



City of San Antonio

Agenda Memorandum

File Number: 14-1565

Agenda Item Number: 29.

Agenda Date: 8/7/2014

In Control: City Council A Session

DEPARTMENT: Development Services

DEPARTMENT HEAD: Roderick Sanchez

COUNCIL DISTRICTS IMPACTED: Council District 10

SUBJECT:

Alcohol Variance Case V2014006

SUMMARY:

Consideration of a request for a variance in accordance with Chapter 4 of the City Code for Midland-Kaufman, LP, Applicant, to sell alcoholic beverages at 2235 Thousand Oaks Drive, Suite # 105, which is located within three hundred (300) feet of the Thousand Oaks Elementary and The Foundation School for Autism.

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 Thousand Oaks Elementary and The Foundation School for Autism.

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(d)(6) requires the applicant to verify that no more than 30% of the establishment's annual gross revenues are generated by the sale of alcoholic beverages. As the variance request relates to a proposed Liquor Store, 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 2235 Thousand Oaks Drive, Suite # 105 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 requested waivers and variance will allow the sale of alcoholic beverages for off-premise consumption at a "Beverage Retail Sales - Liquor Store" at this location.

ALTERNATIVES:

The City Council may deny the requested waivers and variance, prohibiting the sale of alcohol for off-premise consumption at the proposed "Beverage Retail Sales - Liquor Store" located at 2235 Thousand Oaks Drive, Suite # 105.

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), and the variance request involves the sale of alcohol for off-premise consumption. Should City Council choose to waive the variance criteria of §4-6(c), the prohibition of off-premise sales in §4-6(e)(1), and the annual reporting requirement in §4-6(d)(6), staff recommends approval of the variance with the following conditions:

1. This authorization shall apply only to the proposed "Beverage Retail Sales - Liquor Store" and not transfer to different land uses;
2. This authorization shall terminate in the event of non-operation or non-use for a period of twelve or more successive calendar months; and
3. This authorization shall apply only to Suite #105.

Should the City Council approve the request, staff recommends the following conditions:

Staff analysis includes the following factors:

1. The subject property is located at the intersection of Thousand Oaks and Henderson Pass, in an area established as a commercial corridor. The subject property is currently developed as a large multi-tenant shopping center and the variance request is limited to a single use and a single suite.
2. The Thousand Oaks Elementary property measures approximately 11.07 acres in size. Although the subject property and the school property are located across the street from each other, the location of the proposed liquor store is located more than 400 feet from the entrance of the school. Additionally, as one would walk, the door-to-door measurement exceeds 800 feet and the suite is not visible from the school.
3. The Foundation School for Autism is located on the subject property, but is situated on the opposite side of the retail center from the proposed liquor store. The door-to-door measurement between the two suites exceeds 500 feet and the suites are not visible to each other.

All listed distances are approximate and were measured using the City's online zoning map.