

CITY OF SMYRNA

COMMUNITY DEVELOPMENT

MEMORANDUM

To: Mayor and Council

From: Ken Suddreth, Community Development Director
Joey Staubes, AICP, Planner - I

Date: May 18, 2015

RE: VARIANCE CASE V15-022
1651 Roswell Street, Suite C – Allow beer and wine pouring for a restaurant within 600 feet of a public school and 200 feet of residential property.

BACKGROUND

The applicant requests a variance to allow beer and wine pouring for a restaurant at 1651 Roswell Street. The existing restaurant is located approximately 474 feet from Haven Academy, a public school, and 100 feet from residential property (Morgan's Point Apartments). Chapter 6 – Alcoholic Beverages, Sec. 118 (b)(4) requires pouring of beer and wine to be at least 600 feet from a public school and 200 feet from residential property.

ANALYSIS

The subject parcel is located on Roswell Street near the intersection of Hawthorne Avenue and N Matthews Street (see Figure 1). The subject parcel is zoned Neighborhood Shopping (NS) and includes a multi-tenant commercial strip. The adjacent property to the north and east is zoned RM-12 and includes the Morgan's Point Apartment complex. To the west of the subject property is Five Point Food Store, zoned NS. To the south across Roswell Street is undeveloped property zoned NS, and a multi-tenant commercial building zoned Office-Distribution (OD).

The applicant requests a variance to allow pouring of beer and wine at a restaurant located in the commercial strip at 1651 Roswell Street. The multi-tenant building includes the applicant's restaurant, Gursha Ethiopian Cuisine, as well as a package store and laundromat. The subject property is approximately in the middle of the multi-tenant commercial development. From the front door of the restaurant, Haven Academy is approximately 474 feet away, and Morgan's Point Apartment complex is approximately 110 feet away. Chapter 6, Section 118 (b)(4) requires establishments pouring wine and beer to be:

"600 feet from a school, and 200 feet from a church, park, public building, library or residence; provided, however, in no event shall the primary customer entrance of the proposed premises be located closer than 75 feet from the property line of the school, church, park, public building, library, or residence."

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The ordinance determines the method of calculating distance in Section 118 (c)(1) as:

"The measure in lineal feet of the most direct route of travel on the ground by a pedestrian from the center of the nearest door of customer entry of the proposed license premises to the nearest property line of the church, school, park, public building, library, or residence. Such travel shall be measured as a straight line from the customer door to the property line and is not required to follow a line running along the nearest sidewalk or street route; provided that, when a straight line of travel would not be a customary and reasonable line of travel because of obstacles to such travel, the line of travel shall be angled around such obstacles and the distance shall be the sum of the segments of the line."

The survey submitted by the applicant shows a distance of 474 feet to Haven Academy. However, the distance calculated to Morgan's Point is not calculated correctly, and indicates a larger buffer than what is required. The buffer is only 200 feet, and the distance as stated above is calculated from the front door of the establishment requesting an alcohol license, to the closest point of the residential property line. Using the scale provided on the survey, this distance is approximately 110 feet.

The applicant has proposed limiting the hours of serving alcohol from 4pm to 9pm on weekdays, and from 11am to 9pm on weekends. No hardship to justify the request was presented by the applicant in the variance application. Additionally, serving beer and wine only after the school is closed presents enforcement challenges. Community Development has no history of any license being issued for pouring or package store sales at the suite the restaurant now occupies. The restaurant opened in November of 2014. No changes have been made to Chapter 6 – Alcoholic Beverages since the restaurant opened.

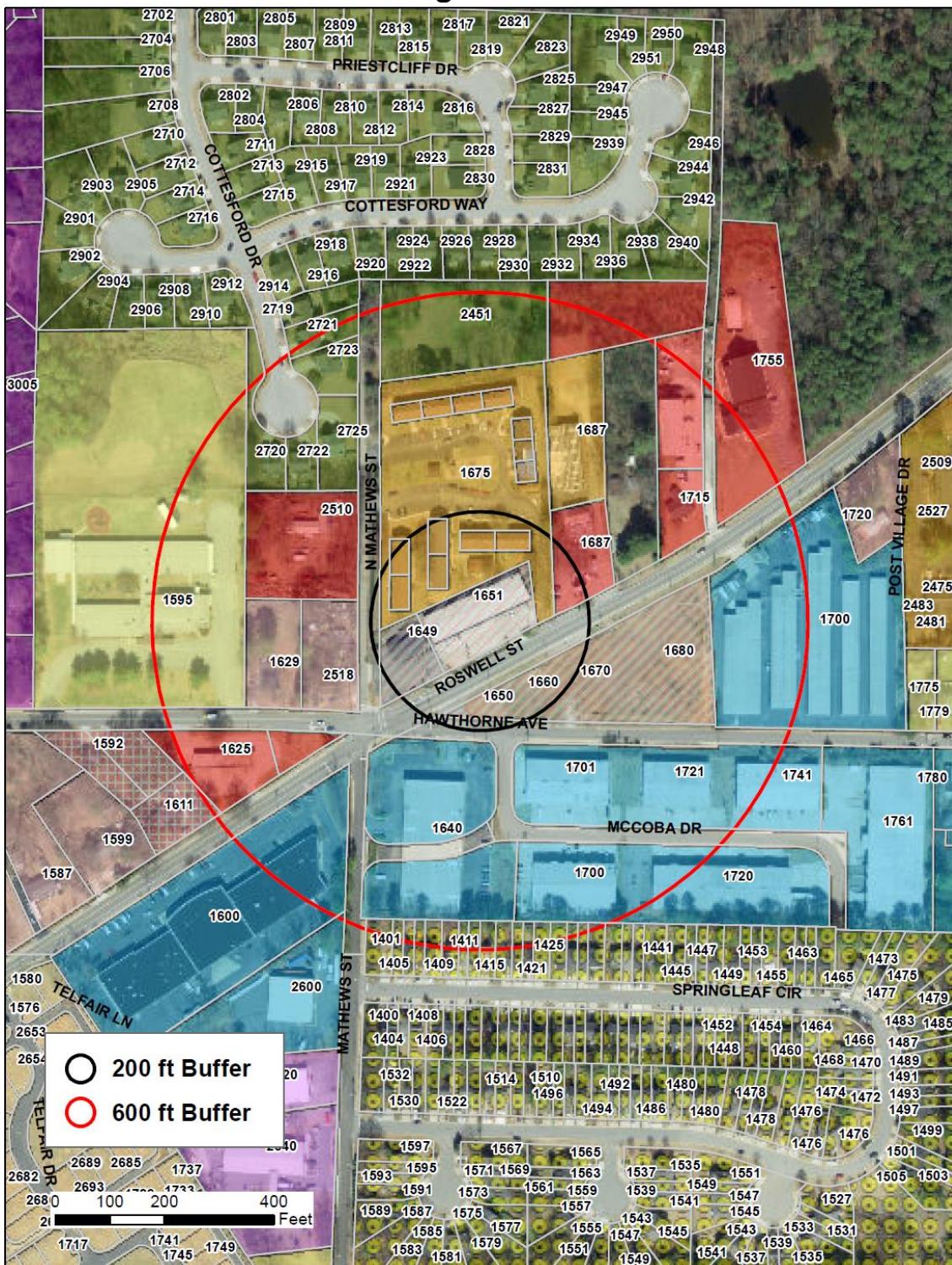
The Five Point Food Store, located at 1649 Roswell Street once held a license for package sales. However, due to the store having four violations, their license was revoked in December 2010. Following the revocation, a new applicant submitted an application for package sales that the License and Variance Board denied on July 27, 2011. The applicant appealed the LVB denial to Mayor and Council and on the September 19, 2011 meeting of Mayor and Council, a motion was made to deny the appeal. The motion passed with a vote of 6-0, based on the store being located within the 600 foot school buffer.

Community Development recommends denial of the requested variance, as it would set negative precedent, and provide a basis for similar variances to be approved in the City. The applicant has not demonstrated a unique or exceptional hardship that would provide a basis to recommend approval for such a request. Community Development believes it is in the public interest to deny the request as it is specified in Chapter 6 – Alcoholic Beverages in the City Code of Ordinances; and that such a recommendation supports the health, safety, and welfare of the community.

STAFF COMMENTS

The applicant is requesting to deviate from the City's distance requirement for a restaurant to pour beer and wine within the specified buffer designated for a school and residential property. According to Section 1403 of the Zoning Ordinance, variances must be reviewed under the following standards: (1) Whether there are unique and special or extraordinary circumstances applying to the property; (2) Whether any alleged hardship is self-created by any person having an interest in the property; (3) Whether strict application of the relevant provisions of the code would deprive the applicant of reasonable use of the property; and (4) Whether the variance proposed is the minimum variance needed. Community Development has reviewed the request against the variance review standards and found there to be no basis by which to recommend approval. Additionally, Community Development believes approval of such a request would set negative precedent, as no similar variances have been approved in the City. Furthermore, a location adjacent to the subject property, 1649 Roswell Street, was denied the ability to obtain a package sales license as it is within the 600 foot school buffer. Therefore, Community Development recommends **denial** of the requested variance.

Figure – 1



**Figure – 2
Subject Property**



**Figure -3
View toward Haven Academy**



Figure – 4
View towards Morgan's Point Apartments



Figure – 5
Survey Submitted by Applicant

