

Board of Adjustments (BOA) Staff Report

Board of Adjustments Hearing Date: October 13, 2022

BOA Case P22-099: Request by Michael Seitz for a variance from Section 50-76 General Retail (GR) District of the Tomball Code of Ordinances to allow for encroachment of 22-feet and 4-inches into the 25-foot rear building setback, and 10-inches into the 5-foot interior side yard setback for a carport and accessory storage building. The site is approximately 0.78 acres out of the Jesse Pruitt Survey, Abstract No. 629. Located within the 700-800 blocks of East Main Street (north side) at 817 E. Main Street, within the City of Tomball, Harris County, Texas.

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”)
Lot Area: 0.78 acres
Present Zoning & Use: General Retail District (GR) and CUP (CUP-32) (Exhibit “B”) / Tool & Machinery Rental Facility and Accessory Residence (Exhibit “D”)
Comp Plan Designation: Neighborhood Commercial (Exhibit “C”)
Adjacent Zoning & Land Uses:
North: Single-Family 6 (SF-6) / Single-family residences
South: Planned Development (PD #7) / School
West: General Retail (GR) / Private Drive & Office
East: General Retail (GR) / 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. This year (2022), without obtaining building permits, the owner of the property constructed a carport and placed a freight container at the rear of the property to serve as accessory structures to this residence. These structures encroach

beyond the side setback (5-feet) and/or rear setback (25-feet) ordinarily required for accessory structures in General Retail zoning. The applicant is now seeking variances to allow these structures (carport and freight container) to remain where they are presently located. If approved, the requested variance(s) would allow the carport and freight container to be as close as 2-feet 8-inches to the rear property line and the carport as close as 4-feet 2-inches to the western side property line.

According to Section 50-31 (a) (Nonconforming uses), no alterations may be made to nonconforming uses that will effectively expand the degree of a nonconforming use. Because the Board of Adjustments does not have the authority to approve the expansion of a nonconforming use the applicant obtained a Conditional Use Permit in August of 2022 for an accessory residence within General Retail zoning. This Conditional Use Permit brought the residential use of the existing log cabin into legal conformity, allowing the applicant to now seek variances.

ANALYSIS

According to the City of Tomball Code of Ordinance, accessory structures in General Retail zoning districts shall conform to applicable provisions of the building code. This states that accessory structures in General Retail must be setback a minimum of 25-feet from the rear property line when adjacent to Single Family land uses and 5-feet from side interior property lines. The ordinarily applicable rear setback according to the building code is 15-feet, the increased setback when abutting residential land uses is likely in an effort to protect residential land uses from potential nuisances that may be created when commercial land uses are located in close proximity to residences.

According to Section 50-33 (f) (Variances) When reviewing variance requests the Board of Adjustments should consider:

Section 50-33(f.4) (Findings of Undue Hardship)

1. The literal enforcement of the controls will create an unnecessary hardship or practical difficulty in the development of the affected property.
 - a. No, the literal enforcement of the code does not create an unnecessary hardship or difficulty.
2. That the situation causing the hardship or difficulty is neither self-imposed nor generally affecting all or most properties in the same zoning district:
 - a. No, the situation causing the hardship is self-imposed.
3. That the relief sought will not injure the permitted use of adjacent conforming properties:
 - a. Yes, the granting of the variances does not appear to injure permitted uses of adjacent properties.
4. That the granting of a variance will be in harmony with the spirit and purpose of this chapter:
 - a. Yes, city staff believes that the intent of the heightened setback standard is in an effort to protect adjacent residential land uses. Given that the structures that the variances apply to are utilize solely for storage purposes, it could be viewed as not presenting any immediate harm to the adjacent residential land uses.

Section 50-33(f.5)

1. Self-inflicted hardship. A variance shall not:
 - a. Be granted to relieve a self-created or personal hardship.

Given that the structures requiring a variance were constructed without city approval and the issuance of a building permit, the hardship created is entirely self-imposed and thus by code, should not warrant the approval of a variance.

RECOMMENDATION

City Staff has reviewed the request and recommends denial of **BOA Case P22-099**.

The hardship on site is self-imposed. The literal enforcement of the ordinary setback standards on this particular lot does not create an undue hardship or practical difficulty in the development of this property.

PUBLIC COMMENTS

A Notice of Public Hearing was published in the paper and property owners within 300 feet of the project site were mailed notification of this proposal on September 27, 2022. Any public comment forms will be provided in the Planning & Zoning Commission and City Council packets or during the public hearing.

EXHIBITS

- A. Aerial Location Map
- B. Zoning Map
- C. Future Land Use Map
- D. Site Photo
- E. Comprehensive Plan
- F. Setback Exhibit
- G. Application

Setback Exhibit

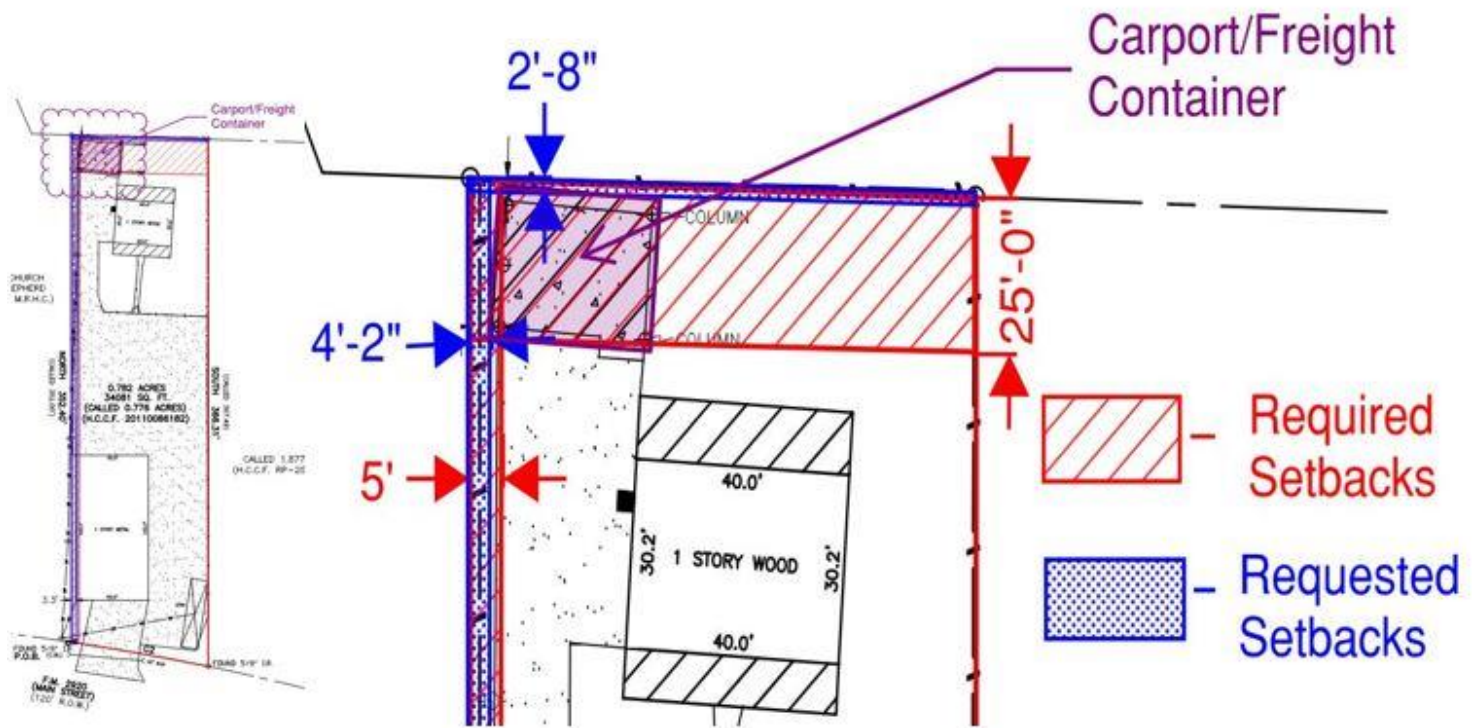


Exhibit "A"
Aerial Location Map



Exhibit "B" Zoning Map

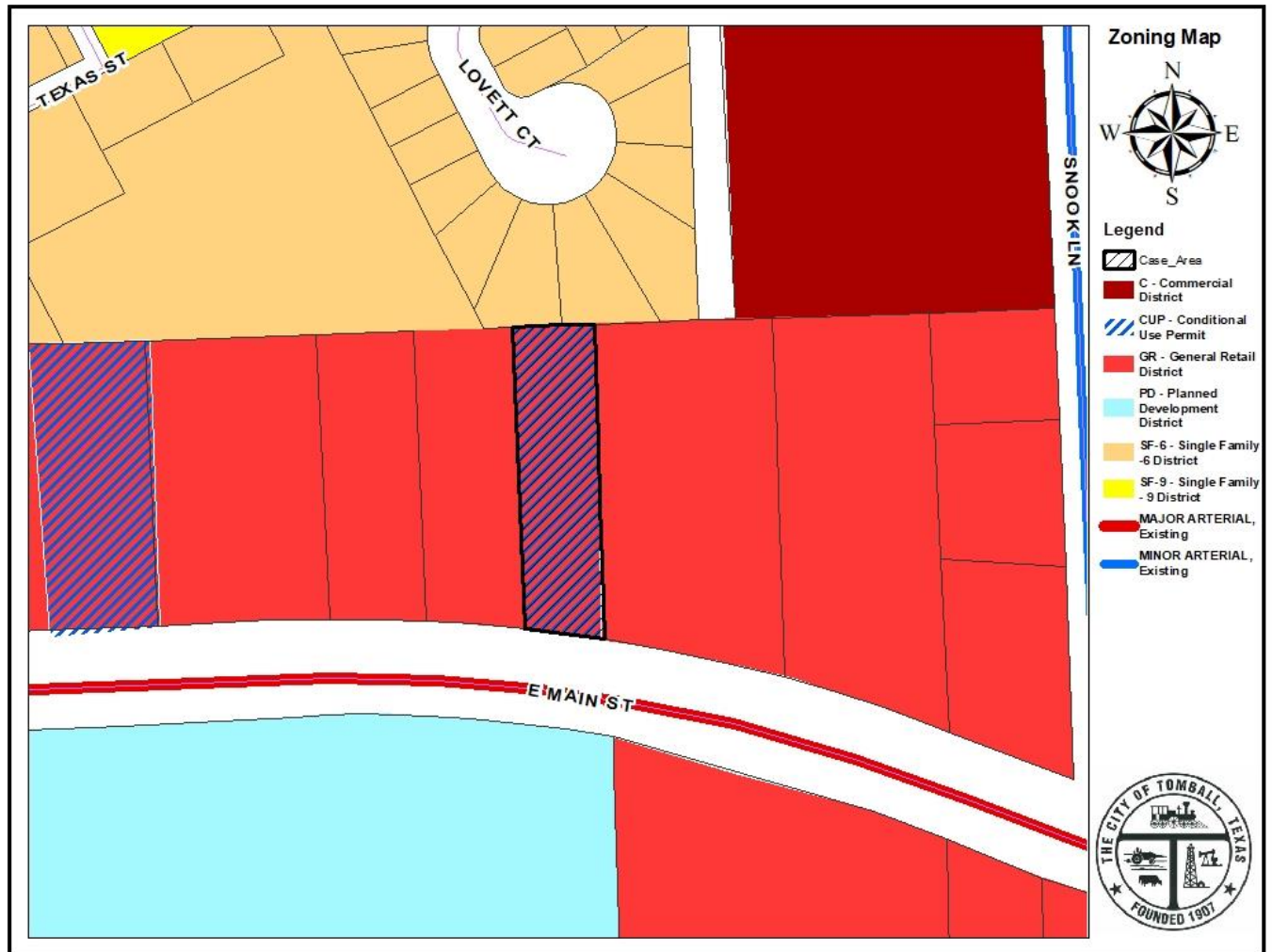
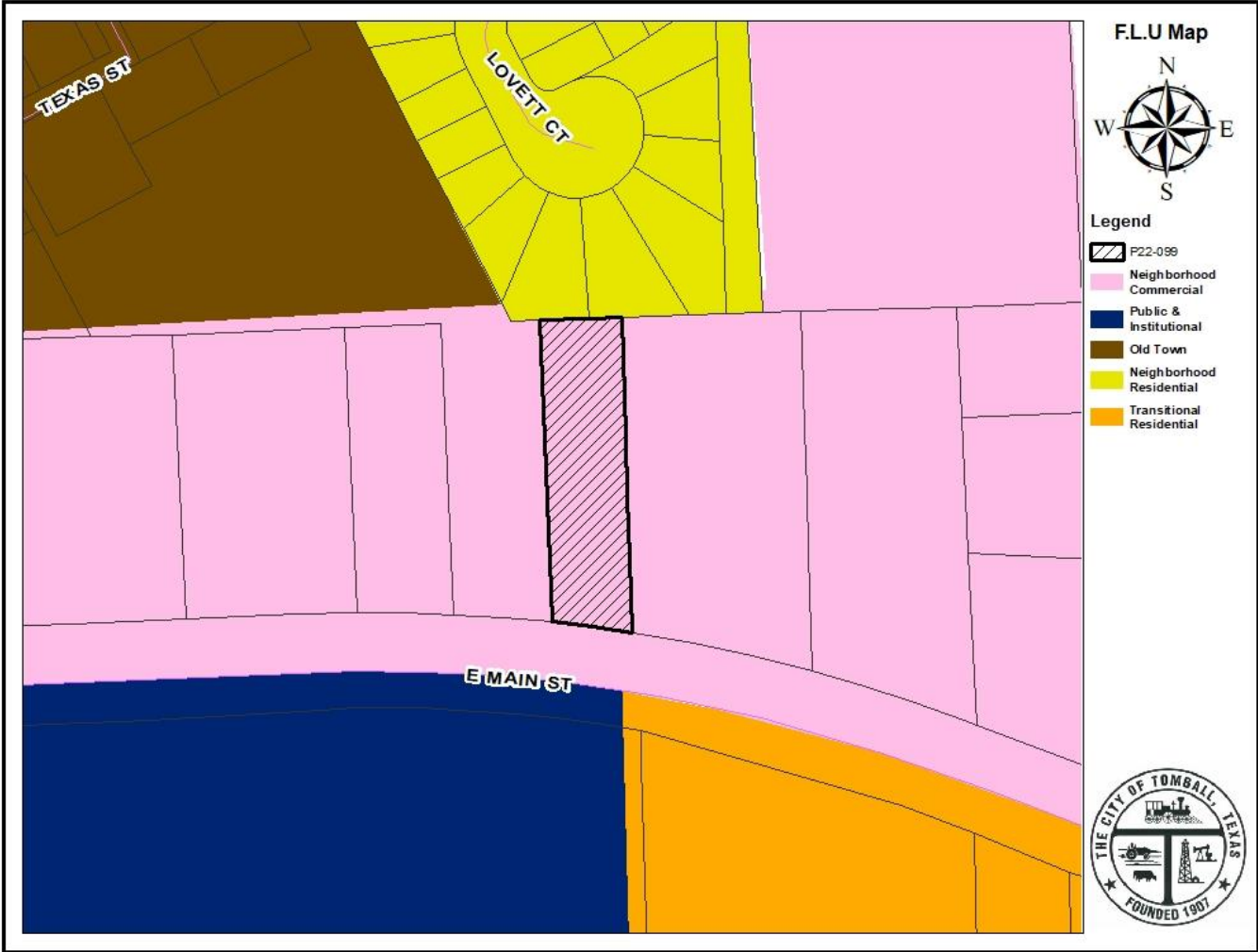


Exhibit "C"
Future Land Use Map



**Exhibit “D”
Site Photos**

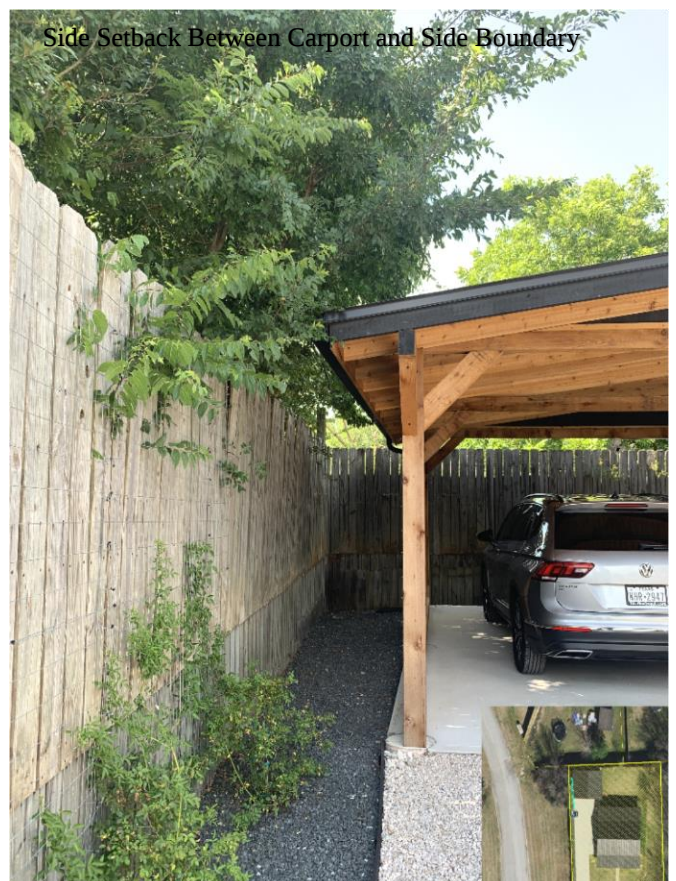
Log Cabin Accessory Residence and Subject Carport / Freight Container



**Rear Setback Between Carport / Freight Container
and Rear Boundary**



Side Setback Between Carport and Side Boundary



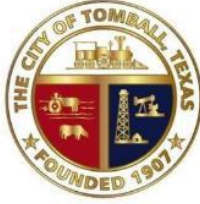
Existing single family residences behind subject property



Existing Warehouse on Subject Property



Exhibit "E" Application



RECEIVED (KC)
04/01/2022

Revised: 4/29/2020
BOA Case #22-099
\$250.00

08

Planning Division

: A variance is the authority to depart from the application of areas, side yards, setback, height, and similar regulations to prevent unnecessary hardships.

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: Dr.
Mailing Address: 27708 Tomball Parkway, #138 City: Tomball State: TX Zip: 77375
Contact: Michael Seitz Phone: (832) 212-0963 Email: dr.michael.seitz@bluesky-global.com

Owner

Name: Same as above Title: _____ Mailing Address: _____
City: _____ State: _____ Zip: _____
Contact: _____
Phone: (____) _____ Email: _____

Description of Proposed Project: Placement of a container for storage and construction of a carport

Physical Location of Property: 817 E Main Street
[General Location – approximate distance to nearest existing street corner]

Legal Description of Property: TR 9C ABST 629 JPRUITT
[Survey/Abstract No. and Tracts; or platted Subdivision Name with Lots/Block]

HCAD Identification Number: 0440550000044 Acreage: 0.75

Current Use of Property: Commercial/Residential

VARIANCE(S) REQUESTED

Applicable Zoning Ordinance Requirements and Sections:
Section 50-76, Subsection 2

Variance Requested:

We are requesting a 56 foot variance from the required rear building setback standard and a 9.5 foot variance from the required side street setback.

A description of hardship letter must be submitted in conjunction with this application. The criteria for a hardship are outlined in the attached document titled "Description of Hardship." In the letter, state variance(s) requested specifically and in detail (identify section and requirement). Please attach separate sheets(s) as necessary.

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  01 April '22
Signature of Applicant Date

X  01 April '22
Signature of Owner Date

From: noreply@tomballtx.gov
To: [Kimberly Chandler](#)
Subject: Receipt #R01311082
Date: Monday, April 4, 2022 9:57:43 AM

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

DATE : 4/4/2022 9:53 AM
OPER : LCU
TKBY : LC
TERM : 5
REC# : R01311082
130.0000 PLANNING AND ZONING
817 E MAIN 250.00

Paid By:817 E MAIN
2-CK 250.00 REF:W 1177

Letter explaining the hardship, demonstrating the following:

1. That literal enforcement of the provisions of the Zoning Ordinance will create an unnecessary hardship or practical difficulty in the development of the affected property.

I purchased the property to move from central Houston to Tomball, with the plan to rejuvenate the warehouse and use it for the storage of my company's inventory of air cleaning machines (BlueSky-global.com). I am a startup company, and as such was excited to be starting in Tomball. Behind the blue building that fronts Main Street, there was a log cabin that had been abandoned some years before when the prior owner died (after operating the business on the property for 50 years). The cabin was briefly lived in. The cabin was in deplorable condition, but it was a hobby project for me, and I decided to make it my new home.

I sold my townhome in Houston and after moving in it became evident, as an afterthought, that it was challenging to park my personal vehicle and store yard tools, etc.. The location of a parking spot at the back, left corner of the house had sufficient space and access.

Given my personal storage requirements, after having moved, I opted to purchase a shipping container, which I painted black, to keep the aesthetics of the cabin. I was parking my car adjacent to it. Due to the hot summer conditions, and the long periods my car remains parked, I realized I needed a canopy (, especially when I travel for a month to Europe on business, to protect the car from sun, tree and bird droppings, and potentially hail.) So, I erected a canopy attached to the container – which was not very functional when the wind blew and, important to me, did not keep with the aesthetic I was working toward for the property.

It was then that I decided to design a carport structure that exactly followed the design of the log cabin porch – using the same CEDAR beams (6"x4") for structural integrity and most importantly, visual appeal. I am a mechanical Engineer by profession (PhD) so I designed a structure that was very stable and strong, since this was my home and car shelter. It never occurred to me that such a carport structure built and designed by me would need a special permit. I was mistaken, of course, but at that time I was caught up in the urgent need for a car shelter.

As an engineer, I had carefully looked at my property drainage prior to purchasing and I had previously determined that the location of the parking area to the left was ideal, as that section of the property, historically, drained into adjacent drainage swales located at the boundary within my neighbor's property. Therefore, the drainage of the property would in no way be changed by the presence of the carport. (See photos). I presumed since the back corner of all the properties, including my neighbors, was unkept and, because of the presence of the drainage swale, highly unlikely to ever be developed (see photos) that building the structure would not negatively affect my neighbors or the city.

In my design philosophy the "feeling" of Tomball is my particular attraction, so even with my blue warehouse I am planning to keep it rustic and beautiful. I really care about function AND aesthetics. Unfortunately, the location and size requirements of a carport and storage did require me to be close to the fence line of the property – I failed to be alarmed by this at the time because I was adjacent to scrub brush and a drainage swale adjacent (behind) the neighbor's property (totally incorrect of me but just "felt ok" and doing no harm). I think that because the old blue building is similarly located close to the property boundary I actually used the blue building offset as my guide, which was presumptive, but seemed reasonable at the time.

I am requesting a "hindsight" variance, and I am sorry about my ignorance in not doing this before, but I was caught in my own enthusiasm to solve the problem of an aesthetic sheltered parking and a tool shed as soon as possible because of my personal needs since it is my private residence now. If the city forces me to break down the structure, my losses would be –

- A. I would have no other location to park in a shelter spot (the log cabin placement and narrow property prohibit any other placement without seeking a variance.
- B. Financial, with the cost of tear down being significant, as well as the cost of new cedar structure/timber and tin roof being quite expensive.).
- C. The loss of a my carefully designed car port that is functional and beautifies that back corner of the lot, in my opinion.

2. That there are special circumstances or conditions affecting the land involved such that the application of the provisions of the Zoning Ordinance would deprive the owner/applicant of the reasonable use of his/her land.

There is no practical room to place a sheltered car park and tool shed without the same variance requirements. The existing structures pre-exist the zoning and setback ordinances, thereby making it almost impossible to have created a storage and parking area to meet the current requirements. If not granted a variance, I would not be able to have sheltered residential parking or storage of tools within the non-industrial, residential, portion of the property

3. That the variance is necessary for the preservation and enjoyment of a substantial property right of the owner/applicant.

If I was not kindly granted a variance, I would not be able to have sheltered residential parking or storage of tools.

4. That the granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of the Zoning Ordinance.

As the survey map and photos show,

- A) I do not believe that the placement of the carport creates a loss or injury to the adjacent church access road usage (the portion currently being unkept brush area (see photos)) ,
- B) does not affect drainage, since there is a primary drainage swale away from all the properties in that back corner and the carport does not in any way impede or add to it,
- C) does not affect the enjoyment of my rear neighbor of his property (see photos and numbering), with a high back fence making the carport structure largely invisible to them.

5. That the situation causing the hardship or difficulty is neither self-imposed nor generally affecting all or most properties in the same zoning district.

I bought the property as is, and the placement of the home was prior to me purchasing it and pre-exists the current zoning requirements.

6. That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area.

As the photos show, and what I believed when I built it for my use, was that it would in no way bring injury, harm or any other negative state to bear on others.

7. That the granting of a variance will be in harmony with the spirit and purpose of these regulations.

From what my understanding and engineering approach teaches me regarding the regulations is that offset from boundaries are for safety not encroaching on others' rights to enjoy their property, both now and in the future; for drainage; and for access to safety vehicles and inspections. The back corner of the lot where I placed my carport does not bring any new risk or harm others in my opinion.

8. That the granting of an individual variance will not set a precedent.

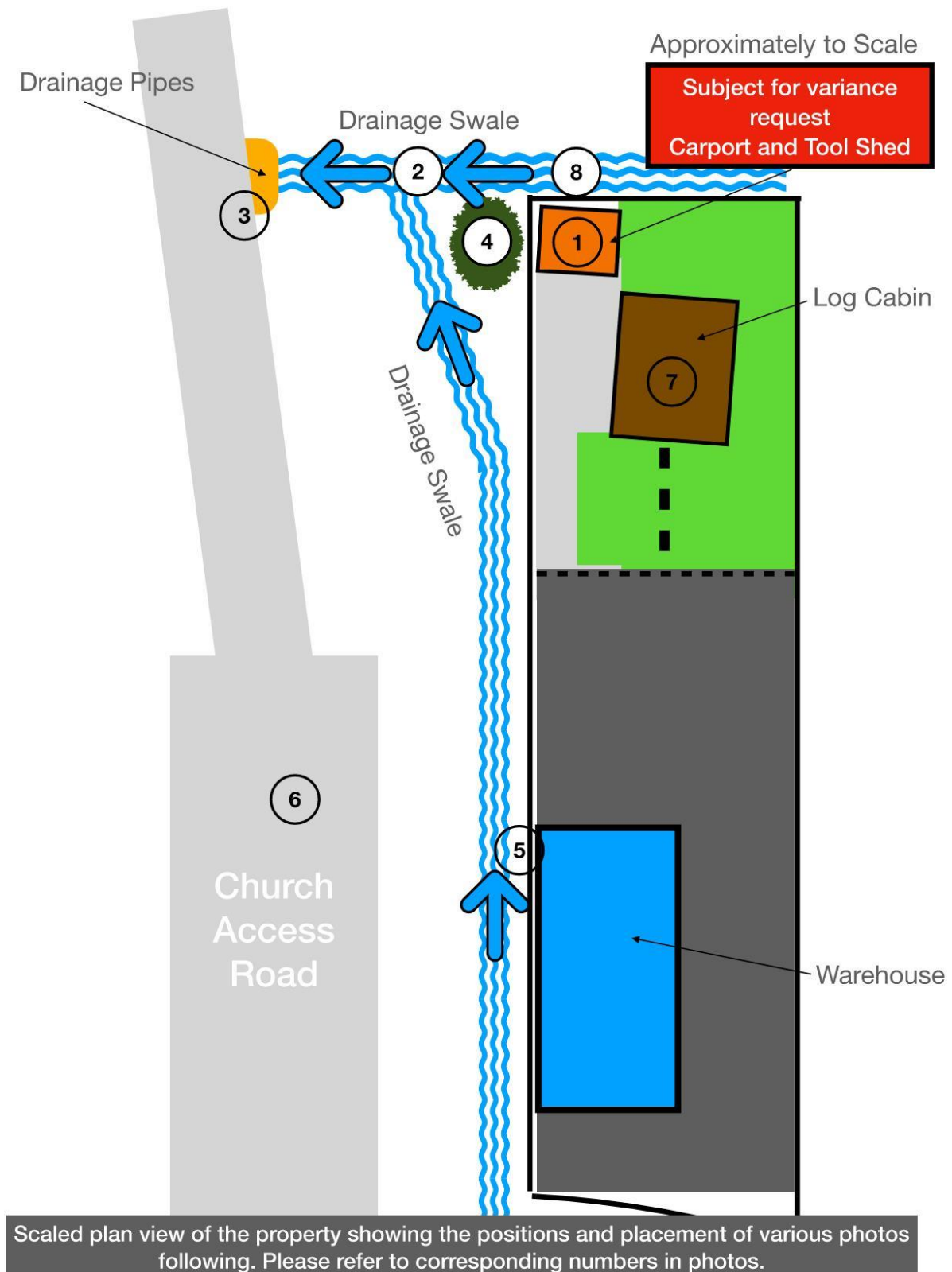
Along with the low street visibility, the placement of the home, and the particular nature of the back corner as it relates to the street, the brush, the neighbor and the drainage swale, it is my contention a unique variance opportunity is present, since it can be reasonably stated it brings no harm to others, but gives me functional benefit to safely park my vehicle and store my residential tools. Further, the design is aesthetic and in keeping with the log cabin style.

I would like to also express that my speed of execution, and my enthusiasm to build something attractive and functional is not intended to be damaging, disrespectful of the city or the residents, and that my actions, while self-fulfilling and self-benefiting, were NEVER intended to harm or affect others in any way. I regret if the city feels that I have disrespected the existing requirements, but I will be more self-aware in the future and proceed with caution and knowledge. I humbly plead with the city to grant me a variance, and to please forgive my lack of permitting, and not request me to destroy the structure I have constructed myself, as a place to park my car and store my tools while still being aesthetically pleasing.

Variance application for 817 E Main St, Tomball TX 77375



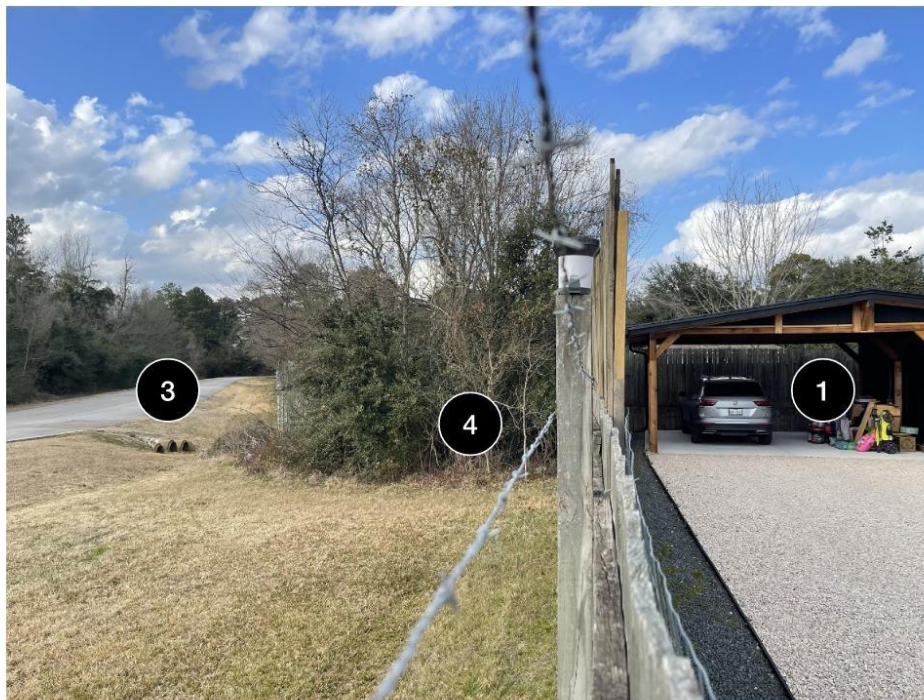
Carport and Tool Shed







View of the adjacent brush and drainage pipes as seen from the road

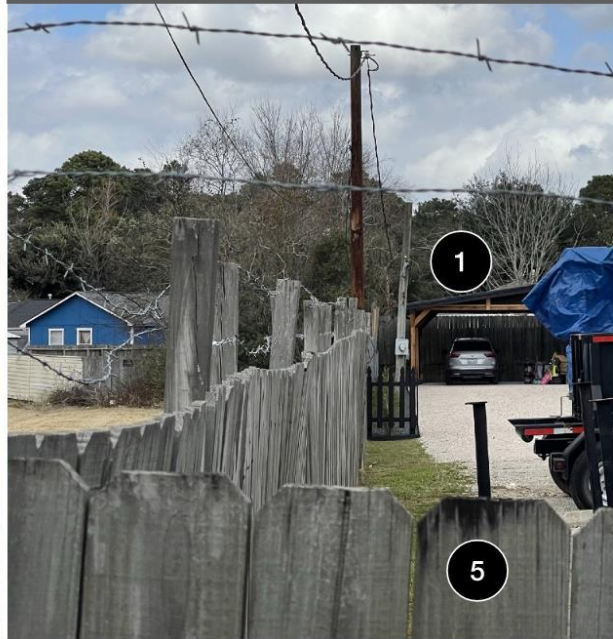


View of the adjacent brush and drainage pipes as seen at my property fence

View of the property line as seen between the road and the storage lay down area



View of the property line as seen from the corner if the blue warehouse looking back at the storage lay down area



View of the adjacent road, clear area, and my warehouse. The Carport position is similar to the warehouse offset from the fence line.





