

Legislation Text

File #: 21-486, **Version:** 1

PRESENTER:

Christopher J. Looney, AICP, Planning and Development Services Director

SUBJECT:

Public hearing and consideration of a variance request to allow a proposed business, addressed at 494 North Seguin Avenue, to provide alcohol sales (wine and beer, on premises consumption) within 300 feet of a church.

DEPARTMENT: Planning & Development Services

COUNCIL DISTRICTS IMPACTED: Council District 5

BACKGROUND INFORMATION:

Case # CS21-0139

Applicant: Rashmi Bhat
7 Monks Café
494 N Seguin Avenue
New Braunfels, TX 78130
(270) 556-4129; info@bonjourtexas.com <<mailto:info@bonjourtexas.com>>

Staff Contact: Maddison O’Kelley, Assistant Planner
(830) 221-4056; mokelley@nbtexas.org

The subject property is located on the corner of Meusebach Street and North Seguin Avenue south of the railroad, and is zoned “C-2” Central Business District. The applicant currently occupies the existing commercial structure on the property as a café and intends to expand the current menu to offer beer and wine for consumption on-site.

The applicable Texas Alcoholic Beverage Commission (TABC) permit type for this business is considered a “Wine and Beer Retailer’s On-Premise Permit (BG)” under which the permit holder can sell for consumption beer and wine not more than 14% or 17% alcohol by volume on or off the premises where the product is sold. The applicant also intends to obtain a Food and Beverage Certificate (FB) under which alcoholic beverage sales cannot exceed 60% of the total gross receipts of the licensed premise. The applicant does not anticipate sales from alcohol to exceed 20% of projected gross revenue. The proposed use is considered a restaurant land use under New Braunfels’ Zoning Ordinance and is allowed within the C-2 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 194.62 feet from the front door of the St. Joseph’s Anglican Church, addressed at 446 N. Seguin Avenue. This distance was measured from the front door of each structure to their respective front property lines and along N Seguin Avenue, as required by the Zoning Ordinance. Therefore, the proposed business is not permitted to sell wine and beer for on-site 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.

Surrounding Zoning and Land Use:

North - Across railroad, C-4/ Industrial

South - C-2 / Church

East - C-2/ Residential

West - Across N. Seguin Ave, M-2/ Industrial Warehouse

ISSUE:

The proposed variance is consistent with the following actions from Envision New Braunfels (the community’s Comprehensive Plan):

- 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

RECOMMENDATION:

The Planning Commission held a public hearing May 4, 2021 and voted to recommend approval of the request (8-0-0) with Commissioner Gibson absent.

NOTIFICATION:

Public hearing notices were sent to owners of 15 properties within 200 feet of the request, including the property owner of the protected use. To date, the City has received no responses.

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>](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?&_ga=2.171111111.1629111111.1629111111-1629111111.1629111111>](https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?&_ga=2.171111111.1629111111.1629111111-1629111111.1629111111)
- Texas Local Government Code, Title 4, Chapter 109 (Alcoholic Beverage Code)
[<https://statutes.capitol.texas.gov/Docs/AL/htm/AL.109.htm>](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 and List
5. Excerpt of Minutes from the May 4th Planning Commission Regular Meeting