Legislation Text

File #: 21-40, **Version:** 1

Presenter/Contact
Maddison O'Kelley, Assistant Planner
(830) 221-4056 - mokelley@nbtexas.org

SUBJECT:

Public hearing and consideration of approval of a variance request to allow a proposed business, addressed at 344 Landa Street, to provide alcohol sales (wine and beer, no onsite consumption) within 300 feet of a church.

BACKGROUND / RATIONALE:

Case No.: CS20-319

Council District: 3

Applicant/Owner: Robert Pineda
344 Landa Street
New Braunfels, TX 78130

Staff Contact: Maddison O'Kelley
(830) 221-4056
mokelley@nbtexas.org

The subject property is located on Landa street and is zoned "C-1" Local Business District. There is an existing 800 square foot commercial structure on the property that was constructed in 2009. The applicant is proposing to occupy the existing building and open a retail cheese shop with beer and wine sales. In a letter provided to staff, the applicant states there will be no liquor sold, nor consumption of any alcoholic beverages on the property. The applicable Texas Alcoholic Beverage Commission (TABC) permit type for this business is considered a "Wine and Beer Retailer's Off-Premise Permit (BQ)" under which all alcoholic products must be sold in their unbroken original containers and no on-premise consumption is permitted. The proposed use is considered a retail land use under New Braunfels' Zoning Ordinance and is permitted within the "C-1" zoning 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, 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 set forth in Section 109.33 of the Texas Local Government Code. Sec. 144-5.1.8 states "a place of business

where alcoholic beverages are 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 subject structure is measured as 187.47 feet from the front door of the River City Vineyard Community Church, addressed at 358 Landa Street. This distance was measured from the front door of each structure to their respective front property lines and along Landa Street, as required by the Zoning Ordinance. Therefore, the proposed business is not permitted to sell wine and beer, 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 to 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 to this requirement, the City Council is the authorized body to approve or deny the request.

Surrounding Zoning and Land Use:
North - R-1/ Single-Family Residence
South - Across Landa Street, C-1 / Government Recreation Building
East - C-1A/ Commercial
West - C-1/ Commercial

ADDRESSES A NEED/ISSUE IN A CITY PLAN OR COUNCIL PRIORITY:

City Plan/Council Priority: Envision New Braunfels Comprehensive Plan	**Consistent Actions:** **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:** Pro actively provide a regulatory environment that remains business and resident friendly. **Future Land Use:** The property is situated within the New Braunfels Sub-Area. It is located within *Existing* Civic, Market, Employment, Education, Tourist/Entertainment, Outdoor Recreation, and Medical Centers and in *Planned* Civic, Education, and Outdoor Recreation Centers.

FISCAL IMPACT:

N/A

COMMITTEE RECOMMENDATION:
The Planning Commission held a public hearing on January 5, 2021 and recommended approval (9-0 -0).

STAFF RECOMMENDATION:
N/A

Notification:
Public hearing notices were sent to owners of 16 properties within 200 feet of the request, including the property owner of the protected use. To date, the City has received one response in objection from the property labeled as #3 on the response map. A representative for the River City Vineyard Church provided a response indicating the church is in favor of the request.

RESOURCE LINKS:
- Chapter 144, Sec. 3.3-7 (C-1) of the City's Code of Ordinances: <https://gismaps.nbtexas.org/ZoningOrdinance/Sec._3.3-7_C-1_(2012).pdf>
- Sec. 144-5.18 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>

ATTACHMENTS:
1. Aerial Map
2. Map Exhibit of Distance to Church
3. Applicant Request Letter
4. Notification Map