



# City of San Antonio

## Legislation Details (With Text)

**File #:** 18-4645

**Type:** Zoning Case

**In control:** City Council A Session

**On agenda:** 9/6/2018

**Title:** ALCOHOL VARIANCE # AV2018009 (Council District 1): Ordinance granting a Variance to City Code Section 4-6 and authorizing the sale of alcoholic beverages on Lots 21, 22, 23, and 24, Block 4, NCB 1774, located at 1719 Blanco Road for on-premise consumption within three-hundred (300) feet of Agnes Cotton Elementary School, a public education institution located within the San Antonio Independent School District.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Location Map, 2. Draft Ordinance, 3. Ordinance 2018-09-06-0688

Date	Ver.	Action By	Action	Result
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**DEPARTMENT:** Development Services

**DEPARTMENT HEAD:** Michael Shannon

**COUNCIL DISTRICTS IMPACTED:** Council District 1

**SUBJECT:**

Alcohol Variance Case AV2018009

**SUMMARY:**

Consideration of a request waiving the application requirements of City Code Section 4-6 and granting a variance authorizing the sale of alcoholic beverages on Lots 21, 22, 23, and 24, Block 4, NCB 1774, located at 1719 Blanco Road for on-premise consumption within three-hundred (300) feet of Agnes Cotton Elementary School, a public education institution located within the San Antonio Independent School District, in Council District 1.

**BACKGROUND INFORMATION:**

The Texas Alcoholic Beverage Code Ann., Title 4, Chapter 109, Subchapter B, §109.33(e) authorizes municipalities to establish a variance process if it is determined that the enforcement of the regulation in a particular instance is not in the best interest of the public, constitutes waste or inefficient use of land or other resources, creates an undue hardship on an applicant for a license or permit, does not serve its intended purpose, is not effective or necessary, or for any other reason the city council, after consideration of the health, safety, and welfare of the public and the equities of the situation, determines is in the best interest of the community. Pursuant to this enabling legislation, the provisions of Chapter 4, §4-6(c) of the City Code were established by the City of San Antonio.

The TABC authorizes municipalities to establish variance criteria from the distance requirements and §4-6(c) of San Antonio's City Code states that with City Council authorization, the sale of alcoholic beverages at a location within three hundred (300) feet of a public school may be granted, provided that the City Council makes the following findings:

- 1) The sale of alcoholic beverages had been permitted within the last two (2) years at the location in question;  
*The sale of alcoholic beverages has not been permitted within the last two (2) years at this location.*
- 2) The discontinuance of the sale of alcoholic beverages was not a result of a violation of law;  
*The discontinuance of the sale of alcoholic beverages was not a result of a violation of law. A variance is not needed from this provision.*
- 3) A variance is necessary because the manner of measurement, as currently prescribed in V.T.C.A. § 109.33(b), has changed and as a result thereof, the premises in question has been determined to be within three hundred feet (300) feet of a public school;  
*The method of measurement has not changed. The applicant will need a variance from the 300-foot distance requirement.*
- 4) The proposed sale of alcoholic beverages would be for on-premise consumption and constitute no more than thirty (30) percent of the establishment's annual gross revenues.  
*The applicant has stated that alcohol sales will not exceed 30% of total revenues. The applicant has indicated that sales of alcoholic beverages will be for on-premise consumption.*

The TABC authorizes municipalities to establish variance criteria from the provisions of §4-6 (d).

- 6) The applicant shall on an annual basis submit to the department of building inspections the necessary documentation to verify that no more than thirty (30) percent of the annual gross revenues of the establishment are generated by the sale of alcoholic beverages;  
*The applicant would like a waiver of this requirement.*

#### **ISSUE:**

Currently, the sale of alcoholic beverages at 1719 Blanco Road will violate Chapter 4, §4-6 of the City Code and Title 4, Chapter 109, Subchapter B, §109.33(a)(1) of the Texas Alcoholic Beverage Code. The applicant is requesting a variance to allow the on-premise sale of alcohol within three hundred (300) feet of Agnes Cotton Elementary School, which is accredited and recognized by the Texas Commission of Education.

§4-6(c)(3) mandates that alcohol cannot be sold within three hundred (300) feet of a public school.

*This property is zoned "C-2" Commercial District and is used as a restaurant. The applicant proposes to sell beer and wine and is approximately 224 feet from the existing school property, measured property line to property line in accordance with TABC measurement standards.*

§4-6(e)(1) includes three activities or actions that would constitute a violation of any granted variance: 1) selling alcoholic beverages for off-premise consumption, 2) selling alcoholic beverages for on-premise consumption of alcoholic beverages that exceed more than thirty (30) percent of the annual gross revenues of the establishment, and 3) violating any other condition imposed by city council.

*Alcohol will be sold for on-premise consumption only (no off-premise consumption) at the existing restaurant. The applicant is to sell alcohol as specified by the Texas Alcoholic Beverage Commission (TABC) requirements.*

#### **ALTERNATIVES:**

The City may opt not to grant the requested waiver and variances, prohibiting the sale of alcohol for on-premise consumption at the establishment, located at 1719 Blanco Road.

**FISCAL IMPACT:**

None.

**RECOMMENDATION:** Approval of this request is at the discretion of City Council.

**Staff Analysis:** The analysis includes the following findings and factors:

1. The distance from the subject property to the Agnes Cotton Elementary School property is approximately 224 feet.

*\*\*\*\*All listed distances are approximate, were measured in a straight line between nearest points, using the City's online zoning map.\*\*\*\**

2. The sale of alcohol is for on-premise consumption only.

Should City Council choose to waive the provisions of §4-6(c)(1), §4-6(c)(3), §4-6(c)(4), and §4-6(d)(6) of the City Code, staff recommends the following conditions:

- 1) That the sale of alcoholic beverages be limited to the restaurant establishment.
- 2) Alcohol sales will include beer and wine for on-premise consumption only.
- 3) That the authorization for the sale of alcoholic beverages shall not transfer to different land uses.
- 4) That such authorization shall terminate in the event of non-operation or non-use of the identified establishments for a period of twelve (12) or more successive months.
- 5) The hours of operation shall be limited to 11:00AM to 10:00PM, from Tuesday through Saturday.