

Legislation Text

File #: 24-351, **Version:** 1

PRESENTER:

Matthew Simmont, AICP Planning Manager

SUBJECT:

Approval of a variance request to allow the sale of alcohol for on-premises consumption within 300 feet of a church for a proposed business in the Creekside Wellness Center Planned Development District, Creekside Wellness Center, Lot 19A, currently addressed at 2031 Central Plaza, Suite 101.

DEPARTMENT: Planning and Development Services

COUNCIL DISTRICTS IMPACTED: 5

BACKGROUND INFORMATION:

Case No:	CS24-0079
Applicant:	Jamie Frailicks
	124 Lily Pond Trl
	San Marcos, TX 78666
	(512) 787-2191 jcfraililckslc@gmail.com
Staff Contact:	Amanda Mushinski
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The subject property is approximately 0.7 acres in size, located on the southeast side of Central Plaza, approximately 630 feet southeast of the intersection of Central Plaza and Creekside Crossing, and ¼ of a mile southeast of Resolute Baptist Hospital.

Surrounding Zoning and Land Use:

North	PDD (Creekside Wellness Center)	River City Church and Silos at Freiheit
South	PDD (Creekside Wellness Center)	Commercial Property
East	PDD (Creekside Wellness Center)	Hotel
West	PDD (Creekside Wellness Center)	Apartment Complex

ISSUE:

The applicable Texas Alcoholic Beverage Commission (TABC) permit type for this business is considered a “Mixed Beverage Permit (MB) and Food and Beverage Certificate (FB)” which authorizes the sale of distilled spirits, wine, and malt beverages for on-premises consumption. It includes the authority to transport alcoholic beverages from the place of purchase to the MB’s licensed premises, provide guestroom minibars (hotels), and hold events at a temporary location away from the primary MB premises. The proposed use is considered a restaurant land use under New Braunfels’ Zoning Ordinance and is allowed within the Creekside Wellness Center Planned Development District.

Title 4, Chapter 109, Subchapter C, Section 109.33(a)(1) of the Texas Local Government Code (TxLGC) states cities may enact regulations prohibiting the sale of alcoholic beverages within a specified distance of protected land uses such as churches, schools, and hospitals. There are different distance requirements dependent on the type of protected use.

In 2012, the City Council adopted amendments to the Zoning Ordinance to establish Sec. 144-5.18 Sale of Alcoholic Beverages. The ordinance mirrored the authorized distance requirements outlined in Section 109.33 of the Texas Local Government Code. Sec. 144- 5.1.8 states “a place of business where alcoholic beverages is sold shall be prohibited within 300 feet of a church, private or public school, daycare center or child-care facility or public hospital. The measurement of this distance shall be along the property lines of the street fronts and from front door to front door, and in direct line across intersections.”

The front door of the proposed business measures approximately 208 feet from the front door of the River City Church, currently located at 2032 Central Plaza. This distance was measured from the front door of each structure to their respective front property lines and across Central Plaza, as required by the Zoning Ordinance. Therefore, the proposed business cannot sell alcoholic beverages for on-premises consumption because it is within 300 feet of a church.

The applicant is requesting a variance to allow the sale of alcohol at the subject property. Section 109.33(e) of the same subchapter of the Local Government Code states the governing board of a city or town that has enacted required distances between businesses that sell alcohol and protected uses may also allow variances from the regulations if the governing body determines that 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 governing board, 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.

Because the TxLGC authorizes the governing body of a city to grant a variance from this requirement, the City Council is the authorized body to approve or deny the request.

The proposed variance would be consistent with the following actions from Envision New Braunfels:

- **Action 1.3:** Encourage balanced and fiscally responsible land use patterns.
- **Action 1.6:** Incentivize infill development and redevelopment to take advantage of existing infrastructure.
- **Action 3.6:** Proactively provide a regulatory environment that remains business and resident friendly.

Future Land Use Plan: The subject property is located within the Oak Creek Sub Area, near existing Medical, Education, and Market Centers, and a proposed Employment Center.

FISCAL IMPACT:

N/A

RECOMMENDATION:

N/A

Mailed notification as required by state statute:

Public hearing notices were sent to owners of 8 properties within 200 feet of the request. To date, the city has received no responses in opposition.

Resource Links:

- Chapter 144, Sec. 5.18 (Sale of Alcoholic Beverages) of the City's Code of Ordinances:
https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?
- Texas Local Government Code, Title 4, Chapter 109 (Alcoholic Beverage Code):
<https://statutes.capitol.texas.gov/Docs/AL/htm/AL.109.htm>