



City of San Antonio

Agenda Memorandum

File Number: 13-1321

Agenda Item Number: 14.

Agenda Date: 1/16/2014

In Control: City Council A Session

DEPARTMENT: Development Services

DEPARTMENT HEAD: Roderick Sanchez

COUNCIL DISTRICTS IMPACTED: Council District 7

SUBJECT:

Alcohol Variance V2014003

SUMMARY:

Consideration of a request for a waiver of the variance criteria listed in Section 4-6(c); Section 4-6(d)(6); and the portion of Section 4-6(e)(1) prohibiting variances for off-premise consumption and request for a variance in accordance with Chapter 4 §4-6(c) of the City Code for Adam L. Valenzuela (DBA Bottle caps Liquor) to sell alcoholic beverages for off-premise consumption as an “Alcohol - Beverage Retail Store (Liquor Store)” located at 6101 Callaghan Road, within three hundred (300) feet of the St. Luke Catholic 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 St. Luke Catholic 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.

Should the City Council grant a 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 at 6101 Callaghan 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 requests a variance to allow the sale of alcohol at a proposed liquor store.

ALTERNATIVES:

The City Council may opt to grant the requested variance by waiving the required findings identified in §4-6(c) as well as the provision allowing variances only from public schools, §4-6 (d)(6), and the provision in §4-6(e) (1) prohibiting variances for off-premise consumption.

The City Council may deny the variance application, prohibiting the sale of alcohol on the subject property.

FISCAL IMPACT:

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

RECOMMENDATION:

The subject property does not satisfy two of the four variance criteria of §4-6(c), the variance request is from a private school, and the variance request involves the sale of alcohol for off-premise consumption only.

Should City Council choose to waive the variance criteria of §4-6(c), the provision allowing variances only from public schools, the annual reporting requirement in §4-6 (d)(6), and the prohibition of off-premise sales in §4-6 (e)(1), staff recommends approval of the variance request with the following conditions:

1. That this authorization shall not transfer to a land use not listed in the ordinance (proposed liquor store).
2. That this authorization shall terminate in the event of non-operation or non-use for a period of twelve or more successive calendar months.

Staff analysis includes the following factors:

1. The property is located at the intersection of Callaghan Road and Loop 410, in an area with a long history of commercial activity. The subject property is developed as a multi-tenant retail center, but the variance request is limited to a liquor store in the suite addressed as 6101 Callaghan Road and will not apply to any other uses or addresses on the property.

2. The St. Luke Catholic School property measures approximately 10 acres in size. The subject property does not directly abut the school property, the nearest school structure is located more than 300 feet from the subject property structure, and the school's main entrance is located approximately 500 feet from the proposed liquor store's main entrance.

3. The subject property has operated as a liquor store since 2001, before the City of San Antonio verified or enforced the distance requirements related to the sale of alcohol. The previous tenant has vacated the property and a new tenant seeks to continue the use.

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