



Interoffice Memorandum

September 25, 2023

TO: Mayor Jerry L. Demings
-AND-
County Commissioners

FROM: Andres Salcedo, P.E., Acting Director
Planning, Environmental, and Development Services
Department *Andres*

CONTACT PERSON: **Jennifer Moreau, AICP, Manager**
Zoning Division
(407) 836-5856

SUBJECT: October 24, 2023 - Appeal Public Hearing
Applicant/Appellant: A. Kurt Ardaman for Northstar Powers LLC
BZA Case # ZM-23-07-047, August 3, 2023; District 2

Board of Zoning Adjustment (BZA) Case # ZM-23-07-047, located at 6320 Clarcona Ocoee Road, Orlando, Florida, 32810, in District 2, is an appeal to the Board. The applicant is appealing the Zoning Manager's determination on calculation of the minimum distance separation requirement between package stores and religious institutions, specifically pertaining to the shortest route of ordinary pedestrian travel. Based on the calculation as determined by the Zoning Manager, a proposed package liquor store would not be permitted at the subject site without first obtaining a variance to the minimum distance separation requirements.

At the August 3, 2023 BZA hearing, staff recommended to uphold the Zoning Manager determination. At the hearing, there was one in attendance to speak in favor of overturning the Zoning Manager's determination and there were ten spoke in opposition. It was also noted that one comment was received in favor of the overturning the Zoning Manager's determination and forty-seven comments were received in opposition, primarily due to the negative effects of the proposed package store and the overconcentration of similar uses in the area. The BZA recommended upholding the Zoning Manager's determination. The applicant subsequently appealed the BZA recommendation.

The application for this request is subject to the requirements of Article X, Chapter 2, Orange County Code, as may be amended from time to time, which mandates the disclosure of expenditures related to the presentation of items or lobbying of items before the Board. A copy is available upon request in the Zoning Division.

If you have any questions regarding this matter, please contact Jennifer Moreau at (407) 836-5856.

ACTION REQUESTED: Deny the applicant's request; or approve the applicant's request with conditions. District 2.

AS/JM:ag
Attachment

**PLANNING, ENVIRONMENTAL, AND DEVELOPMENT SERVICES DEPARTMENT
ZONING DIVISION PUBLIC HEARING REPORT**

October 24, 2023

The following is a public hearing on an appeal before the Board of County Commissioners on October 24, 2023 at 2:00 p.m.

- APPLICANT/APPELLANT:** A. KURT ARDAMAN FOR NORTHSTAR POWERS LLC
- REQUEST:** Appeal of the Zoning Manager's determination on calculation of the minimum distance separation requirement between package stores and religious institutions.
- LOCATION:** 6320 Clarcona Ocoee Road, Orlando, FL 32810, south side of Clarcona Ocoee Rd., west side of N. Powers Drive, east side of Aladdin Dr.
- TRACT SIZE:** 2.64 acres
- ZONING:** C-1,Restricted C-1
- DISTRICT:** #2
- PROPERTIES NOTIFIED:** 4,905

BOARD OF ZONING ADJUSTMENT (BZA) HEARING SYNOPSIS ON REQUEST:

Staff described the Zoning Manager's Determination pertaining to how distance separation measurement is calculated, including the shortest route of ordinary pedestrian travel, relevant case law, description of the presented exhibits, illustrations and photos of the site. Staff also provided a detailed analysis of the appeal documents provided by the appellant, as well as an analysis of the appellant's contentions. Staff noted that one (1) comment was received in favor of the appeal and forty-seven comments were received in opposition to the appeal.

The appellant team presented at length, providing the photos and illustrations of their contentions of what constitutes the shortest route of ordinary pedestrian travel and provided case law examples establishing the satisfaction of meeting code distance separation requirements.

There was one in attendance to speak in favor of the request and there were ten in attendance to speak in opposition to the request.

The BZA discussed the information presented, discussed the appellant's rationale and the County's presented shortest routes of ordinary pedestrian travel, the intent in

comparison with the caselaw presented, and unanimously recommended to uphold the Zoning Manager's Determination by a 4-0 vote, with two absent and one vacant.

BZA HEARING DECISION:

A motion was made by John Drago, seconded by Juan Velez and carried to recommend to **UPHOLD** the Zoning Manager's Determination: (4 in favor, none opposed, 2 absent, 1 vacant).



ORANGE COUNTY ZONING DIVISION
 201 South Rosalind Avenue, 1st Floor, Orlando, Florida
 32801 Phone: (407) 836-3111 Email: BZA@ocfl.net
www.orangecountyfl.net

Board of Zoning Adjustment (BZA) Appeal Application

Appellant Information

Name: Northstar Powers LLC

Address: 7325 Harlie Street, Orlando, FL 32819

Email: ardaman@fishbacklaw.com Phone #: (407) 262-8400

BZA Case # and Applicant: ZM-23-07-047, A. Kurt Ardaman

Date of BZA Hearing: 2023-08-03

Reason for the Appeal (provide a brief summary or attach additional pages of necessary):

Appeal Board of Zoning Adjustment decision which decision upheld Zoning Manager's Determination. See attached letter and justification.

Signature of Appellant: *Sapna Premi* Date: 08/17/2023

STATE OF Florida
 COUNTY OF Orange

The foregoing instrument was acknowledged before me this 17th day of August, 2023, by Sapna Premi who is personally known to me or who has produced Personally Known as identification and who did/did not take an oath.

[Signature]
 Notary Public Signature

Notary Stamp:



NOTICE: Per Orange County Code Section 30-45, this form must be submitted within 15 days after the Board of Zoning Adjustment meeting that the application decision was made.

Fee: \$691.00 (payable to the Orange County Board of County Commissioners)

Note: Orange County will notify you of the hearing date of the appeal. If you have any questions, please contact the Zoning Division at (407) 836-3111.

See Page 2 of application for the Appeal Submittal Process.

FISHBACK ♦ DOMINICK
ATTORNEYS AND COUNSELORS AT LAW
1947 LEE ROAD
WINTER PARK, FLORIDA 32789-1834

G BEN FISHBACK (1893-1983)
JULIAN K. DOMINICK (1924-2003)

MARK F. AHLERS
*A. MURT ARDAMAN
JOHN F. BENNETT
*J. GIFFIN CHUMLEY
*RICHARD S. DELLER
HILLARY G. GRIFFITH
PAUL "JJ" JOHNSON JR
ERIC B. JONTZ
JEFFRY R. JONTZ
*DANIEL W. LANGLEY
ANDREW W. MAI
BRANDON E. POWWALL
CHARLES R. STEPTER JR
MICHAEL D. TENPRING

TEL (407) 282-8400
FAX (407) 790-4538
FAX (407) 282-8402

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*FLORIDA BAR BOARD CERTIFIED IN CITY,
COUNTY AND LOCAL GOVERNMENT LAW

August 18, 2023

Via Electronic Mail and Hand Delivery

Ted Kozak
Orange County Zoning
201 South Rosalind Avenue, 1st Floor
Orlando, FL 32801

Re: Case No.: ZM-23-07-047
Appeal of Board of Zoning Adjustment Decision for
property located at 6320 Clarcona Ocoee Road, Orlando, Florida
Parcel ID No.: 36-21-28-0000-00-100 ("Property")

Dear Mr. Kozak:

On behalf of Northstar Powers LLC ("Northstar"), this letter, along with the enclosed Application for the Board of Zoning Adjustment (BZA) Appeal serves as Northstar's appeal to the Orange County Board of County Commissioners regarding the BZA's decision rendered on August 3, 2023. The BZA's decision upheld the Zoning Manager's Determination, a copy of which is enclosed as **Exhibit "A"**. The determination concerned the distance between the main entrance of Northstar's planned package store and the main entrance of Fellowship Baptist Church of Pine Hills using the "the shortest route of ordinary pedestrian travel along the public thoroughfare."

Northstar applied to the County to open a package store at 6320 Clarcona Ocoee Road, Orlando, Florida. In the vicinity and on the opposite side of Clarcona Ocoee Road, a religious institution, Fellowship Baptist Church of Pine Hills, is located at 6225 Clarcona Ocoee Rd, Orlando, Florida.

Orange County Code Section 38-1415 states no package sale vendor "shall be established within one thousand (1,000) feet of an established religious institution." The Code requires the distance to be "measured by following the shortest route of ordinary pedestrian travel along the

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public thoroughfare from the main entrance of the place of business to the main entrance door of the religious institution.”

Orange County issued Zoning Manager Determination dated April 13, 2023 is attached hereto as **Exhibit A**. Orange County’s “measuring pedestrian” followed a public thoroughfare, Clarcona Ocoee Road, and then an allegedly direct “shortest route.” However, the “measuring pedestrian’s” path went up an embankment, cut across a swale/berm, line of young trees, and the religious institution’s unimproved open field used for parking, rather than using the improved driveway to the religious institution’s main entrance. According to the Zoning Manager, “The County does not consider the religious institution’s private, unpaved driveway to be a “public thoroughfare.” However, a line of Florida cases makes it clear that the County must deem the improved driveway a public thoroughfare for measuring purposes. And, even if not a public thoroughfare, neither the County Code nor any court allows the County’s proposed route across the church’s unimproved open field.

The County Code does not define “shortest route of ordinary pedestrian travel,” but Florida Law does. In the Florida case of *State Beverage Dep’t v. Brentwood Assembly of God Church*, 149 So. 2d 871, 873 (Fla. 1st DCA 1963), the First District Court of Appeal overturned the trial court which had used a “straight line” or “as the crow flies” measurement instead of using the “ordinary pedestrian travel” requirement. The court found that the “hard surfaced private roadway” area between the church and package store should have been used when determining the route a pedestrian would ordinarily travel.

The County’s “measuring pedestrian” estimated the distance between Northstar and the Church as 857 feet using an “as the crow flies” measurement method by climbing an embankment, cutting across the swale and berm and unimproved field used for Church parking, and not using the Church’s improved driveway. What the County’s measuring pedestrian failed to do is identify the proper point along the Church property at which the law requires the route to be measured to the entrance to the Church building. The “measuring pedestrian” went up the embankment, cut across the swale/berm/field and did not use the improved driveway, as the law requires. The rule of law contradicts the County’s “measuring pedestrian’s” route. The proper path for pedestrian travel is the private, improved driveway as part of the shortest route of ordinary pedestrian travel.

The legally required route of ordinary pedestrian travel mandates the County to include the Church’s improved driveway in the measurement. This distance between Northstar’s main entrance and the Church’s main entrance is approximately 1,195.9 feet as shown on the enclosed map as **Exhibit “B”**. Florida Law requires the County measure the distance using the Church’s private driveway, which Florida courts deem a public route of ordinary travel.

Below and enclosed, please find supporting information required per the Orange County Zoning Manager Determination application:

1. A copy of the April 13, 2023 zoning determination from Zoning Manager Jennifer Moreau. See attached **Exhibit “A”**.

2. A map of the measurement of a distance of approximately 1,195.9 feet from the main entrance of the proposed package sale vendor to the main entrance of the religious institution. See attached Exhibit "B".
3. A copy of the power point presentation that Northstar presented to the Board of Zoning Adjustment during the BZA hearing on 8/3/23. See attached Exhibit "C".
4. A completed application for Appeal of the BZA's decision.
5. Agent Authorization, Relationship Disclosure form, and Specific Project Expenditure Report.

Also, enclosed please find check number 1022 payable to Orange County BCC in the amount of \$691.00, which represents the appeal fee which is being simultaneously hand-delivered to Ted Kozak's attention along with the original of this letter and its enclosures.

Please let us know if any additional information is needed to process the appeal.

Sincerely,

A. Kurt Ardaman

AKA/ml
Enclosures

EXHIBIT "A"



April 13, 2023

VIA EMAIL

Kurt Ardaman
Fishback Dominick
1947 Lee Road
Winter Park, FL 32789
Via email at: ardaman@fishbacklaw.com

Re: Zoning Manager's Determination (Z23002196) on calculation of the minimum distance requirement between alcohol package stores and religious institutions per Section 38-1415(c), County Code.

Subject Site Address: 6320 Clarcona Ocoee Road
Parcel ID#: 38-21-28-0000-00-100

Dear Mr. Ardaman,

I have reviewed your letter and supporting documentation, dated March 13, 2023, requesting a Zoning Manager's Determination for the calculation of distance between your client Northstar Powers LLC's ("Northstar's") proposed alcohol package store and the Fellowship Missionary Baptist Church of Pine Hills ("Fellowship Baptist Church"), using "the shortest route of ordinary pedestrian travel along the public thoroughfare" pursuant to Section 38-1415(c), County Code. Specifically, your request concerns a proposed alcohol package store on Northstar's property located at 6320 Clarcona Ocoee Road, and the Fellowship Baptist Church located across the street at 6225 Clarcona Ocoee Road.

As described in greater detail below, the County has calculated two (2) distance separation measurements related to applications for a proposed alcohol package store at Northstar's property. Because neither of those measurements resulted in the minimum distance separation requirement being satisfied, the County Zoning Division could not issue approval of either of the corresponding package store applications.

- In July 2021, the County Zoning Division received a request for package sales (3PS Quota) at 6320 Clarcona Ocoee Road (ABA-21-07-0120 - Cheers Wine & Spirits). At that time, the building and site where the proposed alcohol package

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store was to be located were under construction. County staff conducted a distance measurement to verify if the proposed alcohol package store location satisfied the minimum distance separations from preexisting package sale vendors pursuant to Section 38-1414 of the Orange County Code, and from religious institutions, schools, and adult entertainment establishments pursuant to Section 38-1415 of the Orange County Code. The result of this measurement revealed that the minimum distance separation under Section 38-1415 was 843 feet, as measured from the main entrance of the proposed alcohol package store (Cheers Wine and Spirit) to the main entrance door of the religious institution located at 6225 Clarcona Ocoee Road (Fellowship Baptist Church).

Accordingly, the County Zoning Division found that the proposed package store's required minimum distance separation of 1,000 feet from an established religious institution under Section 38-1415 was not met and subsequently denied the request for ABA-21-07-0120. At that time, the Zoning Division advised the applicant in writing that the only way to obtain Zoning Division approval would be to obtain a variance from the minimum distance separation requirement.

- In March 2022, the County Zoning Division received another request for package sales (3PS Quota) at 6320 Clarcona Ocoee Road (ABA-22-03-0040- NorthStar Liquors). At that time, the building and site work where the proposed package store was proposed to be located appeared to be in the final stages of construction. County staff again conducted a distance measurement and found that the required 1,000-foot minimum distance separation from the Fellowship Baptist Church was not met, as staff measured the distance to be 857 feet from the main entrance of the proposed package store at 6320 Clarcona Ocoee Road to the main entrance door of the religious institution located at 6225 Clarcona Ocoee Road. At that time, the Zoning Division again advised the applicant in writing that the only way to obtain Zoning Division approval would be to obtain a variance from the minimum distance separation requirement.

In both of the instances above, County staff measured the minimum required distance using the "shortest route of ordinary pedestrian travel along the public thoroughfare" as outlined in Section 38-1415(c) of the Orange County Code:

- (c) *Distance from such a place of business to a religious institution, school, or adult entertainment establishment shall be measured by following the shortest route of ordinary pedestrian travel along the public thoroughfare from the main entrance of the place of business to the main entrance door of the religious institution, the main entrance door of the school (except as may be otherwise provided by applicable state law), or the main entrance door of the adult entertainment establishment. Notwithstanding the foregoing, the distance from a package sale vendor's location to a school shall be measured by following the shortest route of ordinary pedestrian travel along the public thoroughfare from the main entrance of the place of business to a*

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6320 Clarcona Ocoee Road
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public right-of-way entrance to the property that is used by students, with "property" being defined as the property owned or leased by the school.

Your March 13th letter contends that County staff incorrectly calculated the required minimum distance between Northstar and the Fellowship Baptist Church as 857 feet due to the County's use of the shortest direct route from Clarcona Ocoee Road to the main entrance of the Church. Instead, your letter states that the County should have continued along Clarcona Ocoee Road until reaching the Church's private driveway and thereafter access the main entrance of the Church by way of the private driveway, which reflects an overall distance of approximately 1,286 feet as also illustrated in Exhibit "B" of your March 13th letter.

After reviewing your letter and the supporting information, and after consulting with the County Attorney's Office, my Determination as Zoning Manager, with respect to the minimum required distance between alcohol package stores and religious institutions pursuant to Section 38-1415, is that County staff's calculation of 857 feet is the correctly measured distance between Northstar's proposed alcohol package store at 6320 Clarcona Ocoee Rd and the Fellowship Baptist Church at 6225 Clarcona Ocoee Road.

As detailed above, the minimum distance requirement in Section 38-1415(c) of County Code is measured "by following the *shortest route of ordinary pedestrian travel along the public thoroughfare* from the main entrance of the place of business to the main entrance door of the religious institution." The County interprets "*shortest route of ordinary pedestrian travel along the public thoroughfare*" to mean that the measuring pedestrian, upon leaving the main entrance of the first property, should follow a public thoroughfare all the way to the shortest route from the public thoroughfare to the main entrance of the second property, from which point the pedestrian should directly follow that shortest route.

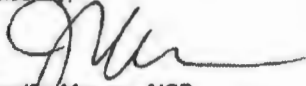
Here, County staff as the measuring pedestrian left the proposed main entrance of the alcohol package store and followed a public thoroughfare, Clarcona Ocoee Road, until reaching the shortest route to the religious institution's entrance, after which time the pedestrian directly followed that shortest route. The County does not consider the religious institution's private, unpaved driveway to be a "public thoroughfare."

Therefore, please be advised that my Zoning Manager Determination for the subject request is that 857 feet is the correctly measured distance between Northstar and the Fellowship Baptist Church using the "*shortest route of ordinary pedestrian travel along the public thoroughfare*" under Section 38-1415(c), County Code.

Should you wish to appeal this Determination, you may do so in accordance with the procedures set forth in Section 30-43(1), County Code. If you have any questions, please feel free to reach out to me at 407.836.5856 or jennifer.moreau@ocfl.net.

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6320 Clarcona Ocoee Road
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Sincerely,

A handwritten signature in black ink, appearing to read 'J Moreau', written over a horizontal line.

Jennifer Moreau, AICP
Manager, Orange County Zoning Division

EXHIBIT "B"



BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **AUG 03, 2023**

Commission District: **#2**

Case #: **ZM-23-07-047**

Case Planner: **Taylor Jones (407) 836-5944**

Taylor.Jones@ocfl.net

GENERAL INFORMATION

APPLICANT(s): A. KURT ARDAMAN FOR NORTHSTAR

OWNER(s): NORTHSTAR POWERS LLC

REQUEST: Appeal of the Zoning Manager's determination on calculation of the minimum distance separation requirement between package stores and religious institutions.

PROPERTY LOCATION: 6320 Clarcona Ocoee Road, Orlando, FL 32810. South side of Clarcona Ocoee Rd., West side of N. Powers Drive, East Side of Aladdin Dr.

PARCEL ID: 36-21-28-0000-00-100

LOT SIZE: 2.64 acres

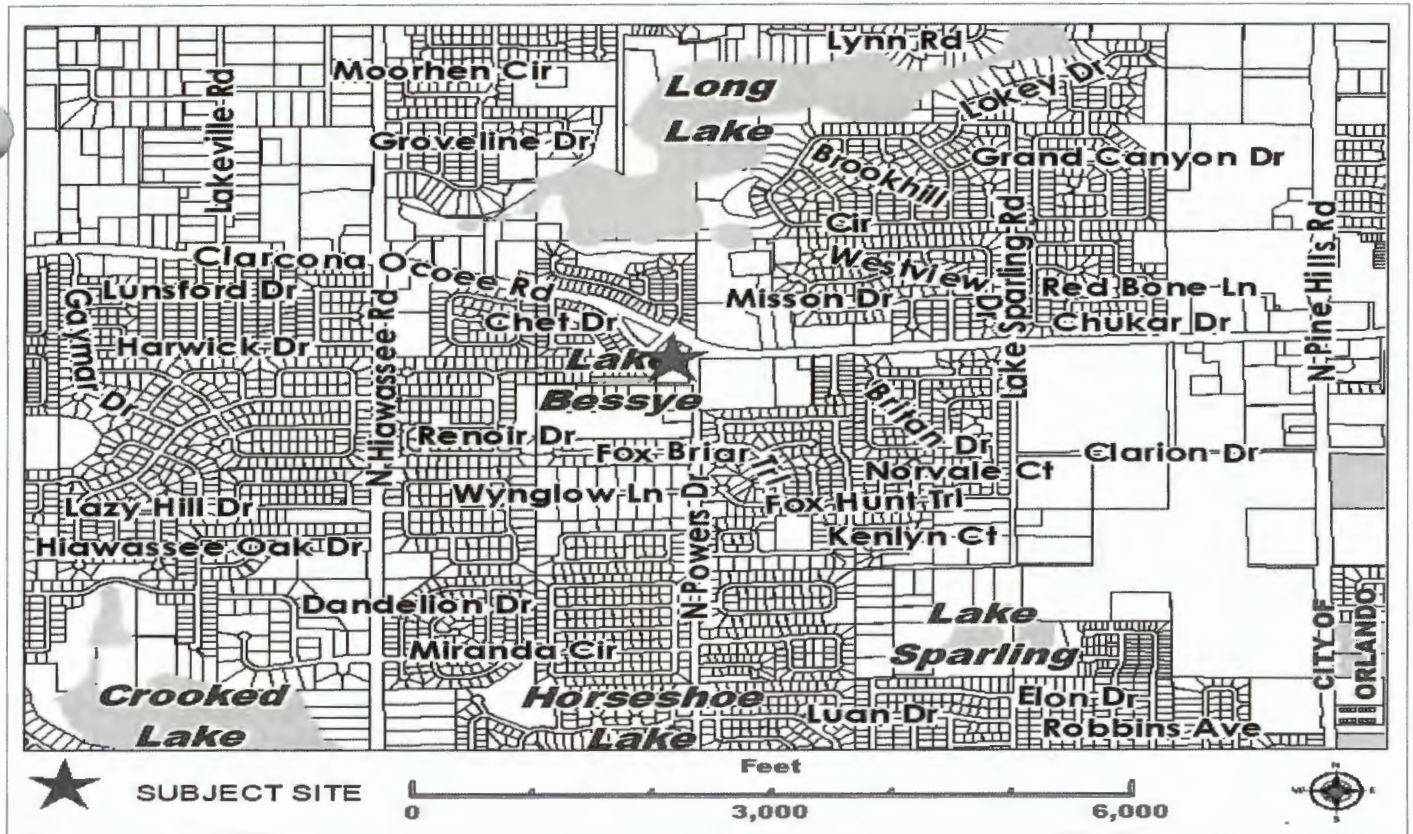
NOTICE AREA: 1 Mile

NUMBER OF NOTICES: 4,905

STAFF RECOMMENDATIONS

Staff recommends that the Board uphold the Zoning Manager Determination in case ZM-23-07-047, that 857 feet is the correctly measured distance between applicant's property and the subject religious institution as measured by the "shortest route of ordinary pedestrian travel along the public thoroughfare" under Section 38-1415(c), County Code

LOCATION MAP



SITE & SURROUNDING DATA

	Property	North	South	East	West
Current Zoning	Restricted C-1 and C-1	R-1 and A-1	A-1	Restricted C-1 and A-1	Restricted C-1 and R-1
Future Land Use	C	LDR	LDR	C and PD-LMDR	C and LDR
Current Use	Commercial	Single Family Residential & Church	Single Family Residential	Commercial and Vacant	Commercial and Single Family

BACKGROUND AND ANALYSIS

DESCRIPTION AND CONTEXT

The subject property is located on the south side of Clarcona Ocoee Road and is zoned Restricted C-1 on the northern portion of the parcel, and C-1 on the southern portion of the parcel. The restrictions are specific to access and buffering and are applicable only on the parcel to the west, which has the same restricted zoning.

The C-1 zoning district allows for a variety of commercial uses and businesses, including restaurants, retail, and offices. The sale of alcoholic beverages, both for on premises consumption (such as bars and restaurants) and premise consumption (liquor stores) is permitted in commercial districts in the county, subject to meeting certain distance separation requirements from established religious institutions, schools, and adult

entertainment establishments. Additionally, liquor stores also have a required minimum distance separation requirement from other liquor stores. The subject parcel has been developed with a multi-tenant retail building and parking.

A request for a distance separation measurement was submitted for a proposed liquor store in the retail building but the distance measurement failed, as it did not satisfy the minimum distance separation requirement from a liquor store to a religious institution. County code requires that liquor stores (also known as package sales vendor) be separated from religious institutions by at least 1,000 feet. Currently the proposed liquor store is 857 feet as measured by the County from the nearest religious institution, which is the Fellowship Baptist Church located at 6225 Clarcona Ocoee Road.

The church property is approximately 13 acres, and consists of a principal sanctuary building, and assorted accessory buildings. The principal sanctuary building is setback from Clarcona-Ocoee Rd. by more than 300 feet. The front door to the principal sanctuary building is located on the north side of the building, and does not face Clarcona-Ocoee Rd. Between the principal sanctuary building and Clarcona-Ocoee Rd., the site consists of a large grass field on the western portion and a large grass dry retention pond on the eastern portion. The property is accessed from Clarcona Ocoee Road only by a narrow, "semi-improved," unstable private driveway that leads to an unimproved, grass parking area located on the west side of the building or the parking area to the east of the building.

This request is to appeal a Zoning Manager's Determination on calculation of the minimum distance requirement between alcohol package stores and religious institutions per Sec. 38-1415(c).

The methodology for how the distance between package sales and other uses is measured is outlined in Sec. 38-1415(c) of the County Code:

Distance from such a place of business to a religious institution, school, or adult entertainment establishment shall be measured by following the shortest route of ordinary pedestrian travel along the public thoroughfare from the main entrance of the place of business to the main entrance door of the religious institution, the main entrance door of the school (except as may be otherwise provided by applicable state law), or the main entrance door of the adult entertainment establishment. Notwithstanding the foregoing, the distance from a package sale vendor's location to a school shall be measured by following the shortest route of ordinary pedestrian travel along the public thoroughfare from the main entrance of the place of business to a public right-of-way entrance to the property that is used by students, with "property" being defined as the property owned or leased by the school.

The Zoning Division conducted two separate distance measurements for the subject property. In both instances, the liquor store satisfied the minimum required distance separation from schools, adult entertainment, and other liquor stores, but did not meet the minimum required distance separation requirement from a religious institution.

The first measurement was conducted in July of 2021. At that time, the site where the proposed liquor store was to be located was under construction. County staff found the liquor store had a distance separation of 843 feet from the church located across the street at 6225 Clarcona Ocoee Road. The approximate path of measurement, from the main entrance of the liquor store to the front entry door of the religious institution along the public thoroughfare, is shown below:

Distance Measurement Path 1 – July 2021



The second measurement was conducted in March of 2022. At that time, the building and site where the proposed liquor store was to be located appeared to be in the final stages of construction. County staff found the liquor store had a distance separation of 857 feet from the church. The approximate path of measurement, from the main entrance of the liquor store to the front entry door of the religious institution along the public thoroughfare, is shown below:

Distance Measurement Path 2 – March 2022



After these measurements had been completed (and distance measurement denied) the applicant requested a Zoning Manager’s Determination on the calculation of the distance separation, as the applicant did not agree with the route used for measurement. The Zoning Division Manager provided a determination of how the County interpreted the code for calculating the minimum distance separation requirement, and the specific methodology for using the path that was measured. The applicant subsequently appealed the determination.

The Zoning Manager’s Determination is that the interpretation of “shortest route of ordinary pedestrian travel along a public thoroughfare”, which is the specific language in Sec. 38-1415(c), means that the measuring pedestrian, upon leaving the main entrance of the first property, should follow a public thoroughfare all the way to the shortest route from the public thoroughfare to the main entrance of the second property, from which point the pedestrian should directly follow that shortest route.

County staff, as the measuring pedestrian, left the main entrance of the liquor store and followed a public thoroughfare, Clarcona Ocoee Road, until reaching the shortest route to the church’s main entrance, from which point the pedestrian directly followed the shortest route to the main entrance door of the religious institution. The measurement of distance separation can effectively be broken into two components, illustrated

below.

The first component being from the liquor store's front door (its main entrance), along the public thoroughfare of Clarcona-Ocoee Rd., to the shortest route to the church's front door (its main entrance). See below (Image 1) where the blue line represents the shortest route of pedestrian travel along the public thoroughfare:

IMAGE 1:



The second component being from the start of the shortest route to the church's front door (its main entrance) which starts at the end of travel along the thoroughfare and ends at the front door. See below (Image 2), where the blue line represents the shortest route to the church front door:

IMAGE 2:



The applicant has appealed this calculation of the measured distance. Instead, the applicant contends the shortest route of pedestrian travel should have been for the measuring pedestrian to go along the sidewalk on Clarcona Ocoee Rd. (abutting church property) until reaching the church's private driveway, and then use the private driveway as the path to reach the main entrance. The applicant doesn't agree with the route taken by

the County, as it crosses over a field. The path proposed by the applicant is included in their application, and this report as exhibit B, and has been included in a side by side with measured path by the County below:

County Measured Path



Applicant Proposed Measured Path



The applicant contends that their proposed path of measurement should be used, based on case law cited by the applicant. The applicant further contends that if their proposed path of measurement was used, the liquor store would meet the required minimum distance separation of 1,000 ft. from a religious institution. Using the path proposed by the applicant, the approximate distance separation is 1,286 ft. between the liquor store and the subject church.

The applicant cites two specific Florida cases as the basis of its appeal and reasons that the church's driveway should be deemed a public thoroughfare. The applicant's appeal first cites the 1963 case of *Albrecht v. Hollywood*. In *Albrecht*, a bar and night club owner challenged the City of Hollywood's distance calculation and interpretation under its applicable distance separation ordinance that required a minimum distance between liquor license vendors of "one thousand feet by nearest pedestrian travel on public right of way." *Id.* at 841, n.1. The applicant's appeal letter notes that the court in *Albrecht* determined that a parking lot was not a public thoroughfare, but also determined that a private thoroughfare should be "construed for the use and benefit of the public as the path of ingress and egress to and from main entrances. . ." From that determination, the court concluded that the private walk within the *Albrecht* case must therefore be "deemed 'public' in nature and within the ambit of the ordinance."

The applicant attempts to draw comparisons between the *Albrecht* case and applicant's current scenario by asserting that the subject church's private driveway should be deemed 'public' for purposes of measuring the route of "ordinary pedestrian travel" and therefore, the measuring pedestrian should travel along the private driveway when conducting the distance separation between the main entrance of applicant's property and the main entrance of the subject church. However, as further explained below, the County does not consider the church's private driveway to constitute a "public thoroughfare" as that language is contained within the County's distance separation requirement under Section 38-1415(c), County Code.

The applicant also cites the 1963 case *State Beverage Department v. Brentwood Assembly of God Church*, similarly interprets the phrase "shortest route of ordinary pedestrian travel" within a minimum distance

separation requirement for alcohol vendors as provided by Florida law. The applicant notes that in *Brentwood*, the First District Court of Appeal (“DCA”) overturned the trial court’s decision to use a “straight line” measurement in its distance measurement calculation. The applicant states that the First DCA instead found that the “hard surfaced private roadway” area between the church and package store should have been used when determining the route a pedestrian would ordinarily travel. Based on those two cases, the applicant asserts that the church’s driveway is public for purposes of measuring the route of ordinary pedestrian travel, and that the measured distance between applicant’s property and the church should have included the driveway.

The County acknowledges that the courts in *Albrecht* and *Brentwood* determined that the “privately owned sidewalk” in *Albrecht* and the “hard-surfaced private roadway” in *Brentwood* were considered as a public thoroughfare for the purpose of measuring a distance separation requirement based upon the particular facts in those cases and the status of the law in 1963. However, the County contends that the circumstances surrounding the locations of the entrances to each of the buildings under consideration in the applicant’s appeal are different from the circumstances surrounding the locations of the entrances to each of the buildings in the *Albrecht* case. Also, in later years, after issuance of the 1963 decisions in *Albrecht* and *Brentwood*, courts have made other determinations and upheld other methodologies in calculating routes to determine the “shortest route of ordinary pedestrian travel”.

For example, in *Jax Liquors, Inc. v. City of Jacksonville*, decided in 1974, several years after the *Albrecht* and *Brentwood* cases, the court emphasized the importance of consideration of the intent of the ordinance and the purpose of the law as to the distance separation requirement. Therefore, instead of upholding a path that required the “ordinary pedestrian” to travel out of his way on paved roadways between two points of measurement, the court in *Jax Liquors* upheld a shorter path of travel for the “ordinary pedestrian” that included grassy strips of land between the two points of measurement. The court stated that “[t]he purpose of the law as to the separation requirement may not be diluted by some walk-a-thon”, i.e., consideration of a longer path of travel between two points of measurement.

Another case that is more recent than *Albrecht* and *Brentwood* and that provides an interpretation of one of Orange County’s minimum distance separation requirement is *ABC Liquors, Inc. v. Skaggs-Albertsons*. The *ABC Liquors* case was decided in 1977 and adopted an alternative, more practical method of calculating minimum distance requirements. The *ABC Liquors* case involved an Orange County minimum distance separation requirement of 5,000 feet between liquor stores. The relevant Orange County Code provision required measurement of the distance “by following the shortest route of ordinary pedestrian travel along the public thoroughfare” from one liquor store’s main entrance to the other.

The Fourth DCA in *ABC Liquors* reversed the trial court’s decision, ultimately siding with the Zoning Director’s determination that the distance between the two liquor stores was less than 5,000 feet. In its decision, the Fourth DCA held that the “shortest route of ordinary pedestrian travel along the public thoroughfare” should mean that the measuring pedestrian, upon leaving the main entrance of the first property, “follows public thoroughfares all the way to the shortest route from the public thoroughfare to the main entrance” from which point the pedestrian should directly follow that shortest route. The Fourth DCA reasoned that this rule – following public thoroughfares all the way to the shortest route from the second main entrance – prevents an illogical interpretation of the distance requirement where the measuring pedestrian has to “go first westerly to east when he can go northerly and easterly to east,” or some other similarly impractical route. The court in *ABC Liquors* also found “no conflict” between its case and the *Brentwood* decision because “in each case the

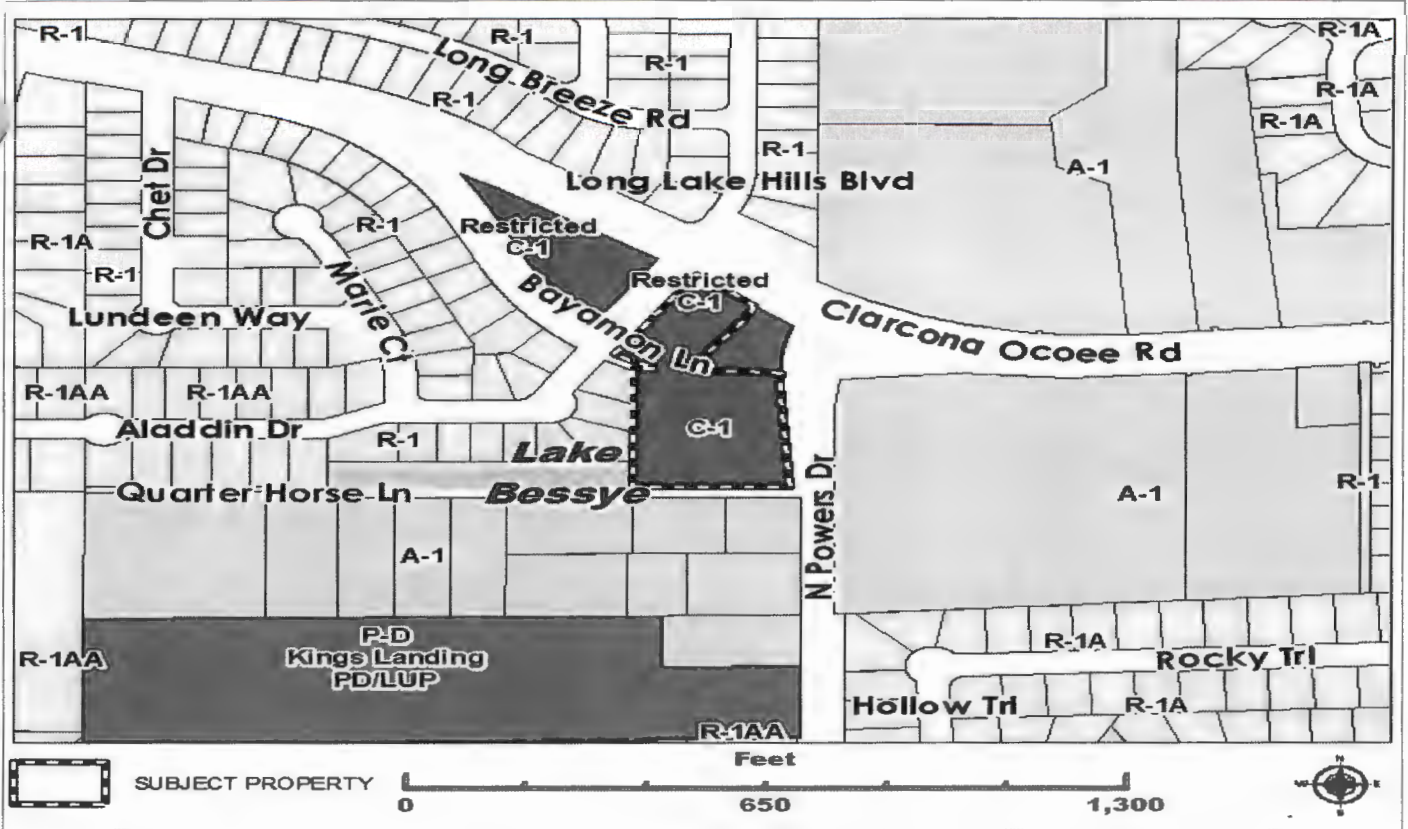
pedestrian follows public thoroughfares all the way to the shortest route from the public thoroughfare to the main entrance,” and found the *Albrecht* decision to be persuasive as well.

Applying the *ABC Liquors* rule to the current scenario, County staff, as the measuring pedestrian, left the proposed main entrance of the alcohol package store and followed a public thoroughfare, Clarcona Ocoee Road, until reaching the shortest route to the church’s entrance, after which time the pedestrian directly followed that shortest route. In accordance with commonly used definitions for “public thoroughfare”, the County does not consider the church’s private driveway to be a “public thoroughfare.” See, e.g., Merriam-Webster Dictionary (defining “thoroughfare” as “a way or place for passage: such as a street open at both ends [or] a main road”); see also *State Beverage Dep’t v. Brentwood Assembly of God Church* (interpreting the term “public thoroughfare” as “a frequented way or course, especially, a road or street by which the public has unobstructed passage”) (citing *Burnham v. Holmes*, 16 A.2d 476, 477.(Me. 1940)). Also, unlike the paved sidewalk and hard surfaced roadway in *Albrecht* and *Brentwood*, respectively, the church’s private driveway is roughly comprised of an unstable surface of gravel and asphalt millings. To conclude, the County’s measurement here is based on a logical, practical interpretation of the required minimum distance as measured by the “shortest route of ordinary pedestrian travel along the public thoroughfare” from one main entrance to the other, instead of being based on an impractical interpretation that effectively dilutes the distance requirement through an elaborate “walk-a-thon.”

Therefore, staff recommends that the Board uphold the Zoning Manager’s Determination in Case Number ZM-23-07-047 that 857 feet is the correctly measured distance between applicant’s property and the subject religious institution as measured by the “shortest route of ordinary pedestrian travel along the public thoroughfare” under Section 38-1415(c), County Code.

C: A. Kurt Ardaman
1947 Lee Rd
Winter Park, FL 32789

ZONING MAP



AERIAL MAP



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ATTORNEYS AND COUNSELORS AT LAW

1947 LEE ROAD
WINTER PARK, FLORIDA 32789-1834

G. BEN FISHBACK (1893-1983)
JULIAN K. DOMINICK (1924-2003)

MARK F. AHLERS
• A. KURT ARDAMAN
JOHN F. BENNETT
• J. GIFFIN CHUMLEY
• RICHARD S. GELLER
PAUL "JJ" JOHNSON, JR.
ERIC B. JONTZ
JEFFRY R. JONTZ
• DANIEL W. LANGLEY
ANDREW W. MAI
BRANDON E. POWNALL
CHARLES R. STEPTER, JR.
MICHAEL D. TEMPKINS

TEL (407) 262-8400
FAX (407) 790-4538
WWW.FISHBACKLAW.COM

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COUNTY AND LOCAL GOVERNMENT LAW

March 13, 2023

Via Electronic Mail and Hand Delivery

Orange County Zoning Division
201 South Rosalind Avenue, 1st Floor
Orlando, FL 32801
zoning@ocfl.net

*Re: Request for Zoning Manager's Determination for property
located at 6320 Clarcona Ocoee Road, Orlando, Florida
Parcel ID No.: 36-21-28-0000-00-100 ("Property")*

Dear Orange County Zoning Manager:

On behalf of Northstar Powers LLC ("Northstar"), this letter serves as Northstar's request for a Zoning Manager Determination concerning the distance between Northstar's planned package store and Fellowship Baptist Church of Pine Hills using the "the shortest route of ordinary pedestrian travel along the public thoroughfare."

Northstar applied to the County to open a package store at 6320 Clarcona Ocoee Road, Orlando, Florida. In the vicinity and on the opposite side of Clarcona Ocoee Road, a religious institution, Fellowship Baptist Church of Pine Hills, is located at 6225 Clarcona Ocoee Rd, Orlando, Florida.

Orange County Code Section 38-1415 states no package sale vendor "shall be established within one thousand (1,000) feet of an established religious institution." The Code requires the distance to be "measured by following the shortest route of ordinary pedestrian travel along the public thoroughfare from the main entrance of the place of business to the main entrance door of the religious institution."

Orange County issued a preliminary email dated February 16, 2023 attached as **Exhibit A**. Orange County's "measuring pedestrian" followed a public thoroughfare, Clarcona Ocoee Road, and then an allegedly direct "shortest route." However, the "measuring pedestrian's" path cut

REQUEST FOR ZONING MANAGER'S DETERMINATION

across a swale/berm, line of young trees, and the religious institution's unimproved open field used for parking, rather than using the improved driveway to the religious institution's main entrance.

In *Albrecht v. Hollywood*, 157 So. 2d 839, 843 (Fla. 2d DCA 1963), the Second District Court of Appeal, citing to the decision in *State Beverage Dep't v. Brentwood Assembly of God Church* (discussed below), determined that a parking lot and alley are not a public thoroughfare. Instead, the court determined that a private thoroughfare should be "construed for the use and benefit of the public as the path of ingress and egress to and from the main entrances...." *Albrecht v. Hollywood*, 157 So. 2d 839, 843 (Fla. 2d DCA 1963). In other words, the "'private' walk must be deemed 'public' in nature and within the ambit of the ordinance." *Id.*

Based on Florida Law, the "measuring pedestrian" did not follow the "shortest route of ordinary pedestrian travel." The County Code does not define "shortest route of ordinary pedestrian travel," but Florida Law does. In the Florida case of *State Beverage Dep't v. Brentwood Assembly of God Church*, 149 So. 2d 871, 873 (Fla. 1st DCA 1963), the First District Court of Appeal overturned the trial court which had used a "straight line" or "as the crow flies" measurement instead of using the "ordinary pedestrian travel" requirement. The court found that the "hard surfaced private roadway" area between the church and package store should have been used when determining the route a pedestrian would ordinarily travel.

The County's "measuring pedestrian" estimated the distance between Northstar and the Church as 857 feet using an "as the crow flies" measurement method by cutting across the swale and berm and unimproved field used for Church parking, and not using the Church's improved driveway. In the County's email attached as **Exhibit A**, the County cites to *ABC Liquors, Inc. v. Skaggs-Albertson's*, 349 So. 2d 657, 660 (Fla. 4th DCA 1977) for the proposition that "the measuring pedestrian should follow public thoroughfares all the way to the shortest route from the public thoroughfare to the main entrance of the second property, from which point the pedestrian should directly follow that shortest route." What the County's measuring pedestrian failed to do is identify the proper point along the Church property at which the law requires the route to be measured to the entrance to the Church building. The "measuring pedestrian" just cut across the swale/berm/field and did not use the improved driveway as the law requires. In fact, the court in *ABC Liquors* cites to the decision in *Albrecht*, which, as discussed, deems a private thoroughfare as a public path. The court also cites to *Brentwood*, both cases that overrule the County's "measuring pedestrian's" route. The proper path for pedestrian travel is the private, improved driveway, and such driveway is deemed public for purposes of measuring the route of ordinary pedestrian travel.


The legally required route of ordinary pedestrian travel mandates the County to include the Church's improved driveway in the measurement. This distance between Northstar and the Church is approximately 1,286 feet. A map of such measurement is enclosed hereto as **Exhibit "B"**. Florida Law requires the County measure the distance using the Church's private driveway, which Florida courts deem a public route of ordinary travel.

Below and enclosed, please find supporting information required per the Orange County Zoning Manager Determination application:

REQUEST FOR ZONING MANAGER'S DETERMINATION

1. A copy of the February 16, 2023 correspondence from Zoning Manager Jennifer Moreau. See attached **Exhibit "A"**.
2. A map of the measurement of a distance of 1,280.60 feet from the main entrance of the proposed package sale vendor to the main entrance of the religious institution. See attached **Exhibit "B"**.
3. A completed application for Zoning Manager's Determination.
4. Site Plan
5. Photographs
6. Orange County Property Appraiser Information

Also, enclosed please find check number 1015 payable to Orange County Zoning Division in the amount of \$638.00, which represents the fee for the Zoning Manager's Determination application, which is being simultaneously hand-delivered to Zoning Division attention along with the original of this letter and its enclosures. Please let us know if any additional information is needed to process the application.

Sincerely,

 A. Kurt Ardaman

AKA/sg
 Enclosures:
 Application – Zoning Manager's Determination
 Agent Authorization
 Agent's Relationship Disclosure Form
 Agent's Specific Project Expenditure Report
 Detailed Site Plan

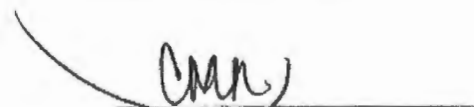
STATE OF FLORIDA
 COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 13 day of March 2023, by A. Kurt Ardaman.



Chanel M. Rambhacus
 NOTARY PUBLIC
 STATE OF FLORIDA
 Comm# GG916581
 Expires 9/25/2023

(NOTARY SEAL)


 Notary Public Signature

Chanel M. Rambhacus
 Notary Public Print Name

Personally Known OR Produced Identification _____
 Type of Identification Produced _____

REQUEST FOR ZONING MANAGER'S DETERMINATION

From: Michelle Lindsay
To: Michelle Lindsay
Subject: FW: Northstar Powers, LLC - Parcel Id No.: 36-21-28-0000-00-100, 6320 Clarcona Ocoee Road (ABA-22-03-0040)
Date: Friday, February 24, 2023 11:48:34 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[State Beverage Dep. t v. Bentwood Assembly of God Church.PDF](#)
[Prop Aerial w Measurements left side of church 1286.6.pdf](#)

From: Moreau, Jennifer C <Jennifer.Moreau@ocfl.net>
Sent: Thursday, February 16, 2023, 4:31 PM
To: Kurt Ardaman <ardaman@fishbacklaw.com>
Cc: Hufnagel, Roger S <Roger.Hufnagel@ocfl.net>; McNeill, Allen S <Allen.McNeill@ocfl.net>; Pritchett, Matthew C <Matthew.Pritchett@ocfl.net>
Subject: FW: Northstar Powers, LLC - Parcel Id No.: 36-21-28-0000-00-100, 6320 Clarcona Ocoee Road (ABA-22-03-0040)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Kurt,

Roger forwarded me your email dated February 7th on behalf of Northstar Powers, LLC, at property 6320 Clarcona Ocoee Road, Orlando, FL 32810.

I have review the information proposed and consulted with the County Attorneys office. With respect to calculation of the minimum distance between alcohol package stores and religious institutions as required by Section 38-1415(c), OC Code, the County maintains that its calculation of 857 feet is the correctly measured distance between Northstar Powers' property and the Fellowship Baptist Church.

As you stated, the minimum distance requirement in Sect. 38-1415, OC Code is measured "by following the *shortest route of ordinary pedestrian travel along the public thoroughfare* from the main entrance of the place of business to the main entrance door of the religious institution." However, the County interprets "*shortest route of ordinary pedestrian travel along the public thoroughfare*" to mean that the measuring pedestrian should follow public thoroughfares all the way to the shortest route from the public thoroughfare to the main entrance of the second property, from which point the pedestrian should directly follow that shortest route. See *ABC Liquors, Inc. v. Skaggs-Albertson's*, 349 So. 2d 657 (Fla. 4th DCA 1977).

Here, the measuring pedestrian followed a public thoroughfare, Clarcona Ocoee Road, until the pedestrian reached the shortest route to the religious institution's entrance, after which time the pedestrian directly followed that shortest route. County does not consider the religious institution's private, unpaved driveway to be a "public thoroughfare." See, e.g., Merriam-Webster



REQUEST FOR ZONING MANAGER'S DETERMINATION

Dictionary (defining "thoroughfare" as "a way or place for passage: such as a street open at both ends [or] a main road").

Therefore, the County maintains that 857 feet is the correctly measured distance between Northstar Powers' property and the Fellowship Baptist Church under Section 38-1415(c), OC Code.

Thanks,
Jennifer Moreau, AICP
Manager, Zoning Division
Planning, Environmental and Development Services Department
201 S. Rosalind Avenue, First Floor
Orlando, Fl 32801
Division - 407-836-3111
Office - 407-836-5856
Fax - 407-836-9611
www.ocfl.net/zoning

From: Hufnagel, Roger S <Roger.Hufnagel@ocfl.net>
Sent: Wednesday, February 8, 2023 7:51 AM
To: Moreau, Jennifer C <Jennifer.Moreau@ocfl.net>; McNeill, Allen S <Allen.McNeill@ocfl.net>
Subject: FW: Northstar Powers, LLC - Parcel Id No.: 36-21-28-0000-00-100, 6320 Clarcona Ocoee Road (ABA-22-03-0040)

Good Morning,

This is in regards to the proposed liquor store 6320 Clarcona Ocoee Rd Permit # ABA-22-03-0040 Parcel 36-21-28-0000-00-100



Roger Hufnagel
Zoning Division
Development Coordinator III
Community, Environmental, and Development Services Department
201 S Rosalind Avenue | Orlando FL | 32801
P: 407-836-5956 | E: Roger.Hufnagel@ocfl.net
www.ocfl.net/zoning.com

From: Kurt Ardaman <ardaman@fishbacklaw.com>
Sent: Tuesday, February 7, 2023 6:06 PM

REQUEST FOR ZONING MANAGER'S DETERMINATION

To: Hufnagel, Roger S <Roger.Hufnagel@ocfl.net>
Cc: Michelle Lindsay <michelle@fishbacklaw.com>
Subject: Northstar Powers, LLC - Parcel Id No.: 36-21-28-0000-00-100, 6320 Clarcona Ocoee Road (ABA-22-03-0040)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Roger:

Pursuant to our telephone call, we represent Northstar Powers, LLC with respect to the distance issue and measurement of "shortest route of ordinary pedestrian travel" between the front door of the church and the package store for the above referenced property and application. When Orange County measured the distance from the subject property to the church property, the measurement was taken by walking across the church's private grassed field which has a berm, swale, planted trees along the berm, and other Improvements. The County failed to traverse the hard surfaced roadway on the church's property which is required by Florida law. Please see the highlighted section of the attached case which requires such on private property.

Attached is a more accurate measurement map reflecting at least 1,286.60 feet from the main entrance of the proposed package store to the main entrance of the church.

Please review and reconsider the County's prior measurement of 857 feet and confirm the correct measurement.

Thank you.

Kurt

A. Kurt Ardaman

Fishback Dominick

A: 1947 Lee Road, Winter Park, FL 32789

P: (407) 262-8400

F: (407) 262-8402

E: ardaman@fishbacklaw.com

W: fishbacklaw.com



Board Certified in City, County and Local Government Law

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ESTABLISHED 1935

ATTORNEYS AND COUNSELORS AT LAW



CONFIDENTIAL : The information in this email (including any attachments) is confidential and may be privileged.

REQUEST FOR ZONING MANAGER'S DETERMINATION



Exhibit
"B"



April 13, 2023

VIA EMAIL

Kurt Ardaman
Fishback Dominick
1947 Lee Road
Winter Park, FL 32789
Via email at: ardaman@fishbacklaw.com

Re: Zoning Manager's Determination (Z23002196) on calculation of the minimum distance requirement between alcohol package stores and religious institutions per Section 38-1415(c), County Code.

Subject Site Address: 6320 Clarcona Ocoee Road
Parcel ID#: 36-21-28-0000-00-100

Dear Mr. Ardaman,

I have reviewed your letter and supporting documentation, dated March 13, 2023, requesting a Zoning Manager's Determination for the calculation of distance between your client Northstar Powers LLC's ("Northstar's") proposed alcohol package store and the Fellowship Missionary Baptist Church of Pine Hills ("Fellowship Baptist Church"), using "the shortest route of ordinary pedestrian travel along the public thoroughfare" pursuant to Section 38-1415(c), County Code. Specifically, your request concerns a proposed alcohol package store on Northstar's property located at 6320 Clarcona Ocoee Road, and the Fellowship Baptist Church located across the street at 6225 Clarcona Ocoee Road.

As described in greater detail below, the County has calculated two (2) distance separation measurements related to applications for a proposed alcohol package store at Northstar's property. Because neither of those measurements resulted in the minimum distance separation requirement being satisfied, the County Zoning Division could not issue approval of either of the corresponding package store applications.

- In July 2021, the County Zoning Division received a request for package sales (3PS Quota) at 6320 Clarcona Ocoee Road (ABA-21-07-0120 - Cheers Wine & Spirits). At that time, the building and site where the proposed alcohol package

ZONING DIVISION

201 South Rosalind Avenue, 1st Floor ■ Reply To: Post Office Box 2687 ■ Orlando, FL 32802-2687
Telephone 407-836-3111 ■ orangecountyfl.net

April 13, 2023
6320 Clarcona Ocoee Road
Page 2

store was to be located were under construction. County staff conducted a distance measurement to verify if the proposed alcohol package store location satisfied the minimum distance separations from preexisting package sale vendors pursuant to Section 38-1414 of the Orange County Code, and from religious institutions, schools, and adult entertainment establishments pursuant to Section 38-1415 of the Orange County Code. The result of this measurement revealed that the minimum distance separation under Section 38-1415 was 843 feet, as measured from the main entrance of the proposed alcohol package store (Cheers Wine and Spirit) to the main entrance door of the religious institution located at 6225 Clarcona Ocoee Road (Fellowship Baptist Church).

Accordingly, the County Zoning Division found that the proposed package store's required minimum distance separation of 1,000 feet from an established religious institution under Section 38-1415 was not met and subsequently denied the request for ABA-21-07-0120. At that time, the Zoning Division advised the applicant in writing that the only way to obtain Zoning Division approval would be to obtain a variance from the minimum distance separation requirement.

- In March 2022, the County Zoning Division received another request for package sales (3PS Quota) at 6320 Clarcona Ocoee Road (ABA-22-03-0040- NorthStar Liquors). At that time, the building and site work where the proposed package store was proposed to be located appeared to be in the final stages of construction. County staff again conducted a distance measurement and found that the required 1,000-foot minimum distance separation from the Fellowship Baptist Church was not met, as staff measured the distance to be 857 feet from the main entrance of the proposed package store at 6320 Clarcona Ocoee Road to the main entrance door of the religious institution located at 6225 Clarcona Ocoee Road. At that time, the Zoning Division again advised the applicant in writing that the only way to obtain Zoning Division approval would be to obtain a variance from the minimum distance separation requirement.

In both of the instances above, County staff measured the minimum required distance using the "shortest route of ordinary pedestrian travel along the public thoroughfare" as outlined in Section 38-1415(c) of the Orange County Code:

- (c) *Distance from such a place of business to a religious institution, school, or adult entertainment establishment shall be measured by following the shortest route of ordinary pedestrian travel along the public thoroughfare from the main entrance of the place of business to the main entrance door of the religious institution, the main entrance door of the school (except as may be otherwise provided by applicable state law), or the main entrance door of the adult entertainment establishment. Notwithstanding the foregoing, the distance from a package sale vendor's location to a school shall be measured by following the shortest route of ordinary pedestrian travel along the public thoroughfare from the main entrance of the place of business to a*

April 13, 2023
6320 Clarcona Ocoee Road
Page 3

public right-of-way entrance to the property that is used by students, with "property" being defined as the property owned or leased by the school.

Your March 13th letter contends that County staff incorrectly calculated the required minimum distance between Northstar and the Fellowship Baptist Church as 857 feet due to the County's use of the shortest direct route from Clarcona Ocoee Road to the main entrance of the Church. Instead, your letter states that the County should have continued along Clarcona Ocoee Road until reaching the Church's private driveway and thereafter access the main entrance of the Church by way of the private driveway, which reflects an overall distance of approximately 1,286 feet as also illustrated in Exhibit "B" of your March 13th letter.

After reviewing your letter and the supporting information, and after consulting with the County Attorney's Office, my Determination as Zoning Manager, with respect to the minimum required distance between alcohol package stores and religious institutions pursuant to Section 38-1415, is that County staff's calculation of 857 feet is the correctly measured distance between Northstar's proposed alcohol package store at 6320 Clarcona Ocoee Rd and the Fellowship Baptist Church at 6225 Clarcona Ocoee Road.

As detailed above, the minimum distance requirement in Section 38-1415(c) of County Code is measured "by following the *shortest route of ordinary pedestrian travel along the public thoroughfare* from the main entrance of the place of business to the main entrance door of the religious institution." The County interprets "*shortest route of ordinary pedestrian travel along the public thoroughfare*" to mean that the measuring pedestrian, upon leaving the main entrance of the first property, should follow a public thoroughfare all the way to the shortest route from the public thoroughfare to the main entrance of the second property, from which point the pedestrian should directly follow that shortest route.

Here, County staff as the measuring pedestrian left the proposed main entrance of the alcohol package store and followed a public thoroughfare, Clarcona Ocoee Road, until reaching the shortest route to the religious institution's entrance, after which time the pedestrian directly followed that shortest route. The County does not consider the religious institution's private, unpaved driveway to be a "public thoroughfare."

Therefore, please be advised that my Zoning Manager Determination for the subject request is that 857 feet is the correctly measured distance between Northstar and the Fellowship Baptist Church using the "shortest route of ordinary pedestrian travel along the public thoroughfare" under Section 38-1415(c), County Code.

Should you wish to appeal this Determination, you may do so in accordance with the procedures set forth in Section 30-43(1), County Code. If you have any questions, please feel free to reach out to me at 407.836.5856 or jennifer.moreau@ocfl.net.

April 13, 2023
6320 Clarcona Ocoee Road
Page 4

Sincerely,

A handwritten signature in black ink, appearing to read 'J Moreau', written over a faint circular stamp.

Jennifer Moreau, AICP
Manager, Orange County Zoning Division

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ATTORNEYS AND COUNSELORS AT LAW
1947 LEE ROAD
WINTER PARK, FLORIDA 32789-1834

G. BEN FISHBACK (1893-1983)
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CHARLES R. STEPTER, JR.
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• FLORIDA BAR BOARD CERTIFIED IN CITY
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May 4, 2023

Via Electronic Mail and Hand Delivery

Ted Kozak
Orange County Zoning
201 South Rosalind Avenue, 1st Floor
Orlando, FL 32801



Re: Board of Zoning Adjustment Appeal of Zoning Manager's Determination for property located at 6320 Clarcona Ocoee Road, Orlando, Florida Parcel ID No.: 36-21-28-0000-00-100 ("Property")

Dear Mr. Kozak:

On behalf of Northstar Powers LLC ("Northstar"), this letter, along with the enclosed Application for the Board of Zoning Adjustment (BZA) Appeal serves as Northstar's appeal to the Orange County Board of Zoning Adjustment of the Orange County Zoning Manager's April 13, 2023 determination, a copy of which is enclosed as **Exhibit "A"**. The determination concerned the distance between Northstar's planned package store and Fellowship Baptist Church of Pine Hills using the "the shortest route of ordinary pedestrian travel along the public thoroughfare."

Northstar applied to the County to open a package store at 6320 Clarcona Ocoee Road, Orlando, Florida. In the vicinity and on the opposite side of Clarcona Ocoee Road, a religious institution, Fellowship Baptist Church of Pine Hills, is located at 6225 Clarcona Ocoee Rd, Orlando, Florida.

Orange County Code Section 38-1415 states no package sale vendor "shall be established within one thousand (1,000) feet of an established religious institution." The Code requires the distance to be "measured by following the shortest route of ordinary pedestrian travel along the public thoroughfare from the main entrance of the place of business to the main entrance door of the religious institution."

FISHBACK DOMINICK LLP

Orange County issued Zoning Manager Determination dated April 13, 2023 attached as **Exhibit A**. Orange County's "measuring pedestrian" followed a public thoroughfare, Clarcona Ocoee Road, and then an allegedly direct "shortest route." However, the "measuring pedestrian's" path cut across a swale/berm, line of young trees, and the religious institution's unimproved open field used for parking, rather than using the improved driveway to the religious institution's main entrance. According to the Zoning Manager, "The County does not consider the religious institution's private, unpaved driveway to be a "public thoroughfare." However, a line of Florida cases makes it clear that the County must deem the improved driveway a public thoroughfare for measuring purposes.

In *Albrecht v. Hollywood*, 157 So. 2d 839, 843 (Fla. 2d DCA 1963), the Second District Court of Appeal, citing to the decision in *State Beverage Dep't v. Brentwood Assembly of God Church* (discussed below), determined that a parking lot was not a public thoroughfare. Instead, the court determined that a private thoroughfare should be "construed for the use and benefit of the public as the path of ingress and egress to and from the main entrances...." *Albrecht v. Hollywood*, 157 So. 2d 839, 843 (Fla. 2d DCA 1963). In other words, the "'private' walk must be deemed 'public' in nature and within the ambit of the ordinance." *Id.*

The County Code does not define "shortest route of ordinary pedestrian travel," but Florida Law does. In the Florida case of *State Beverage Dep't v. Brentwood Assembly of God Church*, 149 So. 2d 871, 873 (Fla. 1st DCA 1963), the First District Court of Appeal overturned the trial court which had used a "straight line" or "as the crow flies" measurement instead of using the "ordinary pedestrian travel" requirement. The court found that the "hard surfaced private roadway" area between the church and package store should have been used when determining the route a pedestrian would ordinarily travel.

The County's "measuring pedestrian" estimated the distance between Northstar and the Church as 857 feet using an "as the crow flies" measurement method by cutting across the swale and berm and unimproved field used for Church parking, and not using the Church's improved driveway. What the County's measuring pedestrian failed to do is identify the proper point along the Church property at which the law requires the route to be measured to the entrance to the Church building. The "measuring pedestrian" simply cut across the swale/berm/field and did not use the improved driveway, as the law requires. The rule of law as stated in both *Albrecht* and *Brentwood* contradict the County's "measuring pedestrian's" route. The proper path for pedestrian travel is the private, improved driveway, and such driveway is deemed public for purposes of measuring the route of ordinary pedestrian travel.

The legally required route of ordinary pedestrian travel mandates the County to include the Church's improved driveway in the measurement. This distance between Northstar and the Church is approximately 1,286 feet. A map of such measurement is enclosed hereto as **Exhibit "B"**. Florida Law requires the County measure the distance using the Church's private driveway, which Florida courts deem a public route of ordinary travel.

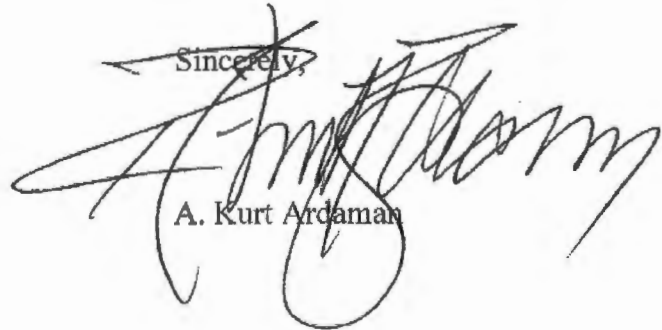
Below and enclosed, please find supporting information required per the Orange County Zoning Manager Determination application:

1. A copy of the April 13, 2023 zoning determination from Zoning Manager Jennifer Moreau. See attached **Exhibit "A"**.
2. A map of the measurement of a distance of 1,280.60 feet from the main entrance of the proposed package sale vendor to the main entrance of the religious institution. See attached **Exhibit "B"**.
3. A completed application for Appeal of Zoning Manager's Determination.

Also, enclosed please find check number 1019 payable to Orange County Zoning Division in the amount of \$638.00, which represents the fee for Appeal of Zoning Manager's Determination, which is being simultaneously hand-delivered to Ted Kozak's attention along with the original of this letter and its enclosures.

We are requesting our appeal to be placed at the August 2023 BZA meeting agenda. Please let us know if any additional information is needed to process the appeal.

Sincerely,



A. Kurt Ardaman

AKA/ml

Enclosures:

Application – Board of Zoning Adjustment (BZA) Appeal of Zoning Manager's Determination
Agent Authorization
Agent's Relationship Disclosure Form
Agent's Specific Project Expenditure Report
Detailed Site Plan

APPEAL OF ZONING MANAGER'S DETERMINATION



Exhibit "B"

SITE PHOTOS



Front Door of proposed Liquor Store



View of Church, facing North, when crossing Clarcona-Ocoee Rd.

SITE PHOTOS



View of Church from private driveway, looking North.



View from Church property, looking south at Clarcona-Ocoee Rd. Showing 2 aprox. Routes



Front Door

07/19/2023

Pedestrian Path along West side of Church, leading toward front door. Facing north



Front Door of Church, view facing south