

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

DRC Date:	July 7, 2025	CASE #:	LDLVAR-2025-35
			Desir Alcohol Variance
LUHO Date:	August 26, 2025	LDC Section:	Section 224 Table 2.4

Request: The applicant is requesting a variance to allow separation reduction for beer and wine consumption on premises (2COP License) within 1,000 feet of religious institutions.

Applicant: Raymond Desir

Property Owner: Marie Desir

Location: The subject property is located at 2610 Avenue G NW, north of Recker Highway, south of Havendale Boulevard NW, east of Polk Parkway, west of US Highway 17, west of the City of Winter Haven in Section 19, Township 28, Range 26.

Parcel ID#: 262819-553672-003041

Size: ±0.08 acres

Land Use Designation: Linear Commercial Corridor (LCC)

Development Area: Urban Growth Area (UGA)

Case Planner: Kyle Rogus, Planner I

Summary:

The applicant is looking to obtain a 2COP liquor license (Beer and Wine Consumption on premises) for their existing ice cream business, Cabana Boy Ice Cream. However, there are four (4) religious institutions within 1,000 feet of the property (see Exhibit #). Section 224 of the Land Development Code (LDC) prohibits the sale of liquor beverages for consumption on the premises within 1,000 feet of a religious institution or public and private school (K-12). Through LDC Section 930, a property owner (or agent of) may request a variance to the 1,000 feet of separation from the Land Use Hearing Officer. Alcohol separation distance is measured from property line to property line.

Four religious institutions, House of Prayer Worship and Praise Center, Abundant Believers Church, Mont Des Olivers Baptist Church, and Philadelphia Haitian Baptist Church are within the 1,000-foot separation distance requirement. House of Prayer Worship and Praise Center is located directly across Avenue G NW about 88 feet from the subject property line. House of Prayer Worship and Praise Center is the closest religious institution in proximity to the subject site and provided a letter of approval for the requested 2COP liquor license stating, “we have no objection to the issuance of beer and wine license to LD Caribbean Cuisine INC” (see Exhibit #6). Abundant

Believers Church is located about 620 feet from the subject property, Mont Des Olivers Baptist Church is located about 684 feet from the subject property, and Philadelphia Haitian Baptist Church is located about 853 feet from the subject property.

The subject site is located in the Linear Commercial Corridor (LCC), providing an abundant number of different uses within the surrounding area. Alongside religious institutions there are three (3) uses that already provide the sale and consumption of beer and wine beverages within the 1,000-foot separation distance requirement: Beverage Depot, CITGO gas station, and Tuff Luck Saloon. Beverage Depot is located about 370 feet from the subject property, CITGO Gas Station is located about 536 feet from the subject property, and Tuff Luck Saloon is located about 800 feet from the subject property.

Both the CITGO gas station and Beverage Depot have APS licenses (beer and wine package sales) which do not require a distance requirement; therefore, they did not have to come in for a variance. The property at the Tuff Luck Saloon has been in operation selling beer and wine for onsite consumption well before 1998, predating the establishment of any of the four mentioned churches within the surrounding area.

There are a few factors that need to be considered. The subject site is approximately 0.08 acres. The existing building on site had a total square footage of 432. The primary use of the building currently acts as an ice cream store. The applicant's request for a liquor license is in addition to the sale of ice cream. It is not in the applicant's intent to provide the surrounding neighborhood with sale of liquor at a large scale.

Staff has found that setback reductions from Table 2.4 in Section 224 of the LDC have been approved for five cases last year.

Staff finds that the request meets the following criteria listed in Section 931:

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:*

There are many instances where liquor stores and religious institutions have coexisted in close proximity without any adverse effects. Setback reductions from Table 2.4 in Section 224 of the LDC were approved for five cases last year alone.

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*

This application marks the third establishment providing either the sale and or consumption of beer and wine in the 1,000-foot distance separation requirements within the last seven (7) years. If the churches opened after the proposed liquor license for LD Caribbean Cuisine INC, no extra burden of approval would be placed on either entity. However, since the religious institutions were established first, the applicant must go through the variance process.

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

It allows the developer the flexibility of offering the local community beer and wine to coincide with the primary sale of ice cream on site.

Staff recommends approval of a variance to reduce the requirements for separation from religious institutions for this site because commerce is supported at this site by policies in the Comprehensive Plan.

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-2025-35**, with the following conditions:

CONDITIONS OF APPROVAL:

1. A variance shall be granted to Marie Desir and LD Caribbean Cuisine INC on Parcel #262819-553672-003041 for one alcohol sales license (2COP) within the distance separations of religious institutions listed in Section 224 of the LDC.
2. The applicant shall secure and locate the necessary alcohol license (2COP license) within one (1) 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 establishment does not close for a period of greater than twenty-four (24) months, otherwise the variance will become null and void.
3. The property owner(s) is responsible for compliance with any further restrictions of record pertaining to the property and this approval shall not be used to supersede authority over those restrictions.

GENERAL NOTES

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

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 submission 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: 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 looking to obtain a 2COP liquor license (Beer and Wine Consumption on premises) for their existing ice cream business, Cabana Boy Ice Cream. However, there are four (4) religious institutions within 1,000 feet of the property (see Exhibit #3). Section 224 of the LDC prohibits the sale of liquor beverages for consumption on the premises within 1,000 feet of a religious institution or public and private school (K-12). The proposed store requires a variance to this separation distance requirement from the following:

- House of Prayer Worship and Praise Center, about 88 feet from the subject property line
- Abundant Believers Church, about 620 feet from the subject property line
- Mont Des Olivers Baptist Church, about 684 feet from the subject property line
- Philadelphia Haitian Baptist Church, about 853 feet from the subject property line.

There are numerous examples throughout the County that demonstrate beverage sales and religious institutions can co-exist without any adverse effects. In this case, at the corner of 25th Street NW and Avenue G NW, approximately 540 feet from the subject site, is a CITGO gas station that sells packaged beer and wine. Abutting the gas station on the east property line is the Abundant Believers Church religious institution.

According to the Property Appraiser, the religious institution was established in 2016 followed by the gas station in 2021. Because the gas station only requires an APS license (beer and wine package sales), there is no distance requirement, therefore not requiring a variance.

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 the Property Appraiser, House of Prayer Worship and Praise Center, the property, which is closest to the applicant's business, has been a religious institution since 2016. The church is located across the street (Avenue G NW) approximately 88 feet away, property line to property line. A letter of approval for a beer and wine license (see Exhibit #6) was provided. Abundant Believers Church has been operating at its current location since 2016 as well. Both religious institutions are the most recently established within the 1,000-foot separation distance requirement.

According to the Property Appraiser, both the Beverage Depot, purchased in 2018, and the CITGO Gas Station; purchased in 2021, have followed in suit shortly after the

establishment of the two previously mentioned religious institutions. This application marks the third establishment providing either the sale and or consumption of beer and wine in the 1,000-foot distance separation requirements within the last seven (7) years.

Per Table 2.1 Use Table for Standard Land Use Districts, allows alcohol sales as an administrative type of review (Level 1). If the churches opened after the proposed liquor license for LD Caribbean Cuisine INC, no extra burden of approval would be placed on either entity. However, since the religious institutions were established first, the applicant must go through the variance process.

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

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. The CITGO gas station and Beverage Depot only require an APS license (beer and wine package sales), which does not require a distance requirement from religious institutions or public and private school (K-12). Because they function as package sales and not consumption on premises, the gas station is able to abut the Abundant Believers Church without a public hearing. Furthermore, the property at 2390 Avenue G NW, Winter Haven, FL 33880 has sold beer and wine for consumption on premises dating back prior to any of the religious institutions in the area. Because the institutions came after what is now the Tuff Luck Saloon, no variance is necessary. The Churches and Tuff Luck Saloon have been functioning near one another since 1998.

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. Below is a chart of other establishments offering liquor sales that have been approved within the distance separation requirement 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 & One Church
LDLVAR-2023-67	2/22/24	One Church & One School
LDLVAR-2024-10	4/25/24	Four Churches

Case	BOA/LUHO Date	Schools/Religious Institution
LDLVAR-2024-12	4/25/24	Four Churches & One Elementary School
LDLVAR-2024-27	7/25/24	Three Churches
LDLVAR-2024-55	11/12/24	Two Churches & One Elementary School

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

This approval is the minimum needed to accommodate the use. The development has already been leased out to the property owner Marie Desir and LD Caribbean Cuisine INC for five (5) years beginning April 25, 2025. The closest religious institution to be affected the most by this variance request, provided a letter of approval with the application (see Exhibit #).

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. Alcohol package sales may be approved in LCC districts without limitations if there are no schools or religious institutions within 1,000 feet.

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 the variance will not result in the creation of a lot or parcel that does not meet the requirements of the Code. This variance will not change the size, shape, or use of the property.

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 request will not circumvent a condition or 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:

The table to follow provides pertinent details of abutting uses and their regulatory parameters.

Northwest: LCC House of Prayer and Worship Praise Center Provided letter of approval 0.35 acres	North: LCC Residential Duplex 0.22 acres	Northeast: LCC Commercial U-Do-It Rentals 0.22 acres
West: LCC Commercial Elkins' Repair Service, INC 0.73 acres	Subject Property: LCC Active local fast-food restaurant. Cabana Boy Ice Cream 0.08 acres	East: LCC Commercial Auto repair / commercial service garage 0.37 acres
Southwest: LCC Commercial Elkins' Repair Service, INC 0.73 acres	South: LCC Commercial Auto repair / commercial service garage 0.37 acres	Southeast: LCC Commercial Auto repair / commercial service garage 0.37 acres

The Linear Commercial Corridor offers a wide range of commercial, office, institutional, and industrial uses along roadways. In the surrounding area we see a range of commercial uses, residential development, and religious institutions, which are often associated with institutional land use designations. With the large presence of residential property outside the Linear Commercial Corridor that runs along Avenue G NW, we see a demand for non-residential uses that provide goods and services to the local community.

Comments from other Governmental Agencies: None.

Exhibits:

Exhibit 1 – Location Map

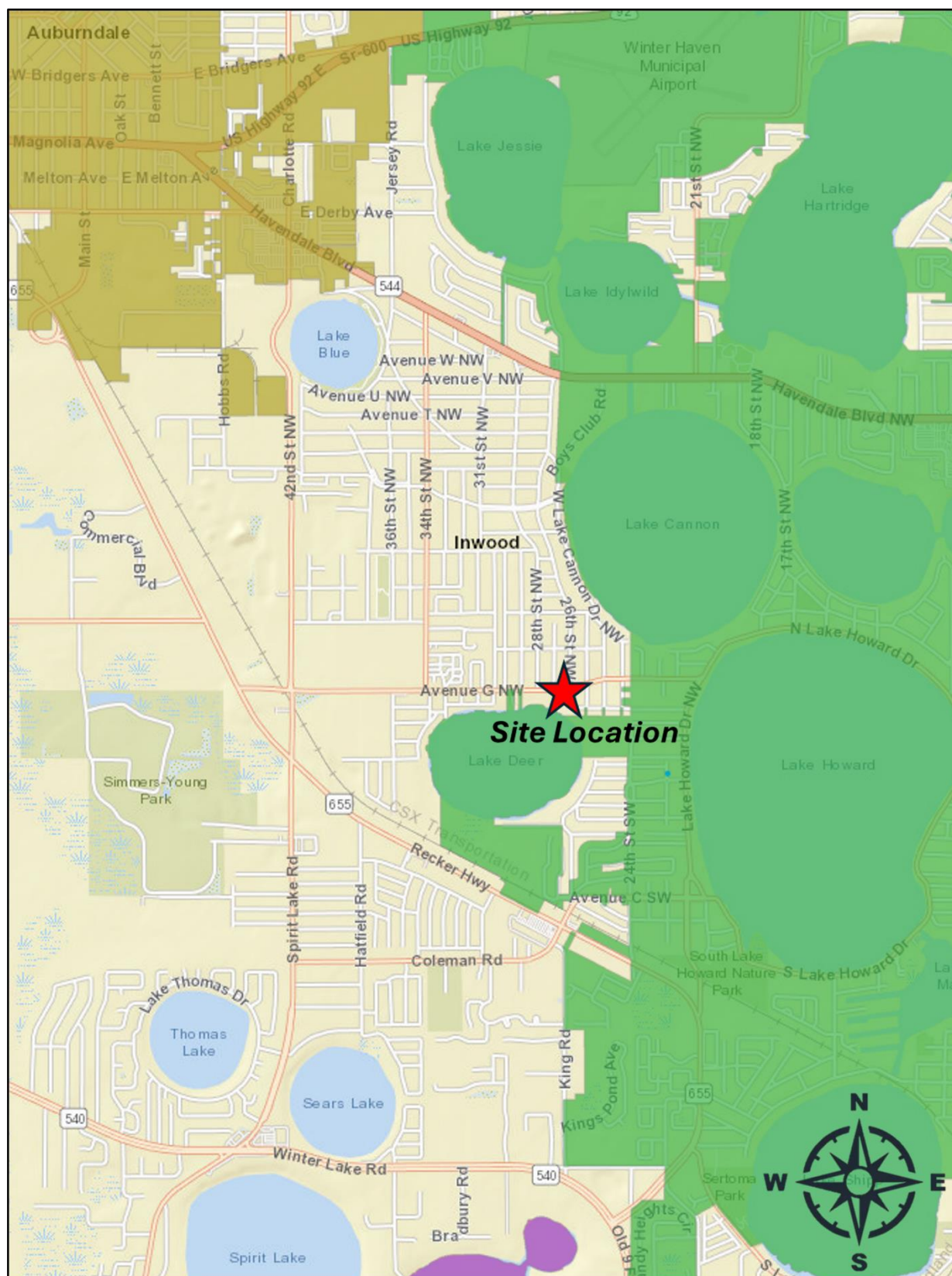
Exhibit 2 – 2023 Aerial Photo (Context)

Exhibit 3 – Future Land Use Map

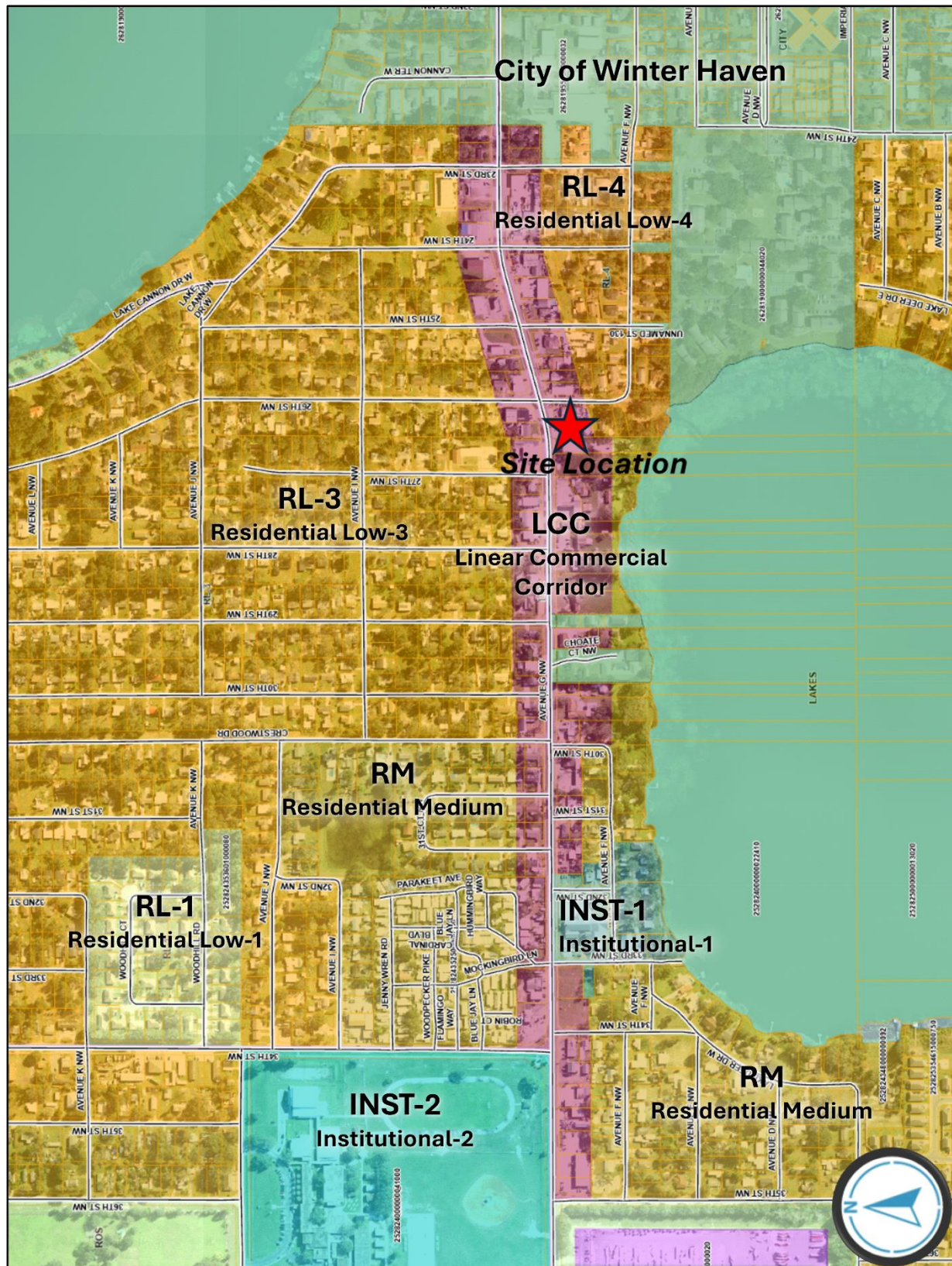
Exhibit 4 – 2024 Aerial Photo (Close)

Exhibit 5 – Approved Site Plan

Exhibit 6 – Letter of Approval

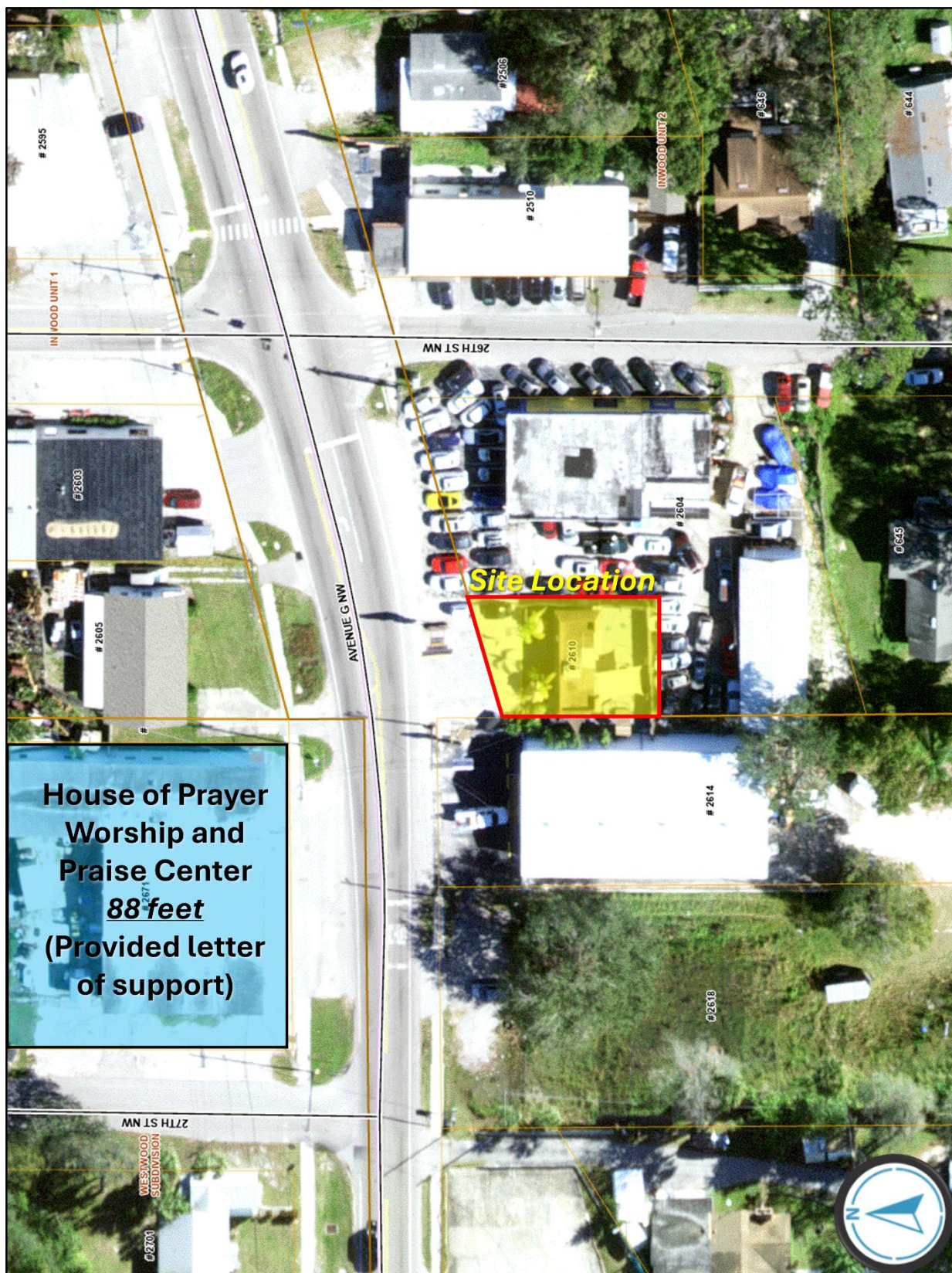


Location Map

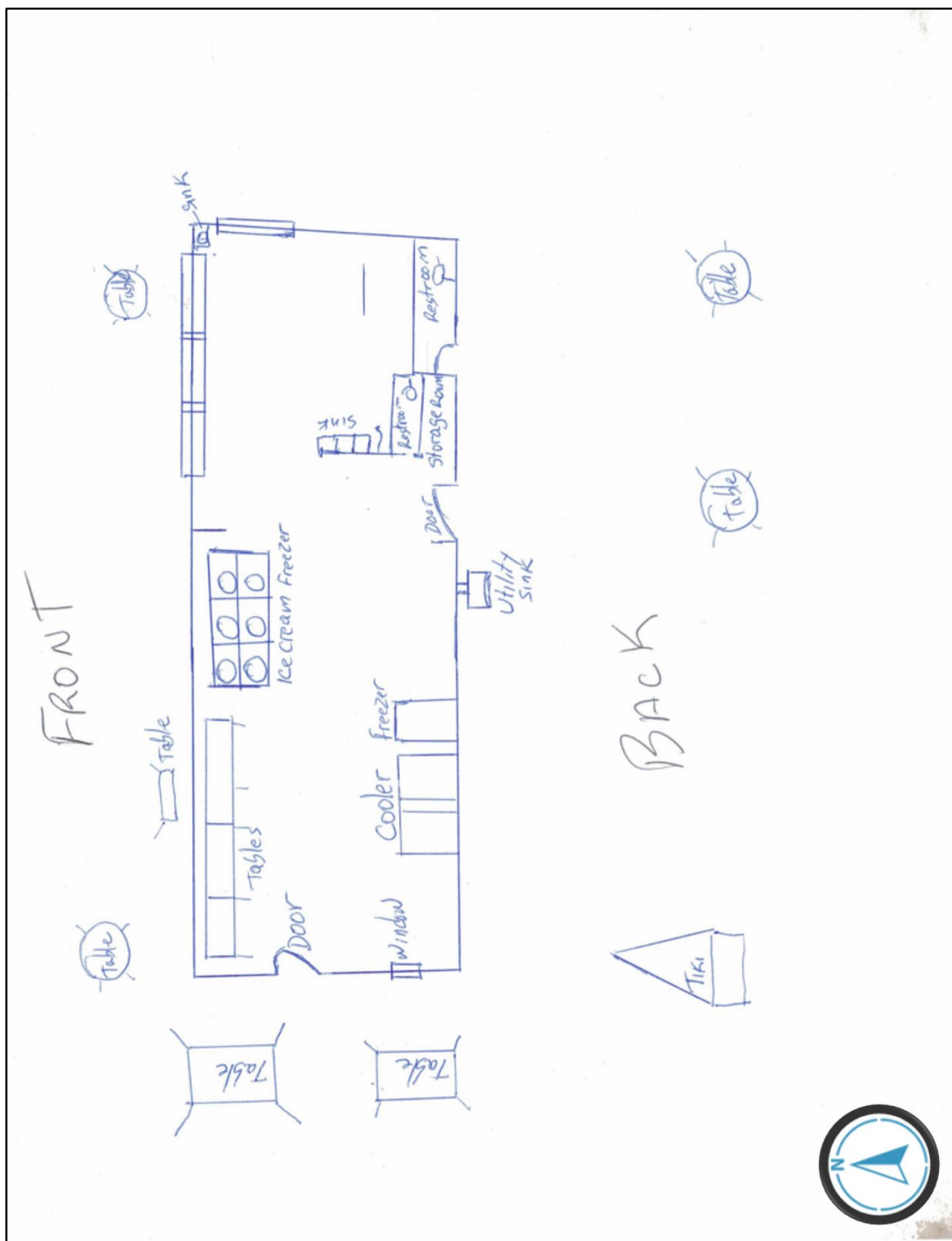


Future Land Use Map

Land Use Hearing Officer
Variance/KSR



2023 Aerial Photo (Close-up)



Approved Site Plan

House Of Prayer Worship & Praise Center
2681 Ave G NW
Winter Haven, FL 33880
(863) 875-6109
gusfowler79@gmail.com

Date: June 1, 2025

To:
Polk County Beer and Wine Licensing Department

Subject: Letter of Approval for Beer and Wine License Near Church Property

Dear Licensing Department,

I am writing to you in my capacity as the pastor of House Of Prayer Worship & Praise Center, located at [2681 Ave G NW, Winter Haven, FL 33880, which is in proximity to the restaurant establishment known as *LD Caribbean Cuisine INC.*

After thoughtful consideration and consultation with our church leadership, I wish to inform the department that we have no objection to the issuance of a beer and wine license to LD Caribbean Cuisine INC. We understand that in certain cases, the proximity of a church may be a determining factor in the licensing decision. If that is the case here, please accept this letter as our formal approval for the license to be granted.

We appreciate your diligence in considering the views of the community and trust that your department will continue to uphold responsible and fair licensing practices.

Please feel free to contact me if any additional information or clarification is needed.

Sincerely,

House of Prayer Worship & Praise Center
Pastor, Gus Fowler
(863) 242-2336
gusfowler79@gmail.com



Letter of Approval