

## Legislation Text

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**File #:** 17-228, **Version:** 1

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Presenter

*Christopher Looney, Planning and Community Development Director  
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**SUBJECT:**

Public hearing and consideration of the first reading of an ordinance regarding a rezoning request to apply a Special Use Permit to 1.186 acres out of the A-155, SUR-35 A P Fuquay Survey, Comal County, Texas, to allow the temporary placement and habitation of a travel trailer for resident security and operation of a Christmas tree sales lot with unimproved parking in the "C-1" Local Business District, addressed at 1293 FM 306.

**BACKGROUND / RATIONALE:**

**Case No.:** PZ-17-008

**Council District:** 4

**Owner:** Rodney Fischer, General Partner (Midtex Oil Inc.)  
P.O. Box 310339  
New Braunfels, TX 78130  
(830) 625-4214

**Applicant:** Daryll Smith (Holiday Hills Christmas Trees)  
3634 Halifax Sq. SE  
Salem, OR 97302  
(210) 363-6333

**Staff Contact:** Matt Greene Planner  
(830) 221-4053  
mgreene@nbtexas.org

The applicant operates several Holiday Hills Christmas tree lots generally adjacent to Shell service stations/convenience stores around town. The original location at 1190 IH-35 near Highway 46 South started in 1993. Occupying a travel trailer for more than 18 hours outside of an RV park is not allowed pursuant to City Code Chapter 62, Health and Sanitation. And occupying a travel trailer outside of an RV Park is also not an authorized use by Chapter 144, Zoning Ordinance. The use of a trailer for on-site management and resident security of the original tree lot was accomplished for 17 years through a series of variances, approved by the Zoning Board of Adjustment. In 2011, Staff determined the Special Use Permit (SUP) rezoning process was a more expedient method for approving the use of a trailer in conjunction with the tree sales, and an SUP

was subsequently approved for the IH-35 location.

In 2015, the applicant received approval of a Type 2 SUP to conduct the same Christmas tree sales operation on the subject property addressed at 1293 FM 306 (see Attachment 3, the previously approved site plan). At the time of approval, the only other business on the property was a convenience store with fuel sales. A condition of the 2015 SUP states “the property will be used for the stated purpose between November 1 and December 31 each year, with no changes in the use of the property unless the Special Use Permit is amended.”

In 2016, the subject property expanded its paving to accommodate a drive through coffee business. Due to this modification in the use and layout of the subject property, the previously approved SUP must be amended. The applicant is requesting approval of the same use, seasonal Christmas tree lot with unimproved customer parking as well as the use of a travel trailer for overnight on-site management and security in a different layout site configuration (Attachment 5).

Business operations will be as they have been previously at this location. Holiday Hills will set up each year at the beginning of November and will operate from Thanksgiving through the end of December for retail sales of Christmas trees and related products. Proposed property improvements include a temporary 60-foot x 120-foot tent, a temporary chain link fence around the perimeter, and a temporary travel trailer for the on-site manager and security, all to be removed at the end of the season. The trailer has a self-contained sanitation system that will be serviced once a week. New Braunfels Utilities will provide a utility pole with a service panel to supply electricity to this business.

Customer access will be through the existing convenience store parking lot. The City Engineer has reviewed the request and has no objection to temporary unimproved parking provided there is no new access point created to the property from FM 306, no mud or base material is tracked from the property onto public streets, and the parking area is returned to its natural vegetative state at the end of the sales period each year.

***General Information:***

**Size:** 1.19 acres

***Surrounding Zoning and Land Use:***

North - Across Hunter Road, C-1Br37 / Undeveloped

South - C-1 / Retail

East - Across FM 306, M-1 / Restaurant

West - C-1 / Resort accommodations

***Comprehensive Plan/ Future Land Use Designation:***

Commercial

***Floodplain:***

No portion of the property is located within the 100-year floodplain.

*Regional Transportation Plan:*

FM 306 is identified as a 150-foot Principal Arterial on the 2012 Regional Transportation Plan. The right-of-way width of FM 306 is currently 120 feet. A right-of-way dedication of up to 15 feet may be required should the property be subject to platting.

*Improvement(s):*

Convenience store with fuel sales and a drive-through coffee kiosk.

*Determination Factors:*

In making a decision on zoning, the following factors are to be considered:

- Whether the permitted uses will be appropriate in the immediate area, and their relationship to the area and to the City as a whole (*Use of the property for retail sales is appropriate for this location. The temporary use of unimproved property is not typically allowed, and may be appropriate only under the conditions recommended for the Special Use Permit. A condition to maintain the site so vehicles will not track mud and debris onto the roadway should mitigate any possible related negative impact.*);
- Whether the change is in accord with any existing or proposed public schools, streets, water supply, sanitary sewers, and other utilities to the area (*The proposed use should not interfere with schools, streets, or utilities. A temporary fence will limit access to the lot.*);
- How other areas designated for similar development will be affected (*Other areas will not be affected.*);
- Any other factors that will substantially affect the public health, safety, morals, or general welfare (*Unpaved parking has the potential to create dust and track mud or base material into the public street. The applicant will be responsible for maintaining a clean, safe environment and approval of the Special Use Permit may be re-evaluated if the City receives complaints.*); and
- Whether the request is consistent with the Comprehensive Plan. (*Temporary retail sales are consistent with the Commercial future land use designation of the subject site.*)

Special Use Permits may be granted to allow compatible and orderly development which may be suitable only if developed in a specific way or only for a limited period of time. The request should be evaluated on the extent to which the proposed use:

- is consistent with policies of the Comprehensive Plan;
- is consistent with the purpose and intent of zoning district regulations;
- meets all supplemental standards (see below); and
- preserves the character and integrity of adjacent development and neighborhoods.

**ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:**

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✓	Yes	City Plan/Council Priority: 2006 Comprehensive Plan Pros and Cons Based on Policies Plan	<b>Pros:</b> Goal 1: <i>Promote manageable growth to achieve a proper balance of economic expansion and environmental quality while maintaining the community's unique qualities.</i> The requested Special Use Permit will ensure public health and safety issues are addressed while meeting the security concerns of the business owner. <b>Cons:</b> None
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**FISCAL IMPACT:**

The City will receive sales tax from the sale of the trees.

**COMMITTEE RECOMMENDATION:**

The Planning Commission recommended approval of the requested SUP with Staff recommendations at their April 4, 2017 public hearing (7-0-0) with Commissioners Tubb and Conkright absent.

**STAFF RECOMMENDATION:**

Staff recommends approval of the request with the following conditions:

1. The property will be used for the stated purpose between November 1 and December 31 each year, with no changes in the use of the property unless the Special Use Permit is amended.
2. The applicant will provide the Planning Division a copy of a current contract for wastewater disposal from a TCEQ licensed hauler covering November 1 through December 31 annually.
3. The sales lot will be accessed through the Pit Stop parking area. No additional direct access from FM 306 will be created.
4. The applicant will be responsible for maintaining a clean and safe customer parking area, and for preventing the tracking of mud, dust or base material onto adjacent property or public right-of-way.
5. Failure to comply with these conditions will result in re-evaluation of the Special Use Permit and possible revocation through the rezoning process.

**Notification:**

Public hearing notices were sent to 6 owners of property within 200 feet of the request. The Planning Division has received 2 responses in favor (#'s 3 and 4), and none opposed.

**ATTACHMENTS:**

1. Aerial and Regional Transportation Plan Map
2. Application
3. Previous, Current and Proposed Site Plans
4. Zoning and Land Use Maps
5. Notification Map and Responses
6. Photographs
7. Sec. 3.3-7 "C-1" Local Business District

8. Sec. 3.6 Special Use Permits
9. Draft Minutes for the April 4, 2017 Planning Commission Regular Meeting
10. Ordinance