Legislation Text

File #: 21-920, **Version:** 1

PRESENTER:
Jean Drew, AICP, CNU-A, Planning & Development Services Assistant Director
SUBJECT:
Public hearing and consideration of a variance request to allow a proposed business, addressed at 111 S. Union Avenue, to provide alcohol sales (wine and beer, off-premises consumption) within 300 feet of a children's daycare.
DEPARTMENT: Planning & Development Services
COUNCIL DISTRICTS IMPACTED: Council District 5

BACKGROUND INFORMATION:

Case #	CS21-0264
Applicant:	Teia Bennett Blumen Meisters Flower Shop 111 S. Union Avenue New Braunfels, TX 78130 830-629-1604; design@blumen-meisters.com <mailto:design@blumen-meisters.com>
Staff Contact:	Maddison O'Kelley, Assistant Planner (830) 221-4056; mokelley@nbtexas.org

The subject property is located on the corner of S. Union Avenue and E. Common Street and is zoned "C-1" Local Business District. The applicant currently occupies one of the suites in the existing commercial structure on the property as a flower shop and intends to begin selling beer and wine in gift baskets.

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 Alcoholic Beverage Code 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 Alcoholic Beverage 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 235.01 feet to the front door of the Happy Days Daycare Center, addressed at 115 N. Union Avenue. This distance was measured from the front door of each structure to their respective front property lines and along Union Avenue, as required by the Zoning Ordinance. Therefore, the proposed business is not permitted to sell wine and beer for off-site consumption because it is within 300 feet of a daycare.

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 Texas Alcoholic Beverage 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 Texas Alcoholic Beverage Code 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 - Across E. Common Street, C-1 and C-1B/ Retail and Lodging
South - C-1 / Residential
East - R-2 SUP/ Parking Lot
West - Across S. Union Ave, C-1 SUP/ Short-Term Rental

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 Employment, Market, and Outdoor Recreation Centers.

FISCAL IMPACT:
N/A

RECOMMENDATION:
The Planning Commission held a public hearing on September 8, 2021 and recommended approval of the request. (8-0-0 with Commission Gibson absent)

NOTIFICATION:
Public hearing notices were sent to owners of 13 properties within 200 feet of the request, including the property owner of the protected use. To date, the City has received three responses in favor (#6, #9, and #12) and none in opposition.

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 Alcoholic Beverage 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 Daycare
3. Applicant Request Letter
4. Notification List and Map
5. Draft Minutes from Planning Commission