mr. Piercy regarding current policy. Mr. Piercy reminded the board in his memo dated August 12, 2008 that up until the aforementioned code revision of 2007 which created the administrative review process, ADU permits were reviewed via the conditional use permit process by the Board of Adjustment. He further reminded the board that during that time they had established a policy precedent, by approving at least three similar cases in the past.

"At issue is whether an existing residence can be designated an ADU and a new structure designated the primary residence. The Department has utilized the decisions and actions of the Board of Adjustment as a guide in these circumstances. The Board of Adjustment has reviewed at least three separate applications in which the applicant proposed to convert an existing residence to an ADU with the intent of building a new, larger primary residence. In each case the Board of Adjustment approved the applications... Since being granted the authority under the code to review ADUs administratively the Department has utilized previous decisions by the Board of Adjustment as a guide for review and findings. The decisions by the Board of Adjustment in each of the above applications appear to be well considered and were the result of thoughtful deliberations. The Board of Adjustment showed consistency in their decision making process. There is no case where an application for an ADU where an existing structure was converted from the primary residence to an ADU was denied by the Board of Adjustment."

Community Development Services has not deviated from this policy. Staff has placed the language in 17.08.022 subsection "E" on the "Code Scrub" list as well.

3. Among the criteria utilized in the Administrative review process, there is really only one that may require additional remarks. Title 17.60B.050 subsection "b" requires that the proposed project not "*Adversely affect the established character of the surrounding vicinity and planned uses*". Remembering that the review process is based solely on a single family residence structure, staff finds that the design, size, and placement of the proposed structure is consistent and in keeping with the established character of the surrounding vicinity. The utilization of T-1-11, simulated stone veneer, and cedar shingles for siding, in conjunction with composition shingles for roofing on the gable end designed structure was found to be well within the acceptable design and construction parameters. The size of the structure, though substantial, was deemed comparable to many of the residences in the vicinity, and it's location on the site would allow the applicant to enjoy the same property rights as other properties in the vicinity without encroachment. Neighboring structures were all found to be in excess of 500 feet away from the proposed project, far exceeding the setback standards for the AG-20 zone; 25 ft front, 5 ft side, and 25 ft rear.
4. While topic number one of this letter establishes that the preponderance of any potential uses for this structure are essentially irrelevant at this stage in the process, I feel it would be appropriate to address the concern which all of the comment letters shared regarding the establishment of some form of "group home" or "school" for autistic residents. It is at this point where care must be taken in choosing and defining the language and vocabulary which is used. In the ValeriesList Newsletter posting which I believe all are familiar with, Mr. Spezialy expresses his intent to open "*a home for autistic men*". We cannot at this time discern Mr. Spezialy's exact intent, and until he takes specific action on his intentions, the County cannot and will not intercede in his affairs. Bearing that in mind, please be advised of the following:
 - a. Group Homes, as defined in KCC 17.08.265, are not listed as a permitted or conditional use in the AG-20 Zone.

- b. Group Care Facilities, as defined in KCC 17.08.263, are not listed as a permitted or conditional use in the AG-20 Zone.
- c. School, Public or Parochial, **are** permitted in AG-20, however as defined (an institution which offers instruction and study **required** to be taught in the public schools of the state of Washington), they appear to be inconsistent with this application.
- d. Adult Family Homes, as defined in KCC 17.08.023, are not listed as a permitted or conditional use in the AG-20 Zone. **HOWEVER: Washington State Law is very clear:**

“An adult family home shall be considered a residential use of property for zoning and public and private utility rate purposes. Adult family homes shall be a permitted use in all areas zoned for residential or commercial purposes, including areas zoned for single family dwellings.”RCW 70.128.175

“Each adult family home shall meet applicable local licensing, zoning, building, and housing codes, and state and local fire safety regulations as they pertain to a single-family residence. It is the responsibility of the home to check with local authorities to ensure all local codes are met.” RCW 70.128.175

“No county or city that plans or elects to plan under this chapter (GMA) may enact or maintain an ordinance, development regulation, zoning regulation or official control, policy, or administrative practice which treats a residential structure occupied by persons with handicaps differently than a similar residential structure occupied by a family or other unrelated individuals. As used in this section, "handicaps" are as defined in the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3602).” RCW 36.70A.410

Adult Family Homes are licensed and regulated by the State of Washington Department of Social and Health Services. Local inspection and regulation is limited to building and access inspection with respect to DSHS criteria in the AFH application process. Attempts by local jurisdictions to regulate these facilities have gone to, and been overruled by the United States Supreme Court, being deemed acts of discriminatory housing practices (City of Edmonds v. Oxford House, Inc ., 115 S.Ct. 1776 (1995) for one of many). In the light of the State laws regarding AFHs, the United States Code on Fair Housing (42 U.S.C. Sec. 3602), and the fact that every ADU permit application processed by Kittitas County since the code change in late 2007, has been approved; denial of this permit based on the concerns expressed in all of the comment letters received, would represent an egregious act of housing discrimination toward the developmentally disabled.

With any land use decision you have the right to appeal, either collectively or as individuals, as outlined in the Notice of Decision. The appeal process would go first to the Board of Adjustment, and if continued, to Superior Court under the Land Use Petition Act (LUPA). If after ten working days the decision is not appealed Mr. Spezialy may initiate the construction of his proposed single family residence. For your reference I have placed many of the materials and links utilized in this process on the County Website in the Spezialy file.

I deeply appreciate the both participation and the manner in which it was conducted through this entire process by all parties concerned. As always I am at your service for any additional questions or concerns.

Jeff Watson

Kittitas County Community Development Services
 411 N. Ruby Street, Suite 2
 Ellensburg, WA 98926
 jeff.watson@co.kittitas.wa.us
 P: 509.933.8274
 F: 509.962.7682