



City of San Antonio

Agenda Memorandum

File Number:15-5703

Agenda Item Number: 27.

Agenda Date: 11/19/2015

In Control: City Council A Session

DEPARTMENT: Development Services

DEPARTMENT HEAD: Roderick Sanchez

COUNCIL DISTRICTS IMPACTED: 5

SUBJECT:

Alcohol Variance Case AV2015009

SUMMARY:

Consideration of a request granting a Variance to City Code Section 4-6 and waiving the requirements of Sections 4-6(c)(1), 4-6(c)(2), 4-6(c)(3), 4-6(c)(4), 4-6(d)(1), 4-6(d)(6) and 4-6 (e)(1) of the City Code and authorizing the sale of alcoholic beverages on the West 100 feet of the South 150 feet of Lot 22, Block 2, NCB 8243, located at 5719 West Commerce Street for off-premise consumption within three-hundred (300) feet of St. John Bosco Elementary School, a private education institution located in the Edgewood Independent School District.

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 the distance requirements and §4-6(c) of San Antonio's City Code states that with City Council authorization, the sale of alcoholic beverages at a location within three hundred (300) feet of a school may be granted, provided that the City Council makes the following findings:

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

According to the applicant alcohol has previously been sold on the property within the last two (2) years. The convenience store is changing ownership and a new beer and wine license is being obtained and the required alcohol variance is being requested. The applicant meets the

two (2) year location requirement.

- 2) The discontinuance of the sale of alcoholic beverages was not a result of a violation of law;
There are no recorded violations nor has there been a discontinuance of alcohol sales at the noted property.
- 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
The property at 5719 West Commerce Street is located within three hundred (300) feet of the property line of St. John Bosco Elementary School. The applicant has requested a variance to this provision.
- 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 noted that the use of the property is a Convenience Store and all sales are for off-premise consumption only.

The TABC authorizes municipalities to establish variance criteria from the provisions of §4-6 (d).

- 1) Requiring the submission of certified documentation from the Texas Alcohol and Beverage Commission establishing that an alcoholic beverage license had been issued for the location where the variance is sought and that the date of expiration of the license was less than two years before the date of the variance request.
According to the applicant alcohol sales for off-premise consumption has occurred on the property since 2013; two (2) years. Expiration is not applicable to this request.
- 6) Requiring 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.
 - a. *The responsibility of providing documentation verifying that no more than thirty (30) percent of the proposed uses annual gross revenues are generated by the sale of alcoholic beverages is the responsibility of the business owner. Thus it is stated as such in this document.*
 - b. *No more than thirty (30) percent of the annual gross revenues are to be generated by the sale of alcohol.*

Additionally, §4-6(e)(1) includes three activities or actions that would constitute a violation of any granted variance: 1) selling alcoholic beverages for off-premise consumption, 2) to selling alcoholic beverages for on-premise consumption of alcoholic beverages that exceed more than thirty (30) percent of the annual gross revenues of the establishment, and 3) violating any other condition imposed by city council.

ISSUE:

Currently, the sale of alcoholic beverages at 5719 West Commerce Street 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 is requesting a variance to allow the off-premise sale of alcohol within three hundred (300) feet of St. John Bosco, which is accredited and recognized by the Texas Commission of Education.

§4-6(c)(3) mandates that alcohol cannot be sold within three hundred (300) feet of a public school.

The existing convenience store is approximately 255 feet from the existing school facility.

§4-6(e)(1) includes three activities or actions that would constitute a violation of any granted variance: 1) selling alcoholic beverages for off-premise consumption, 2) to selling alcoholic beverages for on-premise consumption of alcoholic beverages that exceed more than thirty (30) percent of the annual gross revenues of the establishment, and 3) violating any other condition imposed by city council.

Alcohol will be sold by the convenience store for off-premise consumption only.

ALTERNATIVES:

The City may opt not to waive the requested waivers and variances, prohibiting the sale of alcohol for off-premise consumption at the existing convenience store located at 5719 West Commerce Street.

FISCAL IMPACT:

None.

RECOMMENDATION:

Staff Analysis includes the following findings and factors:

1. The school facility is less than 300 feet from the subject property (approximately 255 feet).

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

2. West Commerce is a commercial corridor that includes established commercial developments. The Convenience Store has operated with alcohol sales for two (2) years and the sales are limited to beer and wine only.
3. The variance request is triggered by a change in business ownership which requires new beer and wine licensing and an alcohol variance to the City's Code requirements.

Should City Council choose to waive the provisions of §4-6(c)(1-4), §4-6(d)(1) and §4-6(d)(1) of the City Code, staff recommends the following conditions:

- 1) That the sale of alcoholic beverages is to be limited to the convenience store.
- 2) Alcohol sales are not to exceed 30% of total revenues of the established business.
- 3) All alcohol sales are for off-premise consumption (beer and wine sales only).
- 4) That the alcohol sales not be permitted between the hours of 12:00 a.m. and 6 a.m.
- 5) That the authorization for the sale of alcoholic beverages shall not transfer to different owners or land uses.
- 6) That such authorization 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.