



City of San Antonio

Agenda Memorandum

File Number:17-1352

Agenda Item Number: 17.

Agenda Date: 3/2/2017

In Control: City Council A Session

DEPARTMENT: Development Services

DEPARTMENT HEAD: Michael Shannon

COUNCIL DISTRICTS IMPACTED: Council District 2

SUBJECT:

Alcohol Variance Case AV2017004

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) and 4-6 (d)(1) of the City Code and authorizing the sale of alcoholic beverages on a Portion of All of Block, NCB 12398, generally located at 4427 Moana Drive for on-premise consumption within a church hall, within three-hundred (300) feet of the St. Thomas More Catholic School, a private education institution located in Council District 2.

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 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 previously been sold at this location, but using a temporary sales license. The church hall is now seeking a full TABC license.
- 2) The discontinuance of the sale of alcoholic beverages was not a result of a violation of law;
Alcohol has been sold at this location previously, but they are now trying to acquire a full TABC

license.

- 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;

The method of measurement has not changed. The applicant will need a variance from the 300 foot distance requirement.

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 did previously occur at this location; however, they were using a temporary license. While the applicant provided copies of temporary TABC licenses, there is no full TABC license previously issued to this hall.

ISSUE:

Currently, the sale of alcoholic beverages 4427 Moana Drive 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 St. Thomas More Catholic 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.

The location has not previously had a full TABC license. Rather, they had operated with temporary licenses in the past. The applicant is seeking a waiver from this requirement.

§4-6(c) (2) requires that the discontinuance of the sale of alcohol not be the result of a violation of the law.

The applicant sold alcohol at this location until January of 2017 using temporary TABC licenses. They are now seeking a full license. The applicant is seeking a waiver from this requirement.

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

Sales of alcohol at the church hall will be located within 300 feet of the existing school facility. The applicant is requesting a waiver to this requirement.

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

Alcohol has been sold at this location in the past two years, but using temporary licenses. The applicant is requesting a waiver to this requirement.

ALTERNATIVES:

The City may opt not to grant the requested waivers and variance, prohibiting the sale of alcohol for on-premise consumption at the church hall, generally located at 4427 Moana Drive.

FISCAL IMPACT:

None.

RECOMMENDATION:

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

1. The distance from the door of the church hall to the door of the St. Thomas More Catholic School is approximately 151 feet and the distance to the church is approximately 578 feet.

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

2. The sale of alcohol is for on-premise consumption only.

Should City Council choose to waive the provisions of §4-6(c) (1-3) and §4-6(d) (1) of the City Code, staff recommends the following conditions:

- 1) That the sale of alcoholic beverages be limited to the church hall for events.
- 2) Alcohol sale will include beer and wine for on-premises consumption only.
- 3) That the authorization for the sale of alcoholic beverages shall not transfer to different land uses or owners.
- 4) That such authorization shall terminate in the event of non-operation or non-use of the identified establishments for a period of twelve (12) or more successive months.
- 5) The hours of operation shall be limited to Friday - Saturday 5:00PM to 12:00AM and on Sunday from 12:00PM to 12:00AM.
- 6) The sale of alcohol shall not exceed 30 percent of total revenue.