City of San Antonio

Agenda Memorandum

File Number:21-4266

Agenda Item Number: 47.

Agenda Date: 6/17/2021

In Control: City Council A Session

DEPARTMENT: Development Services

DEPARTMENT HEAD: Michael Shannon

COUNCIL DISTRICTS IMPACTED: 10
SUBJECT:
Alcohol Variance Case AV2021-004

SUMMARY:
Consideration of a request granting a Variance to City Code Section 4-6 and waiving the requirements of the City Code and authorizing the sale of alcoholic beverages at an Outdoor Sports Court to Enrique Nunez de Urquidi, applicant, on Lot P-3 and Lot P-21, NCB 17812, located at 14630 Judson Road for on-premise consumption within three-hundred (300) feet of the Northeast ISD Softball Complex/John H. Wood Junior High, a public education institution and facility in Northeast Independent School District, Council District 10.

BACKGROUND INFORMATION:
The Texas Alcoholic Beverage Code Ann. 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:
   The applicant indicated that there have not been on-premise consumption of alcohol, and sales of alcoholic beverages permitted on this property within the last two (2) years.
2) The discontinuance of the sale of alcoholic beverages was not a result of a violation of law;
   There are no recorded violations of alcohol sales or consumption 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 14630 Judson Road is located within three hundred (300) feet of the property line of the Northeast ISD Softball Complex/John H. Wood Junior High. The applicant has requested a variance from 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 alcohol sales will not exceed 30% of total revenues of the proposed business and is for on-premise consumption.

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

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. The applicant has requested a variance from this provision.

b. No more than thirty (30) percent of the annual gross revenues are to be generated by the sale of alcohol. The applicant has requested a variance from this provision.

ISSUE:

Currently, the sale of alcoholic beverages at 14630 Judson 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-premise sale of alcohol within three hundred (300) feet of Northeast ISD Softball Complex/John H. Wood Junior High, 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 proposed Outdoor Sport Court business is approximately 88.5 feet from the existing school sports facility property, measured property line to property line in accordance with TABC measurement standards.

§4-6(e)(1) includes three activities or actions that would constitute a violation of any granted variance: 1) selling alcoholic beverages for on-premise consumption, 2) selling alcoholic beverages for off-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 for on-premise consumption at the proposed Outdoor Sport Court business. The application is to sell alcohol as specified by the Texas Alcoholic Beverage Commission (TABC) requirements.

ALTERNATIVES:

The City may opt not to waive the requested waivers and variances, prohibiting the sale of alcohol for on-premise consumption at 14630 Judson Road.

FISCAL IMPACT:

None.

RECOMMENDATION: Approval of this request is at the discretion of City Council.

Staff Analysis includes the following findings and factors:

1. The school property is less than 300 feet from the subject property (approximately 88.5 feet measured property line to property line in accordance with TABC measurement standards).

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

2. The door-to-door measurement from the front door of the subject property to the front door of the school is approximately 908.7 feet.
3. The sale of alcohol is for on-premise consumption.

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 proposed business/outdoor sports court.
2) All alcohol sales are for on-premise consumption (beer and wine sales only).
3) The days and hours of operation for alcohol sales are limited to Monday through Sunday 12:00p.m.-10:00p.m.
4) That the authorization for the sale of alcoholic beverages shall not transfer to different owners or land uses.
5) 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.