

GRANDFATHERED PROXIMITY VARIANCES

(See 32B-1-202(3) & 32B-1-104(3))

For many years, Utah has had laws that prohibited businesses that serve alcohol from being located too close to a "Community location". A community location is defined as:

- (a) a public or private school
- (b) a church
- (c) a public library
- (d) a public playground
- (e) a public park



The actual distance considered "too close" to these locations has changed over time as has the distance for the type of license. For instance, current laws require that bars must have a greater distance from a school than a restaurant.

Previously, a variance to this law, in some circumstances, could have been requested from the Commission. Now, no variances are allowed. However, the variances that were previously granted are now considered "grandfathered" if the business is still in existence. Some businesses' have been there so long, that there were no proximity laws in place. They are also grandfathered to whatever law was in existence when they opened their business and were approved by the DABS Commission. The issue was, that for businesses that closed, the location had not previously been allowed to keep the proximity variance. Now, in some cases, they can.

In 2017, a change to Utah law now allowed a new business to operate at a location that was previously approved for a proximity variance ***if there was an active license at that location on May 9, 2017, or later and they apply for the same type of license previously operated.*** However, it also prohibits the Commission from granting a variance if there was not an active license at the location on or any time before May 9, 2017.

The legislative record shows that the intent was to protect businesses with a previously approved variance. However, the language of the statute also shows that they wanted a "line in the sand" so to speak, so that grandfathering only applies to businesses that had an active license as of the effective date of the statutory change, May 9, 2017.

Utah's grandfathered proximity laws allow a new business to operate under the previously granted variance laws of a location as of May 9, 2017 or later. Some restrictions apply.

FOR INSTANCE - The following two scenarios have locations that would normally be too close in proximity to both a church and a school to obtain a DABS retail license. But let's review them based on the newest proximity law:

1. A beer-only restaurant license suddenly closed in September 2017. After an investigation, DABS found the licensee was truly gone and the account was deactivated at that time. On September 22, 2017, DABS



received communication from the building owner where the DABS license had been located. He wanted to be able to lease the premises to new tenants and was asking DABS about proximity issues since the location was too close, according to current laws, to both a school and a church. It was established, however, that the license at that location was in operation on May 9, 2017.

In this scenario, the new tenant **would be able** to obtain a beer-only restaurant license based on the new laws, even though the business is currently closed. Note, however, that the only license type that could go into that location would be the beer-only restaurant as that is what was in that space on May 9, 2017. Neither a full or limited restaurant nor bar would qualify to go into that location.

2. There was also a request for the Department to consider an application for a limited-service restaurant license in Cedar City. That application was received in December of 2017. Upon inspection of the proposed location, it was found to also be too close to two community locations, a church, and a school. Further investigation showed that a full-service restaurant license had been at that location for a long time, from February 1998 through October 31, 2015, but not on May 9, 2017.

In the second scenario, the new tenant **would not be able** to obtain a license. There are two issues. The applicant applied for a limited restaurant. The previous license at that location had been a full restaurant license, so if they had qualified that would be the only type of license that could go into that space. The other issue was that it had not been in business since 2015, so they do NOT qualify under this new law.

For more information on proximity to a community location, contact DABS at 801-977-6800