



City of San Antonio

Agenda Memorandum

File Number: 14-1501

Agenda Item Number: 28.

Agenda Date: 8/7/2014

In Control: City Council A Session

DEPARTMENT: Development Services

DEPARTMENT HEAD: Roderick Sanchez

COUNCIL DISTRICTS IMPACTED: Council District 1

SUBJECT:

Alcohol Variance V2014005

SUMMARY:

Consideration of a request for a Variance in accordance with Chapter 4 of the City Code for Brown and Ortiz, Applicant, for Gray Street, LLC, to sell alcoholic beverages at 611 South Presa Street, 812 South Alamo Street, and 910 South St. Mary's Street, which is located within three hundred (300) feet of the Bonham Academy.

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 Bonham Academy.

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 requirements.

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.

The applicant has also requested a waiver of these requirements.

ISSUE:

Currently, the sale of alcoholic beverages for off premise consumption at 611 South Presa Street, 812 South Alamo Street, and 910 South St. Mary's Street 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 proposed Drugstore - Apothecary located at 611 South Presa Street, 812 South Alamo Street, and 910 South St. Mary's Street. Should the City Council approve the request, staff recommends the following conditions:

- 1) The Variance for the sale of alcoholic beverages shall not transfer to a different land use; and
- 2) The Variance shall terminate in the event of non-operation or non-use of the identified use (Drugstore - Apothecary) 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 with a commercial building which has constructed, according to BCAD records, in 1952. A portion of the property is located across South St. Mary's Street from Bonham Academy. The building faces South St. Mary's Street and South Alamo Street, with the parking lot and loading area for the building facing Bonham Academy. Certificate of Occupancy and building permit records from the Development Services Department indicate that the property was previously operated as a restaurant with alcoholic beverage and as a museum. The property is currently vacant. On June 19, 2014, the City Council approved rezoning from the current "C-3NA" and "C-2" base zoning districts to an "IDZ" base zoning district with use permitted in "C-2" Commercial Districts.

Staff recommends denial of the requested waivers and variance.

Staff analysis includes the following factors:

1. The property has not had alcoholic beverage sales for several years, and when it did, the consumption was on-premise as part of a restaurant. Therefore, the alcohol distance requirement does not place an undue hardship on the applicant or owner, does not constitute waste, and is effective in furthering the purpose of the code.

2. The property is located directly across South St. Mary's Street from the school property. Physically, the buildings on the subject property and the school building are approximately 225 feet apart, less than the 300-foot separation required by code. Additionally, the line-of-site between the subject location and the school buildings is not obscured in any way by any physical impediment.

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