



City of San Antonio

Agenda Memorandum

File Number: 13-1054

Agenda Item Number: 49.

Agenda Date: 12/5/2013

In Control: City Council A Session

DEPARTMENT: Development Services

DEPARTMENT HEAD: Roderick Sanchez

COUNCIL DISTRICTS IMPACTED: Council District 1

SUBJECT:

Alcohol Variance V2014002

SUMMARY:

Consideration of a request for a waiver of the variance criteria listed in Section 4-6(c)(1), 4-6(c)(3) and 4-6(c)(4) and request for a variance in accordance with Chapter 4 §4-6(c) of the City Code for ACCD Public Facility Corporation, Owner, to sell alcoholic beverages for on-premise consumption as a "Food Service Establishment" located on Lot 14, Block 33, NCB 376, currently addressed as 1515 North Main Avenue, within three hundred (300) feet of San Antonio College, a Community College.

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 San Antonio College, a Community College.

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.

Should the City Council grant the variance, § 4-6(d)(6) of the City Code requires the applicant submit to the City annual documentation verifying that no more than thirty (30) percent of the establishment's annual gross revenues are generated by the sale of alcoholic beverages.

Should the City Council grant the 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.

ISSUE: Currently, the sale of alcoholic beverages on Lot 14, Block 33, NCB 376, currently addressed as 1515 North Main Avenue, 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.

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. However, the applicant has not demonstrated that all the required findings of §4-6 (c) have been met.

§4-6 (d)(6) requires the submission of documentation to verify that no more than thirty (30) percent of the establishment's annual gross revenues are generated by the sale of alcoholic beverages. The subject property will operate as a food service establishment and the sale of alcohol will possibly constitute more than thirty (30) percent of the annual gross revenues, therefore this requirement would need to be waived by City Council.

Additionally, §4-6(e)(1) includes three activities or actions that would constitute a violation of any granted variance:

- ~ to sell alcoholic beverages for off-premise consumption;
- ~ to sell alcoholic beverages for on-premise consumption of alcoholic beverages that exceed more than thirty (30) percent of the annual gross revenues of the establishment, or
- ~ to violate any other condition imposed by city council.

As the applicant's request to allow the sale of alcoholic beverages for on-premise consumption will likely exceed more than thirty (30) percent of the annual gross revenues of the establishment a portion of the definition of a violation in §4-6(e)(1) would need to be waived by City Council for the variance to be granted.

ALTERNATIVES:

The City Council may approve the requested waivers and variance to permit alcohol sales at 1515 North Main Avenue.

The City Council could deny the requested variance, which would not allow the sale of alcoholic beverages at this location.

FISCAL IMPACT:

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

RECOMMENDATION:

The subject property does not satisfy the four variance criteria of §4-6(c)(1). Should City Council choose to waive the provisions of §4-6(c)(1), §4-6(c)(3), §4-6(c)(4) as well as §4-6(d)(6) and §4-6(e)(1), staff recommends approval of the variance with the following conditions:

1. That the alcohol variance apply only to 1515 North Main Avenue Suite 103 and
2. That this authorization shall not transfer to different land uses other than the food service establishment

Staff analysis included the following factors:

1. The school subject property measures approximately 48 acres in size.
2. The suite where the food service establishment currently operates is actually more than 300 feet from the school property boundary.
3. North Main Avenue is a commercial corridor within close proximity to San Pedro Avenue, which includes established commercial developments. The properties located south of the subject property are located more than 300 feet from the school's property line. Therefore, these other properties have the potential to offer alcohol sales for on- or off-premise consumption.