



# City of San Antonio

## Agenda Memorandum

**File Number:**15-5008

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**Agenda Item Number:** 17.

**Agenda Date:** 10/1/2015

**In Control:** City Council A Session

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**DEPARTMENT:** Development Services

**DEPARTMENT HEAD:** Roderick Sanchez

**COUNCIL DISTRICTS IMPACTED:** 10

**SUBJECT:**

Alcohol Variance Case AV2015008

**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 with conditions at up to 6 establishments on Lots 10-12, 24-27, NCB 17725, generally located in the 17000 block of Jones Maltsberger and North Loop 1604 East for on-premise and/or off-premise consumption for no more than six (6) total business establishments, including no more than two (2) Grocery Store or Convenience Stores, no more than one (1) Wine Boutique, and no more than three (3) restaurants within three-hundred (300) feet of Great Hearts Academy Charter School, 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 not been sold on a portion of the property within the last two (2) years

but not on all of the sites. The property is undeveloped and vacant and is being proposed for development as a mix of Grocery and/or Convenience Store(s), Restaurant(s), and a 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. Discontinuance is not applicable as the properties are undeveloped and vacant and alcohol has not been previously sold on these properties.
- 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 Great Hearts Academy Charter School - Northern Oaks 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 12:00 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 property is currently vacant and does not presently have established alcohol sales; therefore, the 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 two (2) Convenience Store(s) or Grocery Store(s), no more than one (1) Wine Boutique, and three (3) 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 for the convenience/grocery store(s) and restaurants.
  - c. 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 in the 17000 block of Jones Maltsberger and North Loop 1604 East 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 and off-premise sale of alcohol within three hundred (300) feet of Great Hearts Academy Charter School - Northern Oaks 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 199 feet and 210 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 and off-premise consumption at a retail developed site with convenience/grocery stores, restaurants, and a wine boutique generally located in the 17000 block of Jones Maltsberger and North Loop 1604 East.

#### **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 199 feet to 210 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. This portion of Jones Maltsberger Road is mostly undeveloped. The opportunity to offer alcohol sales for on-premise and off-premise consumption in relation to restaurants or for general sales as part of a Convenience Store, Grocery Store or Wine Boutique allows the properties to be more marketable for future development.
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 six (6) total business establishments, including no more than two (2) Grocery Store or Convenience Stores, no more than one (1) Wine Boutique, and no more than three (3) restaurants. Additionally there shall be no bars, taverns or sexually-oriented businesses on the property.

2. Alcohol sales shall not exceed 30% of total revenues of each established business, with the exception of the Wine Boutique.
3. There shall be no sales of hard alcohol for off-premise consumption.
4. There shall be no sale of alcohol between the hours of 12:00 a.m. and 6 a.m.
5. 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 establishments for a period of twelve (12) or more successive calendar months.