

Variance Standards Responses

This variance request is made pursuant to Section 110.08 of the City of Port St. Lucie Code of Ordinances. The Applicant seeks to operate a retail package store engaging in the sale of alcoholic beverages (beer, wine, and distilled spirits) for off-premises consumption, with on-premises alcohol tastings, as permitted by Florida law, and a classroom to conduct alcohol educational seminars to customers and patrons. The retail store will operate under the name Total Wine & More.

Section 110.02 of the City of Port St. Lucie Code of Ordinances requires vendors of alcoholic beverages to be at least 1500 feet from any school or religious institution. The Total Wine & More store is located in a multi-use building within a large commercial plaza in St. Lucie West. Although the Total Wine & More store is not within 1500 feet of any school or religious institution, the perimeter property line of the parcel that Total Wine & More will be located upon is within 1500 feet of the property line of an existing religious institution. City staff has interpreted Code Section 110.02(c) in a manner that necessitates a variance for compliance with the “proximity” requirement. While the Applicant disagrees with staff’s interpretation of Section 110.02, the most efficient course of action is to apply for a variance under the appropriate procedure defined by the City Code.

For the reasons stated below, this variance should be granted by the Planning & Zoning Board. The submittal of this application is not intended as (and should not be considered) a waiver of the Applicant’s right to raise the issue of interpretation of the “proximity” ordinance on appeal.

As discussed with the Planning Director and the City Attorney’s office, the applicant has retained attorney Cynthia G. Angelos as the application agent. A notarized authorization will be submitted to the City subsequent to the filing of this application. This application was filed within the published schedule in order to be placed on the June 6, 2023 Planning & Zoning meeting agenda.

(1) Please explain special conditions and circumstances that exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district:

As stated above, the Total Wine & More retail unit is located within a large commercial plaza. Attached to this application is a distance map showing that the Total Wine & More unit is not within 1500 feet of the closest school or religious institution. A plain reading of the City Code shows that the intent of the “proximity” ordinance is to prevent the sale of alcoholic beverages within 1500 feet of a school or religious institution. The specificities of the parcel that the Total Wine & More will operate upon make it so that the perimeter property line of the commercial plaza is within 1500 feet of the property line of an existing church, but the Total Wine & More unit is not.

(2) Please explain if these conditions and circumstances result from actions by the applicant:

The conditions necessitating this variance do not result from any actions by the Applicant. This unique situation arose from the nature and scope of a multi-use commercial plaza and the

ambiguity in the City’s “proximity” ordinance. The fact that the Total Wine & More unit is more than 1500 feet from the closest religious institution complies with the intent of the ordinance. The complicated language of the ordinance has led to a result that frustrates its purpose. Nonetheless, the issue can be resolved by the granting of a variance that will create an equitable result for all parties.

(3) Please explain how granting the variance requested will not confer on the applicant special privilege that is denied by this chapter to other lands, buildings, or structures, in the same zoning district:

This variance request seeks no special privilege. In contrast, the request is seeking to allow Total Wine & More the same rights that every other vendor of alcoholic beverages enjoys within the City. Under the City staff’s current interpretation of the “proximity” ordinance, a different retail store selling alcoholic beverages could actually operate *closer* to the existing church than the proposed Total Wine & More unit as long as it is not located in a commercial plaza situated similar to the Applicant’s. This result is irrational and is in contradiction of the stated purpose of the “proximity” ordinance.

(4) Please explain how a literal interpretation of the provisions of the chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the chapter and would work unnecessary and undue hardship on the applicant:

The Applicant believes that it is in compliance with a literal interpretation of the “proximity” ordinance. Notwithstanding this fact, the ambiguous language of the “proximity” ordinance has led to an unreasonable result where Total Wine & More cannot operate even though it is not within 1500 feet of a school or religious institution. As stated above, a competitor store can hypothetically operate *closer* to the existing church than the proposed Total Wine & More unit.

(5) Please illustrate and explain if the variance requested is the minimum variance that will make possible the reasonable use of the land, building, or structure:

This variance request is not related to the size or location of the existing building in relation to a setback, height, or square footage restriction of the City Code, therefore this standard is inapplicable to the instant application.

(6) Please indicate how granting the variance will be in harmony with the general intent and purpose of the chapter and that granting the variance will not be injurious to the area involved or otherwise detrimental to the public welfare:

The Florida Supreme Court has stated that the intended purpose of proximity regulations, such as the one contained in the City Code, “is to remove the atmosphere of an establishment wherein intoxicating beverages are sold a reasonable distance from a church... because the milieu of such a place is considered inimical to the best interests and welfare of those who attend church.” *State ex el Yung Sing v. Parmeter*, 59 So.2d 773 (Fla. 1952). Read in context with its obvious intent, it is clear that the objective of the City’s “proximity” ordinance is met by the proposed location of the Total Wine & More unit. The unit itself is outside of 1500 feet of any religious

establishments and will be located in a commercial plaza that is standard for this type of retail store.

(7) Please indicate that there will be full compliance with any additional conditions and safeguards which the Planning and Zoning Board or Zoning Administrator may prescribe, including but not limited to reasonable time limits within which the action for which variance is required shall be begun or completed, or both:

Total Wine & More is anxious to begin operating and serving customers and will comply with any and all requirements under the City Code.