

**POLK COUNTY
LAND USE HEARING OFFICER
STAFF REPORT**

DRC Date:	March 16, 2024	CASE #:	LDLVAR-2024-10 (ABC Fine Wine and Spirits Variance)
LUHO Date:	April 25, 2024	LDC Section:	Section 224

Request: This is a request for a 3PS Alcohol Beverage License (Liquor, Beer and Wine package sales) within the separation distance (2,500 feet) of four churches.

Applicant: Allyson Williams

Property Owner: NT Florida Lakeland LLC

Location: S Florida Ave, north of Shepherd Rd, west of S Florida Ave, east of Old Hwy 37, Lakeland, in Section 23, Township 29, and Range 23.

Parcel ID#: 232923-000000-022180

Size: ±3.09 acres

Land Use Designation: Linear Commercial Corridor (LCC)

Development Area: Transit Supportive Development Area (TSDA)

Case Planner: Aleya Inghima, Planner II

Summary of Analysis:

The applicant is opening an ABC Fine Wine and Spirits and requesting a variance to the separation requirements for a 3PS alcohol license (Liquor, Beer and Wine package sales). The subject site is located off S Florida Ave, north of Shepherd Rd, west of S Florida Ave, east of Old Hwy 37, Lakeland, in Section 23, Township 29, and Range 23. Section 224 of the Land Development Code (LDC) requires a separation distance of 2,500 feet for establishments with 3PS licenses from schools and religious institutions. The proposed store requires a variance to this distance separation requirement from Lakes Church South Lakeland Campus located at 6928 Florida Avenue S about 888 feet from the property line, Shepherd Road Presbyterian Church located at 1217 Shepherd Road about 879 feet from the property line, Trinity Baptist Church located at 6633 Old Road 37 about 1,211 feet from the property line, and Christ Community Presbyterian Church located at 6565 Florida Avenue S about 2,069 feet from the property line. However, approximately 700 feet away from the subject site is a Winn-Dixie Wine & Spirits and a First Stop Liquor & Tobacco that sells alcohol within 2,500 feet from these churches.

Staff recommends approval for the following reason:

The request will not be injurious to the area involved or otherwise detrimental to the public welfare. Approximately 700 feet away from the subject site is a Winn-Dixie Wine & Spirits and a First Stop Liquor & Tobacco that sells alcohol within 2,500 feet from these churches. Given the nature of the proposed alcohol license relative to the hours of the church, staff finds this request will not pose any land use conflicts.

Development Review Committee

The Development Review Committee, based on the criteria for granting variances, finds that the applicant's request as written **IS CONSISTENT** with Section 931 of the Polk County Land Development Code.

Development Review Committee Recommendation: Based upon the application, and a recent site visit, the Development Review Committee recommends **APPROVAL of LDLVAR 2024-10** with the following conditions:

CONDITIONS OF APPROVAL:

1. The variance to Section 224 is approved for one 3PS Alcohol Beverage License (Liquor, Beer and Wine package sales) on Parcel #232923-000000-022180, as shown in the staff report and described in the staff report.
2. The applicant shall secure and locate the 3PS Alcohol Beverage License (Liquor, Beer and Wine package sales) prior to one year from the date the Land Use Hearing Officer's Final Order is rendered. The variance will be valid as long as the beverage license is current and the store does not close for a period of greater than twenty-four (24) months, otherwise the variance will become null and void.

GENERAL NOTES

NOTE: Approval of this variance shall not constitute a waiver or an additional variance from any applicable development regulation unless specifically noted in the conditions of approval and consistent with the LDC.

NOTE: All conditions of approval, unless otherwise specified, shall be met prior to the effectiveness and validity of the variance approval.

NOTE: All written commitments made in the application and subsequent submissions of information made during the application review process, which are on file with the Land Development Division, shall be considered to be binding upon the applicant, provided such commitments are not at variance with the Comprehensive Plan, LDC or other development regulations in effect at the time of development.

NOTE: This staff report was prepared without the benefit of testimony and evidence submitted by the public and other interested parties at a public hearing.

NOTE: Issuance of a development permit by the county does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the county for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law.

DEMONSTRATIONS OF THE CRITERIA FOR GRANTING VARIANCES SUMMARIZED BELOW:

1. *Whether granting the variance will be in accordance with the general intent and purpose of this Code, and that the variance will not be injurious to the area involved or otherwise detrimental to the public welfare;*

The applicant is opening an ABC Fine Wine and Spirits and wishes to sell liquor, beer, and wine. This application is seeking a variance to the 2,500-foot separation requisite between establishments with a 3PS license (Liquor, Beer and Wine package sales) from four churches, as required by LDC Section 224. The proposed store requires a variance to this distance separation requirement from Lakes Church South Lakeland Campus located at 6928 Florida Avenue S about 888 feet from the property line, Shepherd Road Presbyterian Church located at 1217 Shepherd Road about 879 feet from the property line, Trinity Baptist Church located at 6633 Old Road 37 about 1,211 feet from the property line, and Christ Community Presbyterian Church located at 6565 Florida Avenue S about 2,069 feet from the property line. Approximately 700 feet away from the subject site is a Winn-Dixie Wine & Spirits and a First Stop Liquor & Tobacco that sells alcohol within 2,500 feet from these churches.

2. *Whether special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the applicable land use district;*

According to Property Appraiser, Christ Community Presbyterian Church was established in 2012. The church is located within a LCC (Linear Commercial Corridor) land use. Lakes Church South Lakeland Campus was established around 2021 and is located in a CAC (Community Activity Center) land use. Shepherd Road Presbyterian Church established around 1993 and is located in a RL-1 (Residential Low-1) land use. Trinity Baptist Church was established in the 90s and is also in a RL-1 (Residential Low-1) land use.

Winn-Dixie Wine & Spirits was established in the late 80s and is located in a CAC (Community Activity Center) land use. First Stop Liquor & Tobacco opened up around 2003 and is located in a CE (Commercial Enclave) land use. Both sell alcohol within 2,500 feet from these churches. If these churches opened after the store, no extra burden of approval would be placed on either entity.

3. *Whether provided the special conditions and circumstances present in the request do not result from the actions of the applicant;*

There are no special conditions or circumstances. LCC is a land use district where commercial uses are expected, and alcohol sales are typically allowed. It is important to realize that the separation requirements of Section 224 apply to a wide variety of uses that have disparate intensities and effects upon the surrounding area. Bars and lounges, for instance, require a 4COP license for consumption on premises. The business hours of bars and lounges vary, often with hours that might impact a residential community, school, or religious institution. Furthermore, this case illustrates the uneven nature of alcohol policies in Polk County. If this request was for a restaurant at this location that served beer and liquor but could seat 150 people, it could be granted a 4COP-SRX special retail license and be exempt from any distance requirements.

4. *Whether granting the requested variance will not confer on the applicant any special privilege that is denied by the provisions of this Code and will constitute unnecessary and undue hardship on the applicant;*

Several alcohol distance variances for alcohol sales have been approved since the adoption of the LDC. Therefore, this request is a privilege that has been enjoyed by others under similar circumstances. Per Table 2.2 of the LDC, the Use Table for Standard Land Use Districts, “Alcohol Sales” are a “C1” conditional use that requires an administrative approval. Below is a chart of other liquor stores (3PS License) that have been approved within 2,500 feet of a school or religious institution.

Case	BOA/LUHO Date	Schools/Religious Institution
VAR 12-56	7/26/12	Seven Churches & One High School
VAR 12-73	8/23/12	Two Churches & One High School
LDVAR-2019-55	8/22/19	One Church
LDVAR-2019-72	9/26/19	Two Churches & One Middle School
LDVAR-2020-57	6/26/20	One Church
LDLVAR-2021-107	11/15/21	Two Schools & One Church
LDLVAR-2021-122	1/27/22	Two Churches
LDLVAR-2022-36	7/28/22	One Church
LDLVAR-2022-54	8/25/22	One School
LDLVAR-2023-67	2/22/24	One Church & One School

5. *Whether the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure;*

For this location and this request, this is the minimum variance needed. Though the LDC requires a straight-line measurement from property line to property line, measuring this buffer in such a manner is arbitrary in nature, bound more to social and political influences than land use realities. It provides no advice on the physical barriers on the ground, ignoring too many practical factors, from the path in which one must access these facilities, hours of operation, interactions with other land uses, history of the uses at a location, etc. The subject site is located 888 feet from Lakes Church South Lakeland Campus, 879 feet from Shepherd Road Presbyterian Church, 1,211 feet from Trinity Baptist Church, and 2,069 feet from Christ Community Presbyterian Church.

6. *Whether that in no case shall a variance be granted which will result in a change of land use that would not be permitted in the applicable land use designation;*

Granting this variance will not result in a change of land use.

7. *Whether that in no case shall the Land Use Hearing Officer or the Planning Commission grant a variance which would result in creation of any residual lot or parcel which does not meet the requirements of this Code; and*

Granting this variance will not result in the creation of a lot or parcel.

8. *Whether that the granting of the variance does not circumvent a condition or the intent of a condition placed on a development by the Planning Commission or the BoCC.*

Granting this variance will not circumvent a condition or the intent of a condition placed on the development by the Planning Commission or the BoCC.

Surrounding Future Land Use Designations and Existing Land Use Activity:

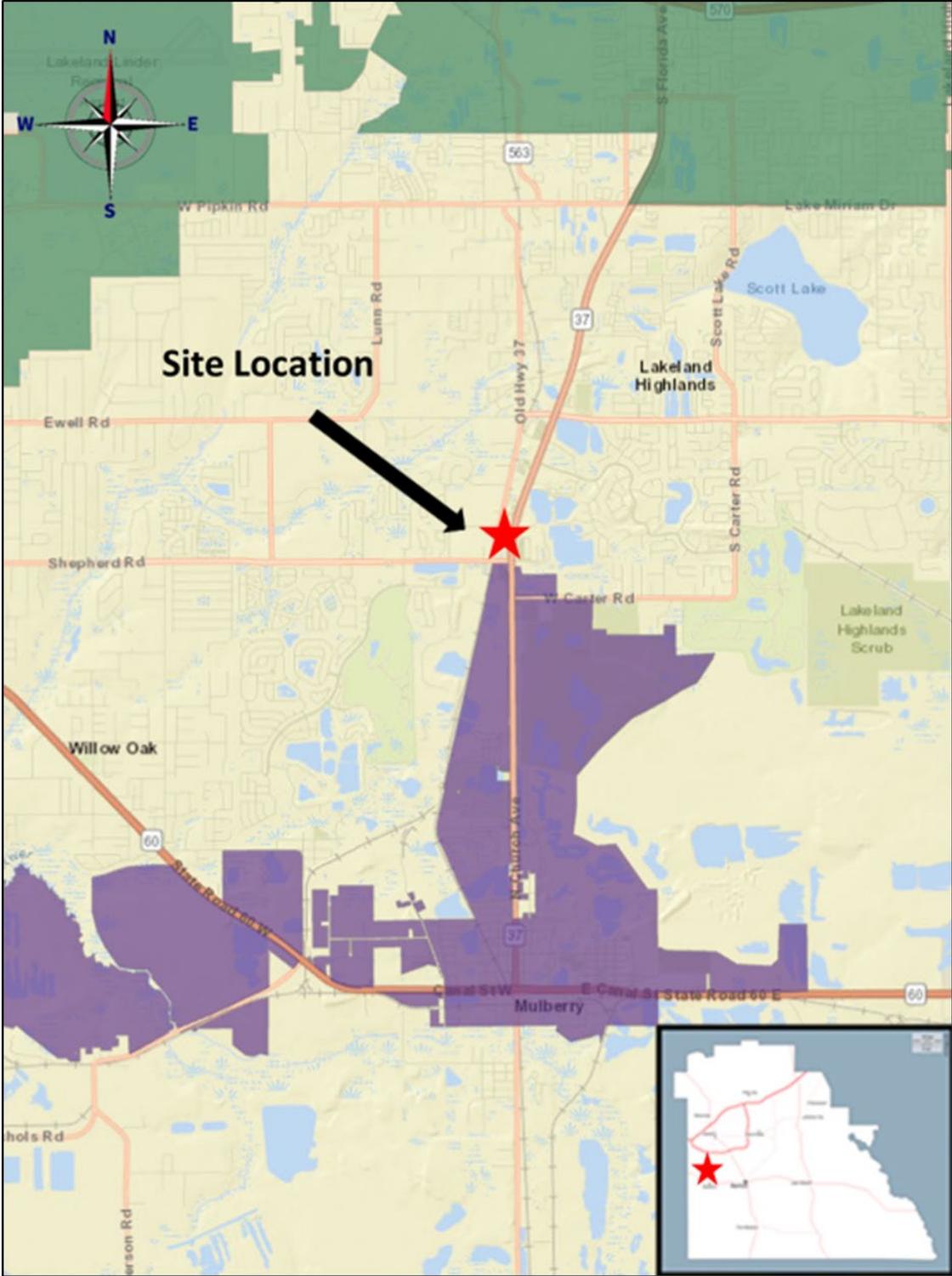
Northwest: LCC CSX Rail line	North: LCC Vacant	Northeast: CAC Apartments
West: LCC CSX Rail line	Subject Property: LCC Vacant	East: CAC Gas Station
Southwest: LCC CSX Rail line	South: LCC Vacant	Southeast: CAC Auto Repair

Commercial development is still underway for this area. Vacant commercial outparcels are located north and south of the site.

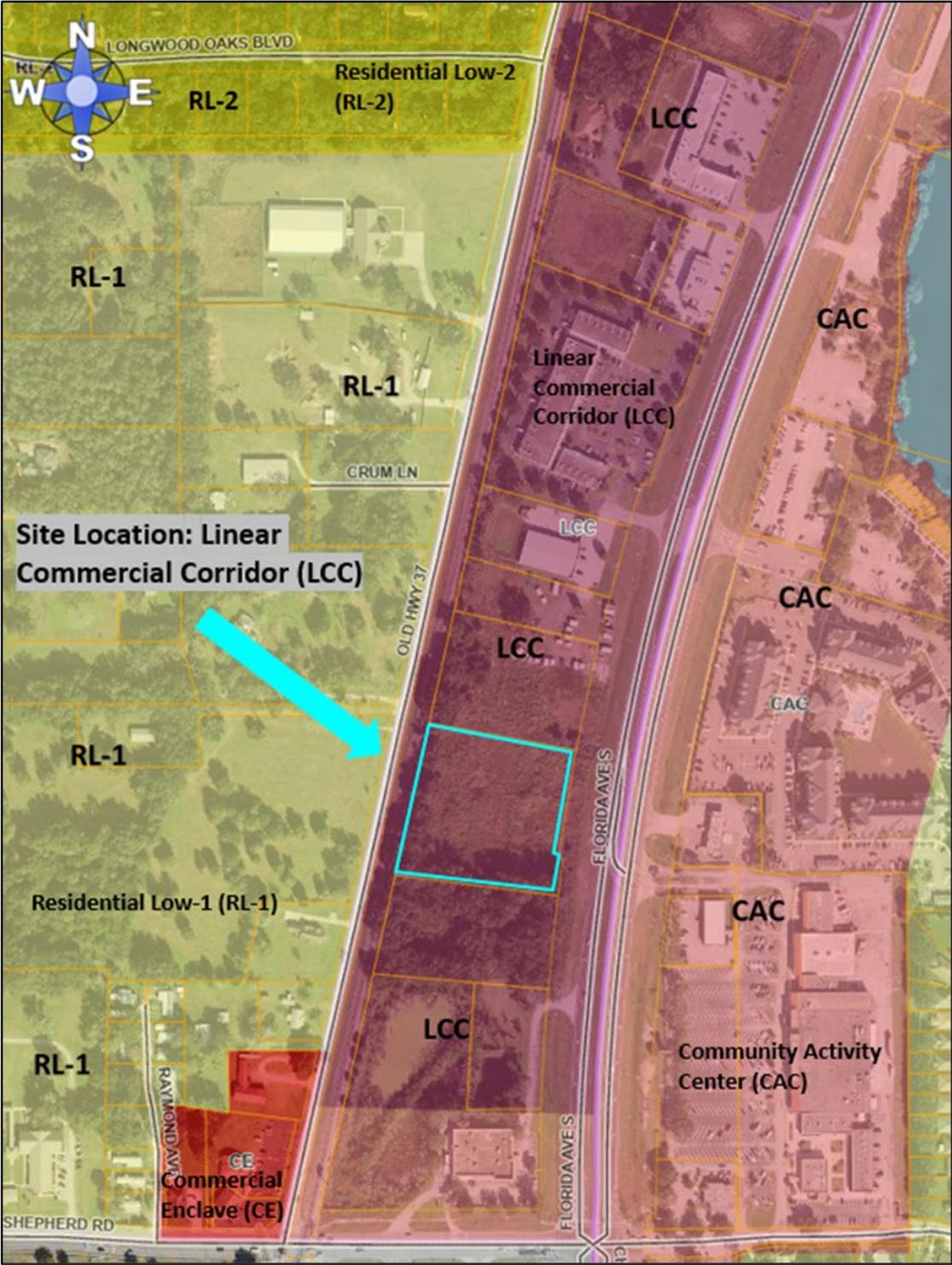
Comments from other Governmental Agencies: None

Exhibits:

- Exhibit 1: Location Map
- Exhibit 2: Future Land Use Map
- Exhibit 3: Aerial Image - Context
- Exhibit 4: Site Plan 1
- Exhibit 5: Distance Survey
- Exhibit 6: Section 931 Justification



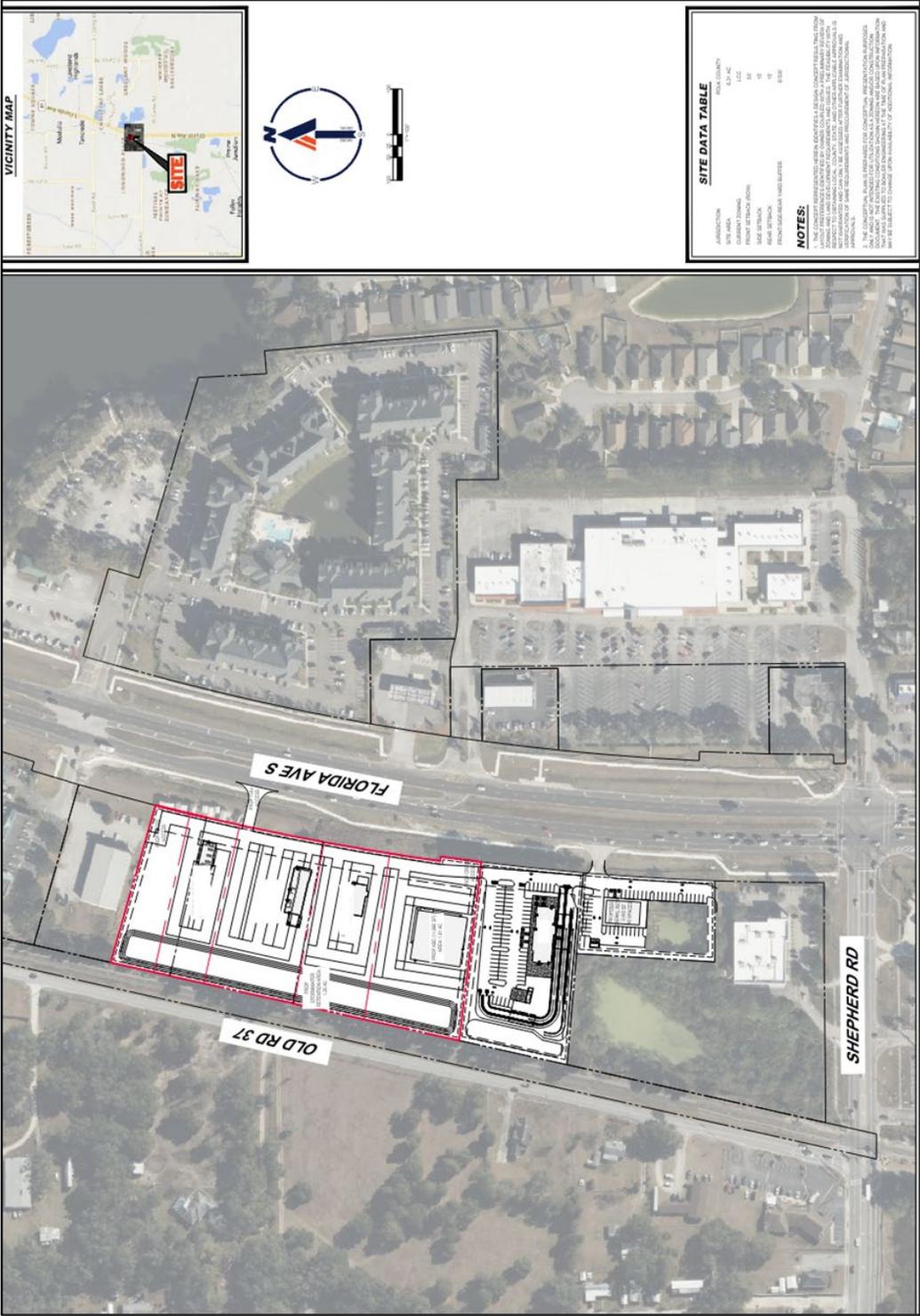
Site Location



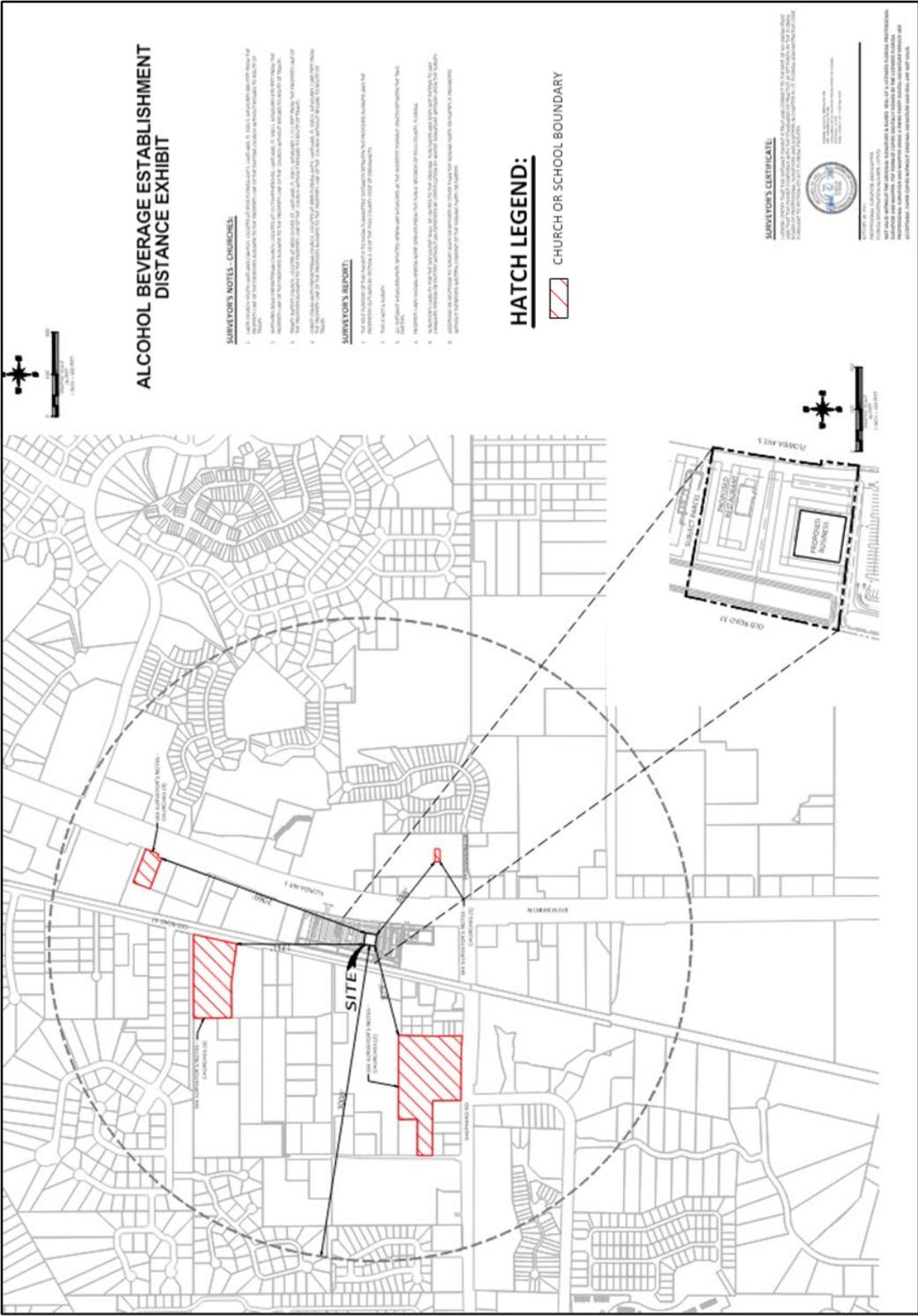
Future Land Use Map



Aerial Context



Site Plan



Distance Survey

CRITERIA FOR GRANTING VARIANCE

Will the variance be injurious to the area involved or detrimental to the public welfare?

Granting this variance aligns with the LCC's general intent and will not adversely affect public health, safety, or welfare. Planned measures ensure the project's harmonious integration into the community, without increasing public safety risks or maintenance burdens.

What special conditions exist that are peculiar to the land, structure, or building involved?

The subject property is one of the few undeveloped and vacant properties left on the western side of the South Florida Avenue. This creates a special circumstance in the fact that the site must conform not only to the set of land development regulations per the Land Development Code, but also in this situation, must conform to the existing businesses or establishments in the vicinity. This circumstance is not a direct result of the proposed use, but rather the timeline of development.

When did you buy the property and when was the structure built? Permit Number?

N/A Structure is not built, property is vacant.

What is the hardship if the variance is not approved?

Application of the provisions of the Code would be unjust in the face of economic equity and competition when considering the character of the surrounding area to be compatible with the proposed use.

Is this the minimum variance required for the reasonable use of the land?

The variance sought represents the minimum adjustment necessary for the reasonable use of the property, aligning with existing commercial activities. The project differentiates itself by offering a broader selection of alcoholic beverages, necessitating this specific request.

Do you have Homeowners Association approval for this request?

No.

Section 931 Justification