

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

November 18, 2025

The following is a public hearing on an appeal before the Board of County Commissioners on November 18, 2025, at 2:00 p.m.

APPLICANT: DAVID M. SMITH

APPELLANT 1: DANIEL W. LANDLEY AND A. KURT ARDAMAN FOR ABC LIQUORS, INC.

APPELLANT 2: JIMMY D. CRAWFORD, ESQ., FOR KNIGHTLY SPIRITS

CASE #: VA-25-09-043

REQUEST: 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.

LOCATION: 12201 S. Orange Blossom Trl., Orlando, FL 32837, east side of S. Orange Blossom Trl., north of W. Wetherbee Rd., south of Taft Vineland Rd., west of the Florida Turnpike

LOT SIZE: +/- 17.13 acres

ZONING: PD

DISTRICT: #4

PROPERTIES NOTIFIED: 5,692

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

Staff described the proposal, including the location of the property, the site plan, and photos of the site. Staff provided an analysis of the six (6) criteria and the reasons for a recommendation of denial of the Variance. Staff noted that two (2) comments were received in favor, and six (6) comments were received in opposition to the request.

The applicant was present and described their justifications for requesting the Variance stating that the subject site could contain a package sale vendor within the northern portion of the shopping center and the request meets the intent of the applicable zoning standards. The applicant noted the proposed operation of the package sale vendor, and the difference of that to the other types of vendors.

The Board described the reasons why the proposal does comply with all six (6) criteria necessary for granting the Variance, stating that there are special conditions involved with the

request as a portion of the shopping center does meet the distance requirement and approval would not confer special privilege as liquor stores are typically located next to grocery stores.

There was no one in attendance to speak in favor or in opposition to the request.

The BZA recommended approval of the Variance as requested by a 4-1 vote with two (2) absent, subject to the four (4) conditions found in the staff report.

BZA HEARING DECISION:

A motion was made by Glenn Rubinstein, seconded by Roberta Walton Johnson, and carried to recommend APPROVAL of the Variance request in that the Board finds it meets that the requirements of Orange County Code, Section 30-43(3); with approval subject to conditions (4 in favor: Glenn Rubinstein, Thomas Moses, Roberta Walton Johnson, Johnny Stanley; 1 opposed: John Drago; 2 absent: Juan Velez, Sonya Shakespeare).



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

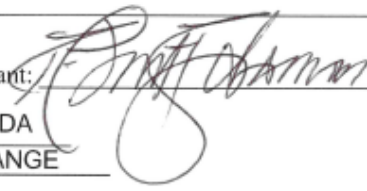
Email: dlangley@fishbacklaw.com ardaman@fishbacklaw.com Phone #: (407) 262-8400

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 _____ as
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.

FISHBACK DOMINICK

ATTORNEYS AT LAW

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HILLARY G. GRIFFITH
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@occompt.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

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.

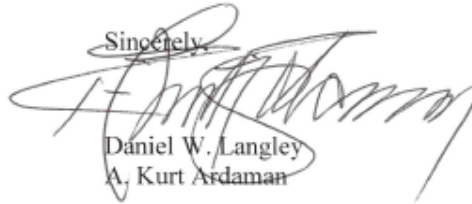
The 5,000 foot-separation requirement between package stores is a zoning use requirement. If the 5,000 foot-separation requirement of Section 38-1414, OCC is not met, the package store use is prohibited. The 5,000 foot-separation requirement is not a performance standard like a building or landscaping 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.

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". The signature is stylized with a large, sweeping initial "D" and "L".

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.



Board of Zoning Adjustment (BZA) Appeal Application

Appellant Information

Name: Jimmy D. Crawford, Esq., attorney for Knightly Spirits

Address: 702 W. Montrose Street, Clermont, FL 34711

Email: jcrawford@cmhlawyers.com Phone #: (352) 432-8644

BZA Case # and Applicant: VA-2025-09-043 - David M. Smith

Date of BZA Hearing: 09/05/2025

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

Knightly Spirits is an existing licensed 3PS liquor store (offsite consumption only) located less than 5000 feet from the applicant's proposed 3PS liquor store. For reasons unknown, Knightly Spirits did not receive the mailed notice of the application for variance from Orange County Code Section 38-1414(b), which requires a minimum of 5000 foot separation between 3PS liquor stores. Knightly Spirits objects to the BZA granting of the variance despite staff's objection and finding that five of the six variance criteria contained within Orange County Code Section 30-43(3) were not met by the application. The BZA made a conclusory statement regarding the criteria evaluation which was not supported by competent substantial evidence.

Signature of Appellant: [Signature]

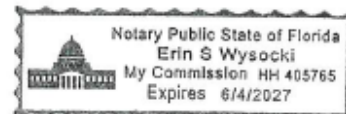
Date: 9/19/25

STATE OF Florida
COUNTY OF Lake

The foregoing instrument was acknowledged before me this 19th day of September, 2025, by Jimmy Crawford who is personally known to me or who has produced _____ 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.

BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **SEPT 05, 2025**

Commission District: **#4**

Case #: **VA-25-09-043**

Case Planner: **Catherine Glase (407) 836-9615**

Catherine.Glase@ocfl.net

GENERAL INFORMATION

APPLICANT(s): DAVID M. SMITH

OWNER(s): SOUTHCHASE SHOPPING CENTER LLC

REQUEST: 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.

PROPERTY LOCATION: 12201 S. Orange Blossom Trl., Orlando, FL 32837, east side of S. Orange Blossom Trl., north of W. Wetherbee Rd., south of Taft Vineland Rd., west of the Florida Turnpike

PARCEL ID: 22-24-29-8226-03-000

LOT SIZE: +/- 17.13 acres

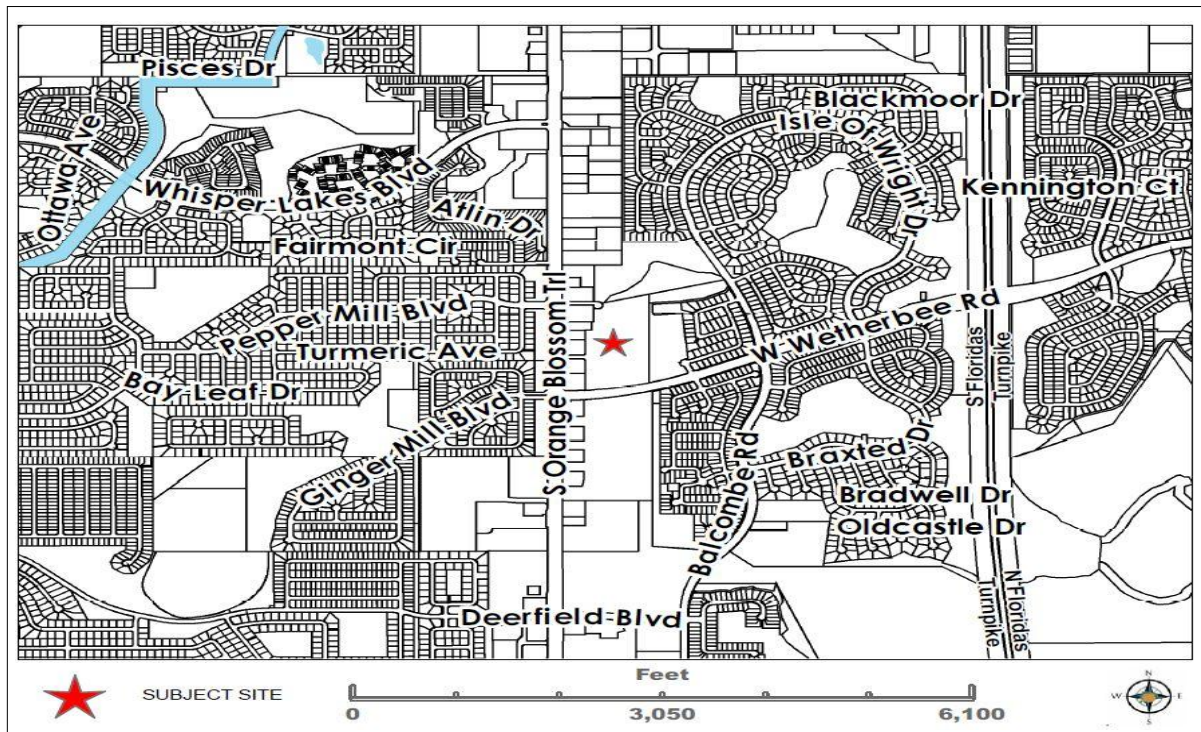
NOTICE AREA: 1 mile

NUMBER OF NOTICES: 5,692

STAFF RECOMMENDATIONS

Denial. However, if the BZA should find that the applicant has satisfied the criteria necessary for the granting of the Variance, staff recommends that the approval be subject to the conditions in this report.

LOCATION MAP



SITE & SURROUNDING DATA

	Property	North	South	East	West
Current Zoning	South Chase PD	South Chase PD	South Chase PD	South Chase PD	South Chase PD
Future Land Use	MDR	LDR	LDR	MDR	C
Current Use	Multi-Tenant Retail	Conservation Area	Multi-Tenant Retail	United States Post Office	Commercial

BACKGROUND AND ANALYSIS

DESCRIPTION AND CONTEXT

The subject property is zoned Planned Development (PD), and is located within Parcel 3 of the South Chase PD. The overall PD allows a mix of single family residential, multi-family, commercial and industrial uses. This section of the PD allows for commercial retail uses. The property's Future Land Use designation is Medium Density Residential (MDR). As the Planned Development was approved prior to the Future Land Use Map being adopted in 1991, the PD is considered consistent with the Future Land Use Map per Comprehensive Plan Policy 8.1.5. Therefore, the request is considered to be consistent with the Comprehensive Plan.

The area surrounding the subject property is mostly commercial development directly along S. Orange Blossom Trail and single-family residential homes to the east. The subject property is 17.13 acres in size and is developed with a 76,620 sq. ft. commercial strip shopping center that was constructed in 1998. The subject property contains a variety of commercial businesses including a Publix Super Market and the subject tenant space.

The proposal is to operate a Publix Liquor Store in the 1,400 sq. ft. tenant space adjacent to the Publix Super Market. The property owner submitted a request (ABA-25-04-0100) to obtain zoning approval for an Alcoholic Beverage License (ABL) to operate a package sale vendor in the subject tenant space. The distance requirements for an ABL are set forth in Sections 38-1414 of Orange County Code. Per Section 38-1414(b) "a package sale vendor may be permitted to operate its business of package sales at a location no closer than five thousand (5,000) feet of any preexisting package sale vendor's place of business within the unincorporated area of the county." The distance is measured by following the shortest route of ordinary pedestrian travel along the public thoroughfare from the proposed main entrance of a package sale vendor who proposes to operate the place of business to the main entrance of any other package sale vendor who is operating such a business. A distance measurement was conducted to verify that the 5,000 ft. separation requirement from the nearest package sale vendor can be met. The result of this measurement showed that the nearest subject package sale vendor (Knighly Spirits Liquor, located at 12975 S. Orange Blossom Trl., Orlando, FL 32837) is 4,726 ft. away, prompting the Variance request.

The request was routed to all reviewing Divisions. There were no objections noted. As of the date of this report, no comments have been received in favor or in opposition to this request.

Section 30-43 (3) of the Orange County Code stipulates a recommendation of approval can only be made if all six (6) Variance criteria are met. While the request meets some of the criteria it does not meet all the criteria. Therefore, staff is recommending denial.

VARIANCE CRITERIA

Special Conditions and Circumstances

NOT MET – There are no special conditions or circumstances peculiar to this property as the presence of other package sale vendors in the area is not uncommon or unique.

Not Self-Created

NOT MET - The need for the Variance is self-created, as it is the applicant's decision to locate a package sale vendor within this tenant space despite the existing package sale vendor within the applicable separation distance.

No Special Privilege Conferred

NOT MET – Approval of the Variance would confer a special privilege not enjoyed by other properties in the district, as it would allow a package sale vendor to operate within the required separation distance from other such businesses. This reduction in separation would grant the applicant a unique allowance beyond what is permitted for other properties that must comply with the established distance requirements.

Deprivation of Rights

NOT MET - Denial of the Variances would not deprive the owner of reasonable use of the property as the space could be utilized for other commercial retail uses.

Minimum Possible Variance

MET - The request is the minimum possible to operate a package sale vendor from the subject location.

Purpose and Intent

NOT MET - Approval of the requested Variances would not be in harmony with the purpose and intent of the zoning regulations as the code is primarily focused on the separation of similar businesses and the separation standard is intended to avoid the clustering of package sale vendors.

CONDITIONS OF APPROVAL

1. Development shall be in accordance with the location plan date stamped August 15, 2025, subject to the conditions of approval, and all applicable laws, ordinances, and regulations. Any proposed non-substantial deviations, changes, or modifications will be subject to the Zoning Manager's review and approval. Any proposed substantial deviations, changes, or modifications will be subject to a public hearing before the Board of Zoning Adjustment (BZA) where the BZA makes a recommendation to the Board of County Commissioners (BCC).
2. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
3. Any deviation from a Code standard not specifically identified and reviewed/addressed by the Board of County Commissioners shall be resubmitted for the Board's review or the plans revised to comply with the standard.
4. This approval is limited to a 3PS license for package sale vendor only. Any change in ownership or license type shall require new approval for a change and/or transfer of the license.

C: David Smith
P.O. Box 3299
Tampa, FL 33601

**PUBLIX SUPER MARKETS, INC.
SOUTHCHASE LIQUOR STORE #0654
12201 S. Orange Blossom Trail
Orlando, Florida**

Variance Application No. _____

WRITTEN STATEMENT

This Variance Application is for a proposed 1,400 square foot Publix liquor store (3-PS liquor, beer and wine package sales) to be constructed in the Southchase Shopping Center in the tenant space located at 12201 S. Orange Blossom Trail, Orlando, Florida. The Parcel Identification Number for the subject property is 22-24-29-8226-03-000 and consists of 19.07 acres. The subject property is located in the South Chase Planned Development (PD) zoning district and is located in the Medium Density Residential (MDR) Future Land Use category.

The proposed liquor store requires a variance to the distance separation requirements set forth in Sections 38-1414. Specifically, Section 38-1414(b) states:

Package sale vendor; distance separation requirements. Subject to section 38-865.d(10) of the Orange County Code relating to the I-Drive District Overlay Zone, within the unincorporated area of the county a package sale vendor may be permitted to operate its business of package sales at a location no closer than five thousand (5,000) feet of any preexisting package sale vendor's place of business within the unincorporated area of the county, and no closer than seven hundred and fifty (750) feet of any preexisting package sale vendor's place of business within a municipality in the county.

On April 21, 2025, the Orange County Zoning Division conducted a distance verification review to verify that the Five Thousand-Foot (5000') separation requirement from the nearest package sale vendor, religious institutions and schools could be met. The result of this verification indicated that the nearest package sale vendor (Knightly Spirits Liquor located at 12975 S. Orange Blossom Trail, Orlando, Florida 32837) is located within 4,726 feet from the proposed liquor store location therefore requiring a variance and that the distance separation from religious institutions and schools were met.

The variance request is to the distance separation requirement of 5,000 feet due to the Knightly Spirits Liquor store is located 4,726 feet from the proposed liquor store as measured by staff requiring a variance of 274 feet. The attached distance survey prepared by SurvTech Solutions Inc., dated July 22, 2025 found the Knightly Spirits Liquor store to be within 4981

feet. Since the measurements by County staff and SurvTech are not significantly different, a **variance of 274 feet is requested.**

Section 30-43 (3) of the Orange County Code stipulates specific standards for the approval of variances. No application for a zoning variance will be approved unless the Board of Zoning Adjustment finds that the following standards are met:

1. Special Conditions and Circumstances - Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same zoning district. Zoning violations or nonconformities on neighboring properties shall not constitute grounds for approval of a proposed zoning variance.

The special conditions and circumstances do not result from the actions of the applicant. The "special conditions and circumstances" that have attracted the applicant to this site. A high volume corner property like this one is essential to the success of a supermarket as well as a liquor store. The applicant would not be seeking a variance to locate a liquor store at this location if it was not for the market phenomenon that are present and the location of the supermarket.. There is also a high amount of new residential growth occurring in the immediate area as well. The Southchase Planned Development encourages commercial uses to locate on the subject site which is currently developed with a shopping center containing a Publix grocery store..

2. Not Self-Created - The special conditions and circumstances do not result from the actions of the applicant. A self-created or self-imposed hardship shall not justify a zoning variance; i.e., when the applicant himself by his own conduct creates the hardship which he alleges to exist, he is not entitled to relief.

The special conditions and circumstances do not result from the actions of the applicant, or other actions reflective of a self-imposed hardship. The Planned Development zoning encourages commercial at the subject location and allows the requested use.

3. No Special Privilege Conferred - Approval of the zoning variance requested will not confer on the applicant any special privilege that is denied by this Chapter to other lands, building, or structures in the same zoning district.

The granting of the requested variance will not confer on the applicant any special privilege that is denied by the Orange County Code to other lands, structures, or buildings in the same district. Not only has the Zoning Board of Adjustment approved alcohol distance variances for liquor stores since the adoption of the Orange County Code, but several of them have been approved within shopping plazas. Therefore, this request is a privilege that has been enjoyed by others under similar circumstances. The applicant would suffer an undue hardship that is unnecessary.

4. Deprivation of Rights - Literal interpretation of the provisions contained in this Chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Chapter and would work unnecessary and undue hardship on the applicant. Financial loss or business competition or purchase of property with intent to develop in violation of the restrictions of this Chapter shall not constitute grounds for approval or objection.

Literal interpretation of the provisions contained in Orange County Code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Orange County Code and would result in unnecessary and undue hardship on the applicant.

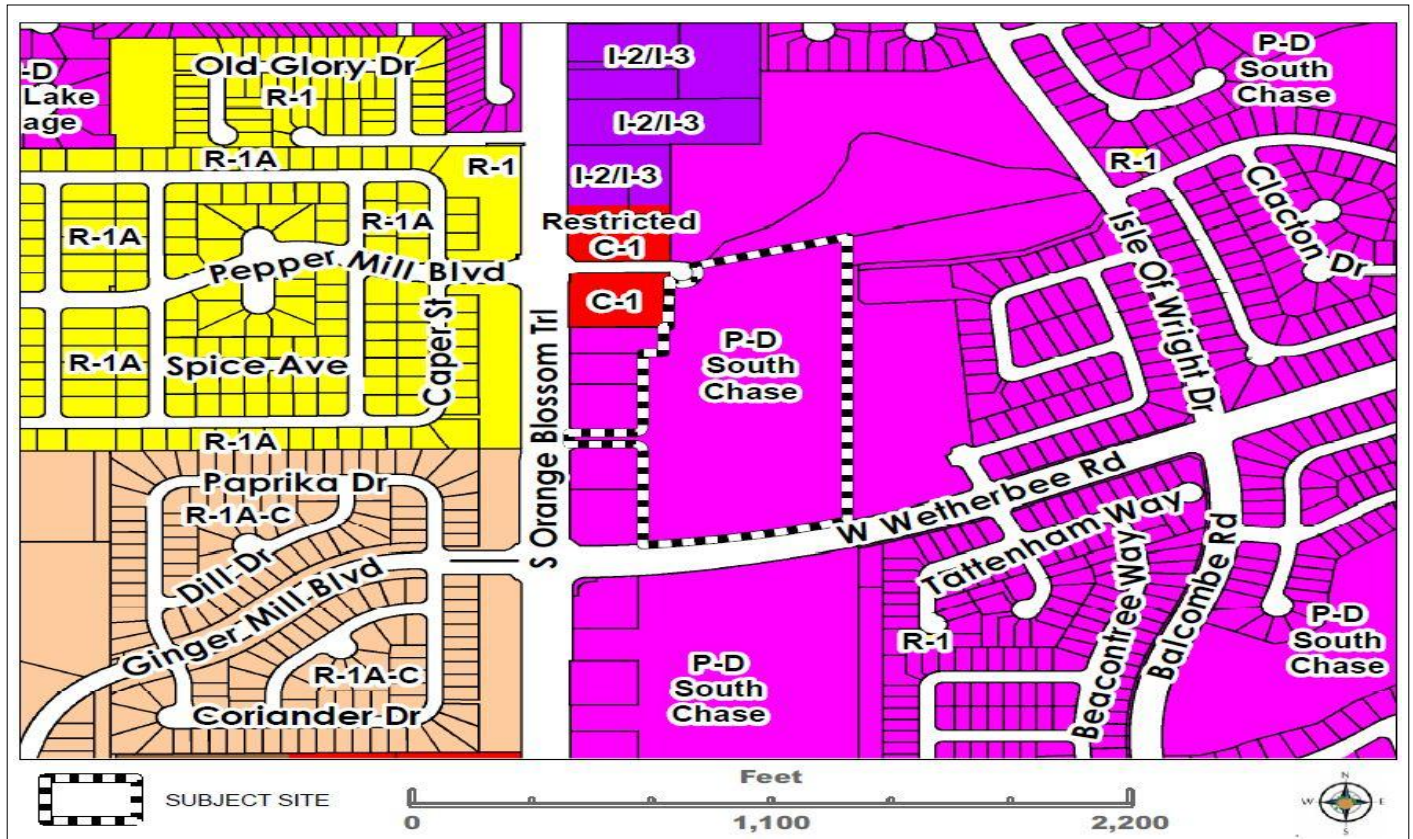
5. Minimum Possible Variance - The zoning variance approved is the minimum variance that will make possible the reasonable use of the land, building, or structure.

The requested variance is the minimum variance that will make possible the reasonable use of the land, building, or structure. The requested variance is the minimum required for compliance from the identified use.

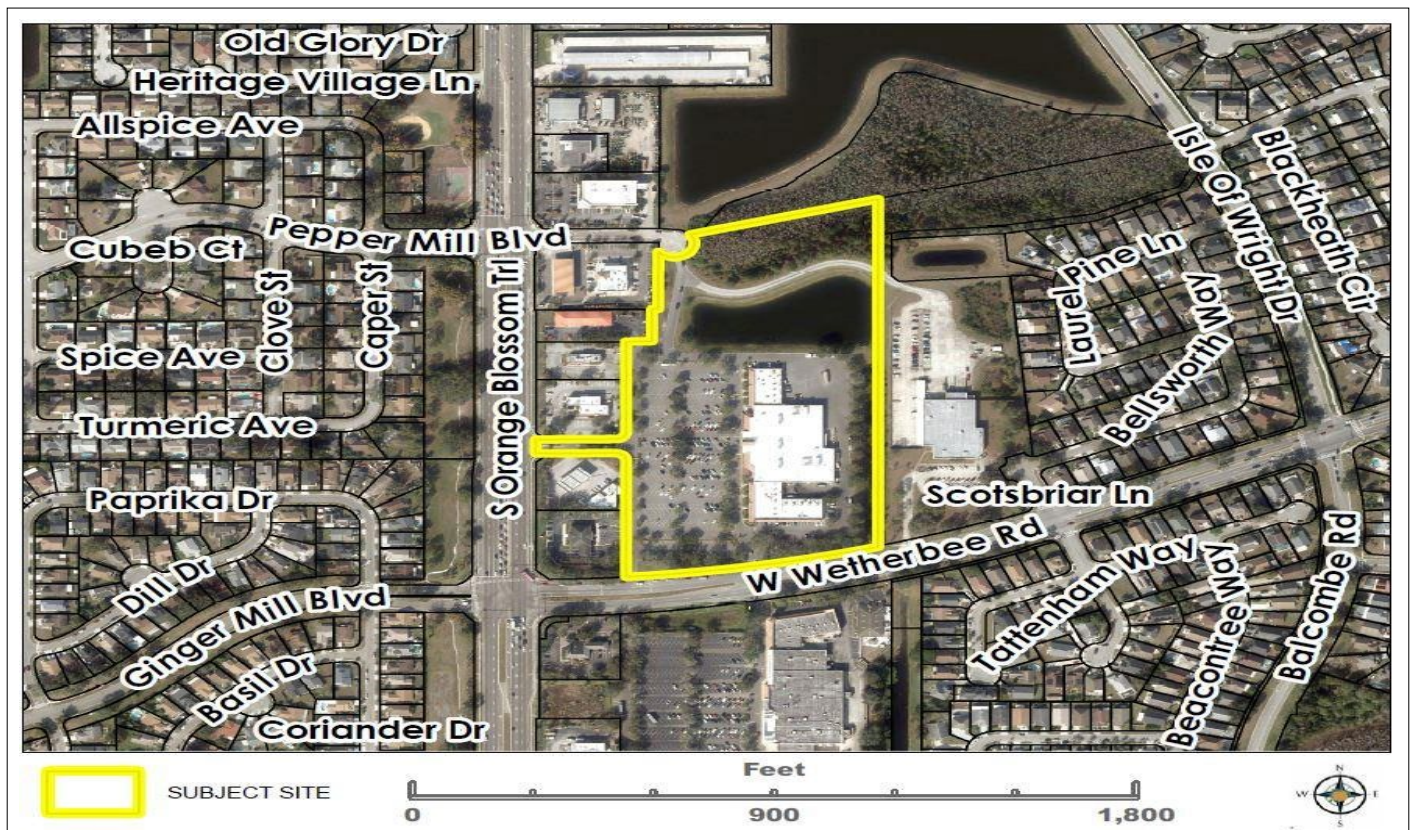
6. Purpose and Intent - Approval of the zoning variance will be in harmony with the purpose and intent of the Zoning Regulations and such zoning variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

This application is to request a variance to the 5,000-foot distance separation requirement between package stores with a 3-PS license. The applicant is seeking to add a 1,400 square foot liquor store in the existing Southchase Shopping Center. The proposed liquor store will be in a tenant space adjacent to the existing Publix supermarket. The proposed liquor store will serve the local residents and travelers in the area. The requested variance is in accordance with the general intent and purpose of the Orange County Code, and will not be injurious to the area involved or otherwise detrimental to the public welfare. The operational characteristics of a liquor store are not any more impactful than other commercial uses permitted by the property's zoning and therefore will not be injurious to the area or detrimental to the public welfare.

ZONING MAP



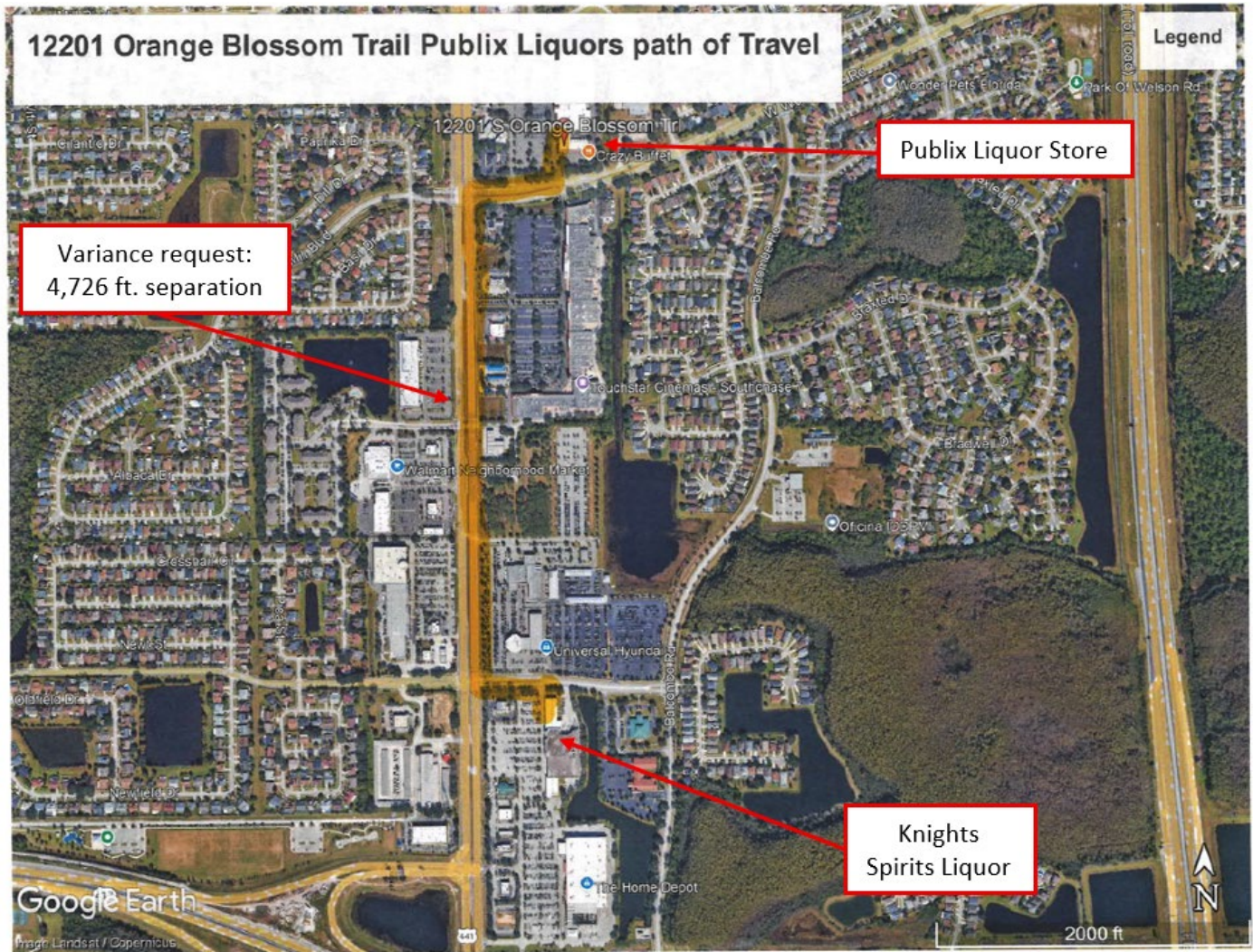
AERIAL MAP



LOCATION PLAN



DISTANCE SEPARATION MAP



SITE PHOTOS



Facing east towards front of subject tenant space



Proposed location:
Publix Liquor Store

Publix Super Market

Facing northeast towards subject tenant space

SITE PHOTOS



Facing east towards existing package sale vendor



Facing southeast towards existing package sale vendor