

Growing Minds Montessori School

Board of County Commissioners

March 7, 2023

By: McGregor Love

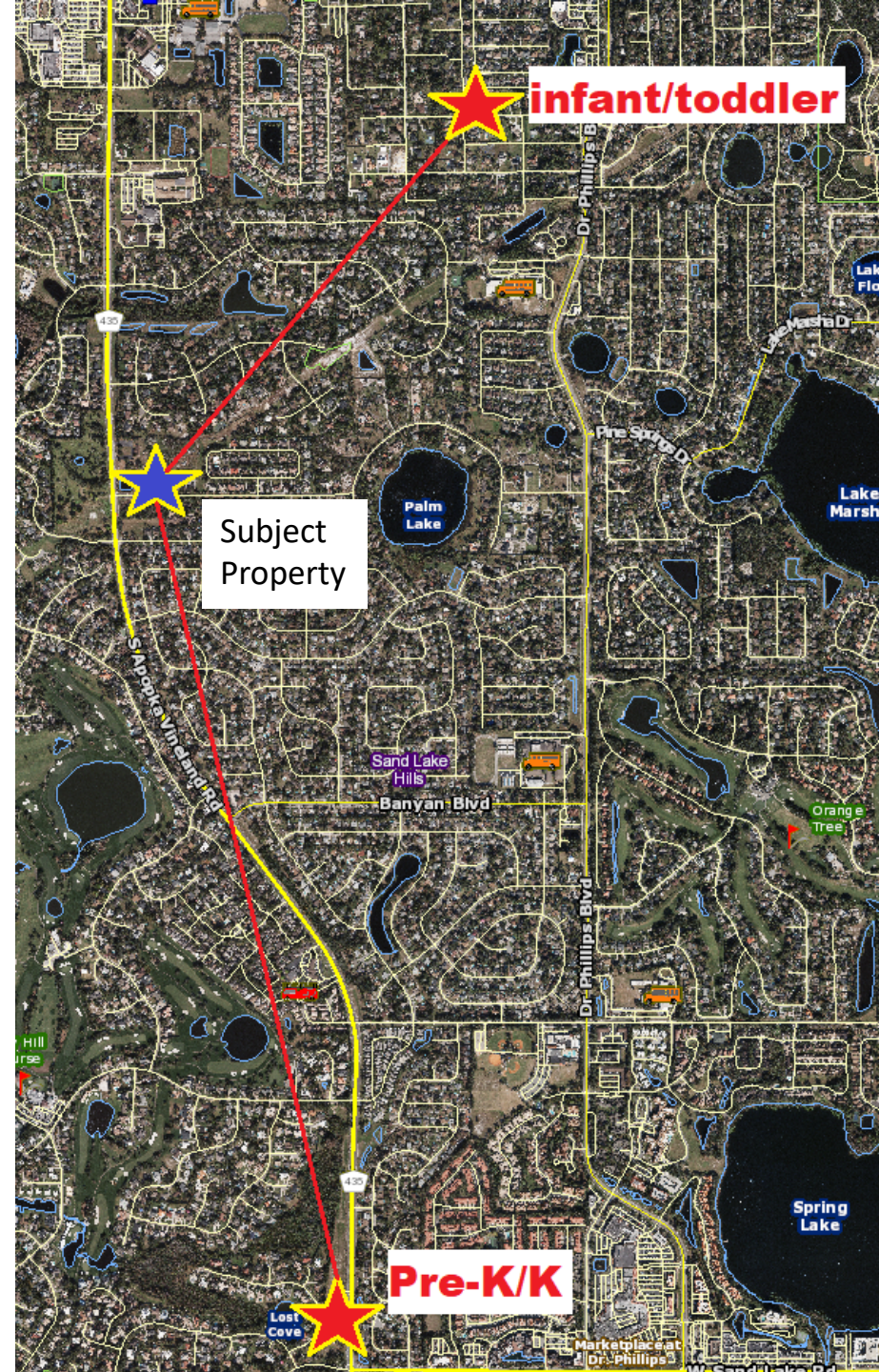
Attorney

Lowndes, Drosdick, Doster, Kantor & Reed, P.A.



Approval would allow:

- *ITP and Pre-K/K programs under one roof;*
- *GMMS to accept waitlisted children*



Request

Applicant asking for:

- Approval of a “Special Exception” to allow 8,500 SF private Montessori school for 146 students (max age 6) and 8 teachers within R-CE zoning district
- Approval of a variance to front setback requirement: 10.4 ft. in lieu of 35 ft.

BZA Result (1/5/23)

- 4 – 3 approval of motion to deny

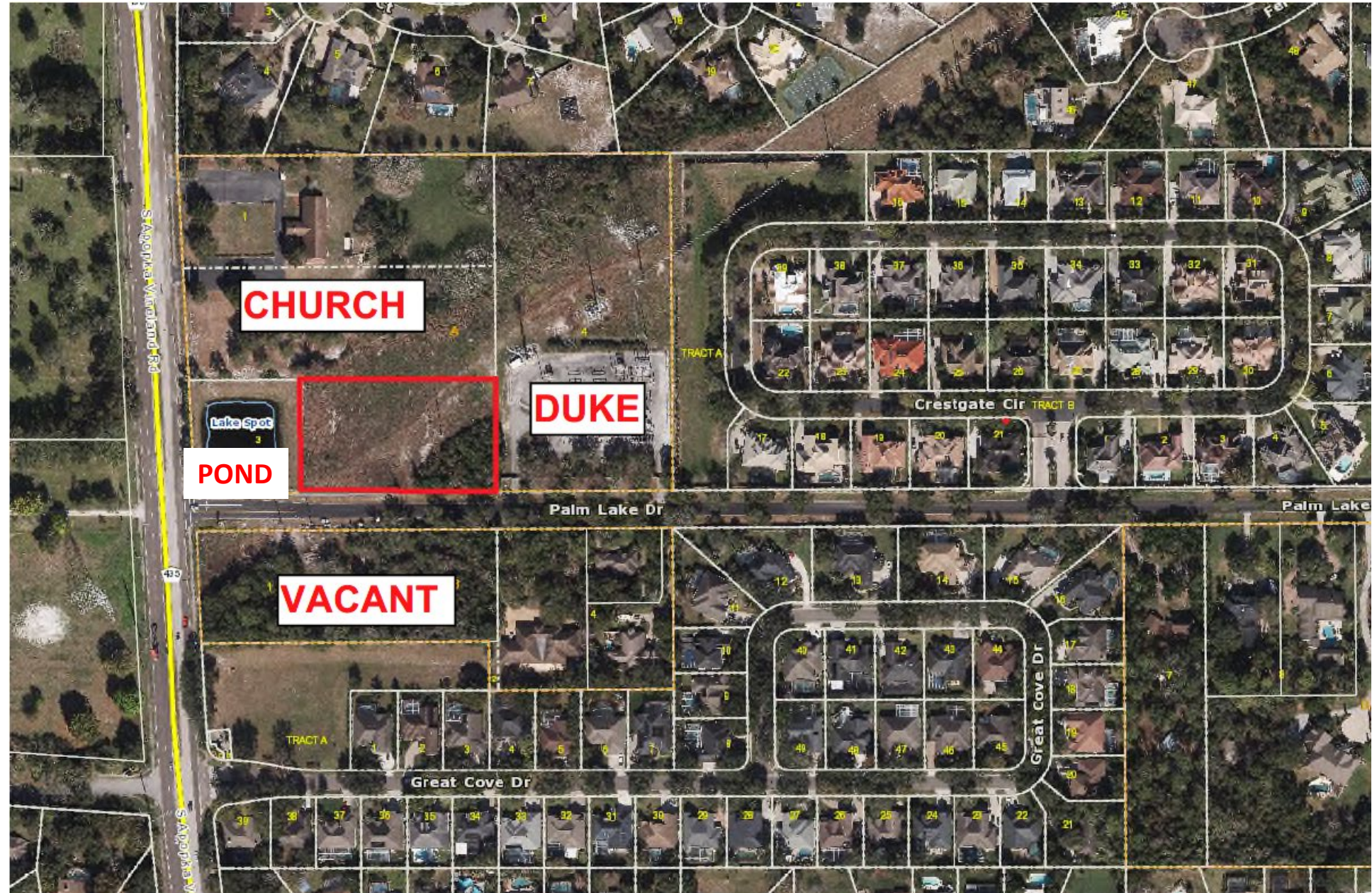
Site Information

- 1.75 acres (124,635 SF)
 - Buildable (19%): 14,424 SF
 - Utility easement limits development to SE corner
- Within Urban Service Area
- Zoning: R-CE
 - Minimum lot size: 1 acre
 - Schools and daycares allowed in R-CE by special exception.



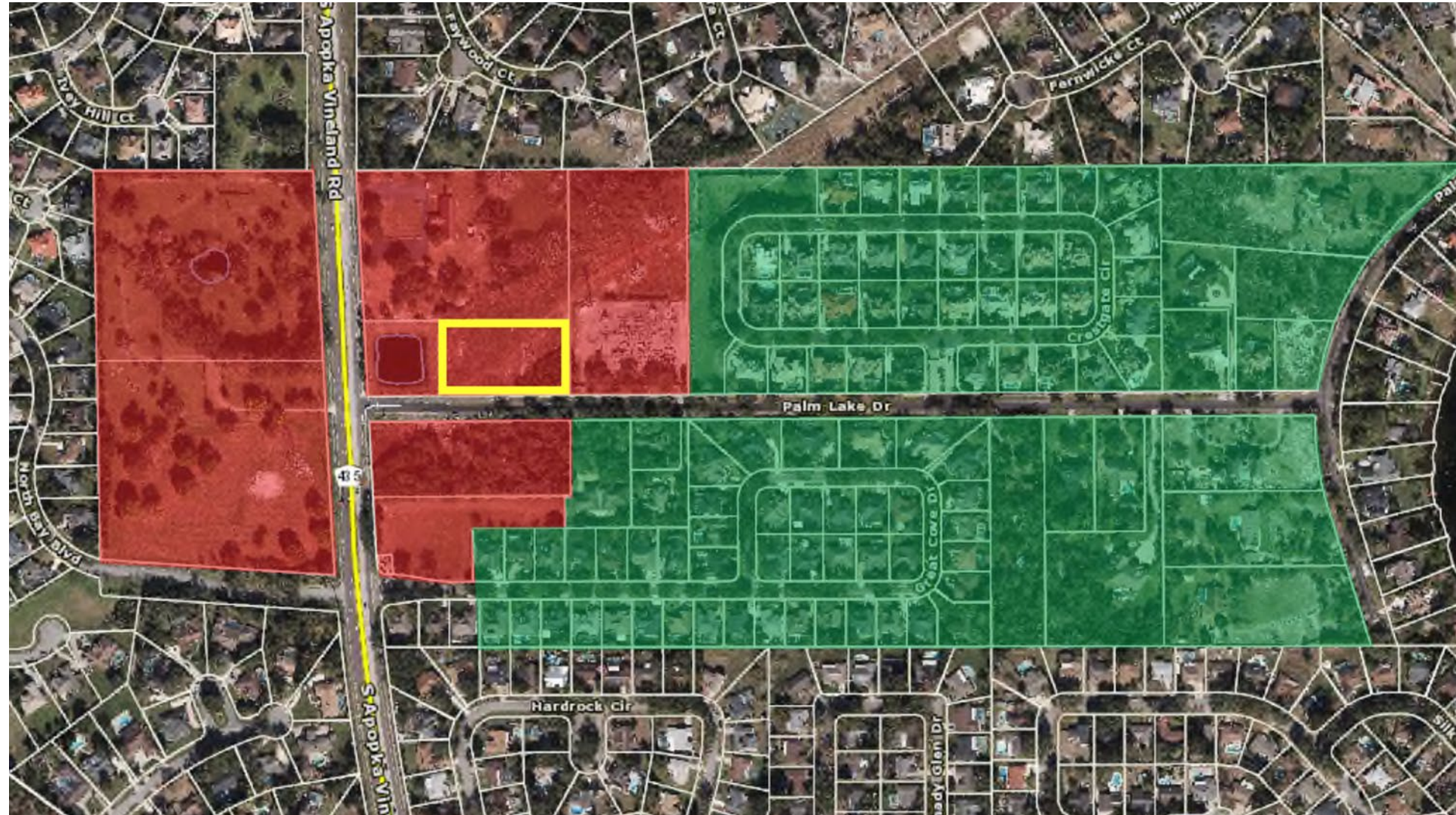
Location

- Surrounded by non-residential uses/vacant land
- Located just east of Apopka Vineland Rd.
- Use is “compatible with the adjacent properties in the area, which include an existing religious institution to the north, a retention pond to the west, an electrical substation to the east, and Palm Lake Drive to the south.” – Staff



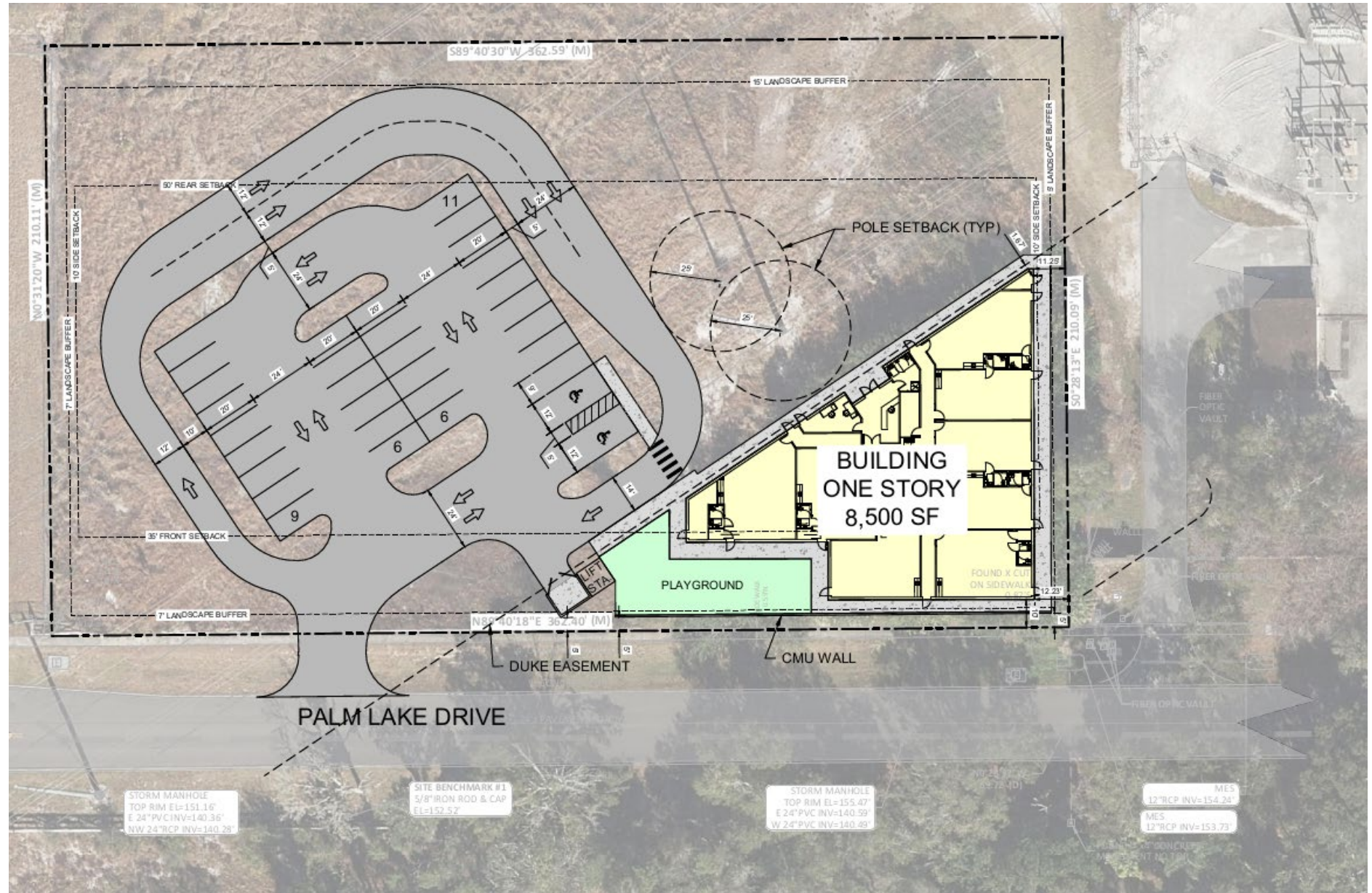
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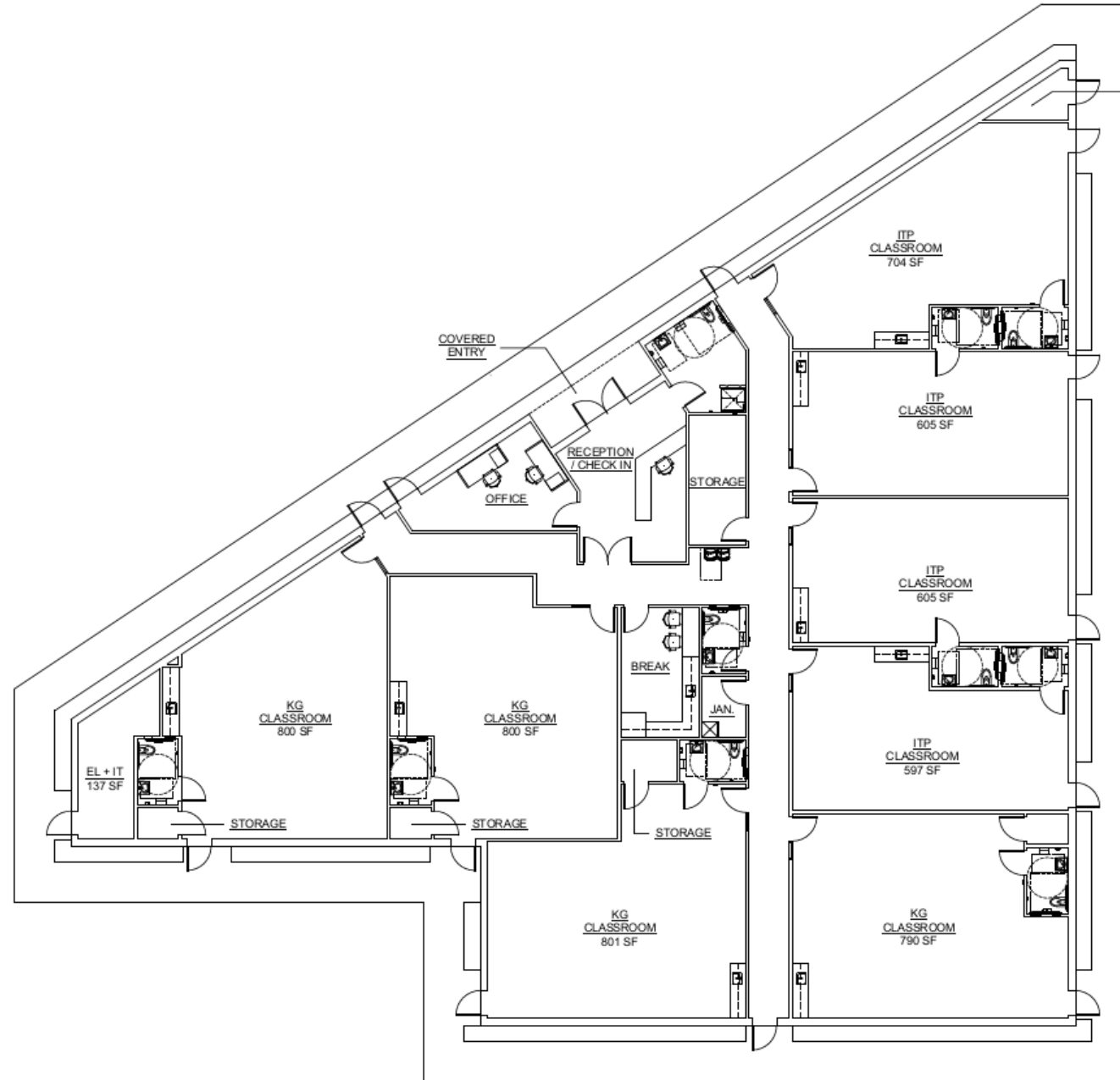
Site Plan

- 8,500 SF, one-story building with playground
- Floor area ratio: 0.11
- Capacity:
 - 146 students
 - 8 teachers
- Ages 3 months – kindergarten (age 6)
- Parking area to be permeable “Pavedrain”
- Hours of operation:
 - 7:00 AM – 6:00 PM (Mon – Fri)



Floor Plan

- 8 classrooms
- Reception, office, storage, breakroom



Special Exception

- Limited institutional uses (such as schools, churches, daycares) allowed by special exception within residential zoning districts
- Allowed if Applicant meets criteria:
 - Consistent with the Comprehensive Plan
 - Similar and compatible with the surrounding area
 - Shall not act as a detrimental intrusion into a surrounding area
 - Meet the performance standards of the district
 - Similar in noise, vibration, dust, odor, glare, heat generation
 - Landscape buffer yards shall be in accordance with Section 24-5 of the Orange County Code
- **County Staff Analysis: applicant meets all Special Exception criteria**

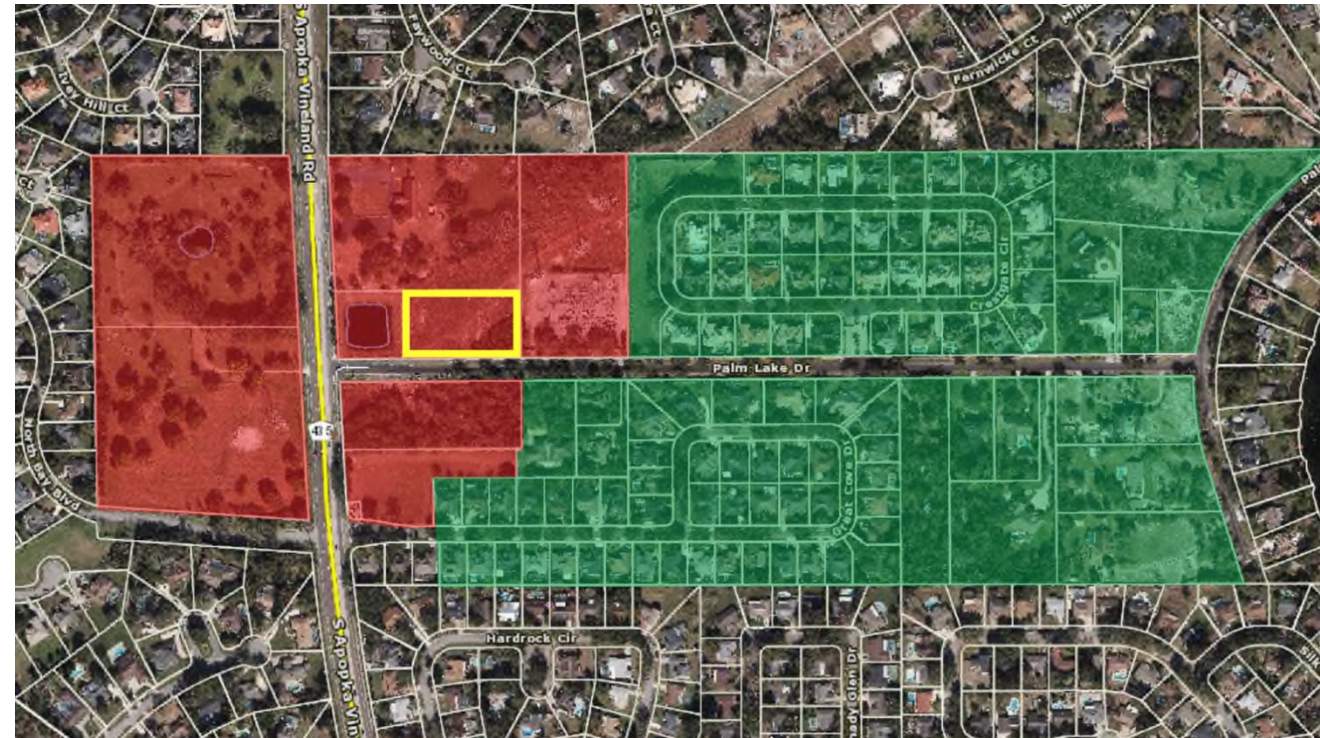
Addressing Concerns of Neighbors

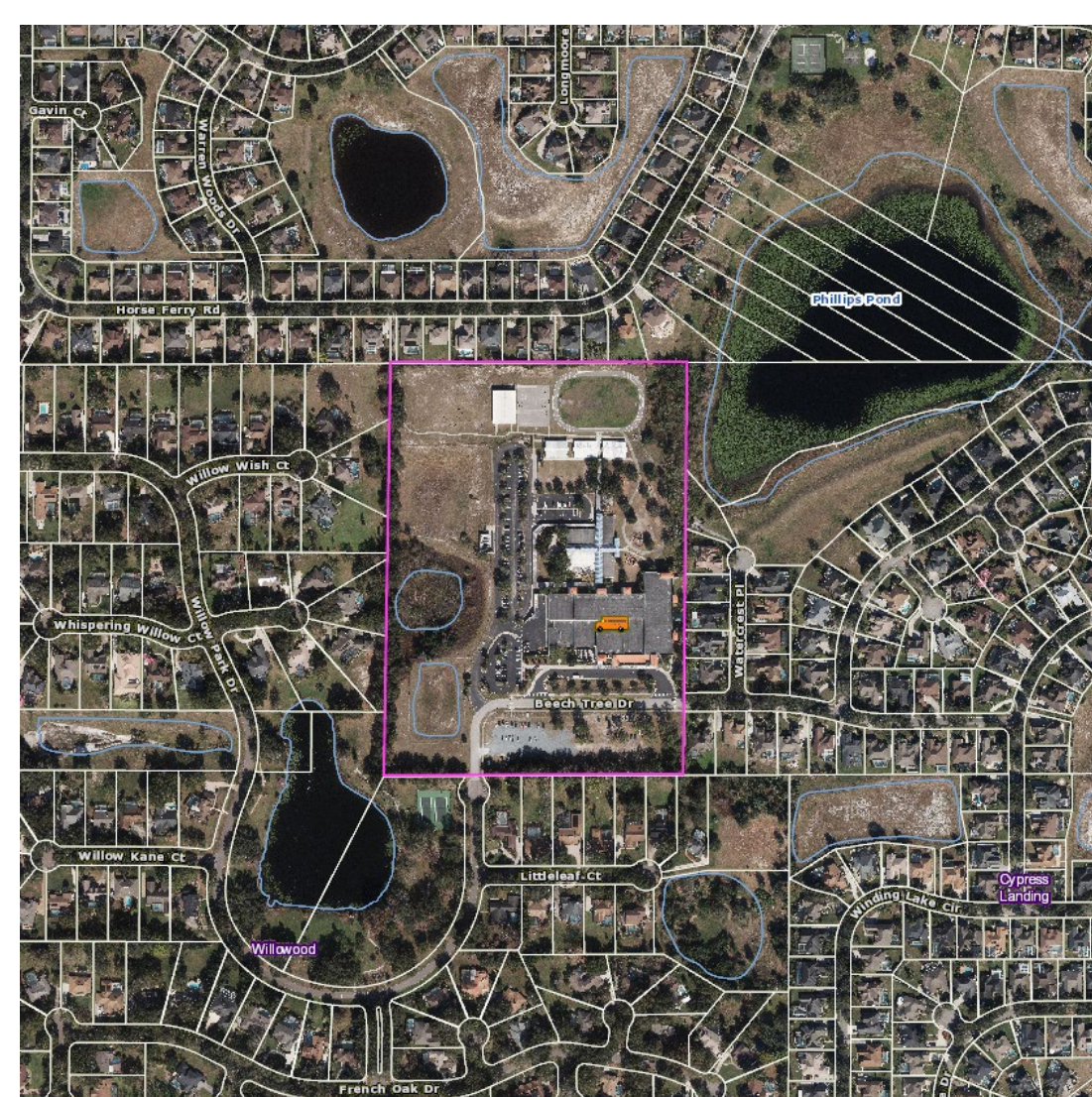
- *“Approval is for a commercial use and will open the door for more commercial uses in the area”*
 - Special exception approval is not a rezoning, and would not allow applicant to develop any other non-residential use
 - County determines on case-by-case basis whether use is appropriate
 - Approval will not set precedent for more non-residential development

Addressing Concerns of Neighbors

■ *“School/daycare is incompatible with nearby residential uses”*

- Schools/daycares are “neighborhood service” uses that enhance existing neighborhoods
- Would provide childcare for nearby residents
 - “[I]n in Orange County, approximately two out of three (67.4 percent) of children under the age of 6 potentially need child care.”
 - 2020 Community Assessment: Orange County Head Start
 - More than 100 District 1 children currently on GMMS waitlist
- Proposed school is modest in size; well-situated compared to nearby schools





Windy Ridge Elementary (also zoned R-CE and surrounded by SF homes)

125,589 SF

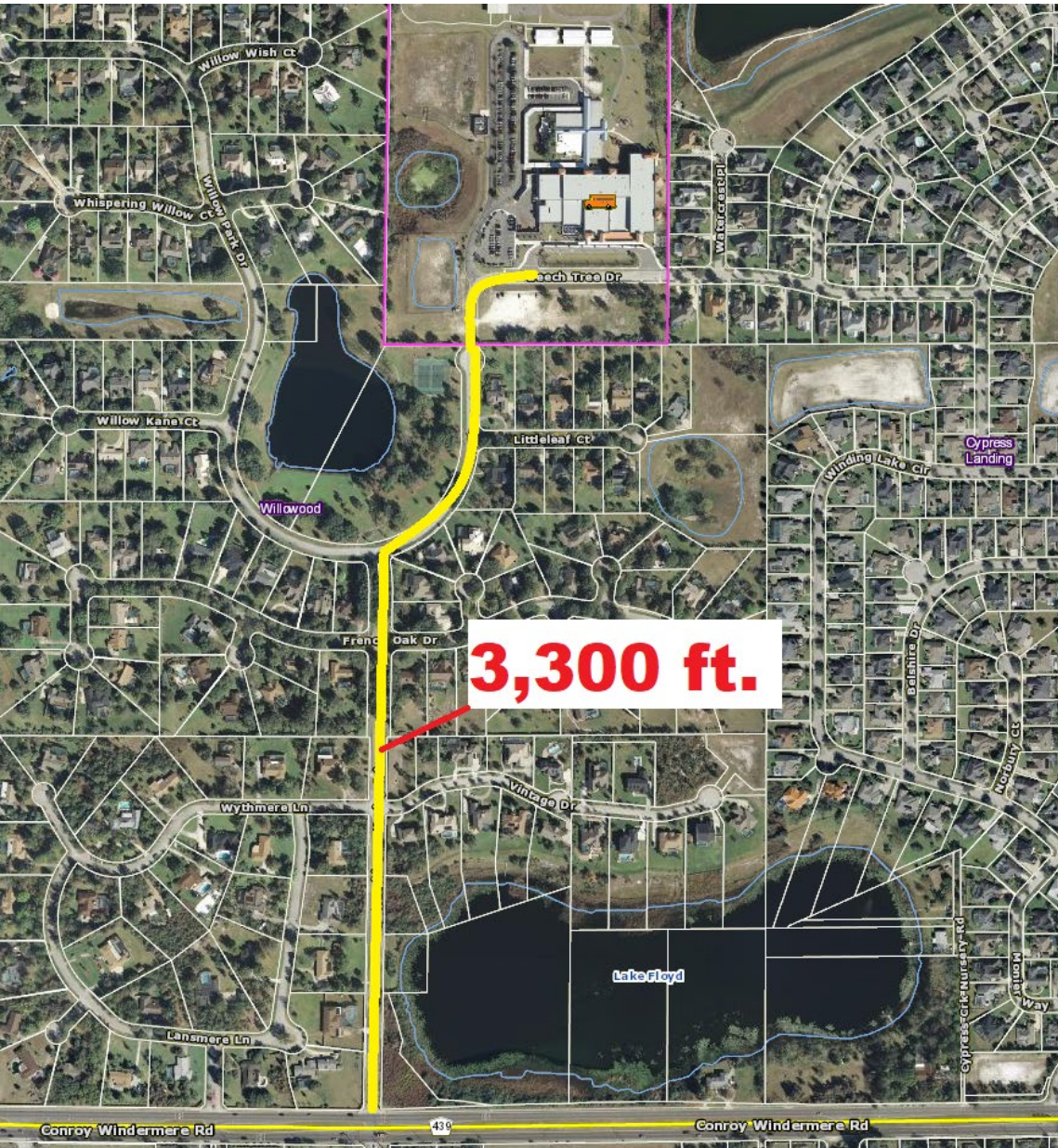
1,153 students



Growing Minds

8,500 SF

146 students



Addressing Concerns of Neighbors

■ “Palm Lake Drive is a residential road that cannot handle the traffic”

- Traffic Study and County Transportation have determined that the use will not impair traffic on Palm Lake Drive
 - Underwent County Operational Analysis
 - Devised in 2/2019 by Hatem Abou-Senna, PhD
- Applicant committed to making traffic improvements:
 - Conga line for drop-off/pickup (queue capacity: 27 cars)
 - 120 ft. westbound right turn on Palm Lake Drive
 - Staggered drop-off/pickup
 - Not required by County but committed to by Applicant
 - Dropoff: 2hr 10min window
 - Pickup: 3 hour window
 - Morning dismissals; afternoon arrivals

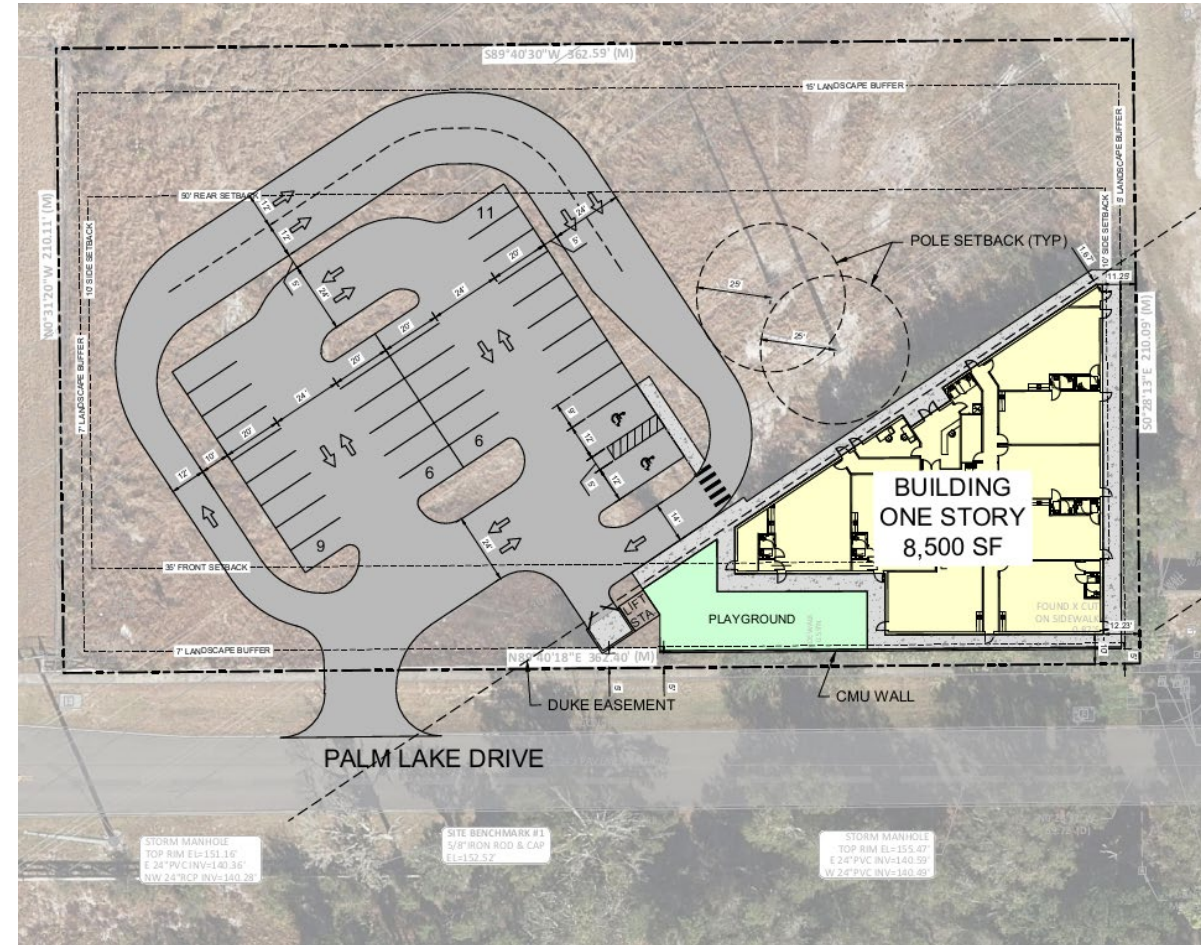


Exhibit "A"
Schedule of Dropoff/Pickup by Program



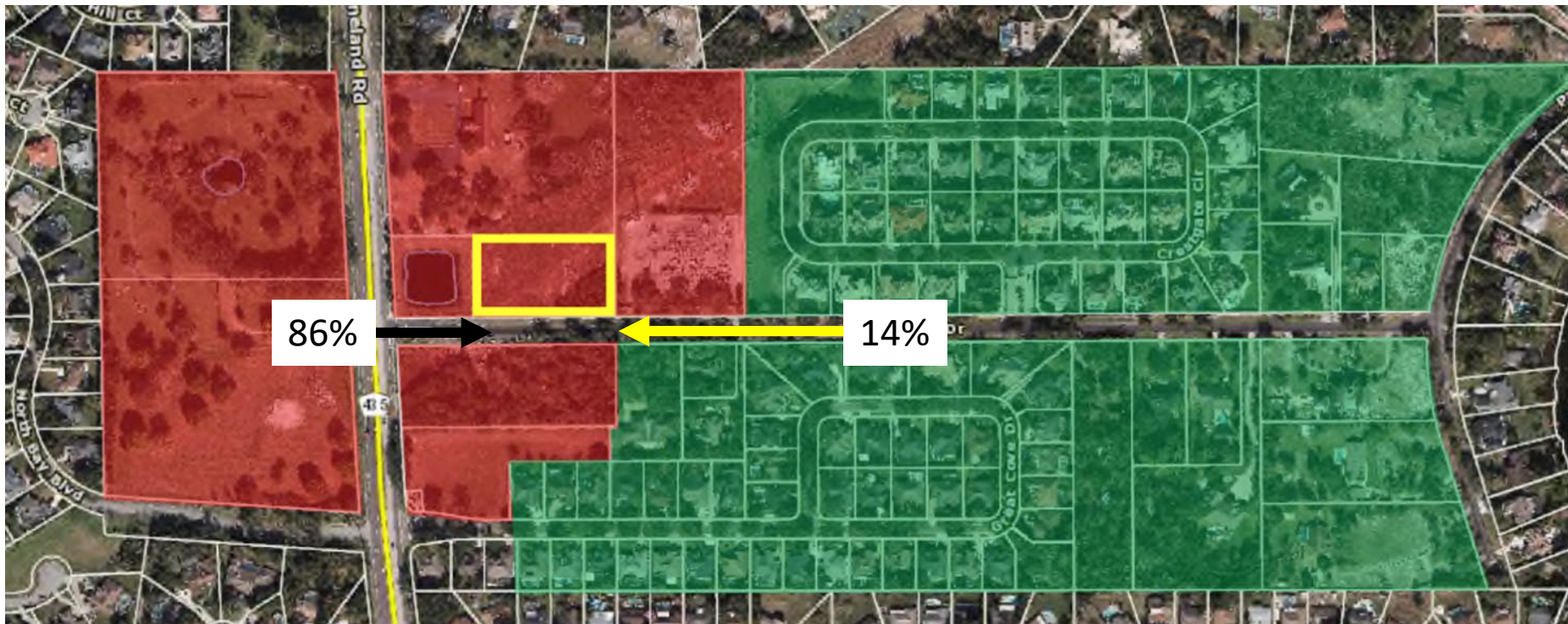
	<i>Before Care and Morning Arrivals</i>			<i>Morning Dismissals</i>		<i>Afternoon Arrivals</i>	<i>Afternoon Dismissals & After Care</i>		
TIME WINDOW	7:00 – 8:50 AM	8:30 – 8:50 AM	8:50 – 9:10 AM	11:30 – 11:45 AM	11:50 AM – 12:10 PM	12:20 – 12:40 PM	2:40 – 3:10 PM	3:15 – 3:45 PM	4:00 – 6:00 PM
WINDOW LENGTH	110 min.	20 min.	20 min.	15 min.	20 min.	20 min.	30 min.	30 min.	120 min.
PROGRAM*	ITP; Pre-K/K	ITP	Pre-K/K	ITP	Pre-K/K	Pre-K/K	ITP	Pre-K/K	ITP; Pre-K/K
APPX. NUMBER OF CHILDREN	32 - 42	25 – 32	32 – 40	12 – 14	30	30	32-42	35-45	32 – 42
Notes	<p><i>GMMS has multiple programs to help spread out arrival/dismissal times: Before Care, After Care, Half-Day, Extended Day, and Full-Day options. Drop off windows are provided so not all students in each program arrive at the same time.</i></p> <p><i>The Infant-toddler program has options 2-5 days a week, where many children attend twice a week (half day or full day)</i></p> <p><i>While the number of children arriving during each window will vary, the arrival windows and the maximum total enrollment (146 children) will remain the same</i></p>								

**ITP = Infant/Toddler Program;
Pre-K/K = Pre-Kindergarten/Kindergarten*

Addressing Concerns of Neighbors

■ *Cut-through traffic on Palm Lake Drive*

- Traffic Analysis: only 14% of visitors will use portion of Palm Lake Drive abutting homes
- Voluntary proposed condition:
 - Applicant will enforce right turn only out of school during specific school hours





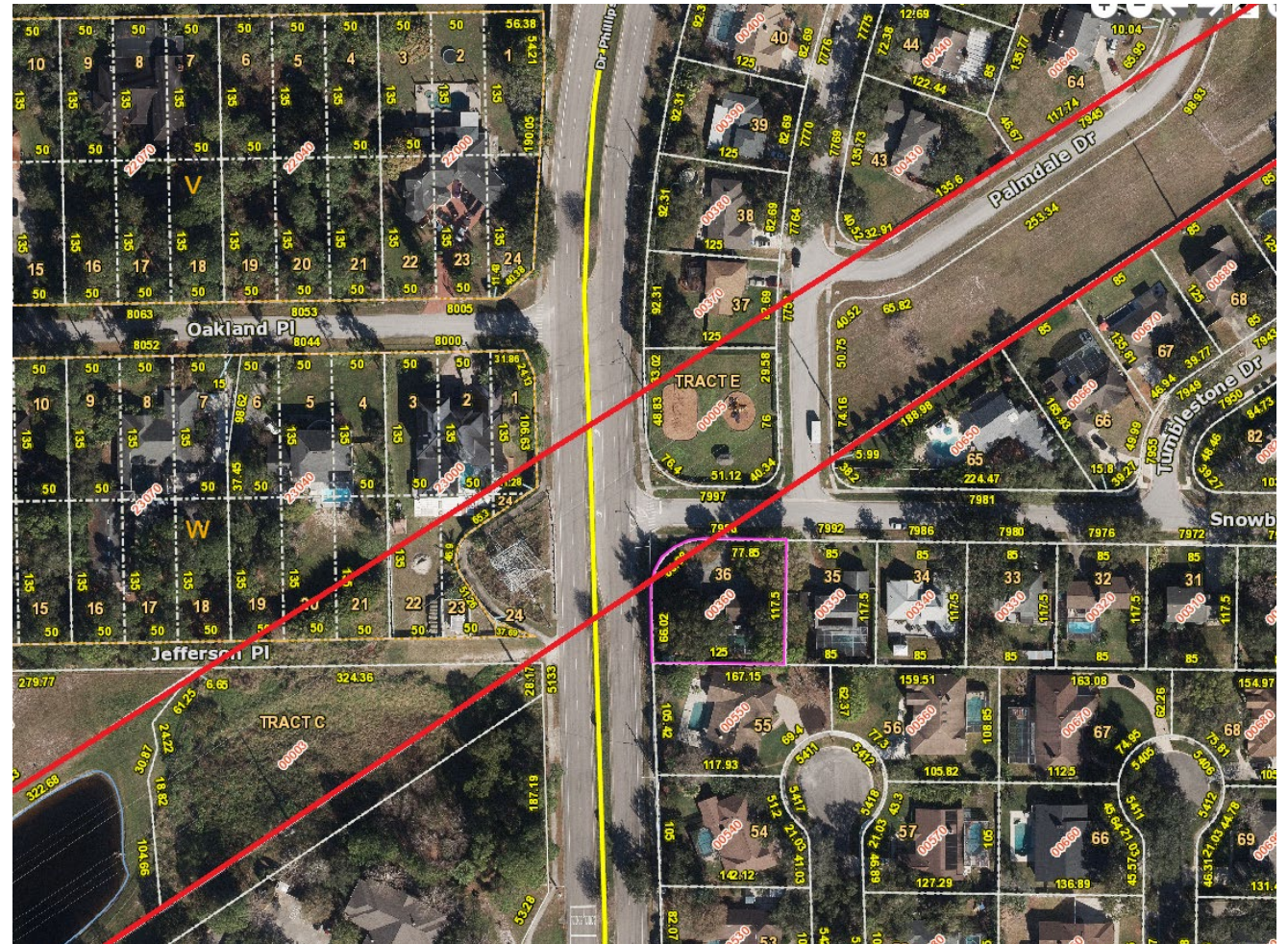
Additional Concerns Raised

- *The building's proximity to power lines poses health risk*
 - “Studies have examined associations of these cancers with living near power lines, with magnetic fields in the home, and with exposure of parents to high levels of magnetic fields in the workplace. No consistent evidence for an association between any source of non-ionizing EMF and cancer has been found.”
 - Source: NIH
 - Exposure to low-level electromagnetic fields has been studied extensively, and there is no evidence that it is harmful to human health, according to the
 - Source: World Health Organization
 - Nearby homes as close or closer to same power lines.



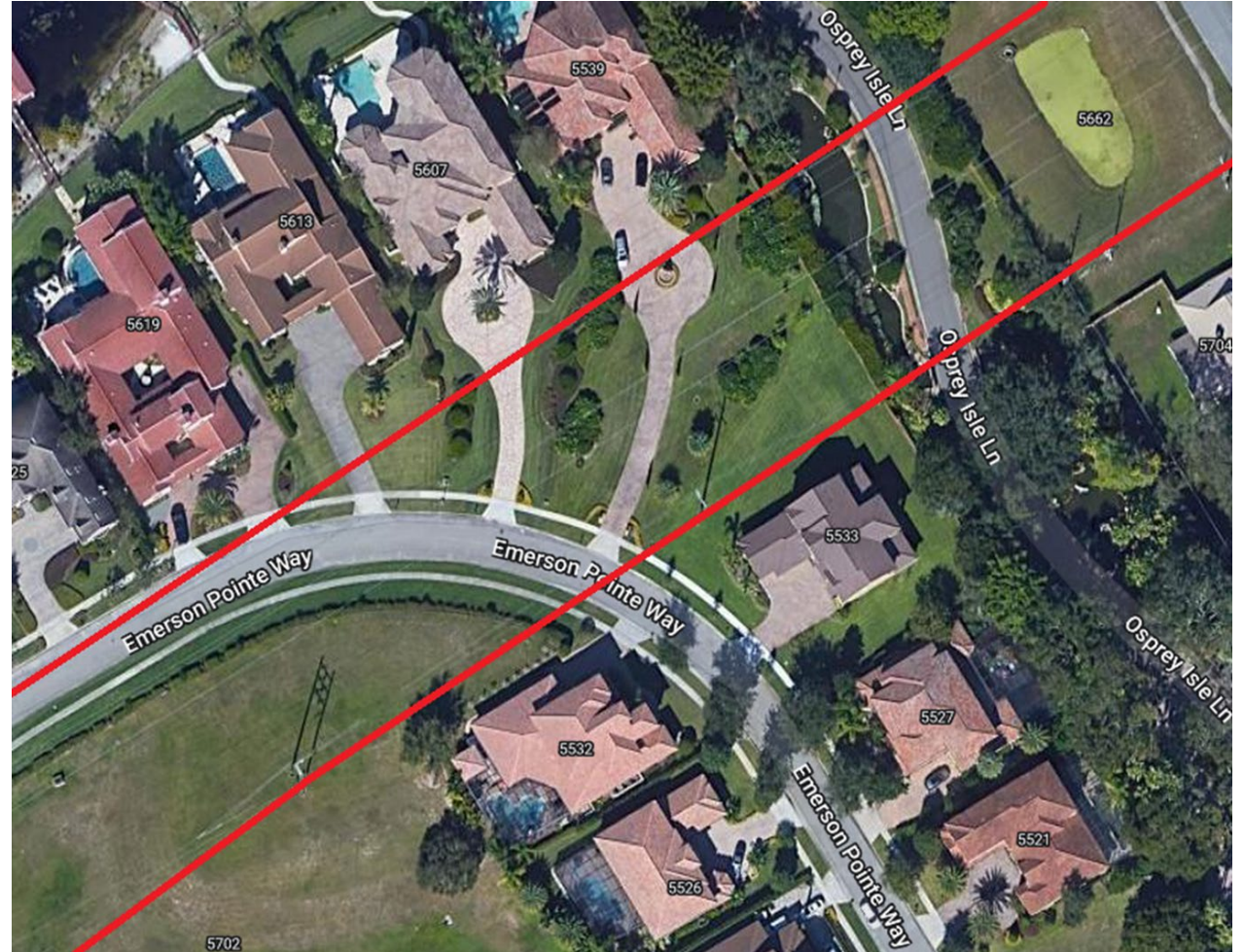
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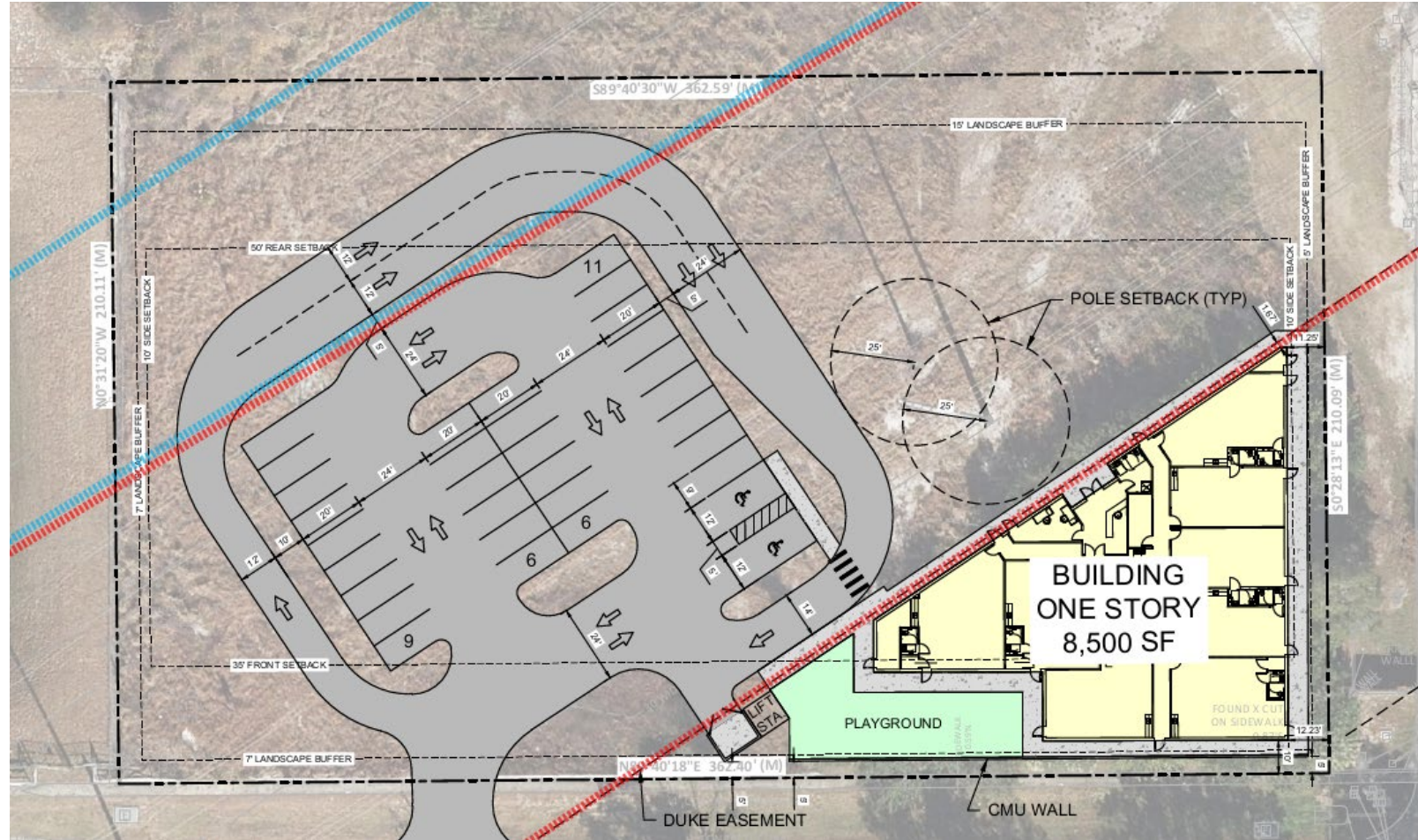
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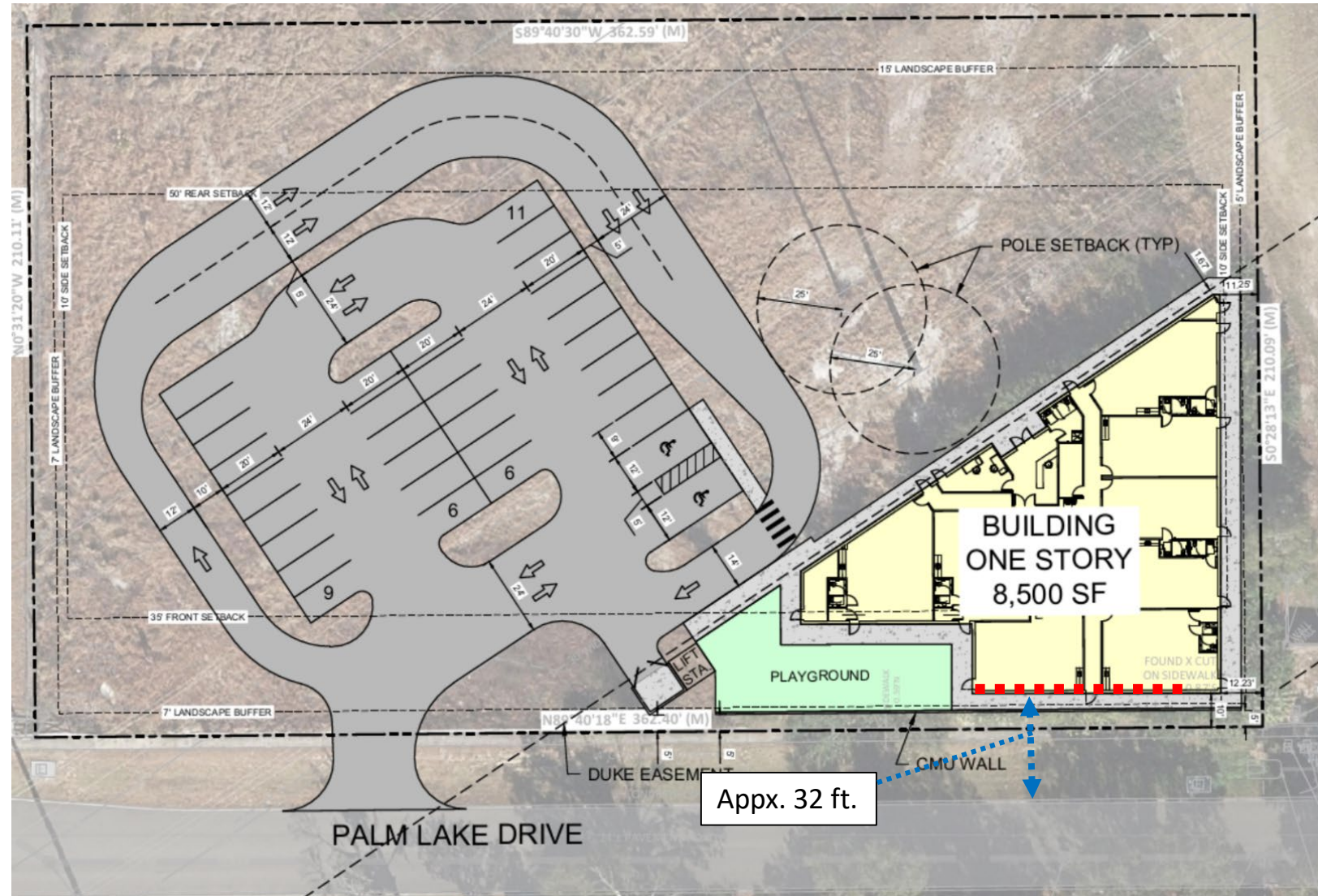
Variance Criteria (Sec. 30-43)

- (1) Special Conditions and Circumstances*
- (2) Not Self Created*
- (3) No Special Privilege*
- (4) Deprivation of Rights*
- (5) Minimum Possible Variance*
- (6) Purpose and Intent of Code*



Variance Criteria (Sec. 30-43)

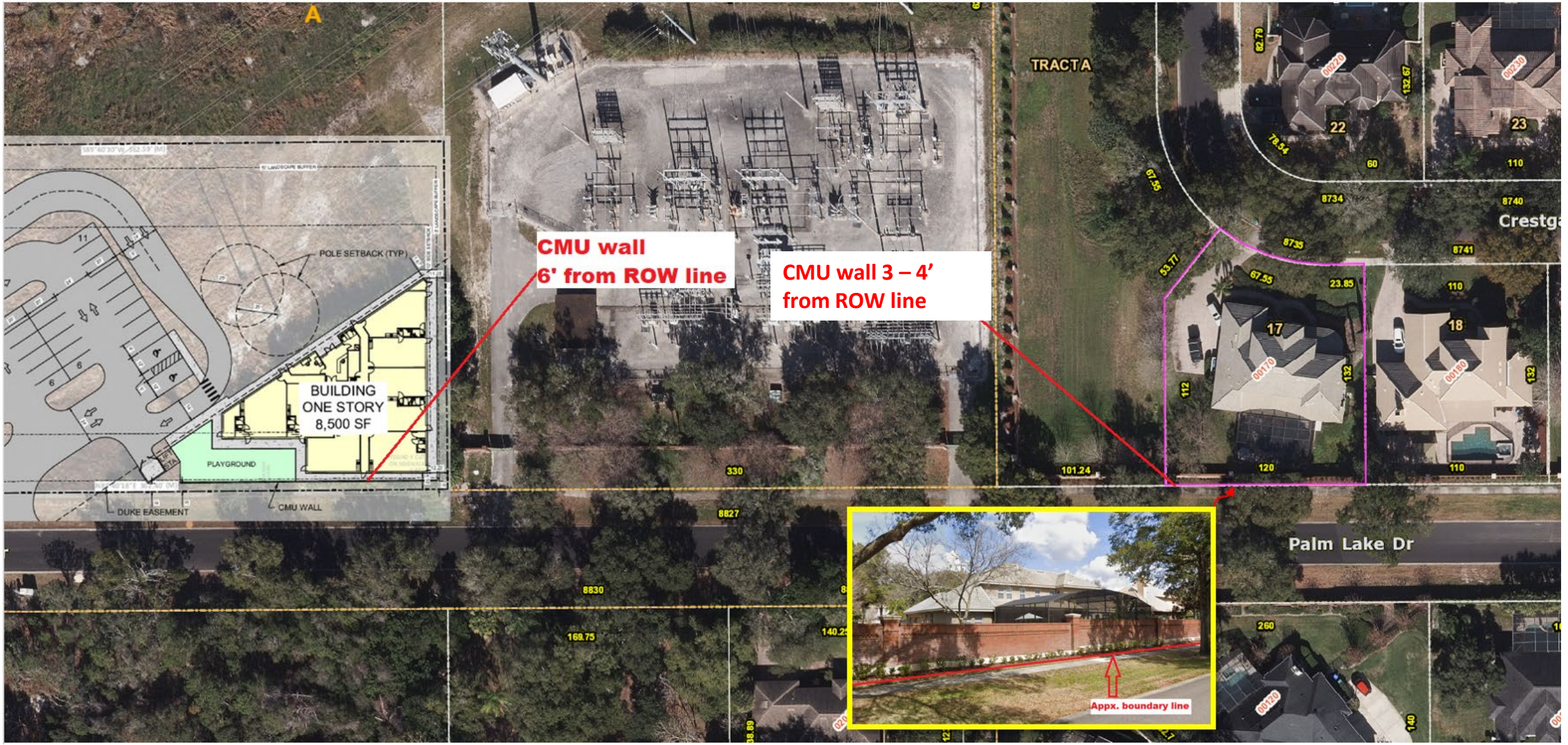
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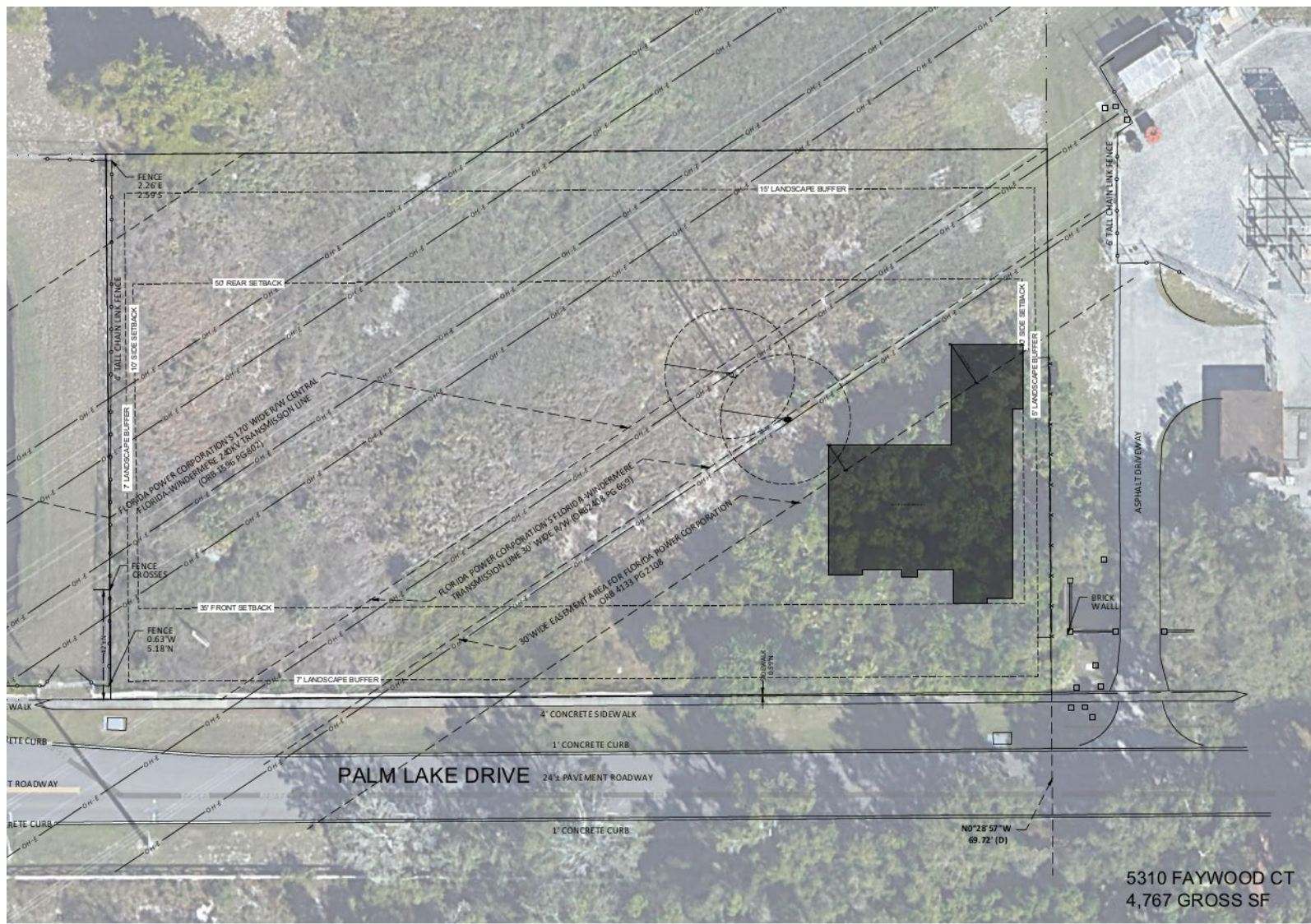
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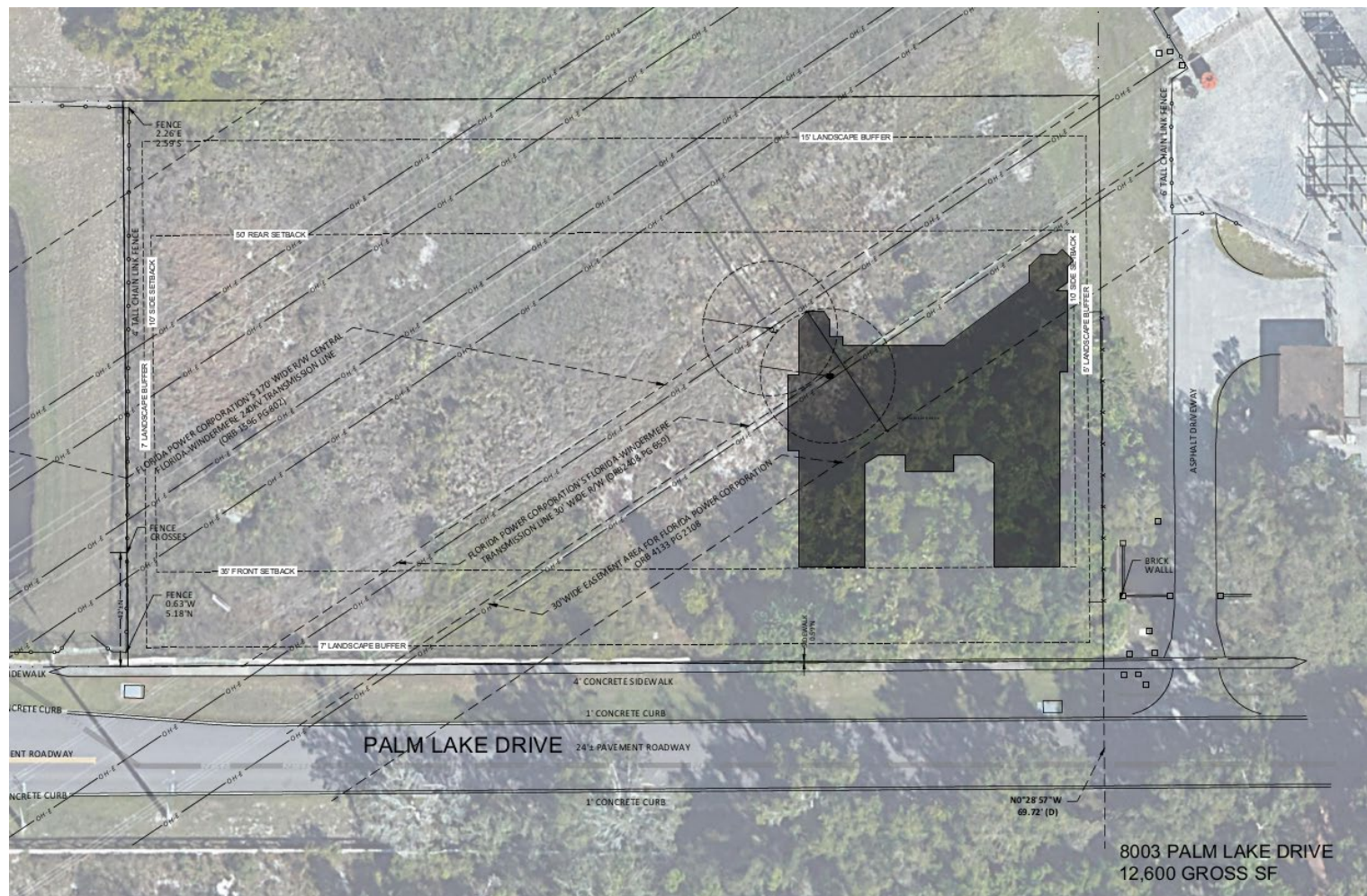
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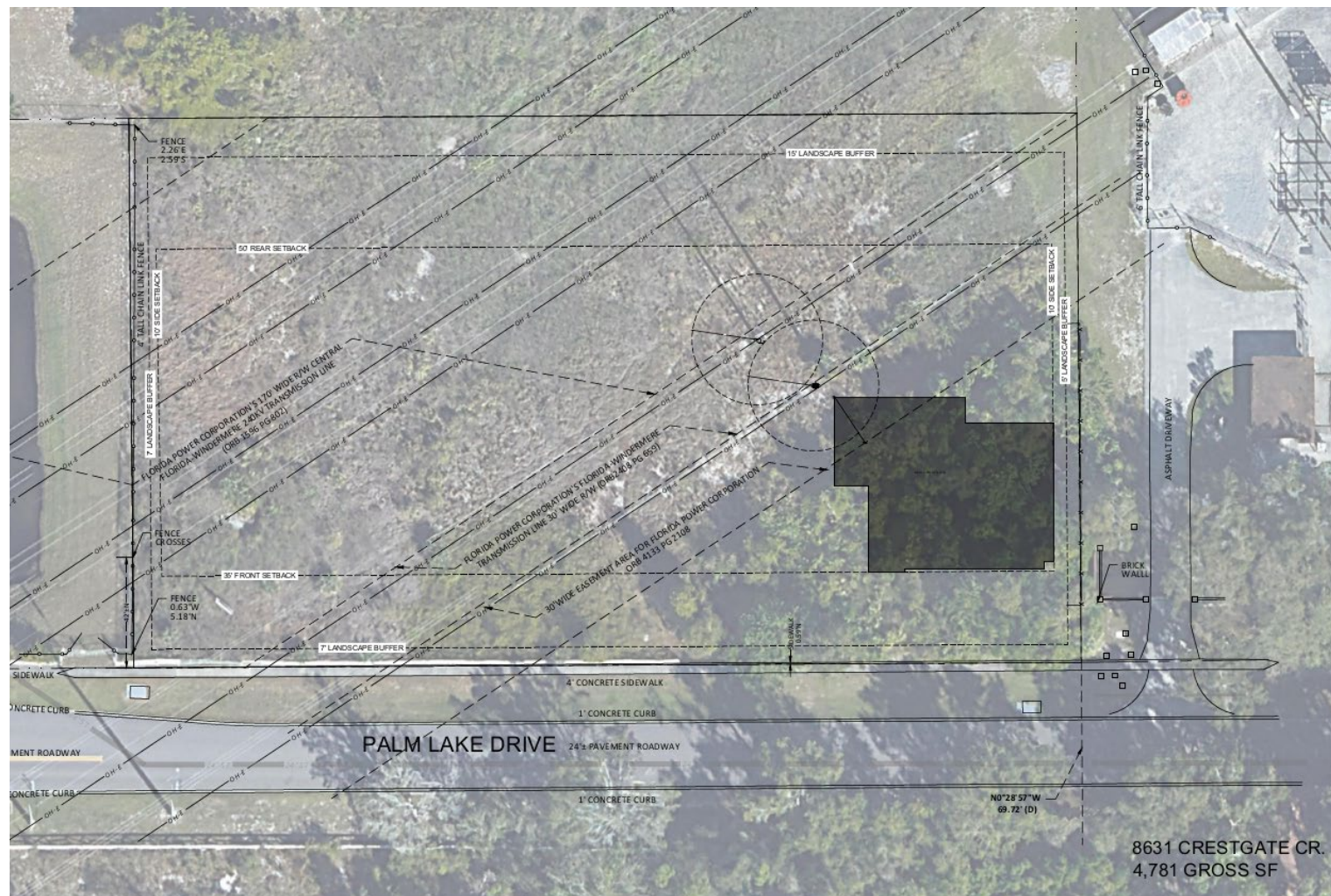
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**THANK
YOU**

Questions?

McGregor Love, Attorney

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(407) 418-6311

Special Exception vs. Rezoning

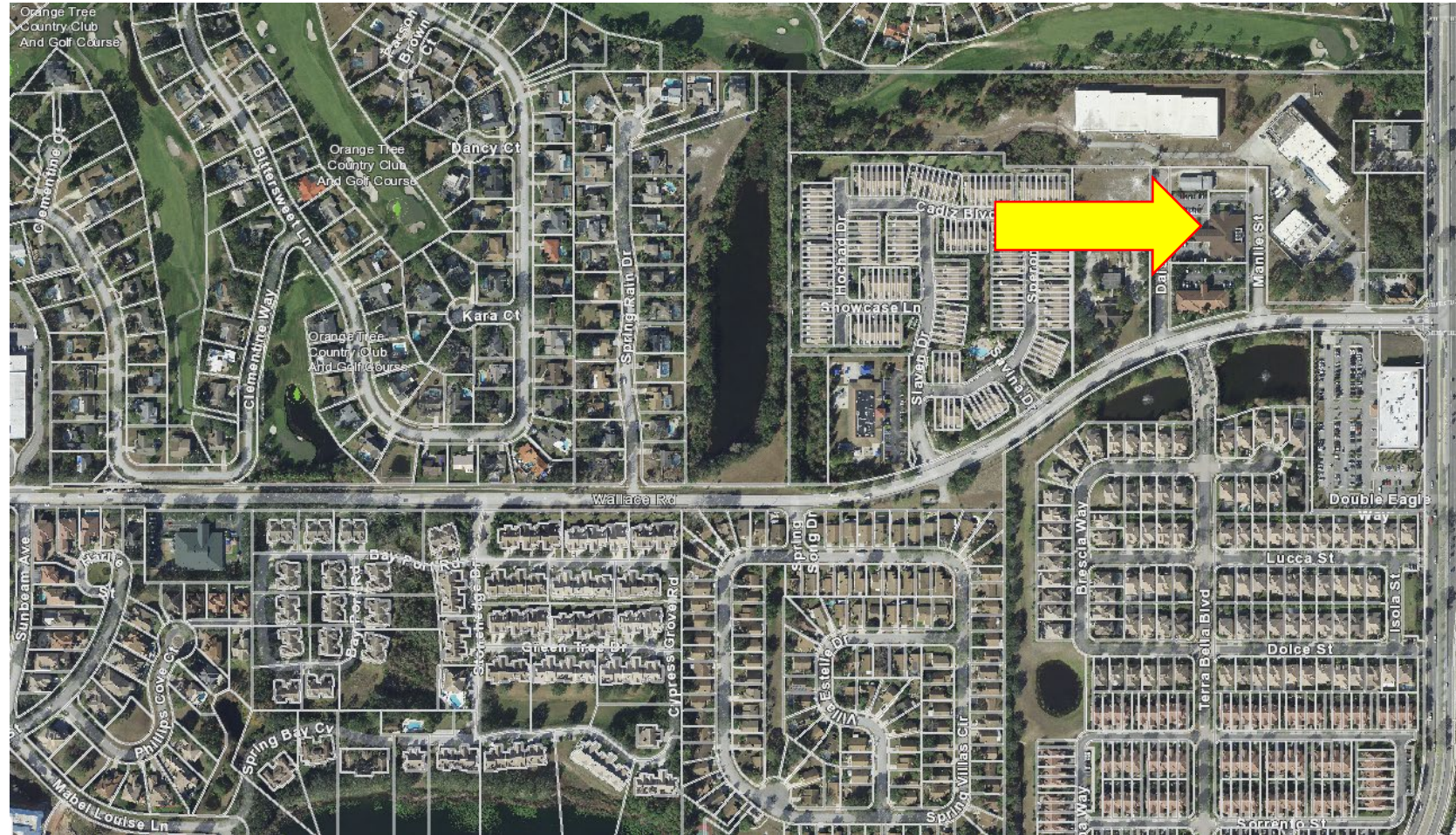
“There is a distinction between seeking Rezoning and seeking a Special exception; each involves somewhat different considerations. In rezoning, the burden is upon the Applicant to clearly establish such right. In the case of a special exception, where the applicant has otherwise complied with those conditions set forth in the zoning code, the burden is upon the Zoning authority to demonstrate by competent substantial evidence that the special exception is adverse to the public interest. *A special exception is a permitted use to which the applicant is entitled unless the zoning authority determines according to the standards in the zoning ordinance that such use would adversely affect the public interest.*”

- Rural New Town, Inc. v. Palm Beach Cnty., 315 So. 2d 478, 480 (Fla. 4th DCA 1975)

Nearby SE Approvals

SE-12-09-069

- Ladybird Academy
 - 13,148 SF daycare
 - 190 children
 - Directly across from single fam. subdivision
 - 10' front setback in lieu of 35'
 - 7' side setback in lieu of 10'



Nearby SE Approvals

SE-14-12-087

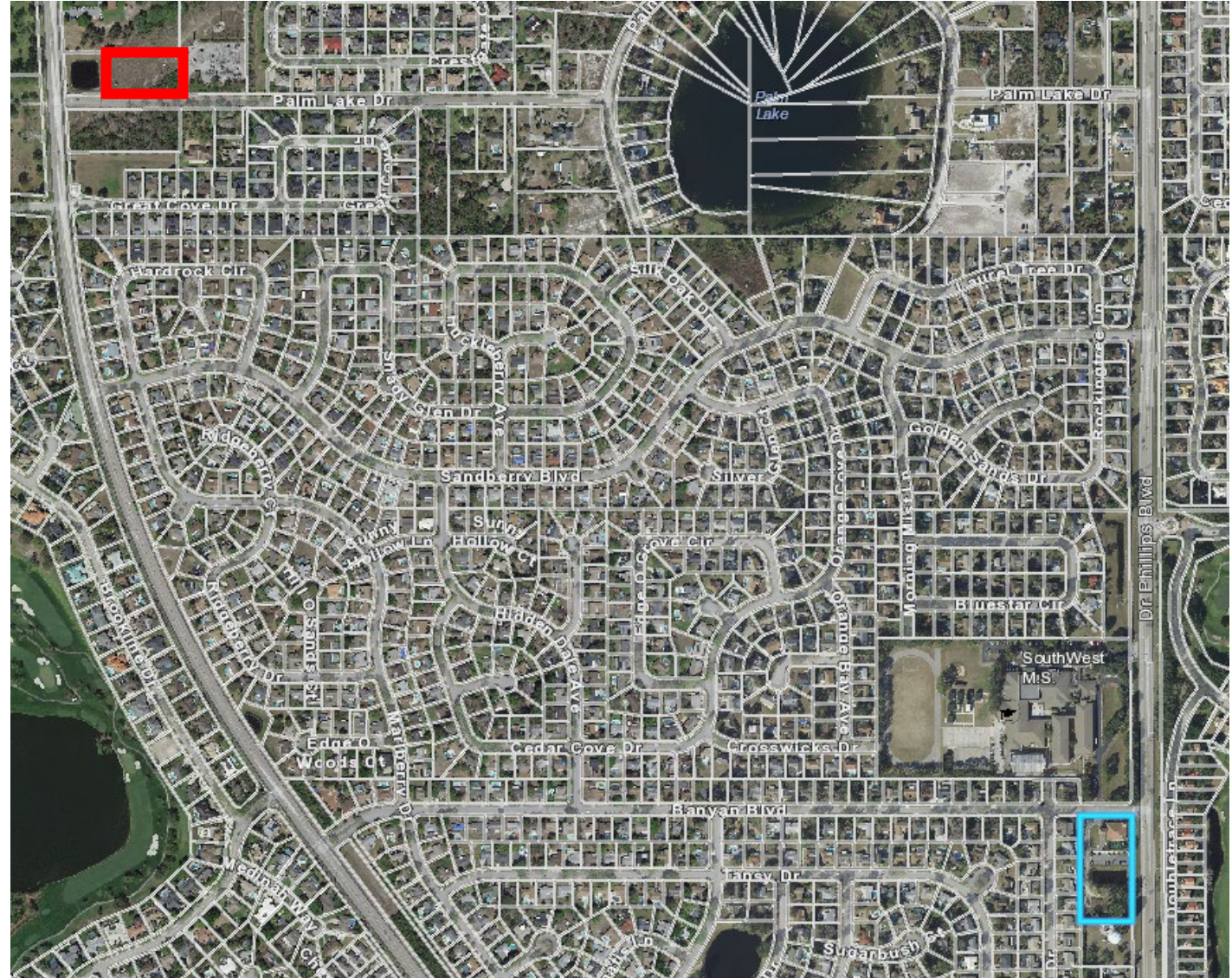
- The Learning Center
 - 7,300 SF daycare
 - 135 children
 - Directly across from South West Middle School on



Variance Criteria (Sec. 30-43)

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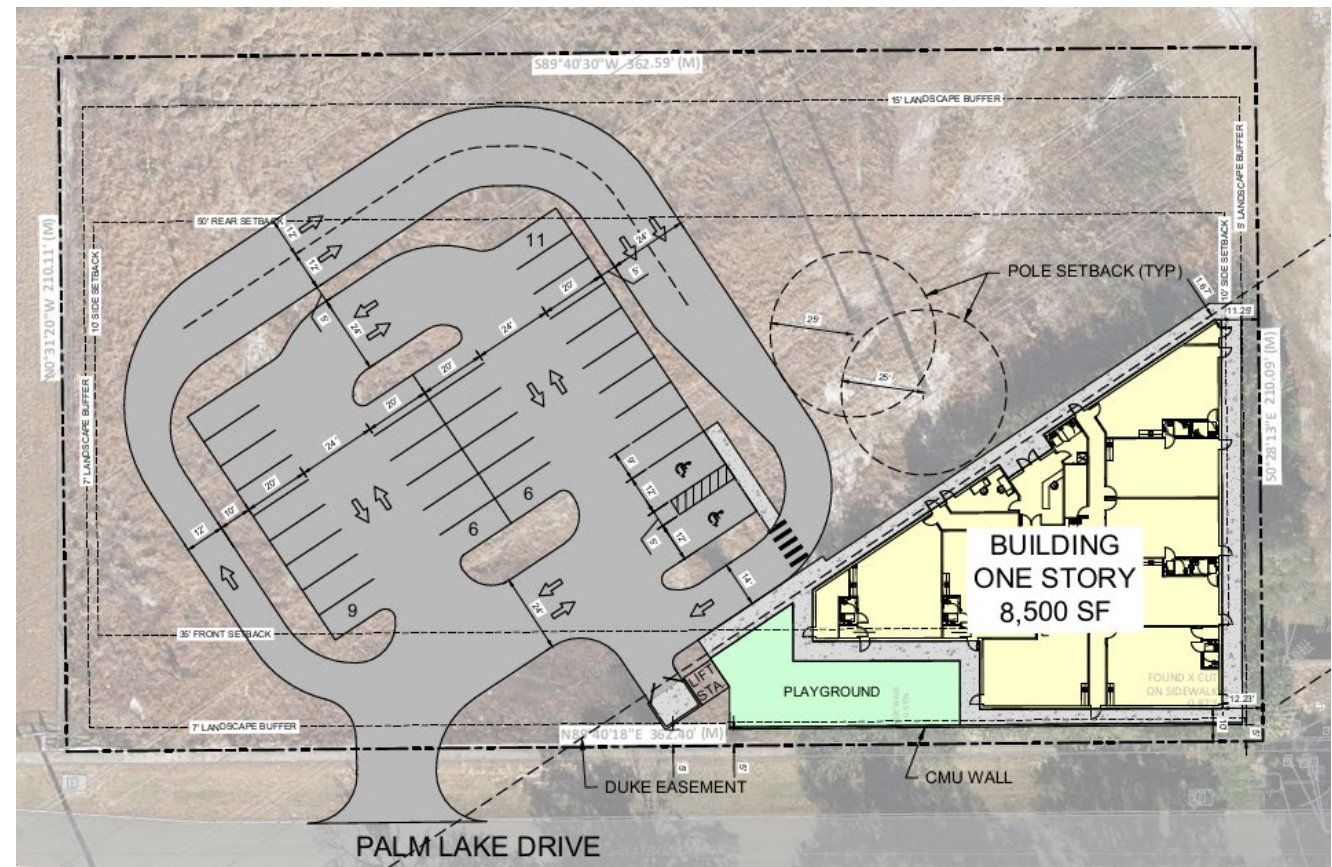




1980

1969





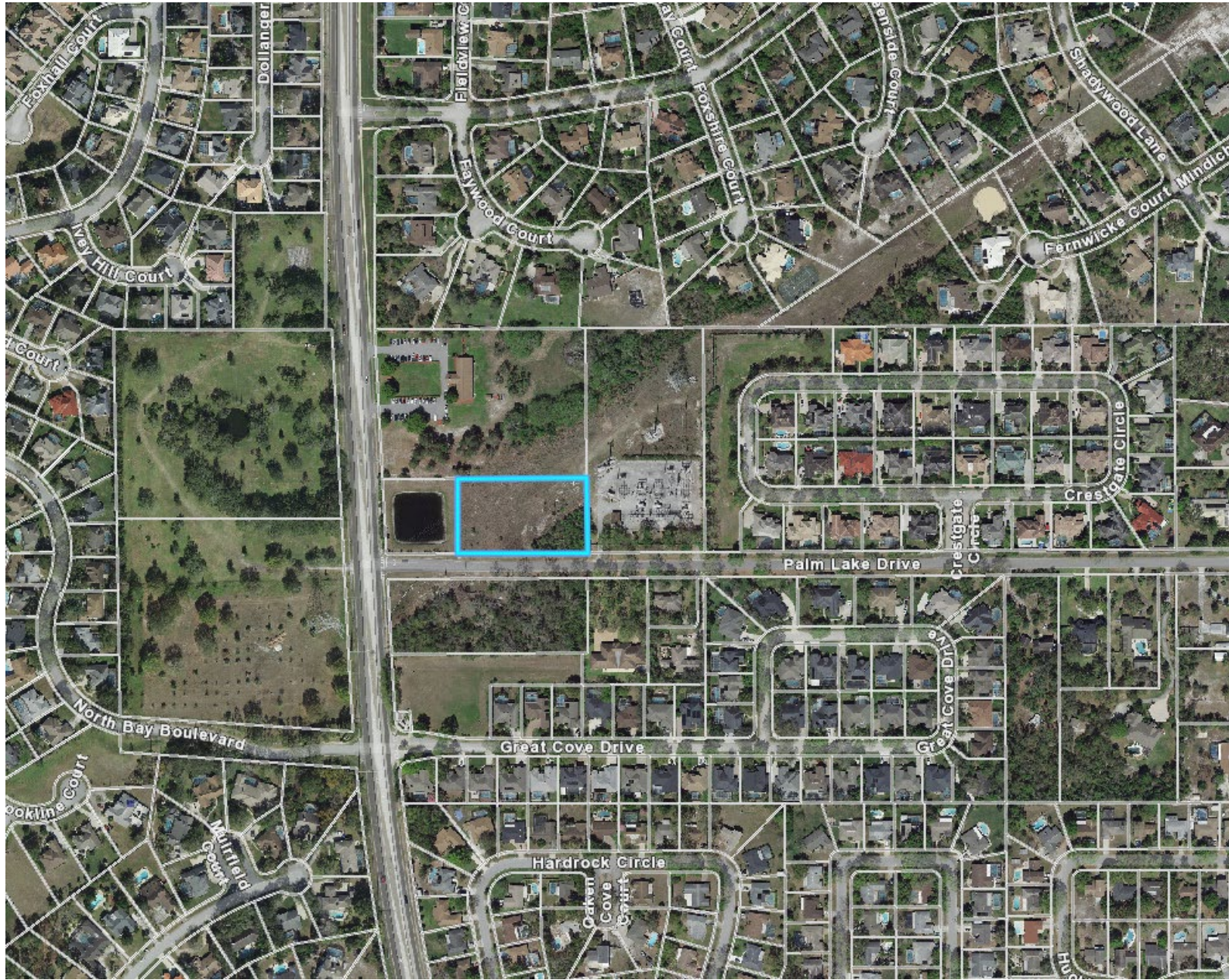
Palm Lake Elementary

Special Exception Criteria

Special Exception Criteria

(1) Consistent with Comprehensive Plan

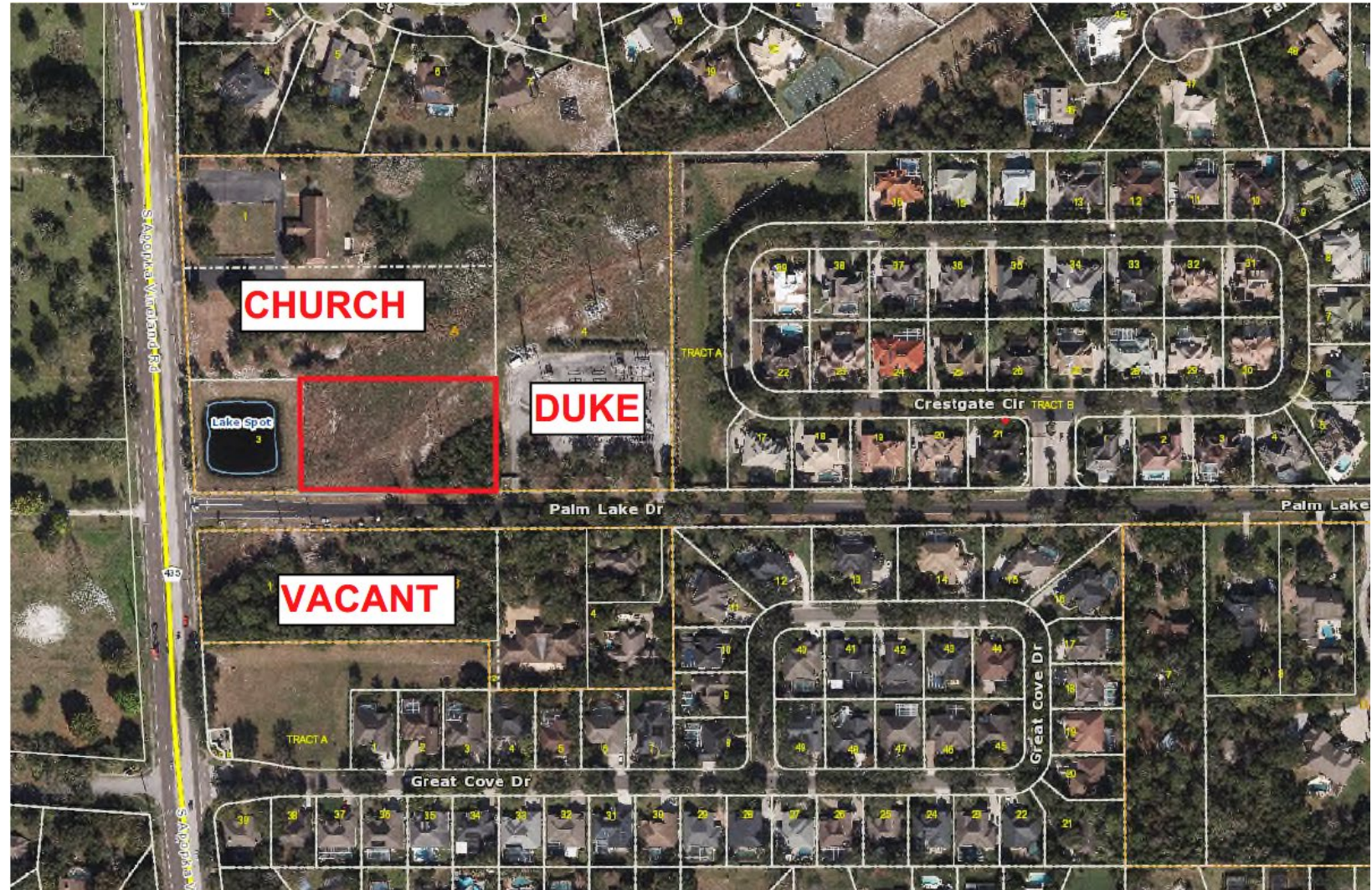
- *“Comprehensive Plan provides that certain institutional uses as conditioned are consistent with residential Future Land Use designations through the Special Exception process, this includes day cares and public and private schools.” – Staff*
- Advances Comprehensive Plan Objective of encouraging infill development:
 - OBJ FLU2.1 INFILL. Orange County shall promote and encourage infill development for vacant and underutilized parcels within the Urban Service Area. (Obj. 3.3- r)



Special Exception Criteria

(2) Similar and compatible with surrounding area

- Use is “compatible with the adjacent properties in the area, which include an existing religious institution to the north, a retention pond to the west, an electrical substation to the east, and Palm Lake Drive to the south.” – Staff
- **FLU8.2.11:** “Compatibility may not necessarily be determined to be a land use that is identical to those uses that surround it. Other factors may be considered, such as the design attributes of the project, its urban form, the physical integration of a project and its function in the broader community, as well its contribution toward the Goals and Objectives in the CP.”



Special Exception Criteria

(3) Shall not act as a detrimental intrusion into a surrounding area

- *“The proposed improvements will be located in a manner to minimize impacts to adjacent properties and is over 100 feet from the nearest single-family residence to the southeast” – Staff*
- *“The proposal includes a 6 ft. high wall and a 5 ft. wide landscape strip adjacent to the Palm Lake Dr. right-of-way, and as such will not be a detrimental intrusion to the surrounding area.” – Staff*
- County Transportation: “the proposed driveway is not expected to have significant queues to obstruct through traffic movements on Palm Lake Drive.”

Special Exception Criteria

(4) Meet the performance standards of the district

- Other than the requested variance (discussed below), the application meets district performance standards

(5) Similar in noise, vibration, dust, odor, glare, heat generation

- “There are no proposed activities on the property that would generate noise, vibration, dust, odor, glare, heat producing and other characteristics that are not associated with the majority of uses permitted in the Zoning district.” – Staff

(6) Landscape buffer yards shall be in accordance with Section 24-5 of the Orange County Code

- Applicant will provide buffer yards in accordance with Code, as conditioned by Staff

Variance Criteria

Variance Criteria (Sec. 30-43)

(1) Special Conditions and Circumstances

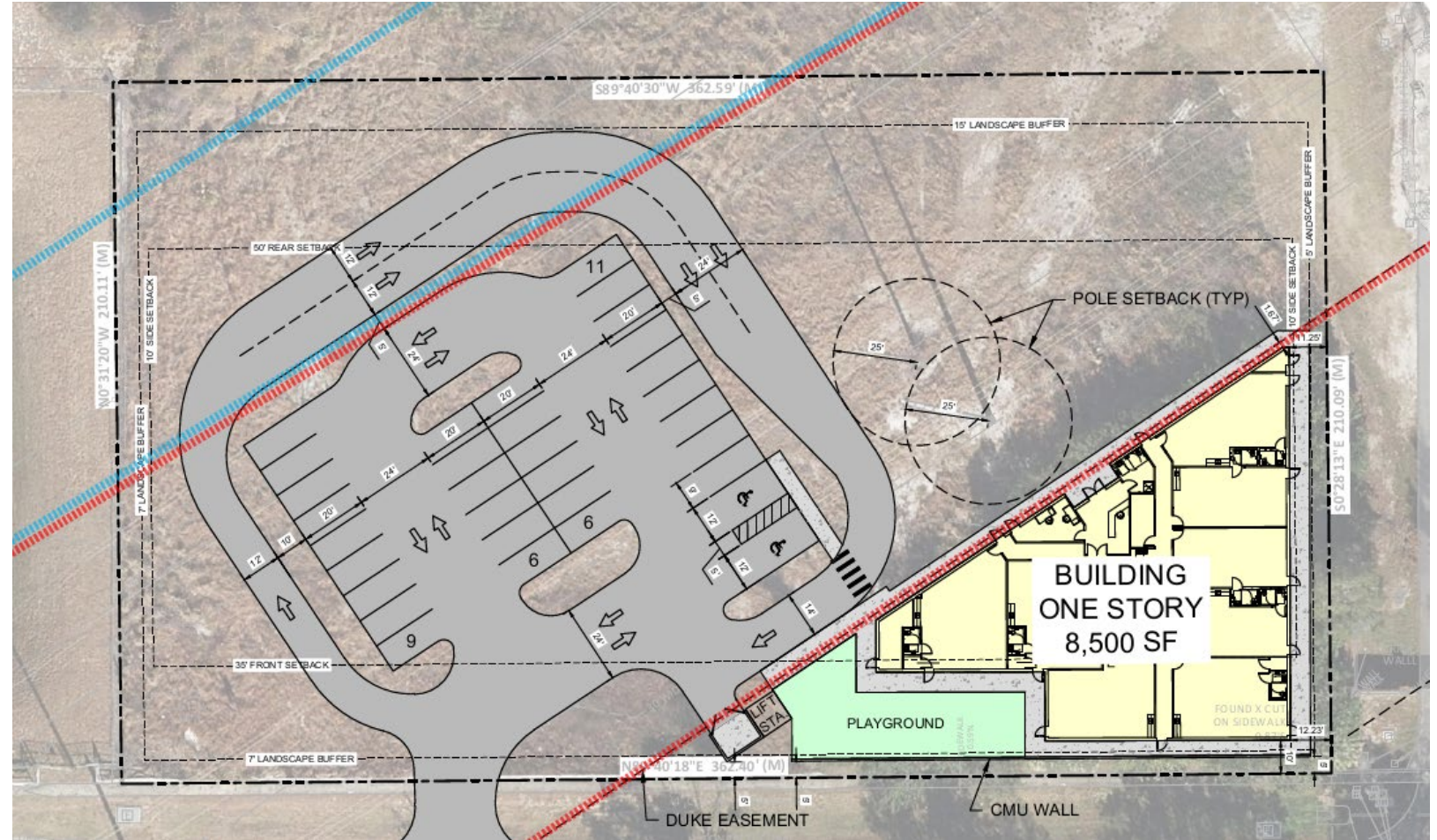
- “Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district.”
- Two power line easements limit development to SE corner



Variance Criteria (Sec. 30-43)

(2) Not self created

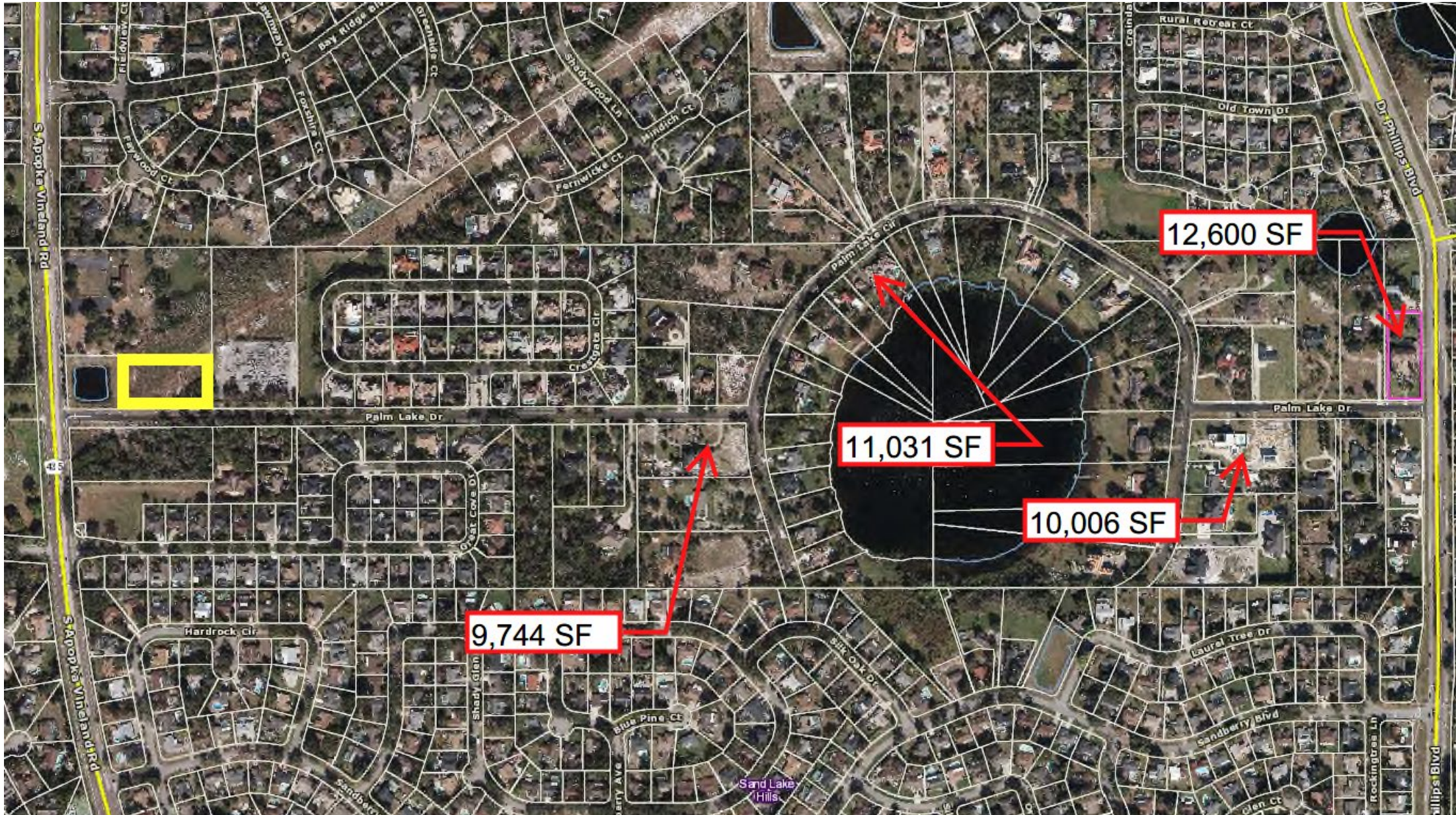
- Applicant did not create Easement and development restrictions



Variance Criteria (Sec. 30-43)

(3) No Special Privilege

- Approval will not “confer on the applicant any special privilege that is denied to other lands or buildings in the same zoning district.”
- Proposed building has a FAR of 0.11
 - Property located within the Urban Service area
 - Even within Rural Settlement, non-residential development allowed a FAR up to 0.15
- If developable area were not so restricted by easements, applicant could easily construct the proposed building without a variance.
- Nearby property owners to the east (also zoned R-CE) have developed larger buildings





Variance Criteria (Sec. 30-43)

(3) No Special Privilege

- Properties to the east have structures located less than 10 ft. from right-of-way (Palm Lake Dr.) line



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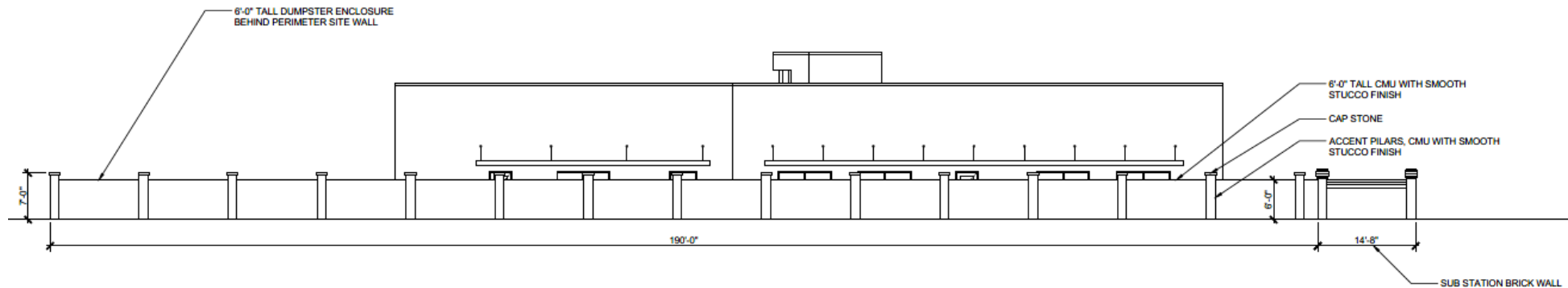
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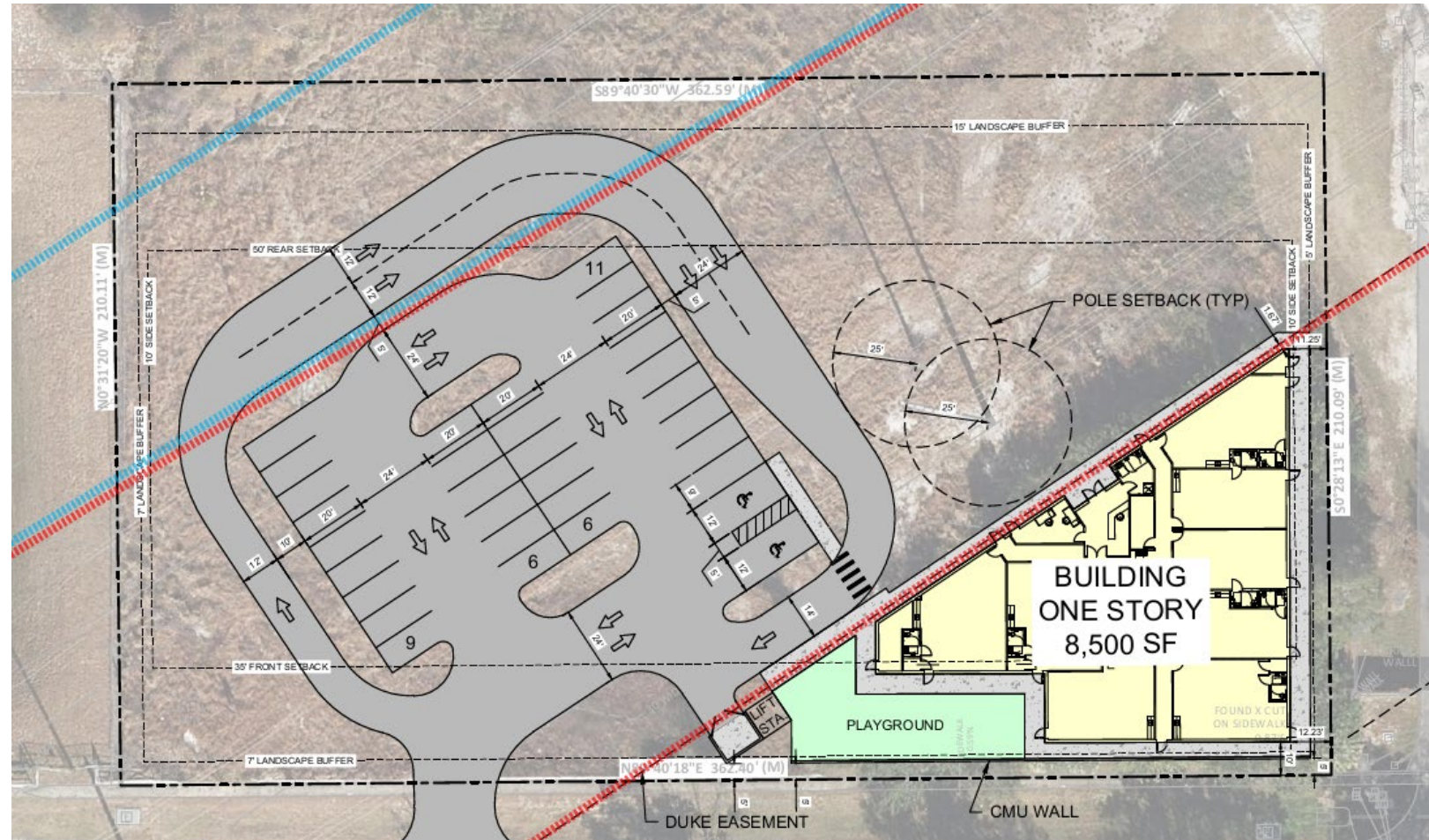
- Properties to the east have structures located less than 10 ft. from right-of-way (Palm Lake Dr.) line
- Separated similar to applicant's proposal: masonry wall, buffer yard,



Variance Criteria (Sec. 30-43)

(4) Deprivation of Rights

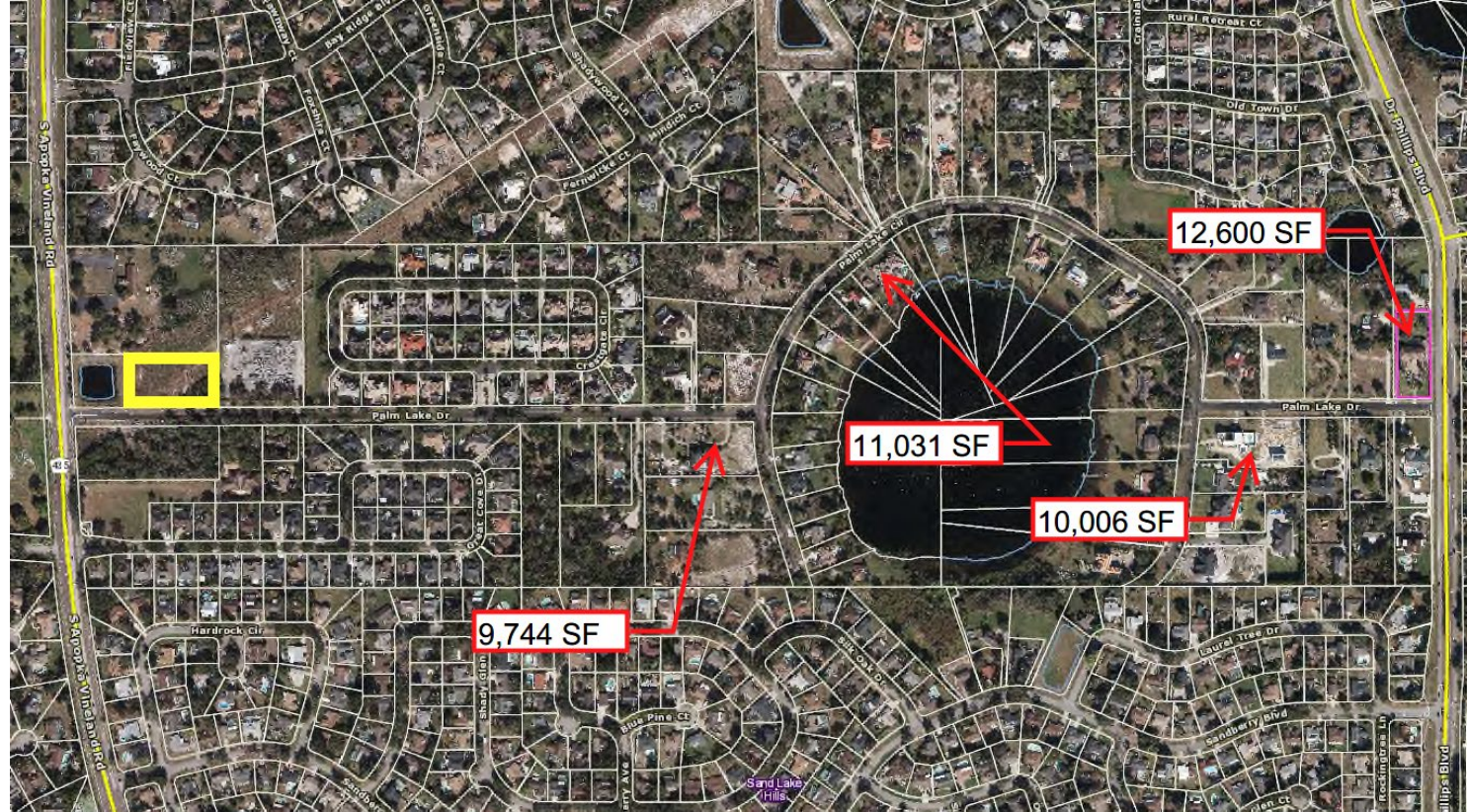
- Given the development restrictions, literal interpretation of Code would deny applicant of rights commonly enjoyed by other properties in the same district.



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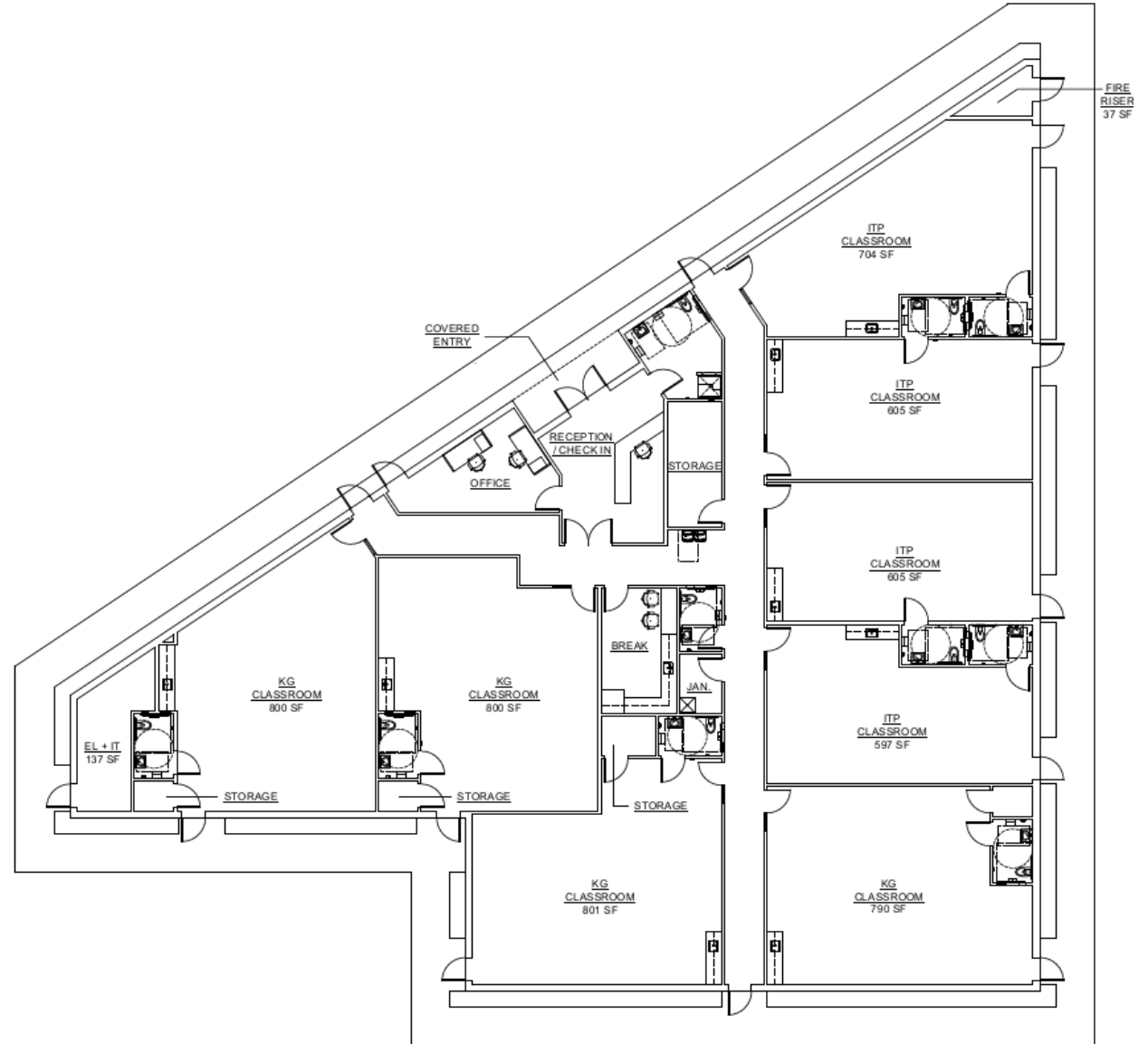
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Variance Criteria (Sec. 30-43)

(5) Minimum Possible Variance

- Requested variance is the minimum variance that will make possible the reasonable use of the land
- Department of Children & Families imposes minimum classroom sizes
- Approval will allow small school/daycare with adequate sized classrooms



Variance Criteria (Sec. 30-43)

(6) Purpose and Intent of Code

- Granting of the variance shall be in harmony with the general purpose and intent of the zoning ordinance.
- Masonry wall and buffer yard will provide visual and physical separation
- Unpaved (grass) portion of Palm Lake Dr. will provide further separation and satisfy intent/purpose of setback
 - Appx. 22 feet of grass
 - Building is appx. 32 ft. from paved road



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- Unpaved (grass) portion of Palm Lake Dr. will provide further separation and satisfy intent/purpose of setback
 - Appx. 22 feet of grass
 - Building is appx. 32 ft. from paved road
- Proposing only 73 ft. of building frontage to be 10.4 ft. from southern property boundary.

