



City of San Antonio

Agenda Memorandum

File Number:16-3619

Agenda Item Number: 33.

Agenda Date: 8/4/2016

In Control: City Council A Session

DEPARTMENT: Development Services

DEPARTMENT HEAD: Roderick Sanchez

COUNCIL DISTRICTS IMPACTED: Council District 10

SUBJECT:

Alcohol Variance Case AV2016007

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(d)(1), and 4-6(d)(6) of the City Code and authorizing the sale of alcoholic beverages on Lot 19, NCB 12103 located at 3131 Nacogdoches Road for on-premise consumption for a proposed restaurant within three-hundred (300) feet of MacArthur High School, a public education institution located in the Northeast Independent School District within Council District 10.

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 applicant proposes operating a restaurant at the subject property. The applicant is in the process of requesting a beer and wine license from TABC for on-premise consumption of alcohol.

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 public 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;

Alcohol has not been sold at the property within the last two (2) years at this location; therefore, the applicant has requested a waiver of this requirement.

- 2) The discontinuance of the sale of alcoholic beverages was not a result of a violation of law;
Alcohol has not previously been sold at this location and a waiver of this requirement is also requested.
- 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 subject property is located within three hundred (300) feet of the property lines of MacArthur High 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.
 - a. *The applicant has stated that alcohol sales will not exceed 30% of total revenues.*
 - b. *The applicant has indicated that no sales of alcoholic beverages will be for off-premise consumption.**No waiver of this requirement is needed.*

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.
Alcohol service and/or sales have not previously occurred at this location; this is a new restaurant. 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. The subject property will operate as no more than one (1) food service establishments.
 - a. *The responsibility of providing documentation verifying that no more than thirty (30) percent of the proposed use's 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 3131 Nacogdoches 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 is requesting a variance to allow the on-premises sale of alcohol within three hundred (300) feet of the property line of MacArthur High School, which is accredited and recognized by the Texas Commission of Education.

§4-6(c)(1) requires that the sale of alcohol had been permitted within the past two (2) years at the location in question.

The proposed restaurant is a new business and has not previously sold alcohol; a waiver of this requirement is requested.

§4-6(c)(2) requires that the discontinuance of the sale of alcoholic beverages was not a result of a violation of law;

There is no previous, continuous alcohol service and a waiver of this requirement is also requested.

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

The proposed establishment will be located less than 300 feet from the property lines of school facilities, however, the restaurant will be approximately six hundred thirty (630) feet from the entrance of MacArthur High School.

§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 not be sold for off-premise consumption and on-premise consumption will not exceed more than 30 percent of annual gross revenues of the establishment.

ALTERNATIVES:

The City may opt not to waive the requested waivers and variances, prohibiting the sale of alcohol for on-premise consumption at the proposed restaurant generally located at 3131 Nacogdoches Road.

FISCAL IMPACT:

None.

RECOMMENDATION:

Staff Analysis: The staff analysis includes the following findings and factors:

1. The MacArthur High School school facilities are significantly more than 300 feet from the proposed restaurant on the subject property. The entrance to MacArthur High School is approximately six hundred thirty (630) feet from the proposed restaurant.

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

2. The applicant has self-imposed an additional restriction in relation to no sales of alcohol for off-premise consumption.
3. Nacogdoches Road is a commercial corridor that includes established commercial developments and is progressively being developed. The opportunity to offer alcohol sales for on-premise consumption in relation to a restaurant allows the property to be more marketable for redevelopment.

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

1. That this authorization shall be limited to the "restaurant".
2. That alcohol shall be sold for on-premise consumption only.
3. That alcohol sales shall not exceed 30% of the total revenues for this establishment
4. That alcohol sales shall not be permitted between the hours of 2:00 a.m. and 6:00 a.m.
5. That this authorization shall not transfer to different owners or different uses.
6. That such authorization shall terminate in the event of non-operation or non-use for a period of

twelve or more successive calendar months.