

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

DRC Date:	October 10, 2024	CASE #:	LDLVAR-2024-46 (U.S. 27 Chipotle Beer & Wine)
LUHO Date:	November 12, 2024	LDC Section:	Section 224 Table 2.4

Request: The applicant is requesting a variance to allow separation distance reduction for Beer and Wine Alcohol Consumption On-Premises (2COP License) within 1,000 feet of a K-12 School.

Applicant: Kelvin Ready

Property Owner: WMG Exchange 3 LLC

Location: 49539 U.S. Highway 27, east side, south of Sand Mine Road, north of Student Drive, west of the Osceola County line, north of Haines City in Section 13, Township 25, Range 26.

Parcel ID#: 262513-998019-000010

Size: ±0.95 acres

Land Use Designation: Town Center (TCX)
North U.S. Highway 27 Selected Area Plan

Development Area: Transit Supportive Development Area (TSDA)

Case Planner: Erik Peterson, AICP

Summary:

Many Chipotle restaurants are offering beer and wine on their menus. The Davenport Chipotle restaurant recently opened on U.S. Highway 27 north of I-4. However, there is a school located within 1,000 feet of the property. Section 224 of the Land Development Code (LDC) prohibits the consumption of beer and wine at a commercial establishment within 1,000 of a religious institution or Kindergarten through 12th Grade Public or Private School. 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.

Chipotle is a national restaurant franchise and has experienced many different alcohol regulations. They do not request alcohol sales in every jurisdiction. The demand for the product has to be high enough to cover the costs of licensure and liability insurance. The decision to serve at this location has much to do with the market demand. This area of the County houses many of the tourists visiting the Orlando theme parks because of the proximity and rental arrangements. The intersection of Sand Mine Road and U.S. Highway 27 is within six miles driving distance of the Disney theme parks. The area is surrounded by residential developments with the term “resort” in

their name. Vacationers often prefer alcohol beverages while eating lunch or dinner. The restaurant is attempting to meet the needs of its customers.

Staff find 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 restaurant is just slightly below the threshold for being exempt from the separation requirement.
- **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 actual travel distance from entrance to entrance is over 1,800 feet.

Staff recommends approval of a variance to reduce the requirements for separation of beer and wine consumption on premises (2COP license) from K-12 schools from 1,000 feet to 700 feet for this site because the location meets the intent of the code.

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-2024-46**, with the following conditions:

CONDITIONS OF APPROVAL:

1. A variance shall be granted to a restaurant on the subject parcel to reduce the requirements for separation of beer and wine consumption on premises (2COP license) from K-12 schools from 1,000 feet to 700 feet.
2. 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 Chipotle franchise would like to sell just beer and wine at this location. Section 224 of the LDC requires 1,000 feet of separation from K-12 schools and religious institutions for the consumption of beer and wine on premises measured from property line to property line. While the restaurant is less than 1,000 feet property line to property line from a Kindergarten through 8th grade public school property, that measurement is direct linear distance “as the crow flies.” The actual travel distance from entrance to entrance is over 1,800 feet.

The relationship between alcohol consumption establishments and K-12 schools has proven to be of little or no conflict as a land use in close proximity. All throughout Polk County, there are many instances where restaurants serve alcohol and K-12 schools coexist near each other with no signs of detriment to either. The restaurant building is approximately 2,300 square feet and its seating capacity is less than 150 seats. If Chipotle was a larger restaurant of just 200 square feet larger and had seating for 150 or more, there would be no separation distance from schools or religious institution because it would qualify for a different alcohol sales license. That license (4COP-SRX) is exempt from separation requirements and would even allow liquor sales. It does not appear that a slightly larger restaurant has different potential adverse impacts upon K-12 schools.

The restaurant opens at 10:45 on any given day. Its peak lunch service is between 11:30am and 1:30pm. On normal school days, students are in their classrooms by 8:00am and are not released until 2:30pm. The peak use of the restaurant is not in direct conflict with times that students may be walking home or being picked up.

Based on the facts that are referenced, staff finds that 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 public welfare.

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 Chipotle location is approximately 790 feet from a Kindergarten-8th Grade public school that was constructed in 2016. The restaurant is not accessible to the school within 790 feet. There is a multifamily apartment development in between them. The actual travel distance between the restaurant and the school is approximately 1,800 feet both by vehicle and walking. Staff believes that the intent of the alcohol beverage consumption

separation distance from schools and religious institutions is to limit their collocation within a certain accessible area. On this site that intent is met.

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

Chipotle is a national restaurant franchise and has experienced many different alcohol regulations. They do not request alcohol sales in every jurisdiction. The demand for the product has to be high enough to cover the costs of licensure and liability insurance. The decision to serve at this location has much to do with the market demand. This area of the County houses many of the tourists visiting the Orlando theme parks because of the proximity and rental arrangements. The intersection of Sand Mine Road and U.S. Highway 27 is within six miles driving distance of the Disney theme parks. The area is surrounded by residential developments with the term “resort” in their name. Vacationers often prefer alcohol beverages while eating lunch or dinner. The restaurant is attempting to meet the needs of its customers.

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 allow beer and wine consumption onsite on the ±0.95-acre property. This variance, if approved, only applies to this parcel and not the rest of the plat. The applicant’s request will not confer this privilege on any of the other commercial parcels in the plat. If other parcel owners in the commercial plat are seeking approval of either alcohol consumption on premises or liquor package sales, they will be required to obtain variance approval.

Alcohol is not a necessity for a successful sit down restaurant, but with certain cuisine and in a location that supports tourism it is often expected by clientele.

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 alcohol consumption at a restaurant. Restaurants with seating require one space per 75 square feet and so do bars, taverns, and lounges, according to Section 709, Table 7.10 of the LDC. The applicant represents one out parcel in a commercial strip. Each parcel contains its own parking.

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;*

Alcohol consumption may be approved in Town Center (TCX) districts without limitations if there are no schools or religious institutions within 2,500 feet. This approval will not change the use of the land. The current use and proposed use will remain a restaurant.

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.*

The restaurant parcel is part of a mixed use Planned Development (LDPD-2020-11) that includes the commercial parcels between the access drive on the south side of the restaurant and Sand Mine Road along with the 264-unit apartment complex. The commercial portion of the project was granted setback a setback reduction from the 65 feet from the right-of-way on U.S. Highway 27 to 35 feet. There were no conditions of approval related to alcohol sales. Approval of this request will not circumvent any conditions of approval.

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>Northwest: Town Center (TCX) 378-unit apartment complex 4-stories high With commercial outparcels On ±36.75 acres</p>	<p>North: Town Center (TCX) High Wind Dental Care – Dentist On ± 32,483 sq.ft.</p>	<p>Northeast: Town Center (TCX) 264-unit apartment complex 4-stories high On ±17.92 acres</p>
<p>West: Town Center (TCX) 378-unit apartment complex 4-stories high With commercial outparcels On ±36.75 acres</p>	<p>Subject Property: Town Center (TCX) Chipotle (Mexican restaurant) On ±41,382 sq.ft.</p>	<p>East: Town Center (TCX) 264-unit apartment complex 4-stories high On ±17.92 acres</p>
<p>Southwest: Residential Low-1X (RL-1X) Stormwater retention pond On ±5.76 acres</p>	<p>South: Neighborhood Activity Center (NACX) Coffee shop and car wash ±1.46 acres</p>	<p>Southeast: Neighborhood Activity Center (NACX) Vacant Commercial Parcel ±1.53 acres</p>

The restaurant is part of a strip of commercial outparcels along U.S. Highway 27 that sits in between two large apartment complexes. The school is on the opposite side of a 264-unit apartment complex. There is no direct connection between the commercial strip and the school. The restaurant fronts U.S. Highway 27 and there is an interconnecting service road that extends from Student Drive north to Sand Mine Road. The school fronts Sand Mine Road. The travel distance between the restaurant and the school is over 1,800 feet. There are approximately 59,000 vehicles per day passing through this section of U.S. Highway 27. Sand Mine Road and Student Drive are signalized at their intersections with U.S. Highway 27 and extend into Osceola County. The commercial service road provides accessibility for local traffic to avoid traveling on U.S. Highway 27.

Comments from other Governmental Agencies:

None.

Exhibits:

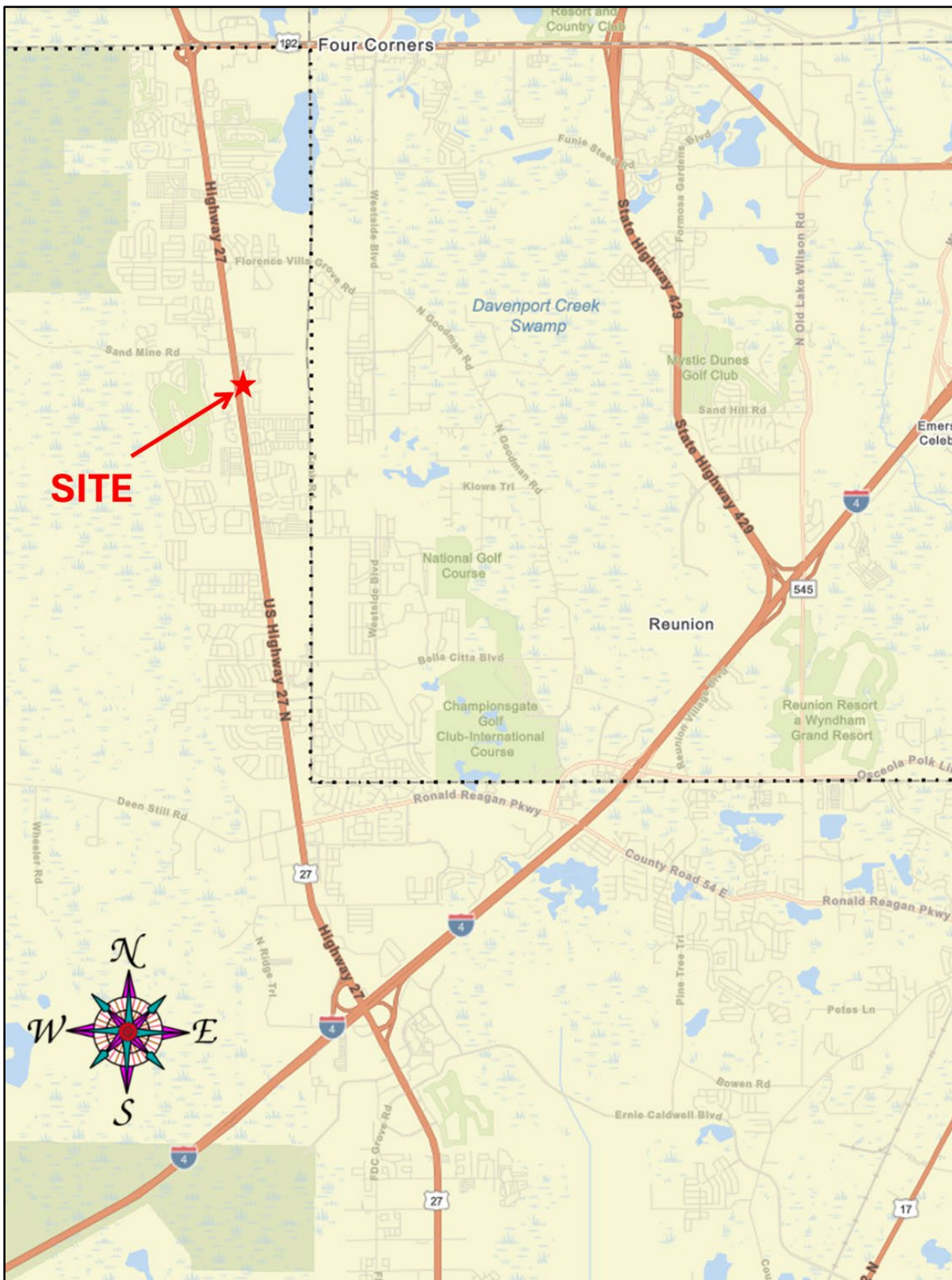
Exhibit 1 – Location Map

Exhibit 2 – 2024 Aerial Context

Exhibit 3 – Future Land Use Map

Exhibit 4 – 2024 Aerial Close-up

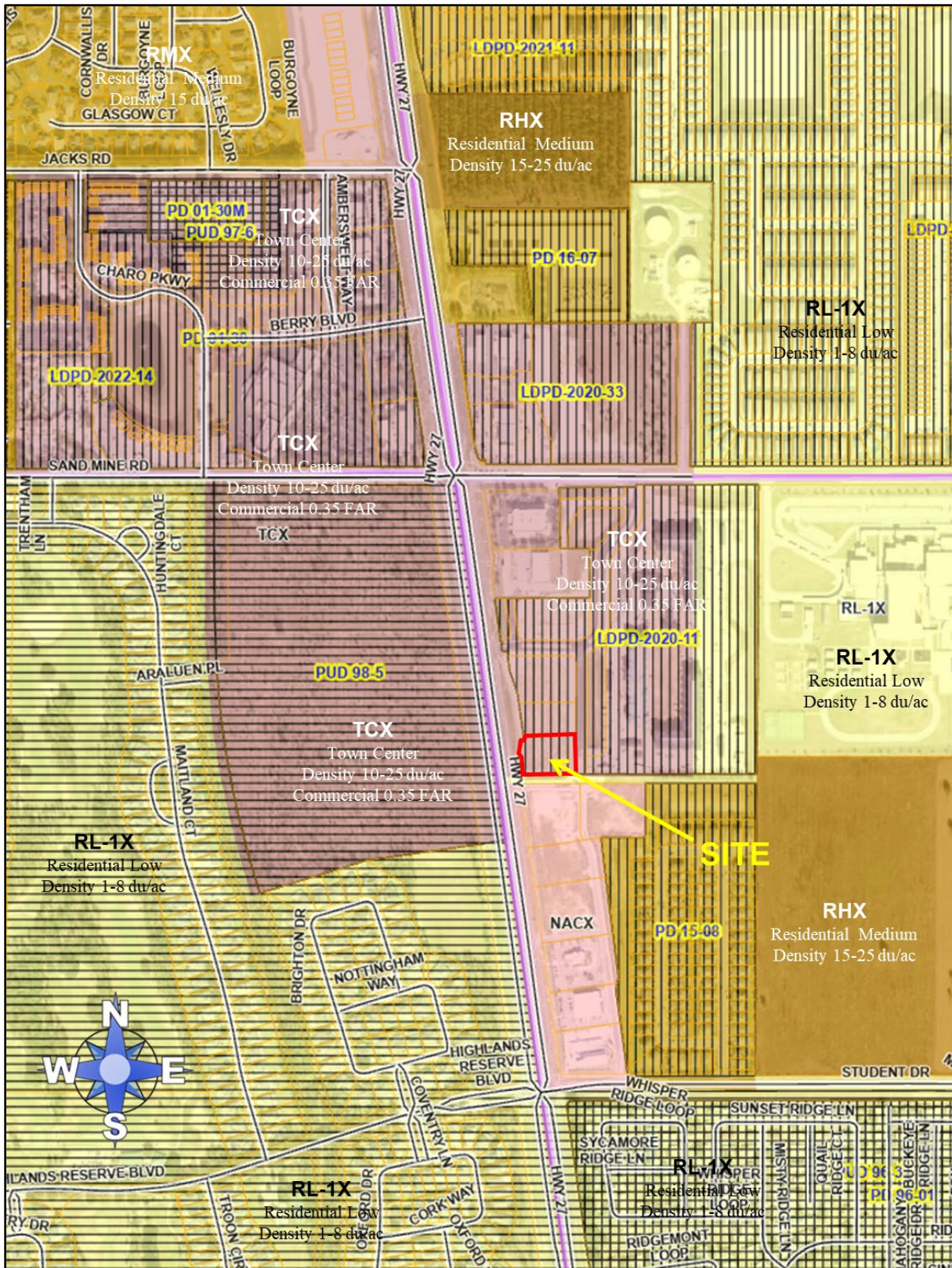
Applicant's Justification under Separate Attachment



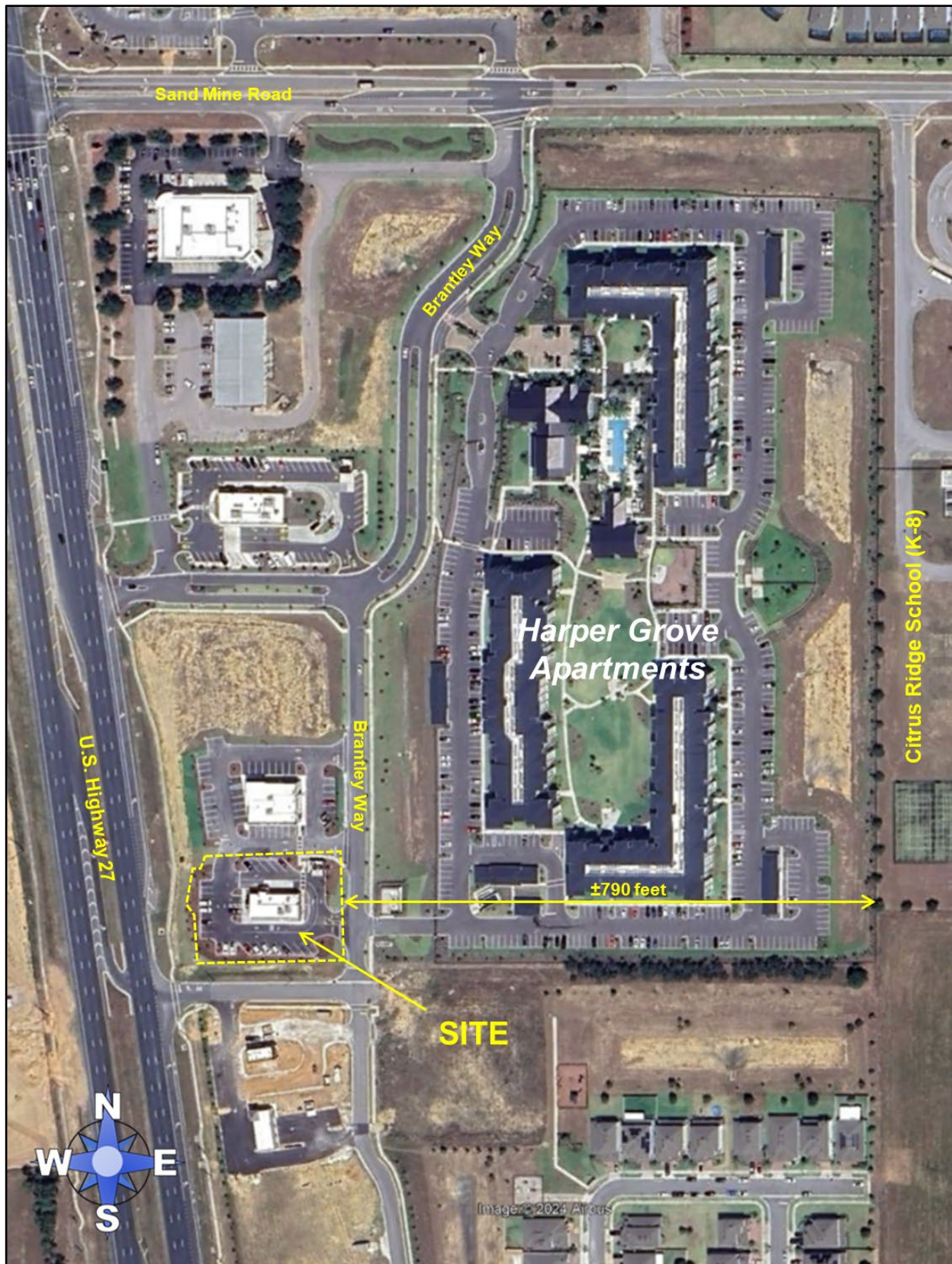
LOCATION MAP



2024 AERIAL CONTEXT



Future Land Use Map



2024 Aerial Photo (Close-up)