



Interoffice Memorandum

DATE: September 23, 2025

TO: Jennifer Lara-Klimetz, Assistant Manager,
Clerk of the Board of County Commissioners,
County Comptroller's Office

THROUGH: Agenda Development

FROM: Brandy Driggers 
Assistant Manager, Zoning Division

CONTACT PERSON: Laekin O'Hara
Chief Planner, Zoning Division
(407) 836-5943 or Laekin.O'Hara@ocfl.net

SUBJECT: Request for Public Hearing to consider an Appeal
of the September 5, 2025 Board of Zoning
Adjustment Recommendation for a Variance, VA-
25-09-043 David M. Smith, located at 12201 S.
Orange Blossom Trl., Orlando, FL 32837, Parcel ID
22-24-29-8226-03-000, District 4

APPLICANT: DAVID M. SMITH

APPELLANT: DANIEL W. LANDLEY AND A. KURT ARDAMAN
FOR ABC LIQUORS, INC.

CASE INFORMATION: VA-25-09-043 – September 05, 2025

TYPE OF HEARING: Board of Zoning Adjustment Appeal

**HEARING REQUIRED BY
FL STATUTE OR CODE:** Chapter 30, Orange County Code

**ADVERTISING
REQUIREMENTS:** Publish once in a newspaper of general circulation
in Orange County at least (15) fifteen days prior to
public hearing.

**ADVERTISING
TIMEFRAMES:** At least fifteen (15) days prior to the BCC public
hearing date, publish an advertisement in the legal
notice section of The Orlando Sentinel describing
the particular request, the general location of the
subject property, and the date, time, and place
when the BCC public hearing will be held;

ADVERTISING	Variance in the PD zoning district to allow a 3PS package sale vendor located 4,726 ft. from a package sale vendor in lieu of 5,000 ft.
NOTIFICATION REQUIREMENTS:	At least 10 days before the BCC hearing date, send notices of the public hearing by U.S. mail to owners of property within 1 mile of the property.
ESTIMATED TIME REQUIRED:	Two (2) minutes
MUNICIPALITY OR OTHER PUBLIC AGENCY TO BE NOTIFIED:	N/A
HEARING CONTROVERSIAL:	No
DISTRICT #:	4

The following materials will be submitted as backup for this public hearing request:

1. Names and known addresses of property owners within 1 mile of the property then expanded to include the entire subdivision (via email from Fiscal and Operational Support Division); and
2. Location map (to be mailed to property owners).

SPECIAL INSTRUCTIONS TO CLERK:

1. Notify abutters of the public hearing at least two (2) weeks prior to the hearing and copy staff.
2. Please schedule the public hearing on November 18, 2025.

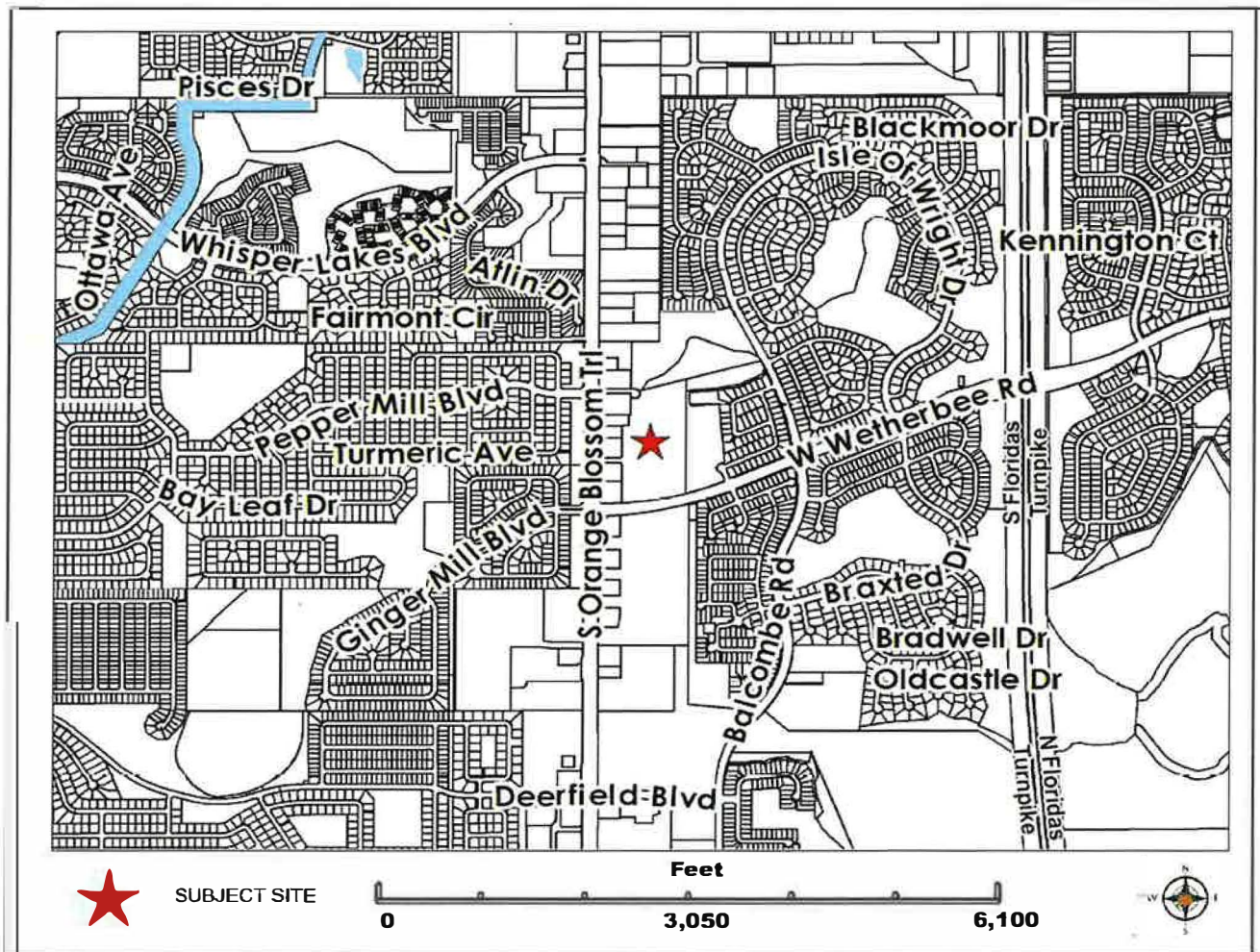
Attachment: Location Map and Appeal Application

cc via email: Jennifer Moreau, AICP, Manager, Zoning Division
Brandy Driggers, Assistant Manager, Zoning Division
Laekin O'Hara, Chief Planner, Zoning Division

Request for Public Hearing – David M. Smith – VA-25-09-043
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If you have any questions
regarding this map,
Please call Laekin
O'Hara at 407-836-5943.

Location Map



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Request for Public Hearing – David M. Smith – VA-25-09-043

Variance



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: Daniel W. Langley and A. Kurt Ardaman for ABC Liquors, Inc.

Address: Fishback Dominick LLP, 1947 Lee Road, Winter Park, Florida

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

BZA Case # and Applicant: VA-25-09-043 David M. Smith representing Southchase Shopping Center LLC

Date of BZA Hearing: 09/05/2025

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

Please see the attached correspondence. Variance is an illegal use variance. Applicant does not meet the criteria for a variance. There was no competent, substantial evidence to support the granting of a variance.

Signature of Appellant: 

Date: 9-16-2025

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 16 day of September, 2025, by A Kurt Ardaman who is personally known to me or who has produced identification and who did/did not take an oath.


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.

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Request for Public Hearing – David M. Smith – VA-25-09-043

Variance



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

Board of Zoning Adjustment (BZA) Appeal Application

Appeal Submittal Process

1. Within 15 calendar days of the decision by the Board of Adjustment, the appellant shall submit the Board of Zoning Adjustment (BZA) Appeal Application to the Zoning Division in person. The application will be processed and payment of \$691.00 shall be due upon submittal. All justification for the appeal shall be submitted with the Appeal Application.
2. Zoning Division staff will request a public hearing for the subject BZA application with the Board of County Commissioners (BCC). The BCC hearing will be scheduled within forty-five (45) days after the filing of the appeal application, or as soon thereafter as the Board's calendar reasonably permits. Once the date of the appeal hearing has been set, County staff will notify the applicant and appellant.
3. The BCC Clerk's Office will provide a mailed public hearing notice of the hearing to property owners at a minimum of 500 feet from the subject property. Area Home Owner Associations (HOA) and neighborhood groups may also be notified. This notice will provide a map of the subject property, as well as a copy of the submitted appeal application.
4. Approximately one week prior to the public hearing, the memo and staff report of the request and appeal will be available for review by the applicant, appellant, and the public.
5. The decision of the BCC is final, unless further appealed to the Circuit Court. That process is detailed in [Section 30-46](#) of the Orange County Code.

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Variance

FISHBACK DOMINICK

ATTORNEYS AT LAW

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PAUL "JJ" JOHNSON, JR.
ERIC B. JONTZ
JEFFRY R. JONTZ
* DANIEL W. LANGLEY
BRANDON E. POWNALL
MICHAEL D. TEMPKINS

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

September 16, 2025

(HAND DELIVERY AND VIA EMAIL: ClerkofBCC@occcompt.com)

Orange County Board of County Commissioners
Attn: Clerk of the Board
201 S Rosalind Ave.
Orlando, FL 32801

**RE: Appeal of Board of Zoning Adjustment Variance Approval (VA-25-09-043)
on September 5, 2025
12201 S. Orange Blossom Trl., Orlando, FL 32837**

Dear Mayor and Commissioners:

Our law firm represents ABC Liquors, Inc., a Florida profit corporation ("ABC"), which has its headquarters located in Orange County, Florida. This correspondence constitutes ABC's appeal of the September 5, 2025 variance (VA-25-09-043) recommended by the Orange County Board of Zoning Adjustment ("BZA") to David M. Smith representing Southchase Shopping Center LLC to allow a 3PS package sale vendor (Publix) at 12201 S. Orange Blossom Trl., Orlando, FL 32837 located 4,726 ft. from an existing package sale vendor in lieu of 5,000 ft. distance required by Section 38-1414, Orange County Code ("OCC"). This appeal is filed pursuant to Section 30-45, OCC.

In reliance on Section 38-1414, the OCC and the County's consistent enforcement of such code provision, ABC has expended millions of dollars acquiring and constructing package stores

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Request for Public Hearing – David M. Smith – VA-25-09-043

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in strict compliance with Section 38-1414, OCC, and foregoing business opportunities for package store locations not in compliance with Section 38-1414, OCC. ABC is adversely affected and is aggrieved by the BZA's erroneous and improper decision to grant an illegal zoning use variance in case VA-25-09-043.

ABC did not receive notice of the BZA hearing on September 5, 2025. ABC learned of the variance decision after the fact. The OCC only provides for property owners within 300 feet of the subject property to receive mailed notices of BZA hearings. Such level of notice is inadequate to ensure due process of parties affected by variances to the 5,000 foot package store separation requirement from other package stores under Section 38-1414, OCC.

Since the County's adoption of the 5,000-foot separation requirement between package store vendors more than 50 years ago, the County has routinely denied variance applications to the distance separation requirements of Section 38-1414, OCC. The County has routinely prevented ABC and other package sale vendors from opening new package sale vendor locations that would be in violation of Section 38-1414, OCC. Recommending or granting a variance in this situation is arbitrary and capricious and constitutes unequal treatment under the law to similarly situated businesses.

The 5,000 foot-separation requirement between package stores is a zoning use requirement. If the 5,000 foot-separation requirement of Section 38-1414, OCC is not met, the package store use is prohibited. The 5,000 foot-separation requirement is not a performance standard like a building or landscaping setback. The County lacks the authority to approve a variance upon a request of an applicant to allow a use that is prohibited by the County's zoning code and land development regulations. Such is commonly known in case law and local government circles as an illegal use variance. *Josephson v. Autrey*, 96 So. 2d 784, 787 (Fla. 1957) ("holding that a zoning board of appeals does not have the power to grant a use variance to effectuate a *pro tanto* amendment of the basic zoning ordinance by authorizing a nonconforming use in a zoning district where such use is unauthorized."); *Clarke v. Morgan*, 327 So. 2d 769, 772 (Fla. 1975) ("holding that the appeals board exceeded its authority in granting a use variance in that its action was tantamount to amending the zoning ordinance."). The prohibition on use variances is also set forth in Section 30-43(3), OCC, which provides that, "[u]nder no circumstances except as permitted above shall the board of zoning adjustment recommend granting a variance to permit a use not generally or by special exception permitted in the zoning district involved, or any use expressly or by implication prohibited by the terms of the zoning regulations in the zoning district."

Moreover, as the Orange County planning staff noted in its written and oral report to the BZA, the applicant did not meet the variance criteria under Section 30-43(3), OCC. The Orange County planning staff recommended to deny the variance. There was no competent, substantial evidence in the record supporting the BZA's decision to recommend the variance. The BZA members' stated reasoning for recommending the variance was not even based on the variance criteria. The discussion of the BZA members was focused more on a timing issue with the availability of leasable space next to the existing Publix which is irrelevant to the variance criteria. The BZA simply ignored the variance criteria and planning staff report and recommendation by granting the variance.

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Alcohol beverage sales is a highly regulated business, and the County's continued enforcement of the County's 5,000 foot package store separation regulation has been considered and upheld by the Florida Supreme Court.

For the foregoing reasons, ABC appeals the BZA recommendation and requests the BCC conduct a *de novo* hearing on the variance request (VA-25-09-043), overturn the BZA's recommendation, and deny the variance.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel W. Langley", is written over the typed name. The signature is stylized with a large, sweeping initial "D".

Daniel W. Langley
A. Kurt Ardaman

cc: Orange County Zoning Division via email BZA@ocfl.net
Charles E. Bailes, III, CEO of ABC Liquors, Inc.