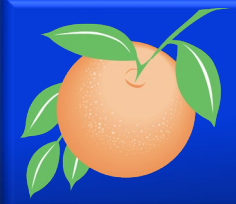


Orange County Zoning Division

ZM-23-07-047

**APPLICANT/ APPELLANT: KURT ARDAMAN
FOR NORTHSTAR**

October 24, 2023



Background

APPLICANT: KURT ARDAMAN

CASE: ZM-23-07-047

ZONING: Restricted Commercial (Restricted C-1) District

FUTURE LAND USE: C (Commercial)

ADDRESS: 6320 Clarcona Ocoee Road, Orlando, FL 32810

LOCATION: Southwest side of Clarcona Ocoee Rd. and N. Powers Drive, east Side of Aladdin Dr.

TRACT SIZE: 2.64 acres

DISTRICT: 2



Background

REQUEST:

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

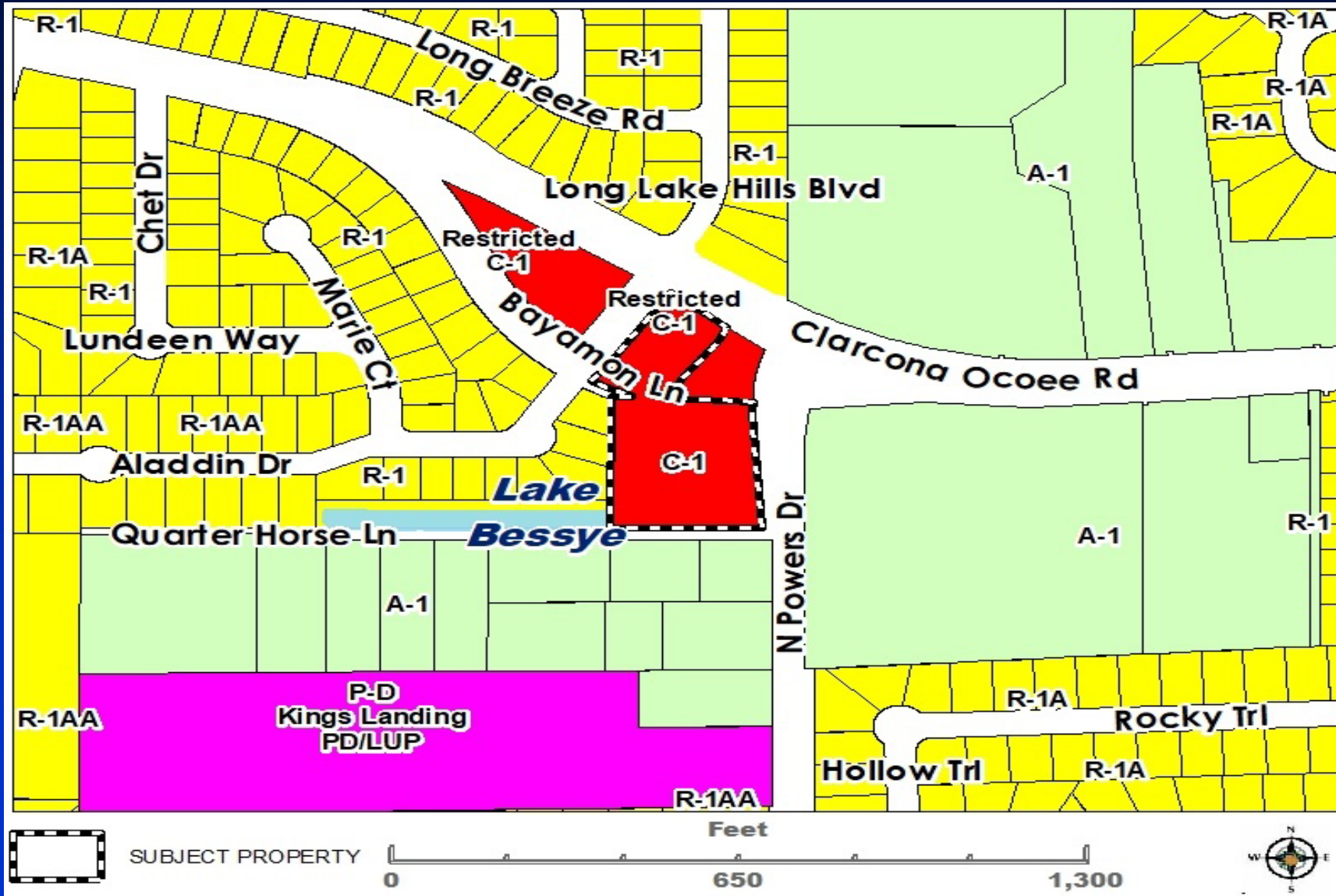


Location Map



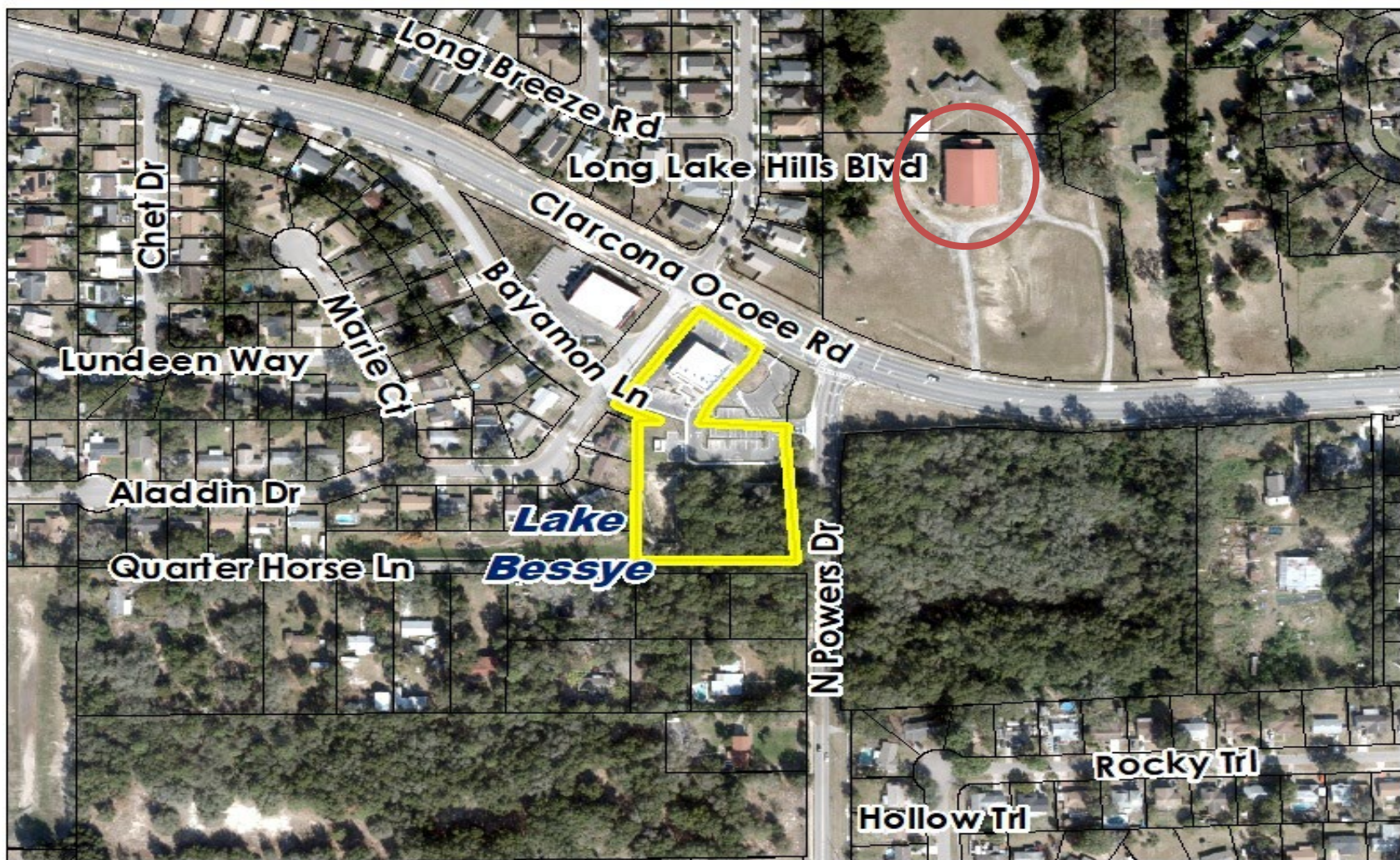


Zoning Map





Aerial Map



SUBJECT PROPERTY

Feet





Distance Separation Requirements

- Code requires liquor stores to be separated from other uses as follows:

USE	DISTANCE SEPERATION REQUIRED
Other Liquor Stores	5,000 ft.* <small>(*within unincorporated area of the county. Other liquor stores within municipalities has distance requirement of 750 ft)</small>
Schools	1,000 ft.
Religious Institutions	1,000 ft.



Applicable Code Section

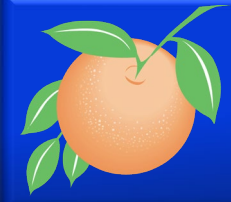
Sec. 38-1415(c):

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.



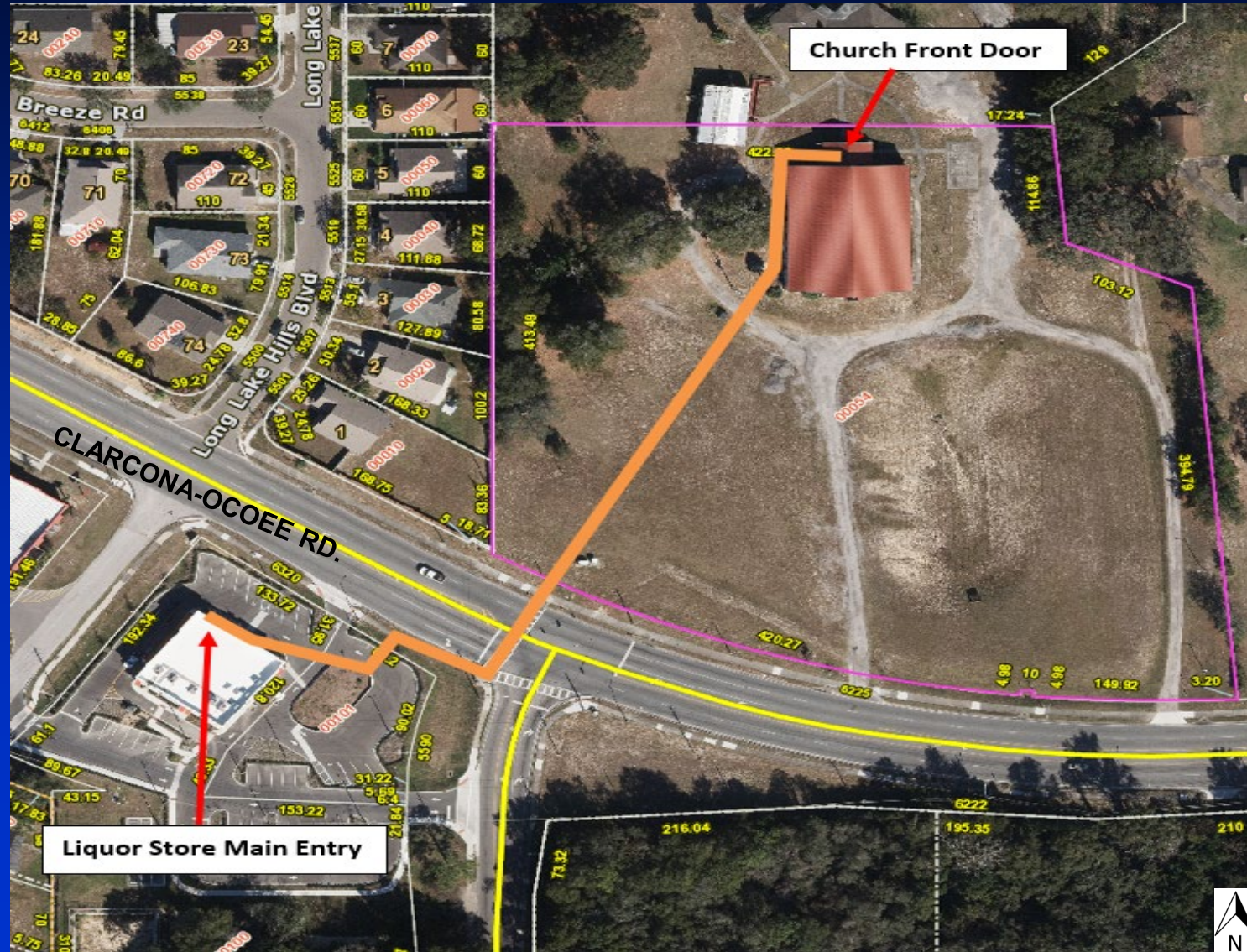
History

- **1991:** Subject Parcel re-zoned to Restricted C-1
- **2021:** Site developed with a retail building with several tenant spaces
- **July 2021:** First Distance measurement conducted and failed – 843 ft.
(site under construction)
- **March 2022:** Second Distance measurement conducted and failed – 857 ft.
(construction)
- **March 2023:** Request for a Zoning Manager Determination regarding the distance traveled
- **April 2023:** Zoning Manager's Determination issued
- **May 2023:** Zoning Manager's Appeal Filed



Aerial Map

County's Measured Path - 857 ft. Separation





Side by Side comparison





Summary

▪ Applicants Contention:

Case law establishes private driveways as public thoroughfares, and therefore the church's private driveway should be used in the pedestrian path to measure the distance separation. If utilizing that path, the liquor store location would satisfy the 1,000 ft. distance separation requirement.

▪ County's Contention:

The church's private driveway is not a public thoroughfare. Based on more recent case law, the County contends that its interpretation of the code and its measured path are correct. Travel should occur along the public thoroughfare until reaching the shortest distance to main entrance of church, then should directly follow that shortest route. Based on that interpretation, the liquor store location does not satisfy the 1,000 ft. distance separation requirement.



County's Case Law

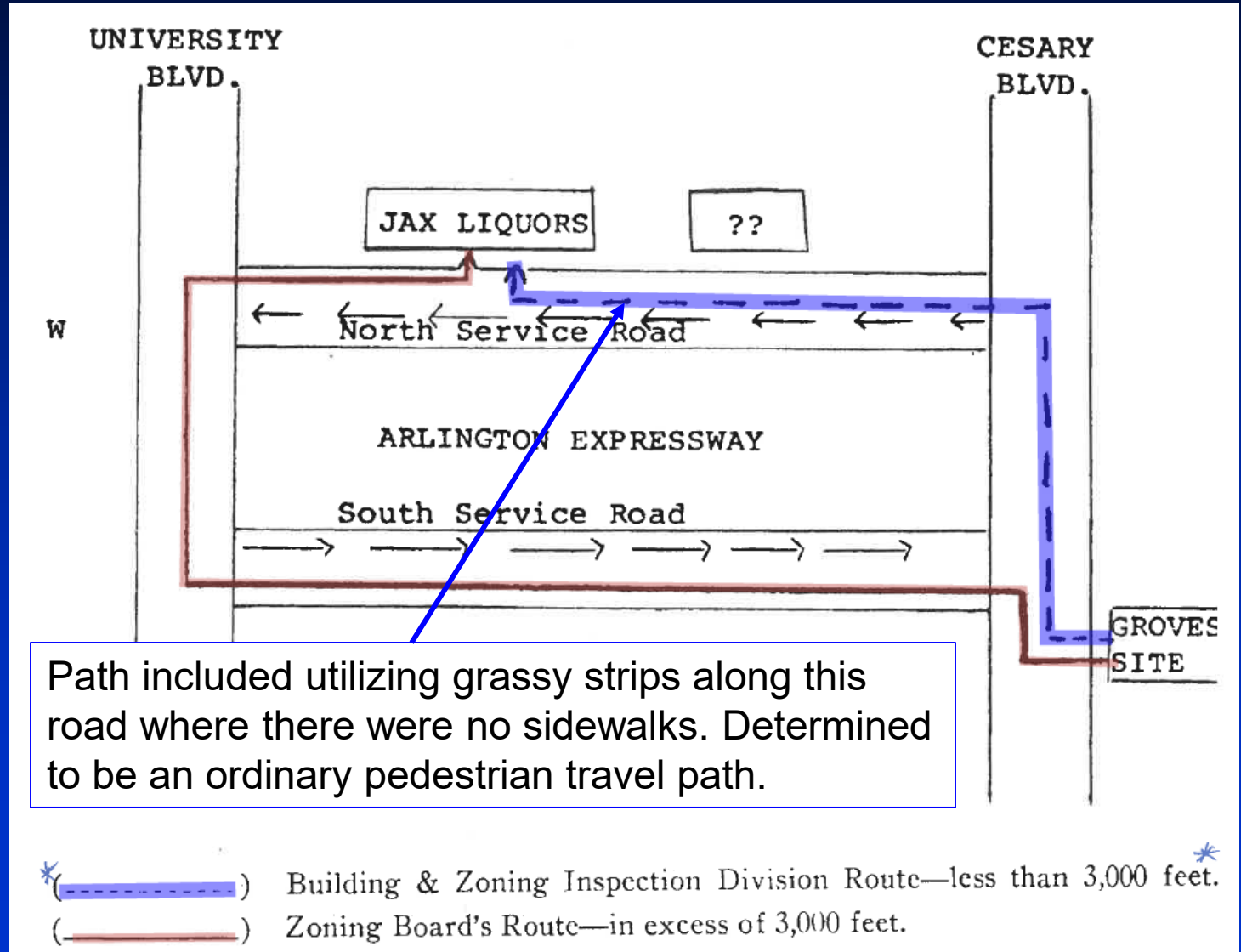
Jax Liquors Inc. v. City of Jacksonville - 1974

- Case that emphasizes importance of the intent of the distance separation ordinance
- Court determined that a path which required a pedestrian to travel a longer route – so they would be walking against traffic according to the recognized rules of the road - would not be classified as “ordinary pedestrian travel”
- Instead, the Court approved a shorter path via a service road, which included using the grassy strips of land along the service road
- Court found it would not be practicable to require a pedestrian to walk a mile or two out of his way to reach a destination 10 or 100 feet from his point of departure
- Noted that the *“purpose of the law as to separation requirement may not be diluted by some walk-a-thon”*



County's Case Law

Jax Liquors Inc. v. City of Jacksonville - 1974





County's Case Law

ABC Liquors v Skaggs-Albertsons - 1977

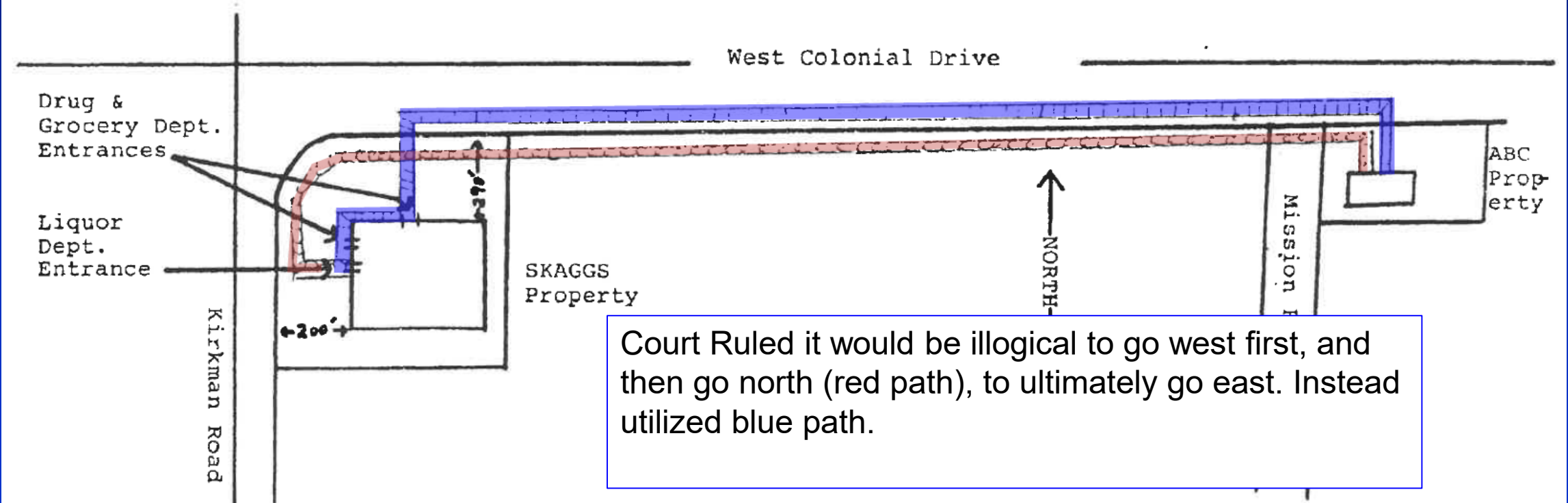
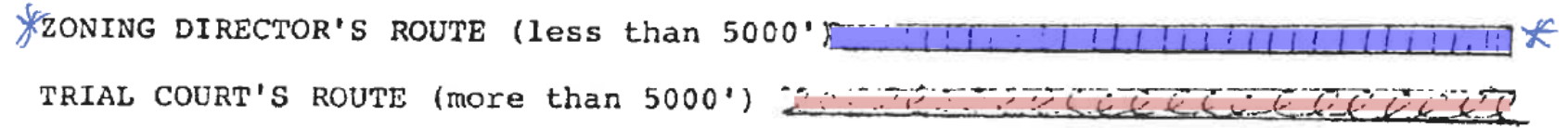
- Case regarding how to measure the 5,000 ft. distance separation in Orange County, where “distances. . . shall be measured by following the shortest route of ordinary pedestrian travel along the public thoroughfare”
- Higher court upheld that a more logical approach is more appropriate and agreed with Zoning Director's determination on measured route
- Determined that the shortest route of ordinary pedestrian 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
- Notes that *“to require the pedestrian to go first westerly to get east when he can go northerly and easterly to east is making him walk too far”*



County's Case Law

ABC Liquors v Skaggs-Albertsons - 1977

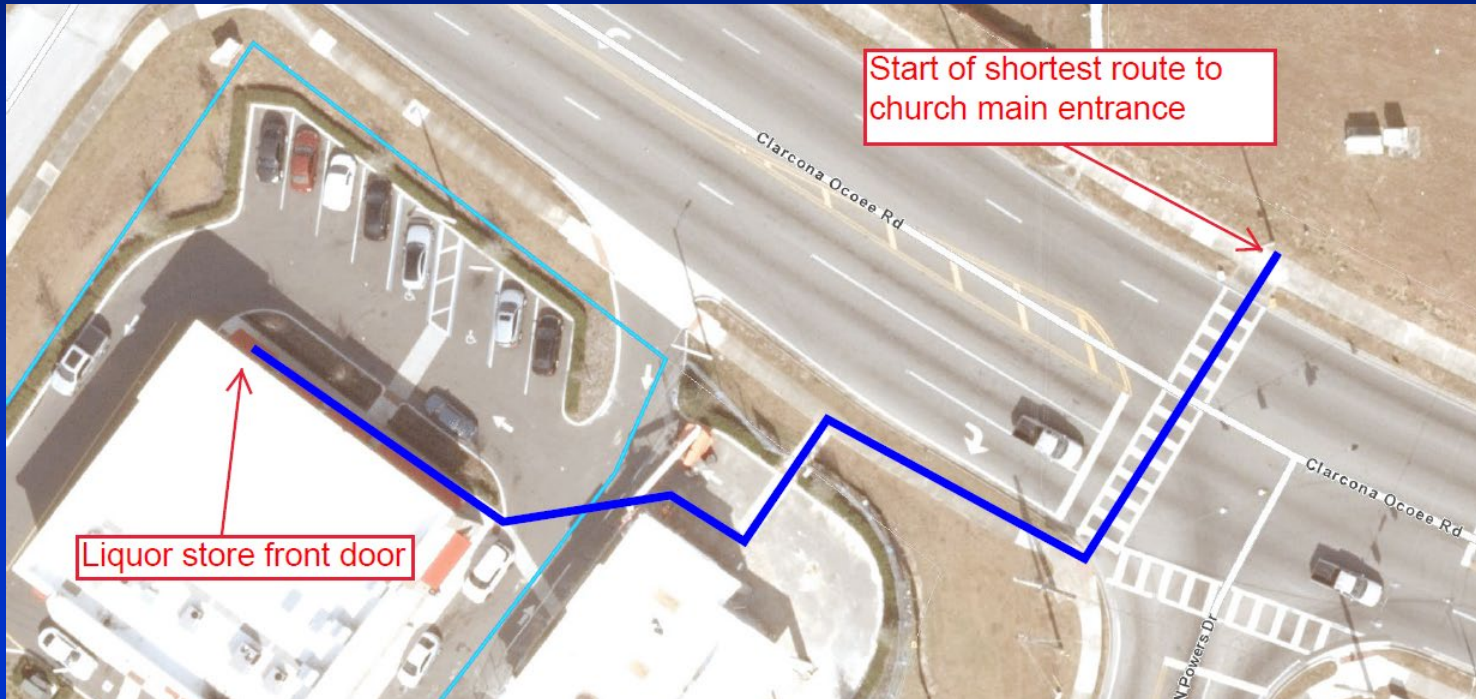
RELATIONSHIP OF MEASUREMENTS BY ZONING DIRECTOR AND TRIAL COURT





Summary of County's Contentions

- The County applied the rule from the ABC liquor case to this case, as basis for the measured path. The aerial photos below show the shortest route along public thoroughfares from one main entrance to the other.

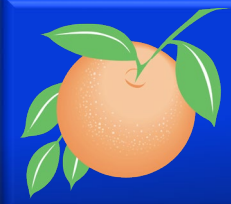




Summary of County's Contentions

- Would be illogical and impractical to utilize applicants proposed path





Site Photograph

Front Door of proposed Liquor Store





Site Photograph

View of church facing north across Clarcona-Ocoee Rd.





Site Photograph

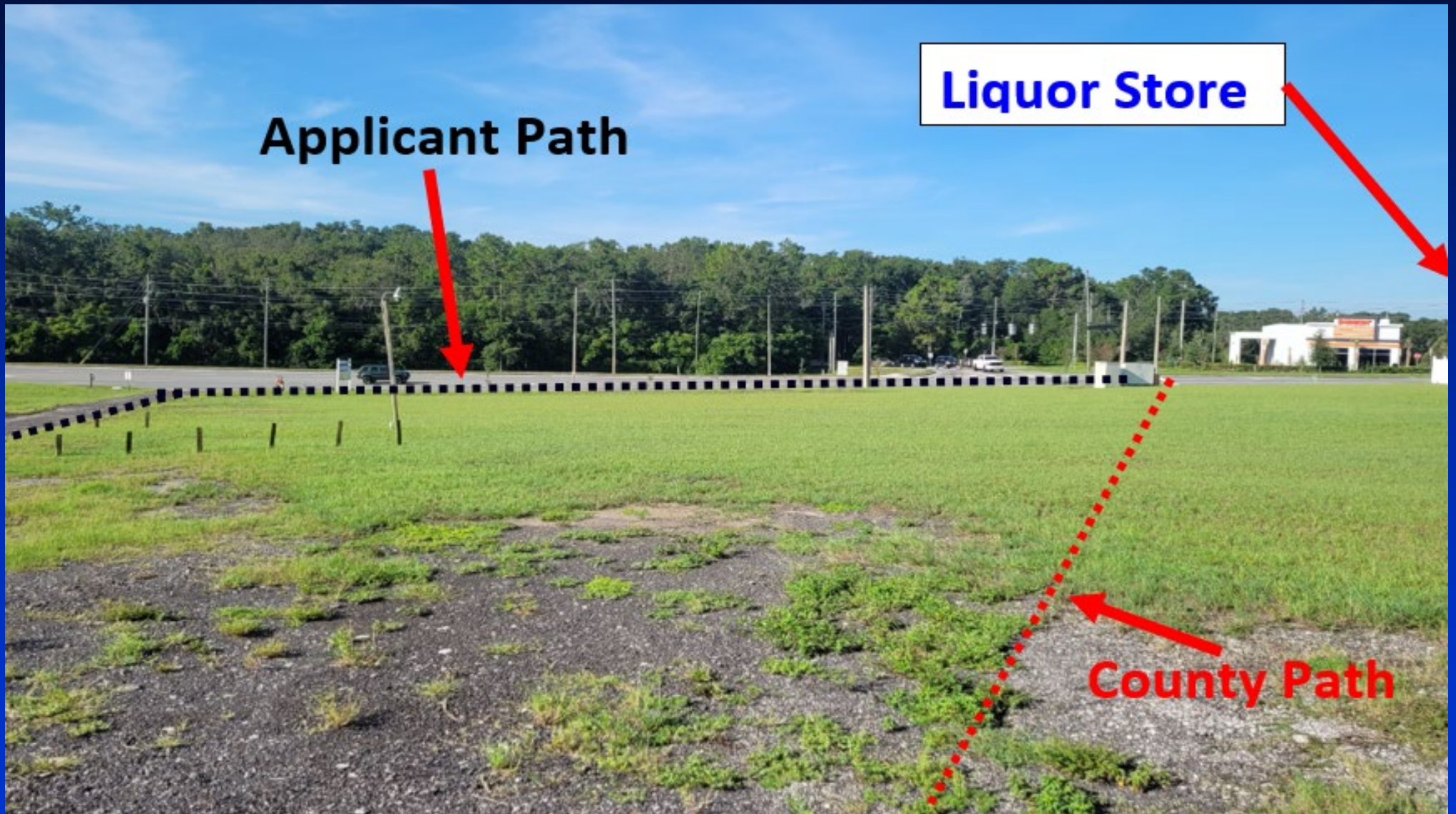
View of church from private driveway, looking north





Site Photograph

View from church property, looking south towards Clarcona-Ocoee Rd.





Site Photograph

View of west side of church from private driveway, looking north



07/19/2023



Site Photograph

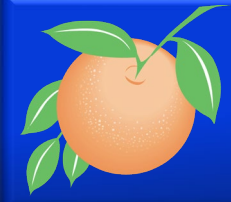
View of church from private driveway, looking south





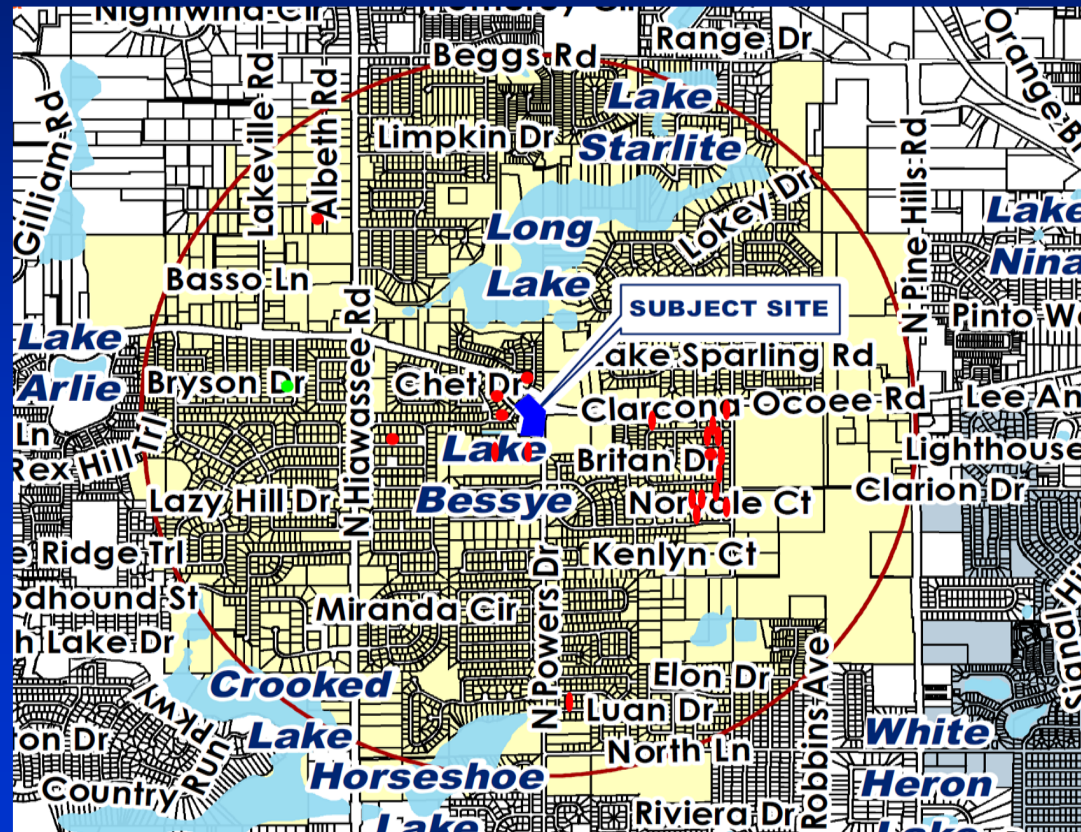
Staff Recommendation

- Staff recommended that the Board uphold the Zoning Manager's Determination 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.



Public Feedback

- Staff mailed a total of 4,905 notices to adjacent property owners in a 1-mile radius
 - Staff received one (1) correspondence in favor of this request
 - Staff received forty-seven (47) correspondence in opposition to this request (25 unmapped)





BZA Findings

- The BZA concluded that 857 feet is the correctly measured distance between the 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; and recommended to uphold the Zoning Manager's Determination.



Requested Action

- Deny the applicant's appeal and uphold the Zoning Manager's Determination, or
- Grant the applicant's appeal and overturn the Zoning Manager's Determination

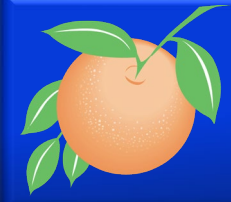


Applicant's Case Law

Albrecht v. Hollywood

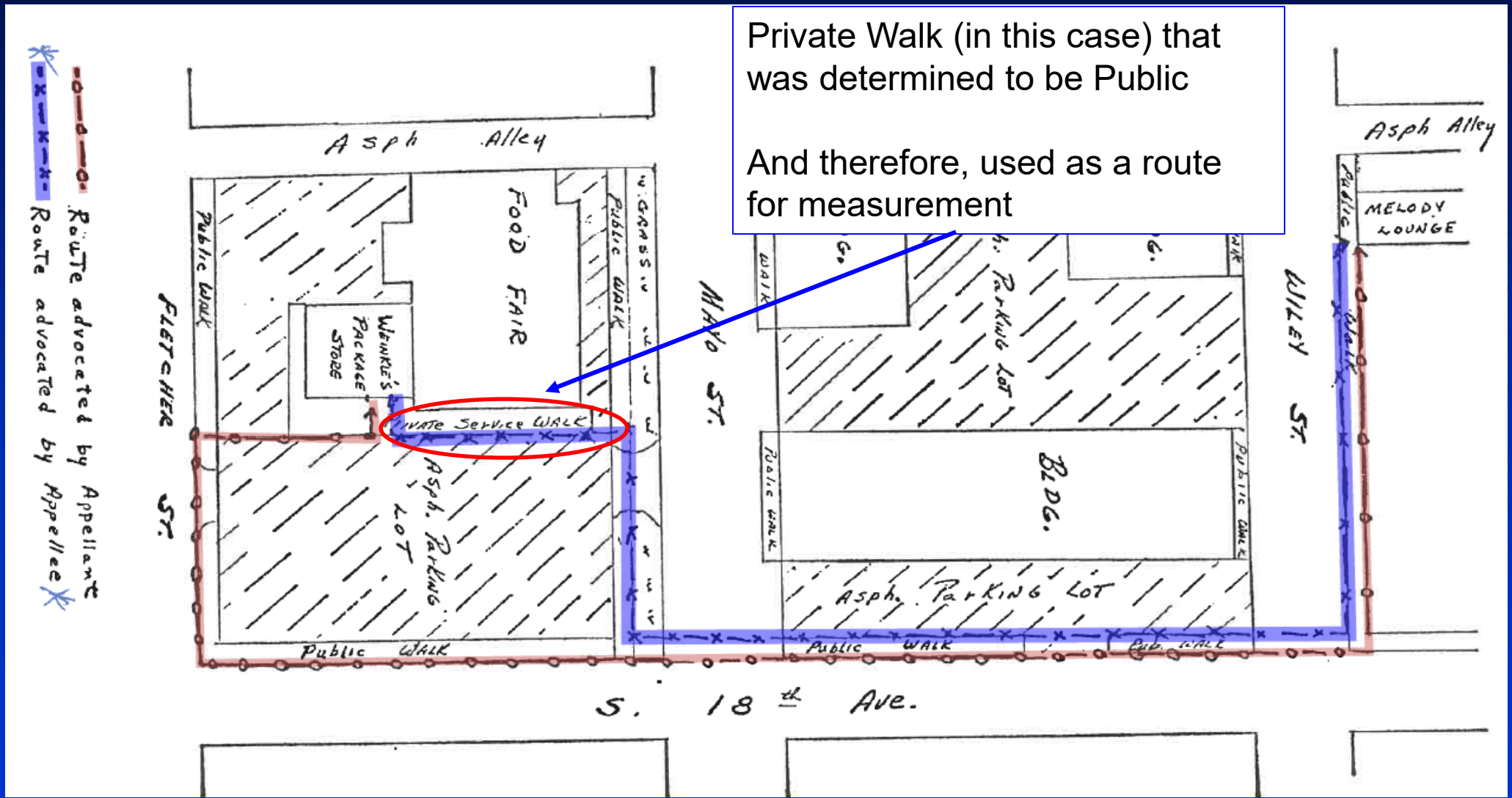
Albrecht v. Hollywood – 1963

- Bar owner challenged City of Hollywood's distance calculation and interpretation
- Courts held that a parking lot and alley are not a public thoroughfare.
- However, courts held 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. . .” And from that determination, the court determined the private walk in the case must be deemed ‘public’ in nature (i.e. a public thoroughfare).
- Based on this, applicant contends that the private driveway should be deemed “public”, and therefore a public thoroughfare, and that the church's private driveway should be used in calculating the minimum distance requirement.



Applicant's Case Law

Albrecht v. Hollywood



Private Walk (in this case) that was determined to be Public

And therefore, used as a route for measurement

Route advocated by Appellant
Route advocated by Appellee

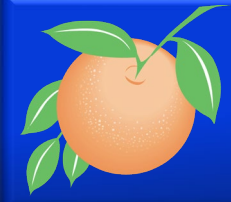


Applicant's Case Law

State Beverage Department vs. Brentwood Assembly of God Church

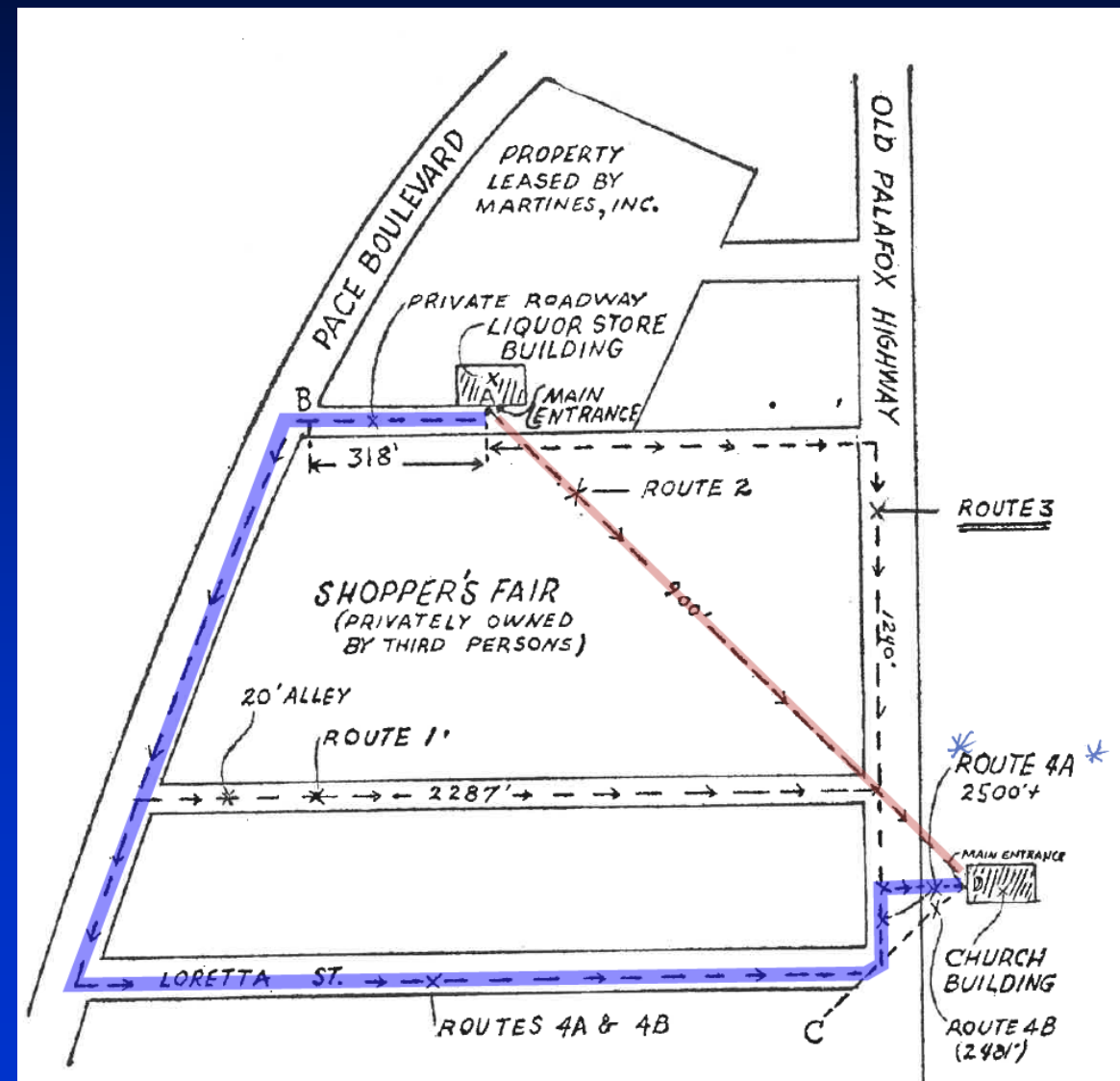
State Beverage Department vs. Brentwood Assembly of God Church– 1963

- **Case regarding measurement and specifically “shortest route of ordinary pedestrian travel along the public thoroughfare”**
- **Higher Court overturned a shorter “Straight line” measurement approved by trial court.**
- **Higher Court found that the “hard surfaced private road” between church and package store should be used to measure.**
- **Based on this, applicant contends: That the private driveway should be deemed “public”, and a such a public thoroughfare, and that the measurement should be done walking on the church’s private driveway.**



Applicant's Case Law

State Beverage Department vs. Brentwood Assembly of God Church





County Contentions

- **County contends that in the years following 1963, Florida courts have made other determinations and upheld other methodologies in calculating routes to determine the “shortest route of ordinary pedestrian travel along the public thoroughfare ”. These cases take a more practical, logical measuring route that do not require unnecessary steps. In the County’s opinion, these cases provide a better interpretation.**
- **In addition, while acknowledging that Applicant’s cited cases do establish a private sidewalk and private roadway as public thoroughfares for purposes of distance measurement in those specific cases, County contends that circumstances of the Applicant's appeal are different than those of Applicant’s cited cases.**
 - (1) County does not consider the church’s private driveway to be a “public thoroughfare.” Based on definitions cited within the dictionary and in Florida case law.**
 - (2) Private driveway is roughly comprised of unstable material. Unlike the paved sidewalk and hard surface roadway cited in the applicant’s cases.**



Summary of County's Contentions

- County does not consider the Applicant's private driveway to be a "public thoroughfare"
- Merriam-Webster Dictionary
a way or place for passage: such as a street open at both ends [or] a main road
- State Beverage Dep't v. Brentwood Assembly of God Church
a frequented way or course, especially, a road or street by which the public has unobstructed passage
- Additionally, unlike the paved sidewalk and hard surfaced roadways cited in applicants respective case law, the driveway is roughly comprised of gravel and asphalt millings