



City of San Antonio

Agenda Memorandum

File Number:13-855

Agenda Item Number: 38.

Agenda Date: 11/7/2013

In Control: City Council A Session

DEPARTMENT: Development Services

DEPARTMENT HEAD: Roderick Sanchez

COUNCIL DISTRICTS IMPACTED: Council District 7

SUBJECT:

Alcohol Variance V2013005

SUMMARY:

Consideration of a request for a Variance in accordance with Chapter 4 of the City Code for Brown and Ortiz, Applicant, for 838 Bandera Road, LP, to sell alcoholic beverages at 838 Bandera Road, which is located within three hundred (300) feet of the James Madison Elementary School.

Pursuant to Title 4, Chapter 109, Sub-chapter B, §109.33(a)(1) of the Texas Alcoholic Beverage Code (TABC), the sale of alcoholic beverages is prohibited for dealers whose place of business is within three hundred (300) feet of a public or private school as measured in a direct line from the property line of the public or private school to the property line of the place of business. The City of San Antonio adopted this distance requirement in Chapter 4, Article 1, §4-6 of the City Code. The State currently relies on local jurisdictions to enforce the distance requirements and the local regulations comply with the regulations established by TABC. The subject property is situated within three hundred (300) feet of James Madison Elementary School.

BACKGROUND INFORMATION:

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 distance requirements. §4-6(c) of San Antonio's City Code states the City Council may authorize the sale of alcoholic beverages at a location within three hundred (300) feet of a public school in accordance with the following findings:

- 1) The sale of alcoholic beverages had been permitted within the last two (2) years at the location in question;

- 2) The discontinuance of the sale of alcoholic beverages was not a result of a violation of law;
- 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; and
- 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 requested a waiver of the variance criteria.

Should the City Council grant the waiver and variance, §4-6(e)(1) of the City Code identifies activities that constitute a violation of any granted Variance:

- ~ The sale of alcoholic beverages for off-premise consumption;
- ~ The sale of alcoholic beverages for on-premise consumption that exceeds more than thirty (30) percent of the annual gross revenues of the establishment; or
- ~ To violate any other condition imposed by City Council.

The applicant has also requested a waiver of the first provision prohibiting a variance for off-premise consumption because the variance is being requested for a convenience store that will sell alcohol for off-premise consumption only.

ISSUE:

Currently, the sale of alcoholic beverages for off premise consumption at 838 Bandera Road will violate Chapter 4, §4-6, and of the City Code and Title 4, Chapter 109, Subchapter B, §109.33(a)(1) of the Texas Alcoholic Beverage Code. The requested waivers and variance will allow the sale of alcoholic beverages for off-premise consumption at this location.

ALTERNATIVES:

The City Council may approve the requested waivers and variance, allowing the sale of alcohol for off-premise consumption at the existing convenience store located at 838 Bandera Road. Should the City Council decide to approve the request, staff recommends the following condition:

- 1.) The Variance for the sale of alcoholic beverages shall not transfer to future proprietors, future property owners, or to different land uses and such Variance shall terminate in the event of non-operation or non-use of the identified establishment for a period of twelve (12) or more successive calendar months.

FISCAL IMPACT:

None. The applicant has paid the required alcohol variance application fee.

RECOMMENDATION:

The subject property is developed as a convenience store (with gasoline) which was constructed in 1964. The property is directly adjacent to James Madison Elementary School. The convenience store faces west, toward the intersection of Bandera Road and West Woodlawn Avenue, with the rear of the building facing James Madison Elementary. Certificate of Occupancy records show that the property has operated as a convenience store without alcohol sales since 1998.

Staff recommends denial of the requested waivers and variance.

Staff analysis includes the following factors:

1. The property has not had alcoholic beverage sales since at least 1998, a period of 15 years.
2. The convenience store property directly abuts the school property. While the school buildings are more than 300 feet from the convenience store building, the school's play area is located in the yard abutting the convenience store property.

Staff recognizes that the subject property is located at the intersection of two major thoroughfares, within established commercial corridors that are undergoing redevelopment and revitalization. Due to lot configurations in the area, the school's location prohibits alcohol sales throughout the 600, 700, 800 and 900 Blocks of Bandera Road.