

Conditional Use Permit (CUP) Staff Report

Planning & Zoning Commission Public Hearing Date: July 11, 2022
City Council Public Hearing Date: July 18, 2022

Rezoning Case: P22-205
Property Owner(s): Michael Seitz
Applicant(s): Michael Seitz
Legal Description: 0.78 acres out of the Jesse Pruitt Survey, Abstract Number 629
Location: 817 E. Main Street (Exhibit "A")
Area: 0.78 acres
Comp Plan Designation: Neighborhood Commercial (Exhibit "B")
Present Zoning and Use: General Retail (GR) / legally nonconforming residence, and tool/machinery rental facility (Exhibit "D")
Proposed Use(s): *Single Family Residential* (Exhibit "D")
Request: Conditional Use Permit (CUP) to bring the existing residence into legal conformity.
Adjacent Zoning & Land Uses:
North: Single-Family 6 / Single-family residences
South: Planned Development (PD#7) / School
West: General Retail / Private Drive & Office
East: General Retail / Vacant Building

BACKGROUND

The subject property has been located within the city limits since at least 1978. The existing warehouse that is located on the property appears in aerial imagery as early as 1978. Prior to the current occupant, this warehouse was most recently occupied by a manufacturing use (Strackbein Machine Company). Sometime between 1995 and 2006 a log cabin was placed in the rear of the subject property and occupied as a residence. These manufacturing and residential land uses became legally non-conforming when the City of Tomball adopted zoning in 2008. In 2021, the current owner purchased the property to operate a tool & machinery rental company with the intention of occupying the existing log cabin as a residence.

Per Section 50-31(a.2) in the City of Tomball's code of ordinance, "a nonconforming use of a building may be changed to another nonconforming use of the same or more restrictive zoning classification, provided no structural alterations are made. In the event that a nonconforming use of a building is changed to a nonconforming use of a higher or more restrictive zoning

classification, it shall not later be reverted to use in the former or less restrictive zoning classification.” City staff believes that the changing of the existing warehouse building use from manufacturing to tool & machinery rental meets the intent and criteria of Section 50-31 by changing one legally nonconforming use to a nonconforming use of less intensity. However, the applicant is only seeking a Conditional Use Permit to bring the residential log cabin into legal conformity to lawfully allow additions/alterations to the existing cabin, as well as to be allowed the ability to construct residential accessory structure(s) (i.e. carport, storage building, and patio covers).

This year (2022) the owner of the property constructed a carport, patio cover, and placed a freight container as accessory structures to this residence without obtaining building permits. These new accessory structures do not meet the required building setback standards, and will ultimately require variance approvals by the Board of Adjustments in order to remain. The Board of Adjustments is not authorized to grant variances to expand legal non-conforming uses, and thus the applicant is seeking to obtain legally conforming status for the residence with the requested CUP in order to apply for variance approvals for these structures. The information pertaining to these variances is to provide background to the request and should not have any bearing on the requested CUP.

ANALYSIS

According to Section 50-81 (f) of Chapter 50 (Zoning), when considering applications for a CUP, the City shall, on the basis of the concept plan and other information submitted, evaluate the impact of the conditional use on and the compatibility of the use with surrounding properties and neighborhoods to ensure the appropriateness of the use at a particular location. Specific considerations shall include the extent to which:

- 1. The proposed use at the specified location is consistent with the goals, objectives, and policies contained in the adopted Comprehensive Plan;**

The property is designated as Neighborhood Commercial by the Comprehensive Plan Future Land Use Map. This category is intended for “commercial uses that are developed with the appropriate context, scale and design to compliment residential development”. Appropriate land uses include “restaurants, retail, professional services, clinics, and offices” and compatible zoning districts include Office, General Retail, and Planned Developments. The request is to bring the legally nonconforming residential use into legal conformity, although this land use is not specifically defined in the intent of the Neighborhood Residential land use category it is an existing use that has occupied the property since the 1990s. Further, the city staff believes that allowing this use to lawfully occupy the site would not be detrimental to surrounding properties.

- 2. The proposed use is consistent with the general purpose and intent of the applicable zoning district regulations;**

According to the Zoning Ordinance, “a conditional use is a land use which, because of its unique nature, is compatible with the permitted land uses in a given zoning district only upon a determination that the external effects of the use in relation to the existing and planned uses of adjoining property and the neighborhood can be mitigated through the imposition of certain standards and conditions.”

The property has been zoned General Retail, since the inception of zoning in 2008. Surrounding properties are zoned Single-Family 6 to the north, General Retail to the east and west, and Planned Development (PD#4) located on the south side of East Main Street. According to Section 50-76 (General Retail District), the “General Retail District is established to provide areas for local neighborhood shopping and service facilities”. This would suggest that such zoning districts should be located in close proximity to neighborhoods and residential land uses. Therefore, the allowance of accessory residential land use in this zoning classification would appear consistent with this intent.

3. The proposed use meets all supplemental standards specifically applicable to the use as set forth in the Zoning Ordinance;

No, because this cabin predates current zoning standards it does not appear to meet the minimum 60-foot rear building setback ordinarily applicable where General Retail backs up to residential zoning districts. Furthermore, as previously stated within the “Background” section of this report, new residential accessory structures have been erected on the site which do not meet the required building setback standards. These structures will ultimately require variance approvals by the Board of Adjustments in order to remain.

Should the CUP application be approved by City Council, and necessary variances granted by the Board of Adjustments the applicant will be required to submit site and building plan applications and supporting documents to the City of Tomball for review and approval illustrating any additions/alterations to the existing cabin and/or construction/placement of accessory structures.

4. The proposed use is compatible with and preserves the character and integrity of adjacent development and neighborhoods and, as required by the particular circumstances, includes improvements or modifications either on-site or within the public rights-of-way to mitigate development-related adverse impacts;

The residential use of the existing log cabin on this subject site predates current zoning ordinances, and is a legally non-conforming use at this time. City staff believes that the continued use of this log cabin for residential purposes would not adversely impact the character and integrity of adjacent developments. The use of the northern portion of this site for residential purposes may serve as an effective transitional land use buffer between the commercial aspect of the property and the single family residential homes immediately north of the property.

5. The proposed use is not materially detrimental to the public health, safety, convenience and welfare, or results in material damage or prejudice to other property in the vicinity.

Staff does not anticipate any adverse effects on surrounding properties.

PUBLIC COMMENT

Property owners within 200 feet of the project site were mailed notification of this proposal and a Notice of Public Hearing was published in the paper on June 29, 2022. Any public comment forms will be provided in the Planning & Zoning Commission and City Council packets or during the public hearing.

STAFF RECOMMENDATION

Based on the findings outlined in the analysis section of this staff report, City staff recommends approval of Zoning Case P22-205 with the following condition(s):

- All outdoor storage of equipment and material must be screened from residential zoning districts and street right-of-ways by an opaque fence and/or wall with a minimum height of six feet. Said screening may be made of wood, metal, vegetation, or a combination thereof.
- Accessory residence must remain subordinate to the principal land use and shall be no greater than 25% of the square footage for the existing principal building.
- Accessory residence shall be limited to no more than one (1) story in height.

P&Z RECOMMENDATION

Approval (2 Vote Aye, 1 Vote Nay):

- Discussion items:
 - Does the approval of the CUP grant approval of the carport, storage container locations?
 - Will the applicant need to obtain building permits for the carport, and storage container?

EXHIBITS

- A. Aerial Photo
- B. Comprehensive Plan
- C. Zoning Map
- D. Site Photo
- E. CUP Application
- F. Concept Plan

Exhibit "A"
Aerial Map



Exhibit "B" Zoning Map

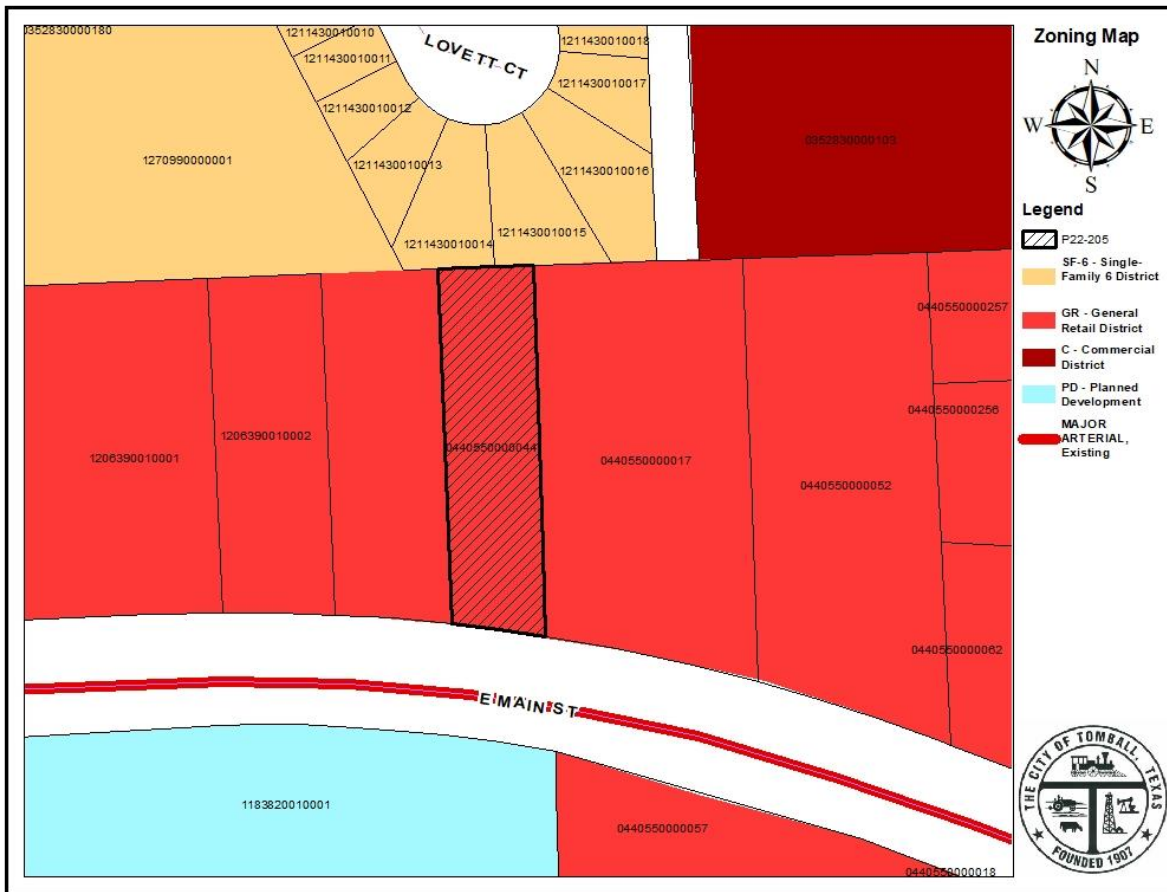
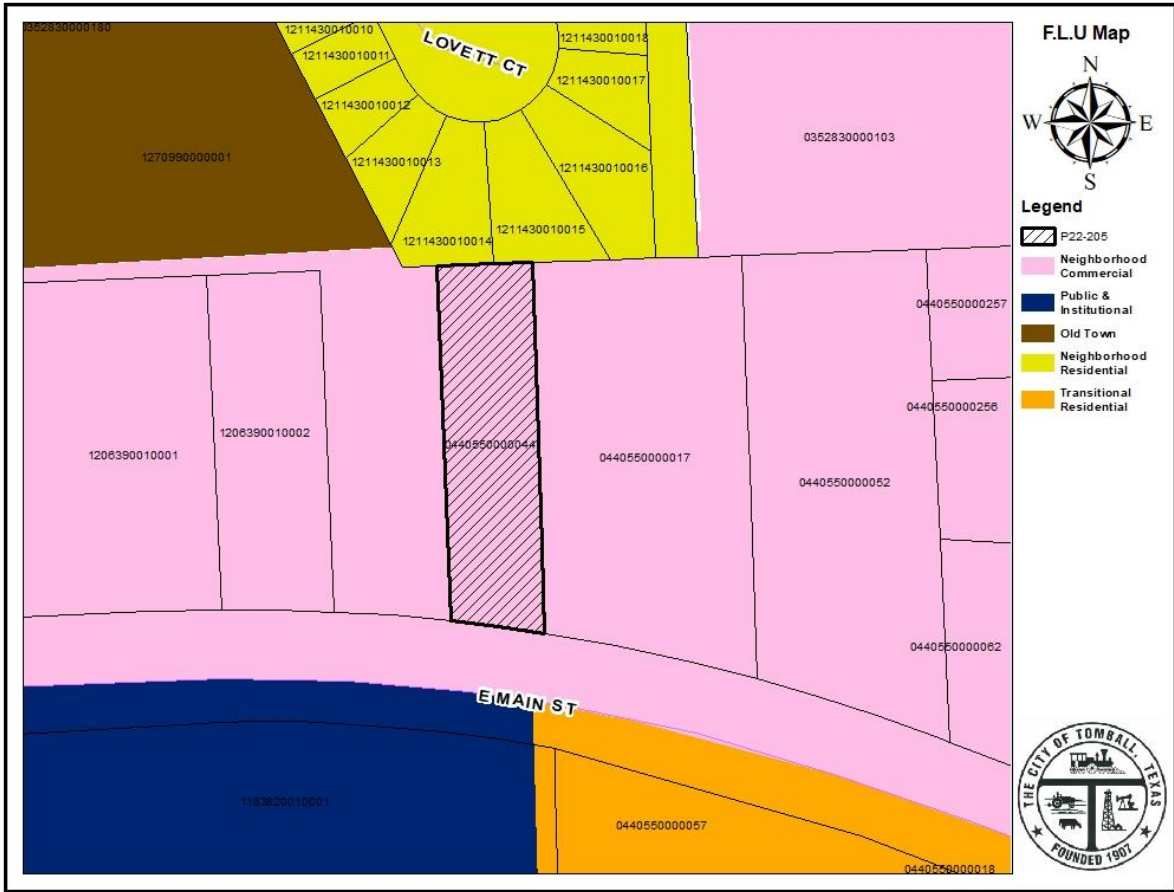


Exhibit "C"
Future Land Use Map



**Exhibit “D”
Site Photo**





Exhibit "E" CUP Application



RECEIVED (KC)
06/13/2022

Revised 5/19/15
ZONING CASE P22-205
\$600 PD

APPLICATION FOR CONDITIONAL USE PERMIT Community Development Department Planning Division

A conditional use is a land use which, because of its unique nature, is compatible with the permitted land uses in a given zoning district only upon a determination that the external effects of the use in relation to the existing and planned uses of adjoining property and the neighborhood can be mitigated through imposition of certain standards and conditions.

No conditional use shall be established and no building permit shall be issued for any use designated as a conditional use within any zoning district until a conditional use permit (CUP) is approved and issued in accordance with the provisions of Section 50-34 of the Code of Ordinances.

APPLICATION SUBMITTAL: Applications will be *conditionally* accepted on the presumption that the information, materials and signatures are complete and accurate. If the application is incomplete or inaccurate, your project may be delayed until corrections or additions are received.

Applicant

Name: Michael W. Seitz Title: _____
Mailing Address: 817 E Main St City: Tomball State: TX
Zip: 77375
Phone: (832) 212 0963 Fax: (____) _____ Email: Dr.michael.seitz@bluesky-global.com

Owner

Name: BlueSky Global LLC Title: _____
Mailing Address: AS ABOVE City: _____ State: _____
Zip: _____
Phone: (____) AS ABOVE Fax: (____) _____ Email: AS ABOVE

Engineer/Surveyor (if applicable)

Name: _____ Title: _____
Mailing Address: _____ City: _____ State: _____
Zip: _____
Phone: (____) _____ Fax: (____) _____ Email: _____

Description of Proposed Project: Request for continued use a personal residence

Physical Location of Property: East Main St & Tom Keating Dr
[General Location – approximate distance to nearest existing street corner]

Legal Description of Property: J. Pruitt, A-629
[Survey/Abstract No. and Tracts, or platted Subdivision Name with Lots/Block]

HCAD Identification Number: 1118610000071 Acreage: 7,800SF

Current Use of Property: Residential

Proposed Use of Property: Residential

Please note: A courtesy notification sign will be placed on the subject property during the public hearing process and will be removed when the case has been processed.

This is to certify that the information on this form is COMPLETE, TRUE, and CORRECT and the under signed is authorized to make this application. I understand that submitting this application does not constitute approval, and incomplete applications will result in delays and possible denial.

X 
Signature of Applicant

May 27, 2022

Date

X
Signature of Owner

Date

From: noreply@tomballtx.gov
To: [Kimberly Chandler](#)
Subject: Receipt #R01319741
Date: Monday, June 13, 2022 1:27:12 PM

401 Market Street
401 Market Street
Tomball, TX 77375
(281) 351-5484

DATE : 6/8/2022 4:16 PM
OPER : JC
TKBY : Juanita Cherety
TERM : 5
REC# : R01319741
130.0000 PLANNING AND ZONING
MICHAEL ASITC-BLUE SKY GLOBAL 600.00

Paid By:MICHAEL ASITC-BLUE SKY GLOBAL
2-CK 600.00 REF:W 100



City of Tomball
510 James Street
Tomball, TX
77375
281-290-1405

31 May, 2022

To whom it may concern,

Application for conditional use permit

I am writing with a request for a permit for the continued use of the rear half of the property, zoned for General Retail Use for residential purposes (Conditional Use Permit). This request is based on my current use of the existing property as my personal home. The log cabin, which was built in 1999, was initially determined habitable during an informal visit by a city official prior to my purchase of the property. Subsequent to the purchase, I remodeled the interior of the cabin, and repaired the leaking roof with a metal roof. The cabin is now my primary residence, with my operating company located in the street-front portion of the property.

I hereby request that the zoning be amended for Residential Conditional Use.

Sincerely yours,

A handwritten signature in black ink, appearing to be "Michael Seitz", written in a cursive style.

Michael Seitz
Business owner
BlueSky Global
Dr.michael.seitz@bluesky-global.com
832.212.0963

Approximately to Scale

Subject for variance request
Carport and Tool Shed

Drainage Pipes

Drainage Swale

Drainage Swale

Log Cabin

Warehouse

Church Access Road

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