



City of San Antonio

Agenda Memorandum

File Number:15-2075

Agenda Item Number: 49.

Agenda Date: 4/2/2015

In Control: City Council A Session

DEPARTMENT: Development Services

DEPARTMENT HEAD: Roderick Sanchez

COUNCIL DISTRICTS IMPACTED: Council District 10

SUBJECT:

Alcohol Variance Case AV2015003

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 Lots 21-23, Block 34, NCB 9073 generally located at 1251, 1253, and 1255 Austin Highway for on or off-premise consumption for potential retail shopping center redevelopment of no more than five (5) establishments total, including no more than one (1) Convenience Store, Drug Store, or Grocery Store, no more than one (1) Wine Boutique, with the balance being restaurants within three-hundred (300) feet of Southwest Preparatory School-Northeast Campus, 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 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;
 - a. Alcohol has previously been sold on a portion of the property within the last two (2) years but

not on all of the sites. The property is being redeveloped for potential use as a shopping center with a Convenience, Drug, and/or Grocery Store, Restaurant(s), and Wine Boutique. The applicant has requested a variance to this provision.

- 2) The discontinuance of the sale of alcoholic beverages was not a result of a violation of law;
 - a. The current alcohol service does not cover all of the properties; therefore, the discontinuance provision is not applicable. The applicant has not requested a variance to 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; and
 - a. The properties with the corresponding addresses are located within three hundred (300) feet of the property line of the Southwest Preparatory School - Northeast Campus. 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 requested a variance to this provision and self-imposed the following restrictions:

 - a. The applicant has stated that alcohol sales will not exceed 30% of total revenues of each established business, with the exception of the Wine Boutique.
 - b. The applicant has stated that there will be no sales of hard alcohol for off-premise consumption.
 - c. The applicant is limiting alcohol sales by not permitting alcohol sales between the hours of 11:00 p.m. and 6 a.m.

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.
 - a. The current alcohol service does not cover all of the properties; therefore, the an expiration is not applicable to all of the properties.
- 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 properties will operate as no more than one (1) Convenience Store or Drug Store, Grocery Store, no more than one (1) Wine Boutique, and food service establishments.
 - 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. Thus it is stated herein this document.
 - b. No more than thirty (30) percent of the annual gross revenues are to be generated by the sale of alcohol. The Wine Boutique will more than likely generate thirty (30) percent or more annual gross revenue for this established business, thus this requirement would need to be waived by City Council.

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 1251, 1253, and 1255 Austin Highway 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 Southwest Preparatory School - Northeast Campus, 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 proposed uses are new businesses and have not previously sold alcohol.*

§4-6(c)(3) mandates that alcohol cannot be sold within three hundred (300) feet of a public school. *The proposed retail redevelopment properties are between approximately 130 feet and 200 feet of 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 Wine Boutique for off-premise consumption.*

ALTERNATIVES:

The City may opt not to waive the requested waivers and variances, prohibiting the sale of alcohol for on-premise consumption at a redeveloped retail shopping center with restaurants, and/or a convenience or grocery store generally located at 1251, 1253, and 1255 Austin Highway.

FISCAL IMPACT:

None.

RECOMMENDATION:

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

1. The school facility is significantly less than 300 feet from the subject properties (the approximate distance ranges between 130 feet to 200 feet). The school and the proposed retail redevelopment properties are only divided by four lanes of traffic and a median (they are across the street from one another).

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

2. Austin Highway is a commercial corridor that includes established commercial developments and is progressively being redeveloped. The opportunity to offer alcohol sales for on-premise consumption in relation to a restaurant or for general sales as part of a Convenience Store, Grocery Store or Wine Boutique allows the properties to be more marketable for redevelopment.
3. The applicant has self-imposed additional restriction in relation to the sale of alcohol on the properties.

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 be limited to no more than five (5) establishments total, including no more than one (1) convenience store or drug store, grocery store, no more than one (1) wine boutique, and the balance being restaurants.
- 2) That the alcohol sales not exceed 30% of total revenues for each established business, with the exception of the Wine Boutique.

- 3) That there will be no sales of hard alcohol for off-premise consumption (beer and wine sales only).
- 4) That the alcohol sales not be permitted between the hours of 11:00 p.m. and 6 a.m.
- 5) That the authorization for the sale of alcoholic beverages shall not transfer to different 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 may be required of the applicant for the noted properties