



City of San Antonio

Agenda Memorandum

File Number:18-1512

Agenda Item Number: 26.

Agenda Date: 2/15/2018

In Control: City Council A Session

DEPARTMENT: Development Services

DEPARTMENT HEAD: Michael Shannon

COUNCIL DISTRICTS IMPACTED: Council District 7

SUBJECT:

Alcohol Variance Case AV2018003

SUMMARY:

Consideration of a request granting a waiver of Sections 4-6(c)(1) and 4-6(c)(3), and a Variance from Section 4-6(d)(6) of the City Code, authorizing the sale of alcoholic beverages on Lot 14, NCB 8349, located at 3031 West Woodlawn Avenue for on-premise consumption within three-hundred (300) feet of Madison Elementary, a public education institution in San Antonio Independent School District, Council District 7.

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 not previously been sold at this location. The applicant is seeking the first license for the proposed Wingstop food service establishment use.
- 2) The discontinuance of the sale of alcoholic beverages was not a result of a violation of law;
Alcohol has never been sold on the subject property. A variance is not needed from this provision.

- 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.

- 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 stated that alcohol sales will not exceed 30% of total revenues. The applicant has indicated that sales of alcoholic beverages will be for on-premise consumption.

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

- 6) The applicant shall on an annual basis submit to the department of building inspections the necessary documentation to verify that no more than thirty (30) percent of the annual gross revenues of the establishment are generated by the sale of alcoholic beverages;

The applicant would like a waiver of this requirement.

ISSUE:

Currently, the sale of alcoholic beverages at 3031 West Woodlawn Avenue 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-premise sale of alcohol at a Wingstop within three hundred (300) feet of Madison Elementary School, which is accredited and recognized by the Texas Commission of Education.

ALTERNATIVES:

The City may opt not to grant the requested waiver and variances, prohibiting the sale of alcohol for on-premise consumption at the food service establishment, Wingstop, located at 3031 West Woodlawn Avenue.

FISCAL IMPACT:

None.

RECOMMENDATION:

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

1. The distance from the property where the food service establishment will be located to the parcel of Madison Elementary School property is approximately 75 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), §4-6(c)(3), and §4-6(d)(6) of the City Code, staff recommends the following conditions:

- 1) That the sale of alcoholic beverages be limited to the food service establishment.
- 2) Alcohol sales 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) Hours of operation are limited to 10:45a.m. to 12:00a.m. Monday through Saturday, and 12:00p.m. to

12:00a.m. on Sundays.

- 6) The sale of alcohol shall not exceed 30 percent of total revenue.