

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

<b>DRC Date:</b>	<b>March 16, 2024</b>	<b>CASE #:</b>	<b>LDLVAR-2024-12 (Berkley Corner 3PS)</b>
<b>LUHO Date:</b>	<b>April 25, 2024</b>	<b>LDC Section:</b>	<b>Section 224 Table 2.4</b>

**Request:** The applicant is requesting a variance to allow setback reduction for an Alcohol Package Store (3PS License) within 2,500 of a School and Religious Institutions.

**Applicant:** Asmaa Nor

**Property Owner:** Berkley Corner LLC

**Location:** 1115 Berkley Road, northwest corner of State Road 559 (Berkley Road) and County Road 546 (Old Dixie Highway), north of U.S. Highway 92, east of the Polk Parkway (SR 570), surrounded by the city of Auburndale in Section 22, Township 27, Range 25.

**Parcel ID#:** 252804-313000-004509

**Size:** ±0.4 acres (±17,415 sq. ft.)

**Land Use Designation:** Neighborhood Activity Center (NAC)

**Development Area:** Transit Supportive Development Area (TSDA)

**Case Planner:** Erik Peterson, AICP

**Summary:**

The applicant established Berkley Corner, a retail store specializing in beer, wine, and tobacco products sales in July of 2021 at the site of a former convenience store (Auburndale Food Store) that conducted similar sales. The applicant is applying for a package liquor sales license (3PS) to broaden their market share. However, there are four religious institutions and an Elementary School within 2,500 feet of the property. Section 224 of the Land Development Code (LDC) prohibits the sale of liquor beverages within 2,500 of a religious institution or Kindergarten through 12<sup>th</sup> Grade Public or Private School. Through LDC Section 930, a property owner (or agent of) may request a variance to the 2,500 feet of separation from the Land Use Hearing Officer.

The owner purchased the property in 2021. The County's restrictions on the placement of liquor stores within 2,500 feet of a religious institution or Kindergarten through 12<sup>th</sup> grade (K-12) school has been in effect since 1975. The closest school and church were constructed prior to the adoption of the ordinance. Prior to purchasing the property, the owner would have been made aware of the rules with any inquiry into the County's alcohol beverage licensure policies. Therefore, the owner's hardship is of their own making.

Within the abutting city limits of Auburndale, nearby properties are zoned commercial and the city's separation requirements for liquor stores from churches or schools is only 500 feet. If the owner were to annex into the city, the property would be eligible to seek state licensure for a liquor store. However, this action would place an additional financial burden on the owner that is estimated to be more than \$1,700 annually.

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

- The request **will not be injurious to the area involved or otherwise detrimental to the public welfare** because the abutting and nearby properties within the city are eligible for a liquor store establishment by virtue of the different jurisdictional alcohol beverage sales requirements.
- **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** because the area is in transition to be annexed by the city of Auburndale. The neighborhood is an unincorporated enclave inside the perimeter of the city.
- **The variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure**, because the current business is limited to beer, wine, and tobacco products. Liquor sales can be added without any structural changes or site development requirements.

Staff recommends approval of a variance to reduce the requirements for separation from religious institutions and K-12 schools from 2,500 feet to 500 feet for this site to be consistent with abutting city standards.

### **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-2024-12**, with the following conditions:

### **CONDITIONS OF APPROVAL:**

1. A variance shall be granted to the subject property for the package alcohol sales distance separation from K-12 Schools and Religious Institutions listed in Section 224 of the LDC from 2,500 feet to 500 feet.
2. The applicant must apply for all necessary permits within five (5) years of the date for which the Land Use Hearing Officer's Final Order is rendered.
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 LDC Section 930D.*

*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 city of Auburndale has annexed around the neighborhood where the subject property lies such that it has become an unincorporated enclave within the city. The closest school or church is at least 1,000 feet from the subject property. The negative effects of liquor stores on nearby religious institutions or schools are debatable. In the unincorporated areas, liquor stores are not permitted to be open on Sundays which are the prime operating ours of most religious institutions. The properties abutting the site that lie within the city limits are zoned commercial and the separation between alcohol sales and churches or schools is 2,000 feet less than what is required in the unincorporated areas. Therefore, the adjacent property or property across the street are allowed to establish a liquor store but this property is not by virtue of its jurisdiction. If the only factor that renders a site eligible for liquor sales is the jurisdiction, it is difficult to argue that the requested reduction in alcohol distance separation from 2,500 feet to 1,000 feet will be injurious to the area involved or otherwise detrimental to the public welfare. The city of Auburndale does not believe it to be a detriment if their liquor store separation requirement is only 500 feet away from a church or school.

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;*

The commercial properties that surround this location within the city of Auburndale are eligible to be approved for liquor package sales because they are zoned for liquor sales and meet the city's alcohol beverage sales separation (500 feet) from churches and schools (See

Exhibits 3, 4, and 6). The commercial properties within the unincorporated area surrounding this intersection are all within 2,500 feet of Lena Vista Elementary and several religious institutions. The city's requirements are less stringent than the County's. If any of these properties in the unincorporated area were to annex into the city, they would most likely be eligible to sell liquor in package form for offsite consumption.

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

The closest religious institution to the subject property, Westside Missionary Baptist Church of Auburndale, was established in 1956. The only school within 2,500 feet, Lena Vista Elementary, was built in 1960. The separation between Liquor Stores and Religious Institutions or K-12 Schools has been in the County Codes since December 9, 1975 (Ordinance 75-19). The owner purchased the property on August 5, 2021. There appears to be no special conditions and circumstances present that are not the result of the applicant. The applicant also has the option to annex into the city where the separation requirements are such that the property would be eligible for a liquor package sales license from the state at this location.

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;*

This request will confer upon the applicant a special privilege relative to other commercial properties surrounding this intersection in the unincorporated areas. However, it will not confer a privilege that the commercial properties in the city do not possess. The setback from religious institutions in the city is only 500 feet. The properties surrounding this intersection that are in the city of Auburndale are zoned Neighborhood Commercial (CN) (see Exhibit 6). According to Section 5.6.9 of the city's Zoning Ordinance and Section 4.3 of the city's Code of Ordinances, alcohol package sales are a permitted use so long as they are not located within 500 feet of a church or school.

Denial of this variance request will require the owner to annex into the city for liquor sales approval. Annexation will require the owner to pay an additional tax millage of \$4.2515 per \$1,000 of assessed value. That equates to \$ 1,772.49 annually based on last years tax roll assessment.

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. There are no structural changes or additional parking spaces needed on this site to accommodate the sale of liquor in addition to the sale of other products. Retail sales uses require one space per 300 square feet and so do liquor stores according to Section 709, Table 7.10 of the LDC. The 2,880 square foot building requires 10 parking spaces. There are 10 striped spaces and an additional four spaces that are unmarked. The site once had fuel pumps, but they were removed in the 1980s. Their void enables even greater off-street parking availability.

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;*

This variance may be approved in other NAC districts without limitations if there are no schools or religious institutions within 2,500 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 this request will not result in the creation of a lot or parcel that does not meet the requirements of the Code. This variance request 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 any conditions of approval. This property along with the entirety of the intersection and beyond were zoned C-3 on the original zoning map from 1971. The Board has never placed additional conditions upon the property.

**Surrounding Future Land Use Designations and Existing Land Use Activity:**

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

<p><b>Northwest:</b> City of Auburndale Neighborhood Commercial (CN) L&amp;W Supply Warehouse (wholesale)</p>	<p><b>North:</b> NAC Office for Air Conditioning contractor and Private Medical Transport</p>	<p><b>Northeast:</b> City of Auburndale Neighborhood Commercial (CN) Vacant Single-Family Residence</p>
<p><b>West:</b> City of Auburndale Neighborhood Commercial (CN) L&amp;W Supply Warehouse</p>	<p><b>Subject Property:</b> Neighborhood Activity Center (NAC) Retail Beer, Wine, and Tobacco</p>	<p><b>East:</b> NAC Gas Station and Convenience Retail</p>
<p><b>Southwest:</b> City of Auburndale Neighborhood Commercial (CN) L&amp;W Supply Storage Yard</p>	<p><b>South:</b> NAC Harvest Meat Market (retail)</p>	<p><b>Southeast:</b> NAC Family Dollar (retail) Laundromat and A-1 Discount Beverage (Convenience Store)</p>

This intersection sees a high volume of traffic. The Florida Department of Transportation (FDOT) estimates a daily average of 11,800 vehicles on Berkely Road (SR 559) and 9,900 vehicles travel Old Dixie Highway (CR 546) based on 2022 traffic counts. The Polk County Transportation Planning Organization (TPO) estimates traffic on Berkely Road has increased to 14,700 average

vehicles per day. This intersection receives a lot of market exposure because of the number of turning movements to and from the Polk Parkway exit to the west.

The zoning and land use regulations around the intersection are for commercial uses both in the city and unincorporated areas. While there are some residential structures in the immediate vicinity, they are not being used for residential habitation. They are either office or vacant.

**Comments from other Governmental Agencies:**

None.

**Exhibits:**

Exhibit 1 – Location Map

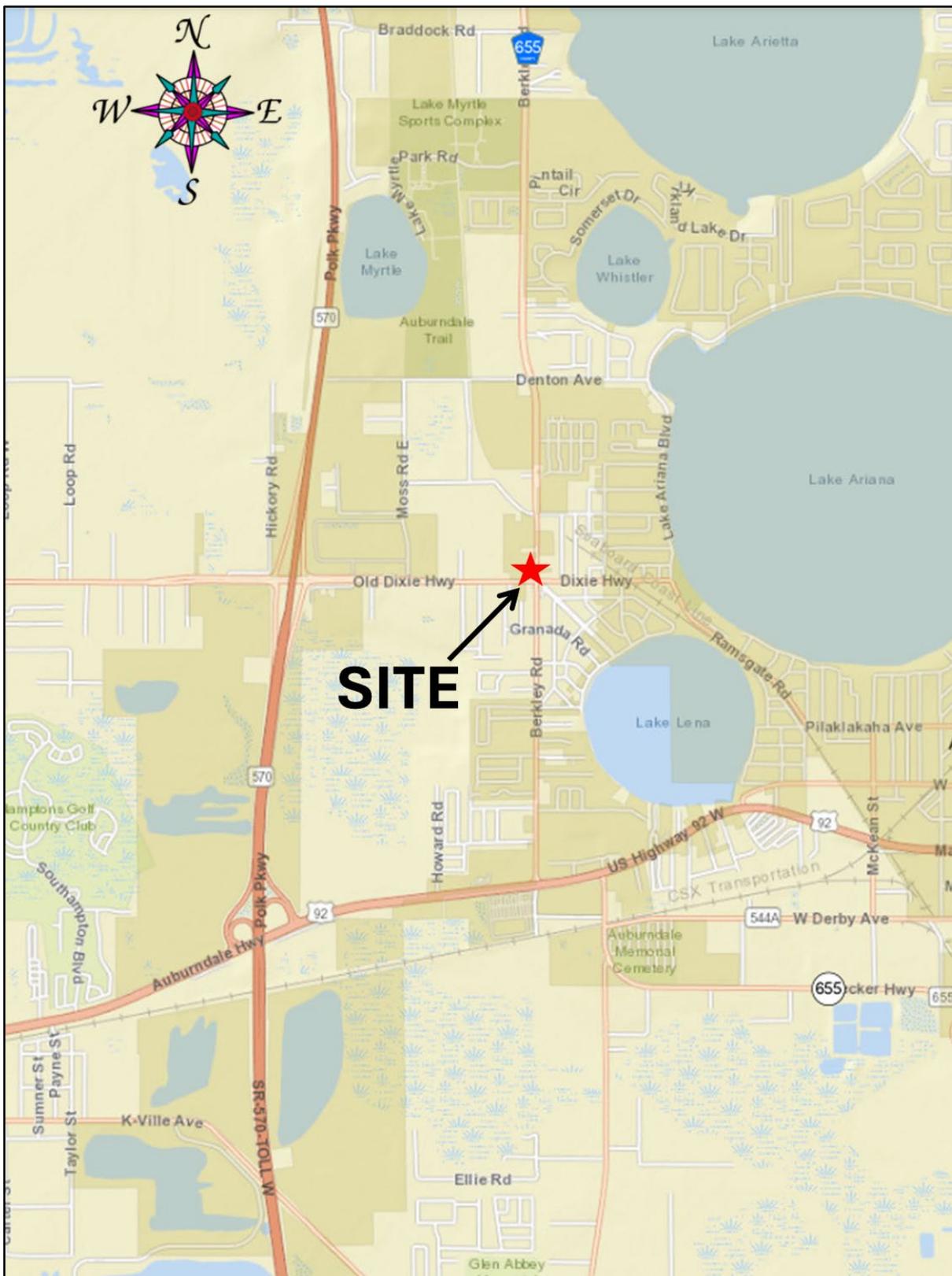
Exhibit 2 – 2022 Aerial Context

Exhibit 3 – Future Land Use Map

Exhibit 4 – Aerial Close-up

Exhibit 5 – Applicant’s Justification

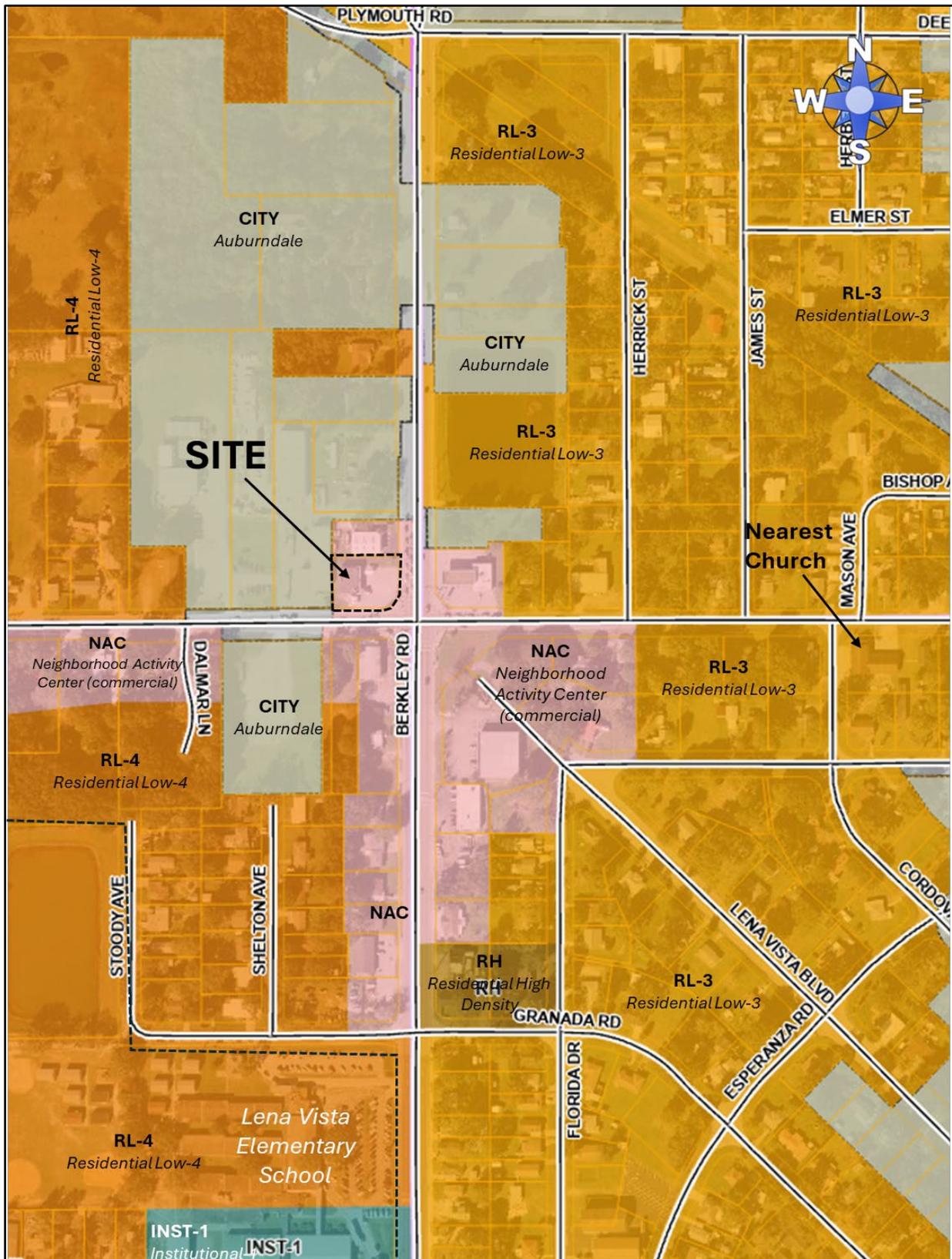
Exhibit 6 – City of Auburndale Zoning Map



# LOCATION MAP



# 2023 AERIAL CONTEXT



# Future Land Use Map



## 2023 Aerial Photo (Close-up)

**CRITERIA FOR GRANTING VARIANCE**

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

No

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

It's the only commercial building with parking on the property.

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

Purchased in Aug. 2021. Built in 1974

**What is the hardship if the variance is not approved?**

Not being able to serve the community an missing on growing the business

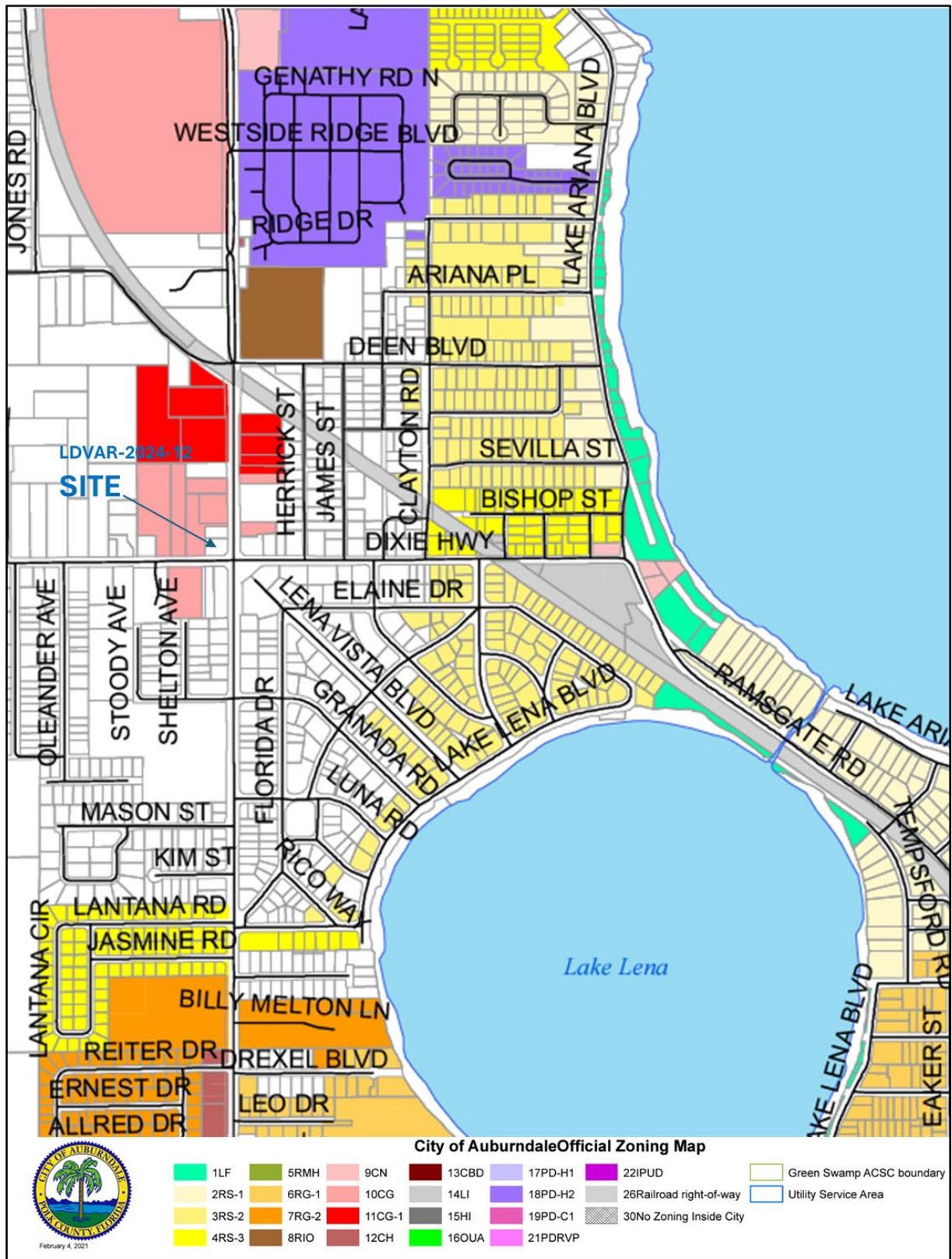
**Is this the minimum variance required for the reasonable use of the land?**

Yes

**Do you have Homeowners Association approval for this request?**

There is no HOA

## Applicant's Justification



# City of Auburndale Zoning Map