

STAFF REPORT

March 20, 2019

To: Southwest Consolidated Zoning Board
Fr: Pamela Hayhow, AICP, Senior Planner
Re: Application No. SW-CU-3449 (GA)

APPLICATION INFORMATION

Applicant: Garrison Pflumm, Jr.
Owner: Calukas Properties
Requested Action: Conditional Use Permit
Purpose: To construct a 3,600 sq. ft. (60 ft. by 60 ft.) detached accessory building (garage) with a 400 sq. ft. (40 ft. by 10 ft.) awning on a lot where no more than 2,580 sq. ft. of detached accessory building(s) and 300 sq. ft. of covered, open-sided area would otherwise be permitted.
Site Address/Location: 29289 W. 162nd Terrace
Legal Description: Lot 2, Pflumm Acres
Existing Land Use and Zoning: Vacant and RN-2, Residential Neighborhood Two District
Existing Improvements: None
Site Size: 6.6± acres

PROPOSAL

The applicant would like to construct a 60 ft. by 60 ft. (3,600 sq. ft.) detached accessory building (garage) with a 40 ft. by 10 ft. (400 sq. ft.) awning on the subject property to be used for personal storage. The size of the garage would exceed the 2,580 sq. ft. allowed for detached accessory buildings (enclosed) and the size of the awning would exceed the 300 sq. ft. allowed for roofed, open-sided accessory structures on the 6.6-acre lot by 1,020 sq. ft., or 28 percent, and by 100 sq. ft., or 33 percent, respectively. The size of enclosed accessory buildings allowed on lots smaller than 10 acres is based on a formula related to the lot size (900 sq. ft. for the first acre, 300 sq. ft. for each additional acre). In addition, on any size lot, roofed, open-

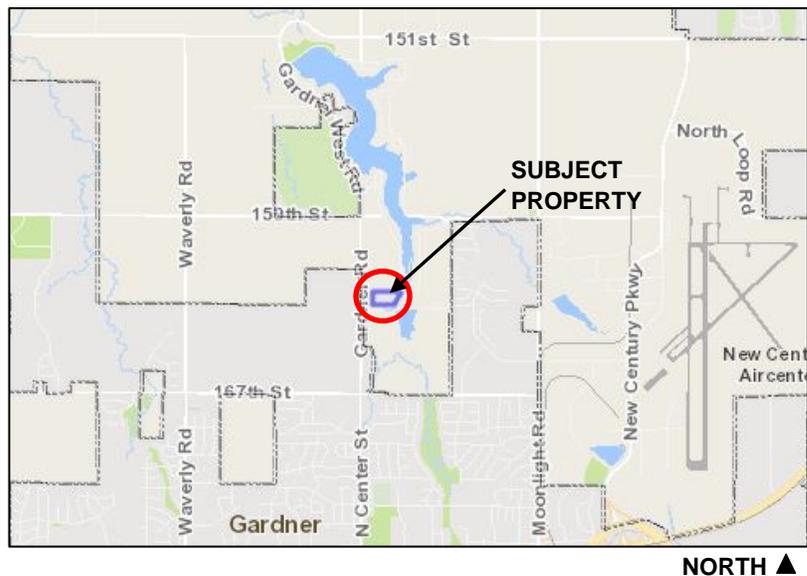


Figure 1: Vicinity Map – subject property outlined in blue, highlighted with red circle

sided accessory structures up to 300 sq. ft. are allowed. Accessory buildings and structures that are larger than the formula may be allowed, subject to approval of a Conditional Use Permit (CUP).

Zoning and Subdivision History: The property was rezoned from RUR, Rural District, to RN-2, Residential Neighborhood Two District, on December 6, 2018 (BOCC Resolution No. 100-18). The final plat for 2 lots of Pflumm Acres was approved in conjunction with the rezoning, and recorded on January 17, 2019.



Figure 2: Aerial View – subject property outlined in blue

NORTH ▲

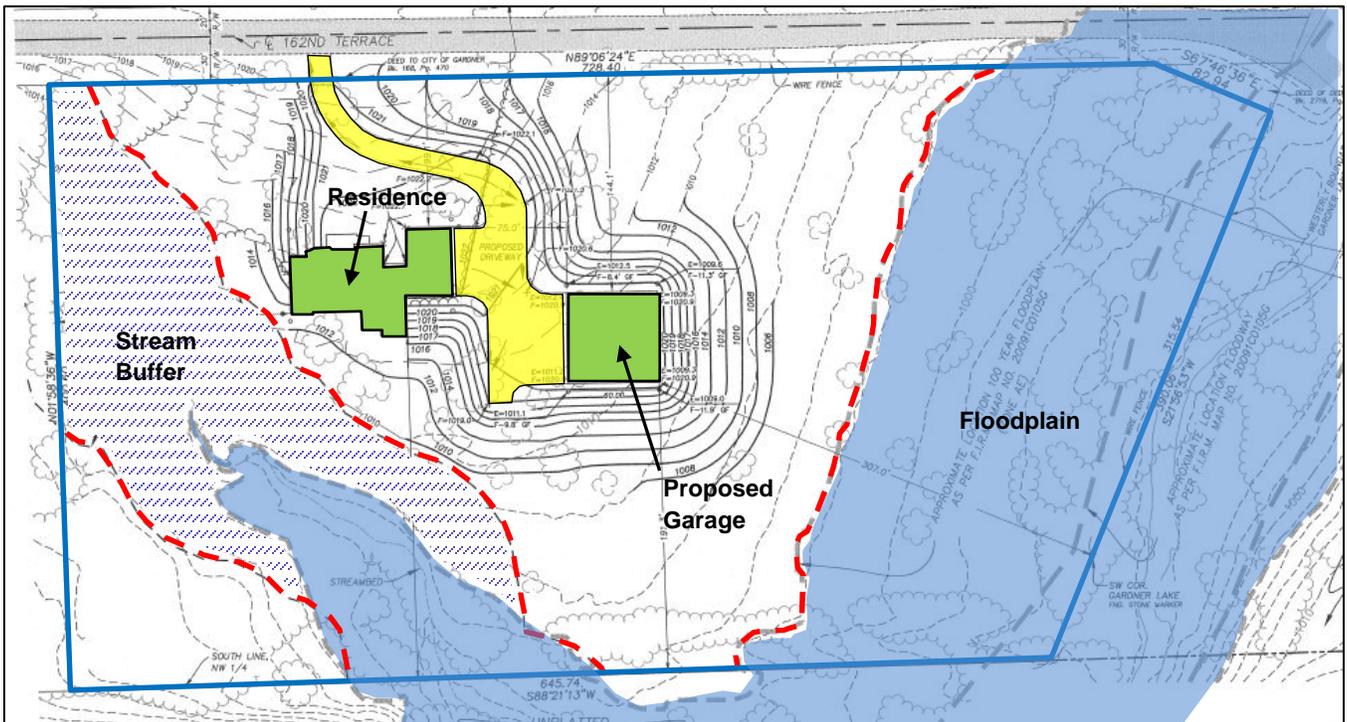


Figure 3: Plot Plan with residence and proposed garage

NORTH ▲

Summary Recommendation: Based on the findings and conclusions of this entire report, staff is recommending **approval** of the requested CUP because the proposed detached accessory building (garage) and awning are consistent with other detached accessory buildings in the area, are compatible with the zoning and single-family residential uses of nearby properties, and are located on the lot in an area screened by existing mature trees within the floodplain and stream buffer areas to the east, south, and west.

MINIMUM INFRASTRUCTURE REQUIREMENTS

The Johnson County Zoning and Subdivision Regulations (*Regulations*), state that the minimum infrastructure requirements shall be guidelines for interpretation of the minimum infrastructure required for each conditional use.

Public Safety: The property is within the Fire District 1 of Johnson County service area, with the nearest fire station located at 234 E. Park Street, about 1.3 road miles south. Police protection is provided by the Johnson County Sheriff's Department.

Roads: Access to this property is from 162nd Terrace, a paved publicly maintained street.

Stormwater: Stormwater management studies were reviewed and accepted with a recent preliminary and final plat of the property. The amount of impervious area for the improvements shown on the submitted plot plan is consistent with the studies. However, a Land Disturbance Permit (LDP) is required for any land disturbance activities that are part of a larger, phased, staged, common plan of development that will disturb a cumulative total of more than 1 acre over the life of the development. The submitted plot plan for the proposed garage indicates more than 1 acre will be disturbed during construction of the new residence and the proposed garage. Staff is recommending the following stipulation, "A copy of the State application for the LDP is required prior to the issuance of a building permit".

Wastewater Disposal: A minimum infrastructure waiver was granted to not require a sanitary sewer main from the low pressure sewer system for Gardner Lake lots to be extended to serve this property.

Water Supply: Water is provided to the property from the city of Gardner. As part of a recent rezoning the applicant agreed, and is working with the city of Gardner, to construct a fire hydrant near the intersection of Gardner Road and 162nd Terrace to provide fire flow to meet building code requirements for the improvements on the subject property. Construction of the fire hydrant is pending. NOTE: The property is currently vacant.

Summary: The existing and pending infrastructure is adequate for the proposed garage. Note: In this residential district, building permits for accessory buildings, such as the proposed garage, cannot be issued before the building permit for the primary single-family residence is issued. The applicant has indicated that the accessory building, if approved, would be constructed in conjunction with the single-family residence.

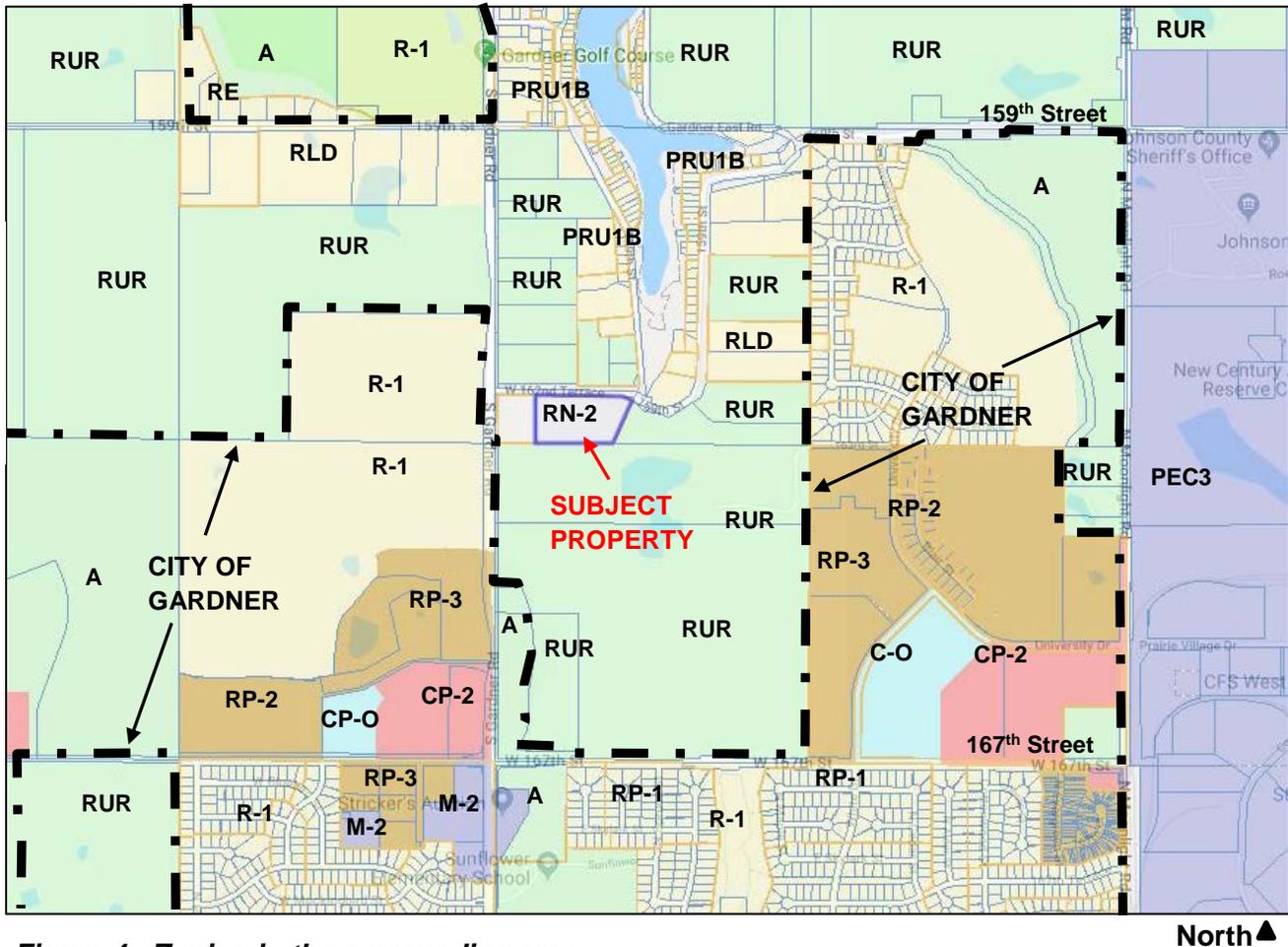


Figure 4: Zoning in the surrounding area

STAFF ANALYSIS

The *Regulations*, the *Rural Comprehensive Plan* and laws in Kansas indicate that consideration should be given to whether the proposed conditional use is in the interest of the public health, safety, morality, and the general welfare of the community. The conditional use permit application has been considered with regard to:

1. Whether the accessory building would be consistent with the zoning and uses of nearby properties. Properties to the south are zoned RUR, Rural District (Unincorporated area) and “A”, Agricultural District (city of Gardner). The RUR zoned parcels have been used for a rock quarrying operation and there is a Conditional Use Permit (CUP) for an existing communication tower. It is unknown whether the rock quarry operation will continue in the long term, and the CUP for the communication tower is valid until 2028. The “A” zoned parcel is used as a wastewater pump station. Further to the south, south of 167th Street, property is in the city limits of Gardner, zoned RP-1 (Planned Single-Family Residential District), and developed with single-family residences in the Genesis Creek and Genesis Creek Estates subdivisions.

Properties to the north are zoned RUR and PRU1B, Planned Residential Urban Single-Family 1B district and are developed with single-family residences on parcels ranging from 1 to 5.8 acres in the RUR district and from 0.1 to 3.4 acres in the PRU1B district (around Gardner Lake). The RUR zoned parcels are smaller than the 10 acre minimum size for the RUR district but they existed prior to 1982

and are legal nonconforming. The 5 acre property located immediately north, across 162nd Terrace, has a Conditional Use Permit (CUP) for a landscape contractor operation.

Properties to the east are zoned RUR, RLD, Residential Low Density District, and PRU1B (Unincorporated area) and R-1 (Single-family Residential), RP-2 (Planned Two-Family Residential District), and RP-3 (Planned Garden Apartment District) in the city of Gardner. In the Unincorporated area, there is a mix of platted and unplatted parcels developed with older single-family residences and accessory buildings. In the city of Gardner, property in the R-1 zoning district, is platted as the Copper Springs subdivision and developed with single-family residences. Property in the RP-2 zoning district is platted as the University Park Addition and is developing with duplex (two-family) residences. Property in the RP-3 zoning district remains undeveloped.

Properties to the west are in the city of Gardner and are zoned R-1, RP-2, RP-3, CP-O (Planned Office Building District), and CP-2 (Planned General Business District). These properties are not used as zoned; they are primarily used for farmstead residential and agriculture. It is anticipated that this area will develop and become more residential in the future.

As noted earlier, accessory building size is based on parcel size. The size of nearby properties range from about 1 acre to 9 acres. Nearby properties are improved with residences which vary in size/design and also have accessory buildings which vary in size and number (the maximum accessory building area allowed per lot can be contained in up to 3 buildings.) There is no consistent, or common, size for residences or accessory buildings. As shown on the plot plan, the single-family residence to be constructed is a modern design (attached garage) with a 107 ft. width and the accessory building has a width of 60 ft. (as viewed from 162nd Terrace). The accessory building size is smaller than, and properly proportional with, the size/width of single-family residence.

On the subject property, there is regulatory floodplain and stream buffer to the east, south and west. The existing mature trees in these areas will remain and continue to provide dense screening/buffering of the accessory building. The accessory building will be most visible from the north, along 162nd Terrace. The nearest residence to the north is about 320 ft. from the accessory building.

Though the accessory building is 28% larger than the Regulations allow by right, it is not so large that it would be likely to attract a commercial use in the future. In addition, commercial use in the future is unlikely as access to the accessory building is from a shared driveway located across the front yard of the single-family residence. Per the written narrative submitted by the applicant, the accessory building is for personal storage. He is aware that use of the accessory building for commercial purposes would be a violation of the *Regulations* but because the CUP runs with the land and not the property owner, staff is recommending a stipulation restricting commercial use of the oversized building (for future property owners).

Given that there is great variety in the size of residences and accessory buildings on nearby properties; that the accessory building size is proportional with the size/width of the single-family residence on the subject property; that the mature trees which screen/buffer views of the accessory building from the east, south, and west are protected through the floodplain regulations and stream buffer; and that the nearest residence is more than 300 ft. from the accessory building; the accessory building is consistent with the zoning and uses of nearby properties.

2. Whether the accessory building is compatible with the character of the neighborhood.

The character of the neighborhood continues to transition from rural/agricultural to more suburban and residential. Nearby single-family residential development, both existing and new, around Gardner Lake will be viable in the future with the recent installation of sanitary sewers. There are numerous detached accessory buildings around Gardner Lake as most of the homes were developed without attached garages. There is no consistent or standard size of accessory buildings in the residential development around Gardner Lake. The accessory building will have a stone wainscot accent to match the stone material used on the residence and will incorporate siding and roofing materials which are similar in color to the residence, which will ensure that the building will have an appearance compatible with the suburban and residential character of the neighborhood.

3. Suitability of the property for uses to which it has been restricted.

The subject property is zoned RN-2, Residential Neighborhood 2 District. Uses allowed in the RN-2 Zoning District include residential and accessory uses. The present use of the property is residential with accessory uses. The property is suitable for the uses to which it is restricted.

4. Extent of detrimental effects to nearby parcels should the Conditional Use Permit be approved.

Given the amount of screening/buffering provided by the existing mature trees in the floodplain and stream buffer; the distance from the nearest home; and the proportional size/width and matching design between the accessory building and the single-family residence; the oversized accessory building should have no detrimental effects to nearby parcels.

5. Length of time the property has remained vacant as zoned.

The subject property is currently vacant. It was originally part of a 10 acre parcel developed with a farmstead residence. The 10 acre parcel was rezoned from RUR, Rural District, to RN-2 on December 6, 2018, to subdivide 3 acres around the existing farmstead and create the subject 6.6 acre property. The two-lot plat known as Pflumm Acres was recorded on February 2019. NOTE: The applicant has indicated that the accessory building, if approved, will be constructed in conjunction with the new residence.

6. Relative gain to the public health, safety and welfare as opposed to the hardship imposed upon the landowner by denying the request.

There should be no detrimental effects to neighboring properties from the accessory building for the reasons listed in Items 1 and 4, above. Further, the accessory building will not create any increased activity in the neighborhood because it is restricted to residential accessory uses by the *Zoning Regulations* and by stipulation. Therefore, there would be no relative gain to the public health, safety and welfare if this request were denied. Similarly, there would be no hardship imposed on the landowner if this CUP is denied because a smaller, approximate 50 ft. by 50 ft., 2,500 sq. ft. accessory building, with a smaller, 10 ft. by 30 ft. awning could be constructed on the property, but not the proposed accessory building.

7. Whether the use is in keeping with the Comprehensive Plan.

The *Rural Comprehensive Plan: A Plan for the Unincorporated Area of Johnson County (Plan)* indicates that this property is located in an area designated as Urban Fringe near the City of Gardner. The purpose of the Urban Fringe Area is, in part, to:

. . . allow for “balanced and orderly” growth - preserving existing residences, active agricultural uses, and valuable open space, while enabling the gradual transition of

portions of this area to development through close cooperation between the County and adjacent cities as well as through coordinated planning with utility and other service providers (e.g., electricity, fire protection, and schools).

This CUP request is compatible and consistent with the uses in existing residential neighborhood and is generally in keeping with the Plan's recommendation to preserve the long-existing residences

ZONING AND SUBDIVISION REGULATION STANDARDS

Article 23 Section 6 (C) establishes that the granting of the requested CUP shall not be recommended unless the Zoning Board first makes a finding that the following conditions are met:

1) *Is in harmony with the general purpose and intent of the regulations.*

The general purpose and intent of the *Regulations* requirement that limits the size of accessory buildings is to prevent the construction of overly large detached accessory buildings, which are out of character in residential neighborhoods, which overshadow adjacent properties and which are often used for commercial or industrial uses that are incompatible with residential neighborhoods.

Though the accessory building and awning are oversized by *Regulations* standards, it would be consistent with the varied pattern of development in the residential neighborhood surrounding Gardner Lake and the subject property. The size and design of the accessory building is proportional and matches the design of the residence to be constructed on the subject property. View of the accessory building from the east, south, and west is mitigated by existing mature trees and dense vegetation along the floodplain and a 160 ft. wide stream buffer. It is unlikely that this will change because development in these areas is strictly regulated. Further, staff is recommending a stipulation that limits the potential commercial use of the accessory building as follows: "residential accessory uses permitted in the RN-2, Residential Neighborhood 2 District by the *Johnson County Zoning and Subdivision Regulations* (the *Regulations*). It shall not be used in conjunction with a business or commercial activity except those activities that are in compliance with the Home Occupation provisions of Article 18 of the *Regulations*."

Staff believes that the accessory building is in harmony with the general purpose and intent of the *Regulations* because it would be consistent with the varied pattern of development in the Gardner Lake neighborhood; the size and design is proportional and matches the residence on the subject property and is not out of character; and because view of the garage is mitigated by existing mature trees along the floodplain and a stream buffer; and because the *Regulations* and a recommended CUP stipulation prevent commercial use of the building.

2) *Will not impair the adequate supply of light and air to adjacent property.*

The accessory building will meet minimum setback requirements and will not impair the supply of light or air to adjacent property.

3) *Will not increase hazards from fire or other dangers.*

The accessory building will be constructed to meet Building Codes and not create any activity of a hazardous or dangerous nature.

4) *Will not increase traffic on streets beyond their capacity.*

The accessory building will not increase traffic on 162nd Terrace because it is restricted to residential accessory uses by the *Regulations* and a recommended stipulation.

- 5) *Will not increase the potential for flood damage to adjacent property or lead to additional public expense for flood protection, rescue or relief.*

The accessory building is shown on the plot plan in a location outside of the floodplain.

- 6) *Will not otherwise unduly impair the public health, safety, comfort, morals, or general welfare of the inhabitants of the County, or otherwise create a nuisance or nuisance-like situation.*

The accessory building will not impair the general welfare of County residents or otherwise create a nuisance because the request is consistent with the existing pattern of surrounding land uses.

- 7) *Will not pollute the air, land, or water.*

The proposed use will not pollute air, land, or water.

Public Works Department Staff: No comments.

RECOMMENDATION

Planning staff recommends **approval** of a Conditional Use Permit to allow an oversize accessory building (garage) with an oversize awning to be constructed and used on the subject property, subject to the following stipulations:

1. This conditional use permit authorizes a 60 ft. by 60 ft. accessory building (garage) with a 10 ft. by 40 ft. awning in accordance with the plot plan, size, and building elevations attached hereto as Exhibit A.
2. The landowners shall obtain a building permit for a single-family residence prior to a building permit for the accessory building.
3. The oversized accessory building shall be used only for residential accessory uses permitted in the RN-2, Residential Neighborhood 2 District by the *Johnson County Zoning and Subdivision Regulations* (the *Regulations*). It shall not be used in conjunction with a business or commercial activity except those activities that are in compliance with the Home Occupation provisions of Article 18 of the *Regulations*.
4. All applicable County code and regulation requirements, including but not limited to building code, fire code, wastewater, stormwater, land disturbance, and post construction water quality shall be met prior to construction of the accessory building. The plot plan indicates more than 1 acre of land disturbance which requires a Land Disturbance Permit.
5. Storage and use of gasoline, chemicals, liquids or any other potentially hazardous materials that may be stored in the accessory building shall be according to manufacturers' directions.
6. The term of this permit shall be for a period not to exceed 10 years, commencing from the date of approval of this resolution by the Board of County Commissioners.
7. If outdoor lighting is attached to or placed around the building, all light fixtures shall be a cut-off or shoebox design to prevent bulb glare and 3,000K or less in temperature/brightness. Light fixtures that produce light spillage onto adjacent property are prohibited.

Reasons for Recommendation of Approval:

1. The accessory building is consistent and compatible with the surrounding zoning and land uses and is proposed at an appropriate site.
2. Given compliance with the stipulations herein, the accessory building will have no detrimental effect on nearby properties.

3. The accessory building is consistent with the Comprehensive Plan.
4. The accessory building will not adversely affect the public health, safety, comfort, morals, or general welfare of the inhabitants of the County.
5. The requested conditional use permit satisfies the "Standards for Issuance of a CUP" [Article 23 Sec. 6 (C)].

Attachments: Vicinity Map, Exhibit A (Plot Plan and Building Elevations), Applicant's Written Narrative