



## Notice of Hearing Examiner Decision

06/24/2020

To: Interested Parties and Parties of Record

RE:           Project Name: Smith Selembo Accessory Dwelling Unit  
                Applicant: Godwin E & Kimberly A Selembo  
                                2160 NE Sawdust Hill Rd  
                                Poulsbo, WA 98370  
                Application: Conditional Use Permit – Accessory Dwelling Unit  
                                (CUP-ADU)  
                Permit Number: 20-00424

The Kitsap County Hearing Examiner has **APPROVED** the land use application for **20-00424 Smith Selembo 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://spf.kitsapgov.com/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 at the Department of Community Development, Monday through Thursday, 8:00 AM to 4:00 PM and Friday 9:00 AM to 1:00 PM, except holidays. If you wish to view the case file or have other questions, please contact [Help@Kitsap1.com](mailto:Help@Kitsap1.com) or (360) 337-5777.

CC: Applicant/Owner: Godwin E & Kimberly A Selembo, [selembo@gmail.com](mailto:selembo@gmail.com)  
Project Representative: Charles LaMont, [wayne@lamontdesigninc.com](mailto:wayne@lamontdesigninc.com)  
Health District  
Public Works  
Parks  
Navy  
DSE  
Fire District #18

North Kitsap School District  
Puget Sound Energy  
Point No Point Treaty Council  
Suquamish Tribe  
Port Gamble S'Klallam Tribe  
WA Dept of Fish & Wildlife  
WA State Dept of Ecology-SEPA  
WA State Dept of Ecology-Wetland Review  
Interested Parties:  
None

**KITSAP COUNTY HEARING EXAMINER  
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

**Accessory Dwelling Unit Conditional Use Permit  
Smith Selembo, File No. 20-00424**

**June 22, 2020**

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**1. FINDINGS OF FACT**

**1.1 Proposal.** Construct a 900 square foot accessory dwelling unit (“ADU”) and 818 square foot two-story garage/storage building on a 2.68 acre lot.

**Applicant/Property Owner.** Godwin E. and Kimberly A. Selembo, 2160 NE Sawdust Hill Road, Poulsbo, WA 98370.

**Location.** 2160 NE Sawdust Hill Road, Poulsbo, WA 98370. Assessor Parcel No. 362701-3-023-2009.

**1.2 Hearing.** An open record public hearing was held June 11, 2020. Due to COVID-19 restrictions, the hearing was conducted remotely, with the Examiner, Kitsap County Department of Community Development (“DCD”), and Applicant calling in. Access information was provided to the public to allow citizens to join via either a video link or telephone call-in. There were no reported technical difficulties during the call or afterwards. However, in case any citizens who wished to comment had difficulty calling in, the record was kept open for a week, through June 18.<sup>1</sup> No comment was received following the hearing. At the hearing, DCD, through Mr. Smith, described the project. DCD found it consistent with requirements, and recommended approval with conditions. The Applicant’s representative (both the project architect and a neighbor) confirmed there were no concerns with DCD's proposed conditions, and noted his support as a neighbor. Mr. Selembo also spoke, agreeing with DCD’s summary of the proposal. No member of the public indicated a wish to speak.

**1.3 Administrative Record.** The Hearing Examiner admitted Exhibits 1-30, which included the Staff Report, application materials, documentation of agency consultation, public notice documents, and a DCD Power Point presentation.

**1.4 SEPA.** DCD issued an unappealed Determination of Non-Significance,<sup>2</sup> with conditions requiring compliance with Title 12 to address stormwater control, Title 19 to address critical areas (slope setbacks), and Title 17 to address land use impacts.

**1.5 Agency Comment.** The proposal was circulated within the County. As long as requirements are met, there were no objections to approval.

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<sup>1</sup> Temporary Emergency Rule to Address COVID-19 Situation (April 1, 2020).

<sup>2</sup> Exhibit 21; Exhibit 29 (Staff Report), p. 2.

**1.6 Notice.** Hearing and application notice was provided consistent with KCC requirements.<sup>3</sup>

**1.7 Zoning/Plan Designations and Critical Areas.** Outside the urban growth area, the site's Comprehensive Plan and zoning designation are Rural Residential (RR),<sup>4</sup> allowing one dwelling unit per five acres. An ADU is authorized by CUP, with requirements specific to the use. Surrounding properties are also zoned RR and are developed with single-family residences.<sup>5</sup>

**1.8 Utility and Public Services.**

- **Water:** Two-party private well
- **Power:** Puget Sound Energy
- **Sewer:** Septic
- **Police:** Kitsap County Sheriff
- **Fire:** North Kitsap Fire & Rescue
- **Schools:** North Kitsap School District #400

**1.9 Access.** NW Sawdust Hill Road, a paved county-maintained local access road that intersects with Stottlemeyer Road NE to the east and Big Valley Road NE, which are both paved county-maintained roads.

**1.10 Site Characteristics, Dimensions and Setbacks.** The property includes open pasture/lawn area on most of the property with some conifers scattered throughout the property and some trees and shrubs along the south property line. The site is developed with an 1,804 square foot single-family residence and small outbuildings; the ADU will be about 12 feet away from the single-family residence and meet the 35-foot height limit.<sup>6</sup> Setbacks meet or exceed requirements, with over 57 feet on the west side, 216 on the front, 321 on the rear and 111 on the east side.<sup>7</sup>

**1.11 Building and Site Aesthetics.** The primary residence and ADU will be similar in appearance. The ADU and residence are both one story rural farmhouse style, and will share similar siding, pitched gable composite roofs, windows, and paint colors.<sup>8</sup> The extensive setbacks provide visual mitigation.

**1.12 Environmental.** Kitsap County resource maps show a High Geologic Hazard area on the site's northernmost portion. The slope measures in places between 55% and 78%, and is vegetated with large and small diameter trees, shrubs, salal, and other plants. The ADU is over 80 feet away. A limited Geological Reconnaissance reviewed project consistency with KCC 19.400, .420, .425, and .430. If adequate drainage is maintained, construction will not adversely affect adjacent slopes.

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<sup>3</sup> Exhibits 19, 22 and 23; KCC 21.04.080, .210.

<sup>4</sup> Exhibit 24; Exhibit 29 (Staff Report), p. 3.

<sup>5</sup> Exhibit 29 (Staff Report), p. 3.

<sup>6</sup> Exhibit 16; Exhibit 29 (Staff Report), pp. 3 and 8.

<sup>7</sup> Exhibit 29 (Staff Report), p. 3.

<sup>8</sup> Exhibit 1; Exhibit 29 (Staff Report), pp. 1, 8.

**1.13 Development Engineering/Stormwater.** The ADU is a Small Project as defined in KCC Title 12, and as such will require the ADU building permit site plan to demonstrate compliance with Minimum Requirements 1-5. Stormwater management is proposed to be via infiltration for the proposed ADU, garage, additional drive/parking area and an existing concrete sports court. Development Services and Engineering has reviewed the land use proposal and found the civil site development approach supportable. These comments are based on a review of the Preliminary Drainage Report and Preliminary Engineering Plans stamped received March 31, 2020 to Kitsap County Development Services and Engineering.

**1.14 Conditions/Staff Report.** The Applicant accepted the proposed conditions, which are incorporated without revision, excepting Condition 21, which appears to apply to not this project, but an earlier one. Except as the Decision revises it, the Staff Report is incorporated.

## 2. CONCLUSIONS OF LAW

**2.1 Hearing Examiner Review Authority.** The Hearing Examiner has CUP review authority for this ADU.<sup>9</sup> The Examiner may approve, approve with conditions, or deny a CUP.<sup>10</sup>

**2.2 Code Requirements Specific to an ADU in the RR Zone.** An ADU outside the urban growth area, and within the RR zone, must obtain a CUP and comply with requirements specific to the use.<sup>11</sup> Only one ADU is allowed per lot, on which no accessory dwelling quarters are located, and the owner "must reside in either the primary residence or the ADU."<sup>12</sup> These requirements are met. Only one ADU is proposed for a lot outside the urban growth area, no accessory living quarters or other ADUs are on the lot, and the property owners live in the single-family residence.

The ADU cannot "exceed fifty percent of the square footage of the habitable area of primary residence or nine hundred square feet, whichever is smaller."<sup>13</sup> The primary residence's habitable area is 1,804 square feet.<sup>14</sup> At 900, the ADU complies.

The ADU, at 12 feet from the primary residence,<sup>15</sup> complies with the requirement to be "within one hundred fifty feet of the primary residence or shall be the conversion of an existing detached structure (e.g, garage)..."<sup>16</sup> The proposal complies with all other setback requirements.

As for design, as the findings address, the primary residence and ADU will be similar in appearance,<sup>17</sup> as the ADU has been "designed to maintain the appearance of the primary

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<sup>9</sup> KCC 17.410.010, 21.04.100 (permit type #18), and 17.410.042 (use #100).

<sup>10</sup> KCC 17.550.030.

<sup>11</sup> KCC Table 17.410.042, FN 1, requiring KCC 17.410.060 compliance. *See* KCC 17.410.060(B)(3).

<sup>12</sup> KCC 17.410.060(B)(3).

<sup>13</sup> KCC 17.410.060(B)(3).

<sup>14</sup> Exhibit 29 (Staff Report), p. 1.

<sup>15</sup> Exhibit 16; Exhibit 29 (Staff Report), p. 8.

<sup>16</sup> KCC 17.410.060(B)(3).

<sup>17</sup> Exhibit 1; Exhibit 29 (Staff Report), pp. 1, 8.

residence."<sup>18</sup> Also, the proposed ADU is stick-built, so is not a mobile home or recreational vehicle.<sup>19</sup>

The ADU will be supplied by well water and a septic system. Kitsap Public Health approved the ADU.<sup>20</sup> The ADU will "meet the applicable health district standards for water and sewage disposal."<sup>21</sup>

Parking and entry requirements are met. The ADU will use "the same side street entrance as the primary residence."<sup>22</sup> Three additional parking spaces will be provided for the ADU.<sup>23</sup> With sufficient space to meet minimum parking requirements and with the "additional off-street parking,"<sup>24</sup> parking requirements are met. All requirements specific to the ADU use are met.

### **2.3 Conditional Use Permit Requirements.**

A CUP must meet four requirements.

1. The proposal is consistent with the Comprehensive Plan;
2. The proposal complies with applicable requirements of [Title 17];
3. The proposal will not be materially detrimental to existing or future uses or property in the immediate vicinity; and
4. The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing character, appearance, quality or development, and physical characteristics of the subject property and the immediate vicinity.<sup>25</sup>

These criteria are met. The Staff Report provided detail on Comprehensive Plan policies. They provide for development at low residential densities that can be sustained without urban levels of service, and will cause minimal environmental degradation. The Plan supports residential uses consistent with the existing and planned rural character of the surrounding rural area, while minimizing housing costs and providing for a range of housing types. The ADU does not have significant environmental impacts, does not require urban infrastructure, and is consistent with the surrounding area's rural character. The proposal is consistent with the Comprehensive Plan.

The proposal is conditioned to ensure compliance with Titles 12, 17, and 19, and other code requirements. No code provision was identified which would not be complied with. Also,

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<sup>18</sup> KCC 17.410.060(B)(3).

<sup>19</sup> KCC 17.410.060(B)(3).

<sup>20</sup> Exhibit 29 (Staff Report), pp. 8-9; Exhibit 17.

<sup>21</sup> KCC 17.410.060(B)(3).

<sup>22</sup> KCC 17.410.060(B)(3).

<sup>23</sup> Exhibit 29 (Staff Report), p. 9; KCC 17.490.030.

<sup>24</sup> KCC 17.410.060(B)(3).

<sup>25</sup> KCC 17.550.030(A).

the proposal will not be materially detrimental to existing or future uses or property in the immediate vicinity. All impacts identified have been addressed through project design, additional mitigation, and/or code requirements.

The proposal is compatible with surrounding existing uses. It is aesthetically consistent with the existing residence. The ADU's small size, existing vegetation, and extensive setbacks which exceed code requirements all ensure it is consistent with the surrounding character, appearance, and quality of development on site and in the immediate vicinity. As conditioned and proposed, the ADU meets all CUP criteria and should be approved.

### **DECISION**

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested CUP for the proposed ADU, provided these conditions are adhered to:

#### **Planning/Zoning**

1. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.
2. The ADU 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 ADU building, regardless of whether a building permit is required, shall be reviewed by DCD and granted approval prior to such modification, expansion, construction and/or issuance of a building permit.
4. Only one ADU shall be permitted on the subject property.
5. The owner of the property must reside in either the primary residence or the ADU and only one of the structures may be rented at any one time.
6. The ADU's habitable area shall not exceed 50% of the primary residence or 900 square feet, whichever is smaller. The proposed size of the ADU is 900 square feet.
7. The ADU shall be located within 150 feet of the primary residence.
8. The ADU shall be designed to maintain the appearance of the primary residence.
9. This permit shall comply with all Kitsap Public Health District regulations and conditions of approval.
10. No mobile home or recreational vehicle shall be allowed as an ADU.

11. The ADU shall use the same side street entrance as the primary residence and shall provide one additional off-street parking space.

12. An accessory living quarters (ALQ) or guest house (GH) is not permitted on the same lot unless the ADU is removed and the ALQ or GH complies with all requirements imposed by the KCC.

13. A property with a primary residence and an ADU 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.

14. The ADU cannot be sold separately from the primary residence unless it has legally been segregated onto its own lot.

15. The recipient of any CUP 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 CUP and as a notice to prospective purchasers of the existence of the permit. The Binder shall be prepared and recorded by the Department at the applicant's expense.

16. The uses of the property are limited to the uses proposed by the applicant, and any other uses will be subject to further review pursuant to the requirements of the KCC. Unless in conflict with the conditions stated and/or any regulations, all terms and specifications of the application shall be binding conditions of approval. Approval of this project shall not be, and is not to be, construed as approval for more extensive or other utilization of the subject property.

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

18. The decision set forth herein is based upon representations made and exhibits contained in the project application 20-00424 Smith-Selembo ADU CUP. Any change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to further review and approval of the County and potentially the Hearing Examiner.

19. This CUP approval shall automatically become void if no development permit application is accepted as complete by DCD within four years of the Notice of Decision date or the resolution of any appeals.



20. Any violation of the conditions of approval shall be grounds to initiate revocation of this CUP.

21. [Original language not applicable. Place holder to maintain numbering.]

### **Development Engineering**

22. Construction plans and profiles for all roads, storm drainage facilities and appurtenances prepared by the developer's engineer shall be submitted to Kitsap County for review and acceptance. No construction shall be started prior to said plan acceptance.

23. The information provided demonstrates this proposal is a Small Project as defined in KCC Title 12, with a required level of drainage review of Simplified Drainage Review-Engineered, and as such will require that building permits include an engineered stormwater design that meets Minimum Requirements 1-5, as outlined in the Kitsap County Stormwater Design Manual.

24. On-site stormwater management, and erosion and sedimentation control, shall be designed in accordance with KCC Title 12 effective at the time the CUP application was deemed complete, February 12, 2020. The submittal documents shall be prepared by a civil engineer licensed in the State of Washington.

25. The Washington State Department of Ecology (Ecology) may require registration of the infiltration trench as an Underground Injection Control (UIC) well in accordance with the Underground Injection Control Program (Chapter 173-218 WAC). The applicant shall contact Ecology to determine if the facility is regulated under the UIC program.

26. The design of the infiltration facilities will be in accordance with Vol. II, Chapter 5 of the Kitsap County Stormwater Design Manual.

27. The infiltration facilities shall remain offline until the drainage areas are stabilized, and the water quality treatment facility is adequately established. Temporary erosion and sedimentation ponds shall not be located over infiltration facilities.

28. During the construction of the proposed infiltration facilities, the Project Engineer shall provide an inspection to verify that the facilities are installed in accordance with the design documents and that actual soil conditions encountered meet the design assumptions. The Project Engineer shall submit the inspection report properly stamped and sealed with a professional engineer's stamp to Development Services and Engineering.

29. If the project proposal is modified from that shown on the site plan accepted for review February 12, 2020, Development Services and Engineering will require additional review and potentially new conditions.

### **Environmental**

30. Consistent with KCC 19.400.420 Erosion Hazards the construction project standard erosion control Best Management Practices (BMPs) should be employed during excavation for the foundation or minor grading.

### **Traffic and Roads**

31. Apply for Concurrency Test (KCPW Form 1601) as required by Chapter 20.04.030, Transportation Concurrency, of the KCC. The KCPW 1601 form reserves road capacity for the project.

32. Submit plans for construction of the road approach between the edge of existing pavement and the right-of-way line at all intersections with county rights-of-way. Approaches shall be designed in accordance with the Kitsap County Road Standards as established in Chapter 11.22 of the KCC. Existing approaches may need to be improved to meet current standards.

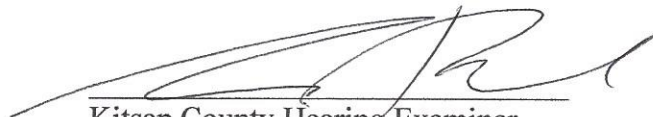
33. Any work within the County right-of-way shall require a Public Works permit and possibly a maintenance or performance bond. This application to perform work in the right-of-way shall be submitted as part of the building permit(s). The need for and scope of bonding will be determined at that time.

### **Kitsap Public Health District**

34. This permit shall comply with all Kitsap Public Health District regulations and conditions of approval.

Absent a timely appeal, this Decision is final.<sup>26</sup>

DECISION entered June 22, 2020.



Kitsap County Hearing Examiner  
Susan Elizabeth Drummond

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<sup>26</sup> See Ch. 36.70C RCW (any appeal to be filed within 21 days to superior court).