

***Payson City Council Staff Report, June 3, 2015***  
***Request for Approval of a Conditional Use Permit to Allow an  
Accessory Building in the FEMA Floodplain***

**Background**

The applicant, Mark Davis is seeking approval from the City Council to construct an accessory building on Utah County parcel #08-128-0003 located at 190 East 600 South in the R-1-9, Residential Zone. The applicant is proposing to construct an accessory building measuring 30' by 75' for a total of 2,250 square feet behind the existing single family dwelling on the site. In accordance with Section 19.6.25.2 of the Zoning Ordinance, a conditional use permit is required because the structure is proposed on property identified by the Federal Emergency Management Agency (FEMA) as a Special Flood Hazard Area (Zone A1 on the Flood Insurance Rate Map).

Floodplains play an important role in natural flood and erosion control by providing areas where floodwaters are stored, and reducing flood velocities, flood peaks and sedimentation. Any development in the floodway and 100-year floodplain (floodway fringe), also known as the Special Flood Hazard Area, must meet specific construction requirements in order to provide a certain level of protection to the building, its contents, and its occupants during a flood. Local floodplain ordinances require any construction in these areas to be consistent with FEMA regulations, including the lowest floor of a structure be at least one foot above the expected depth of floodwater in a 100-year flood, also known as the base flood elevation.

In order to obtain a conditional use permit, the applicant must receive a recommendation from the Planning Commission and approval from the City Council. The Planning Commission reviewed the request on May 13, 2015 and forwarded a favorable recommendation to the City Council. Although the Planning Commission is not required to hold a public hearing, a public hearing must be conducted prior to the final decision of the City Council. The public hearing has been properly noticed and courtesy notices have been mailed to the appropriate property owners.

**Analysis**

Uses designated as conditional uses require special consideration from the Planning Commission and City Council. These uses may or may not be appropriate in particular locations or without the applicant mitigating potential negative impacts. The Planning Commission and the City Council must evaluate the appropriateness of designated conditional uses on a case by case basis. The conditional use permit procedure allows the City Council to approve, deny, or conditionally approve any request for a conditional use permit based on the criteria found in Chapter 19.13 of the Zoning Ordinance.

The City Council will need to review the proposed conditional use considering the criteria and factors set forth in Chapter 19.13.6. The validity of the permit will be conditioned upon strict compliance with applicable City ordinances, the approved project plan, and any additional conditions or requirements imposed by the City Council. The City Council shall be the final authority for all applications for Conditional Use Permits. The following factors shall be weighed and considered when determining whether a Conditional Use Permit application should be approved, approved with conditions or denied:

1. Harmony of the request with the general objectives of the General Plan, Zoning Ordinance, Subdivision Ordinance, any other City ordinance and the particular zone in which the request is located.
2. Harmony of the request with existing uses in the neighborhood.
3. Development or lack of development adjacent to the site.
4. Whether or not the request may be injurious to potential development in the vicinity.
5. Present and future requirements for transportation, traffic, water, sewer, and other utilities.
6. Suitability of the specific property for the proposed use.
7. Number of other similar conditional uses in the area and the public need for the conditional use.
8. Economic impact on the neighborhood.
9. Aesthetic impact on the neighborhood.
10. Safeguards to prevent noxious or offensive omissions such as noise, glare, dust, pollutants and odor.
11. Attempts by the applicant to minimize other adverse effects on people and property in the area.
12. Impact of the proposed use on the health, safety and welfare of the City, the area, and persons owning or leasing property in the area.

Following review of the application for consistency with the development ordinances of Payson City and in consideration of the criteria and factors set forth in Chapter 19.13.6, staff would suggest that the following conditions of approval be considered by the City Council.

1. The structure must be constructed with appropriate flood-proofing methods and must be at least one foot above the base flood elevation as indicated on the Flood Insurance Rate Map produced by FEMA. A FEMA Elevation Certificate must be prepared by a registered professional surveyor or engineer that documents the building and ground elevations at three stages during the construction process: preconstruction, during construction and finished construction. The original, signed and sealed “finished construction” elevation certificate must be submitted before the final inspection is completed for the accessory structure.
2. Section 19.3.1 of the Zoning Ordinance requires the installation of curb, gutter, and sidewalk along the frontage of 600 South with the construction of the detached accessory structure. Furthermore, the ordinance would require the installation of roadway improvements along the frontage of the unimproved 300 East right-of-way. Staff is preparing amendments to various sections of the Municipal Code that would modify these regulations. However, the amendments have not been considered or approved by the Planning Commission and City Council. The applicant is responsible to complete the improvements unless the ordinance is amended and a deferral is authorized by written agreement.
3. The Peteetneet Creek channel traverses the subject parcel and creates additional challenges to improving the site.
  - a. The site plan prepared by the applicant suggests the accessory structure will be placed near the Peteetneet Creek channel. The applicant will need to work with the City Engineer to determine the appropriate setbacks from the waterway.
  - b. The applicant will need to provide information regarding proposed access to the accessory building. Approval of a conditional use permit is not authorization to use the unimproved right-of-way or to enclose, pipe, or create new crossings over the Peteetneet Creek channel.
  - c. Any proposed alteration of the Peteetneet Creek channel will require additional approvals from Payson City and FEMA.
4. A building permit must be obtained prior to any work on the site to accommodate the proposed accessory building.

These items represent the issues staff has identified following a review of the applicable ordinances and resolutions of Payson City and the Conditional Use Criteria established in Chapter 19.13 of the Zoning Ordinance. If the items above are satisfied, staff would suggest that the site will be improved in a manner consistent with the regulations of Payson City.

### **Recommendation**

The City Council will need to determine if the proposed conditional use is an appropriate use in this location and consistent with the development goals of the City. Following a review of the site plan, application materials, and the contents of this staff report, the City Council may:

1. Remand the request back to staff or the Planning Commission for further review. This action should be taken by the City Council if it is determined that there is not enough information provided by the applicant in order for the City Council to make a well-informed decision.
2. Approve the request as proposed. If the City Council chooses to approve the conditional use as proposed, staff would suggest that an opportunity to require the applicant to satisfy the requirements of the development ordinances of Payson City and mitigate any potential adverse impacts will be missed.
3. Approve the conditional use permit with the conditions proposed by staff or more or fewer conditions. Staff would suggest that if with satisfaction of appropriate conditions, the requirements of the development ordinances of Payson City can be satisfied and proper development of the property will occur.
4. Deny the request. This action should be taken if the City Council determines that the adverse impacts of the proposed conditional use cannot be mitigated by the applicant.

Any decision of the City Council should include findings that indicate reasonable conclusions for the decision.