



# City of San Antonio

## Agenda Memorandum

**File Number:**15-2098

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**Agenda Item Number:** 48.

**Agenda Date:** 4/2/2015

**In Control:** City Council A Session

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**DEPARTMENT:** Development Services

**DEPARTMENT HEAD:** Roderick Sanchez

**COUNCIL DISTRICTS IMPACTED:** Council District 3

**SUBJECT:**

Alcohol Variance Case AV2015002

**SUMMARY:**

Consideration of a request granting a Variance to City Code Section 4-6 and waiving the requirement of Section 4-6(c)1, 4-6(c)3, and a portion of 4-6(e)1 and authorizing the sale of alcoholic beverages on Lot 23, Block 1, NCB 10934, located at 2623 SE Military Drive for BACH Dining City Base, LLC, Applicant, to sell alcoholic beverages for on premise consumption as a "Restaurant" within three hundred (300) feet of the Seidel Learning Center, a public education institution located in the San Antonio Independent School District within Council District 3.

**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. The sale of alcohol has not been permitted within the past two years. The restaurant is a new establishment that has not previously sold alcohol at this location. 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 new restaurant did not violate any law that resulted in a prohibition against the sale of alcohol. 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 new restaurant is located within three hundred (300) feet of the property line of the Seidel Learning Center. 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. The applicant has not requested a variance to this provision.

Additionally, §4-6(e)(1) includes three activities or actions that would constitute a violation of any granted variance:

- ~ to sell alcoholic beverages for off-premise consumption;
- ~ to sell alcoholic beverages for on-premise consumption of alcoholic beverages that exceed more than thirty (30) percent of the annual gross revenues of the establishment, or
- ~ to violate any other condition imposed by city council.

#### **ISSUE:**

Currently, the sale of alcoholic beverages at 2623 Southeast Military Drive would 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 since the property is within three hundred (300) feet of a school within the San Antonio Independent School District (SAISD), which is accredited and recognized by the 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.

§4-6(c)(3) mandates that alcohol cannot be sold within three hundred (300) feet of a public school. The proposed restaurant location is approximately one hundred (100) feet from the property line of the school, but is more than three hundred (300) feet from the school facility.

#### **ALTERNATIVES:**

The City Council may opt not to waive the variance criteria prescribed by §4-6(c)(1), as well as §4-6(c)(3) of the City Code which would result in alcohol sales at 2623 Southeast Military Drive being prohibited.

#### **FISCAL IMPACT:**

None.

#### **RECOMMENDATION:**

**Staff Analysis and Recommendation:** Staff analysis included the following factors:

1. The school property is located within the San Antonio State Hospital property which measures approximately 350 acres in size.
2. The school facility is more than 300 feet from the subject property boundary:
  - ~ Main driveway/access point - distance of 6,300 feet
  - ~ Nearest parking and internal roadway - distance of 6,200 feet
  - ~ Nearest school structure - distance of 6,300 feet
  - ~ School's main entrance - distance of 6,300 feet

3. Southeast Military Drive is a commercial corridor that includes established commercial developments. The properties located east of the subject property are located more than 300 feet from the school's property line. Therefore, these other properties have the potential to offer alcohol sales for on- or off-premise consumption, constituting an unnecessary hardship for the subject property.

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

- 1) That the authorization for the sale of alcoholic beverages shall not transfer to different land uses.
- 2) 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.