



Legislation Text

File #: 22-1938, **Version:** 1

STRATEGIC PRIORITY: Economic Development
AGENDA DATE: September 14, 2022
COUNCIL DISTRICT(S): 1
DEPARTMENT: Department of Planning and Urban Design
EXECUTIVE: Majed Al-Ghafry

SUBJECT

A public hearing on an application for and a resolution granting a variance to the alcohol spacing requirements from a public school, Margaret B. Henderson Elementary School, as required by Section 6-4 of the Dallas City Code to allow a wine and beer retailer's permit pursuant to Chapter 25 of the Texas Alcoholic Beverage Code, for a restaurant without drive-in or drive-through service with a food and beverage certificate [Pizza Fritta, Inc.] on the west side of Edgefield Avenue south of Newport Avenue - AV212-003 - Financing: No cost consideration to the City

BACKGROUND

Section 6-4 of Chapter 6, "Alcoholic Beverages," of the Dallas City Code allows Council to grant a variance from the usual spacing required between an alcohol business and a protected use. The usual spacing requirement is 300 feet in a direct line from the property line of the public school to the property line of the place of business.

The standard for approval of the variance is that:

A. the application is for one of the following permits pursuant to the following chapters of the Texas Alcoholic Beverage Code:

- (i) a brewer's permit, Chapter 12;
- (ii) a distiller's and rectifier's permit, Chapter 14;
- (iii) a winery permit, Chapter 16;
- (iv) a wine and beer retailer's permit, Chapter 25;
- (v) a wine and beer retailer's off-premise permit, Chapter 26;
- (vi) a mixed beverage permit with a food and beverage certificate, Chapter 28; or
- (vii) a manufacturer's license, Chapter 62.

B. the application is for one of the following land uses:

- (i) general merchandise or food store use with 10,000 square feet or more of floor area
- (ii) restaurant without drive-in or drive-through service with a food and beverage certificate pursuant to the Texas Alcoholic Beverage Code;
- (iii) alcoholic beverage establishment limited to a microbrewery, microdistillery, or winery; or
- (iv) alcoholic beverage manufacturing.

C. alcoholic beverages will not be sold by drive-in or drive-through service; and

D. enforcement of the spacing requirements in this particular instance:

- (i) is not in the best interest of the public;
- (ii) constitutes waste or inefficient use of land or other resources;
- (iii) creates an undue hardship on an applicant for an alcohol permit;
- (iv) does not serve its intended purpose;
- (v) is not effective or necessary; or
- (vi) for any other reason that 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.

An application for a waiver of the spacing requirements was submitted on July 20, 2022, by Pizza Fritta, Inc. The Margaret B. Henderson Elementary School, located to the southeast of the request site, creates the need for the variance.

The request site is located in a retail shopping center in an area that has become known as Downtown Elmwood on property zoned CR Community Retail. The retail center contains various retail and personal service uses along with the restaurant. The applicant proposes to continue to operate the restaurant and to sell wine and beer for on-premise consumption with a wine and beer retailer's permit in conjunction with a restaurant without drive-in or drive-through service with a food and beverage certificate.

While the required spacing from a school is measured property line to property line, the walking distance from the entrance of the public school to the entrance of the restaurant is approximately 460 feet. Additionally, due to the request site being located across the intersection of Edgefield Avenue and Berkley Avenue, staff has no objection to this request.

This item requires two seconds to pass

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On November 9, 2009, City Council approved an ordinance amending Section 6-4 of Chapter 6 of the Dallas City Code, establishing authority and procedures for City Council to grant an application for a variance to the spacing requirements for an alcohol business from a public or private school pursuant to Texas Alcoholic Beverage Code Section 109.33(e), by Resolution No. 09-2831 and Ordinance No 27747.

On October 26, 2011, September 26, 2012, and January 22, 2014, City Council authorized an ordinance amending Section 6-4 of Chapter 6 of the Dallas City Code to amend the standards for approval of applications for variances from the spacing requirements for alcohol permits by Ordinance Nos. 28444, 28799, and 29261.

FISCAL INFORMATION

No cost consideration to the City.

MAP

Attached