

1. Do 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 subject property (“Property”) is located such that the distance (measured property line to property line) between the Property and Citrus Ridge Academy, a nearby school (“Academy”), is less than 1,000 feet. Sections 3-18 and 3-19 of the Polk County Code of Ordinances (“Code”) require that no point on the property line of the Property lie closer than 1,000 feet from the property line of the Academy. Accordingly, the Applicant is constrained by the above-described site conditions and requires a variance to serve beer and wine on the Property. Section 3-18.1 of the Code provides that “existing land uses in the vicinity and any physical characteristics of the vicinity” shall be considered in determining whether to grant a variance to the provisions of section 3-18(a) and (b).

The Property is uniquely located such that an Applebee’s (which serves beer, wine, and full spirits under a 4-COP license) is in the vicinity. The Applicant is not proposing to bring a new use to the area in the vicinity of the Property; rather, the Applicant is seeking to participate in an already existing use – i.e., the sale of beer and wine. Thus, granting the variance will have very little impact on the area in the vicinity of the Property. Moreover, the Applicant’s proposed use will be less impactful on the area than the current use because it will not serve full spirits like the nearby Applebee’s.

Further the physical characteristics of the properties in the vicinity of the Property are such that the actual travel distance (based on the orientation of the Academy’s exits onto sand mine road, the buildings between Academy and the Property, the location of the Academy’s fences, the route of the sidewalks running between the Academy and the Property, and the route of the roads between the Academy and the Property) between the Property and the Academy is approximately +-1,700 Feet. Thus, a person would have to travel farther than 1,000 feet from the Academy to reach the Property. The provisions of section 3-18(a) and (b) are clearly intended to regulate establishments serving beer and wine which are accessible to nearby schools or churches by traveling 1,000 feet or less. The unique physical characteristics of the area in the Property’s vicinity require people to travel farther than 1,000 feet from the Academy to reach the Property. This unique set of facts weighs in favor of granting a variance.

2. Will the literal interpretation of the provisions of this Code deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this code?

If the variance is not approved, the Applicant’s hardship will be the deprivation of rights commonly enjoyed by other properties in the same zoning district (i.e., the ability to sell beer and wine). Because of the existing land uses in the vicinity of the Property and the unique physical characteristics of the area around the Property, which are discussed above, a literal interpretation and strict compliance with the Code would create an unnecessary and undue hardship on the Applicant.

3. Do the special conditions and circumstances result from the actions of the applicant?

The special conditions and circumstances, which are discussed above, do not result from the actions of the Applicant; rather, such conditions and circumstances are the results of third parties developing and utilizing their property free from any influence of the Applicant.

4. Will granting the variance confer on the applicant any special privilege that is denied by this code to other lands, structures, or buildings in the same district?

No. The provisions of section 3-18(a) and (b) are clearly intended to regulate establishments serving beer and wine which are accessible to nearby schools or churches by traveling 1,000 feet or less. The unique physical characteristics of the area in the Property's vicinity require people to travel farther than 1,000 feet from the Academy to reach the Property. This unique set of facts shows that the Applicant is not asking for any special privilege; rather the Applicant is seeking a variance from the literal interpretation of the Code based on the actual travel distance, which is greater than 1,000 feet.

5. Will granting the variance circumvent a condition or the intent of a condition placed on the development by the Planning Commission or the BoCC?

No. The provisions of sections 3-18(a) and (b) are clearly intended to regulate establishments serving beer and wine which are accessible to nearby schools or churches by traveling 1,000 feet or less. The unique physical characteristics of the area in the Property's vicinity require people to travel farther than 1,000 feet from the Academy to reach the Property. This unique set of facts shows that the Applicant is not attempting to circumvent the intent of the prohibitions in sections 3-18(a) and (b); rather, the Applicant is asking for a variance because a strict interpretation of the Code will not serve the intent of the prohibitions in sections 3-18(a) and (b), which is to prevent establishments serving alcohol from being accessible to schools or churches by traveling 1,000 feet or less from such schools or churches.

6. Is the requested variance the minimum variance that will make possible the reasonable use of the land, building or structure?

Yes. Per section 3-18-1 of the Code, the requested variance is the only means by which the Applicant can make reasonable use of the land (i.e., sell beer and wine).