




Interoffice Memorandum

February 22, 2023

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

FROM: Tim Boldig, Interim Director
Planning, Environmental, and Development Services
Department

CONTACT PERSON: **Ted Kozak, AICP, Chief Planner**
Zoning Division
(407) 836-5537

SUBJECT: March 7, 2023 – Appeal Public Hearing
Applicant / Appellant: McGregor Love for Growing Minds
School
BZA Case #SE-22-07-047, January 5, 2023; District 1

Board of Zoning Adjustment (BZA) Case # SE-22-07-047, located at 8841 Palm Lake Drive, Orlando, FL 32819, in the R-CE district, in District 1, is an appeal to the Board. The applicant is requesting a special exception to allow for an 8,500 sq. ft. day care center and private school (kindergarten) with 146 students and a variance to allow a south front setback of 10.4 ft. in lieu of 35 ft.

The subject property is located on the north side of Palm Lake Dr., east of S. Apopka Vineland Rd., west of Dr. Phillips Blvd., south of Conroy Windermere Rd.

At the January 5, 2023 BZA hearing, staff recommended approval of the special exception and denial of the variance. The BZA recommended denial of the special exception and variance. The applicant subsequently appealed the BZA decision.

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 Ted Kozak at (407) 836-5537.

ACTION REQUESTED: Deny the applicant's requests; or approve the applicant's requests with conditions. District 1

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

March 7, 2023

The following is a public hearing on an appeal before the Board of County Commissioners on March 7, 2023 at 2:00 p.m.

APPLICANT/ APPELLANT: MCGREGOR LOVE FOR GROWING MINDS SCHOOL

REQUEST: Special Exception and Variance in the R-CE zoning district as follows:
1) Special Exception to allow for an 8,500 sq. ft. day care center and private school (kindergarten) with 146 students.
2) Variance to allow a south front setback of 10.4 ft. in lieu of 35 ft.

LOCATION: 8841 Palm Lake Dr., Orlando, FL 32819, north side of Palm Lake Dr., east of S. Apopka Vineland Rd., west of Dr. Phillips Blvd., south of Conroy Windermere Rd.

TRACT SIZE: +/- 1.7 acres

ZONING: R-CE

DISTRICT: #1

PROPERTIES NOTIFIED: 54

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

Staff described the proposal, including the location of the property, the site plan, elevations, landscape plan, and photos of the site. Staff provided an analysis of the six (6) Special Exception criteria and the reasons for a recommendation for approval and of the six (6) Variance criteria and the reasons for a recommendation for denial since there are other options in order to eliminate the need for the Variance. Staff noted that 71 comments were received in favor of the application and 140 comments were received in opposition to the application.

The applicant team presented a Power Point and discussed details of the request, including hours of operation, traffic, stacking, parking, site improvement design, building aesthetics and compatibility with the area.

There were ten individuals in attendance that spoke in favor of the request and there were 34 individuals in attendance that spoke in opposition to the request, which included the provision of a detailed Power Point presentation, citing concerns about traffic, stacking, compatibility with the neighborhood, and environmental concerns.

The BZA discussed traffic issues and compatibility with the residences in the surrounding area and recommended denial of the Special Exception and Variance by a 4-3 vote.

BZA HEARING DECISION:

A motion was made by Thomas Moses, seconded by John Drago and unanimously carried to recommend DENIAL of the Special Exception request in that the Board finds it does not meet the requirements governing Special Exceptions as spelled out in Orange County Code, Section 38-78, and that the granting of the Special Exception does adversely affect general public interest; and DENIAL of the Variance request in that there was no unnecessary hardship shown on the land; and further, it does not meet the requirements governing Variances as spelled out in Orange County Code, Section 30-43(3) (4 in favor, 3 opposed).



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

Appellant Information

Name: McGregor Love (Lowndes Law Firm)

Address: 215 N Eola Drive, Orlando, FL 32801

Email: mcgregor.love@lowndes-law.com Phone #: (407) 418-6311

BZA Case # and Applicant: SE-22-07-047

Date of BZA Hearing: 2023-01-05

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

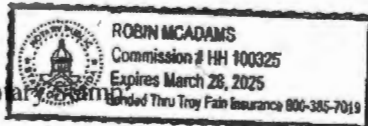
See attached.

Signature of Appellant: [Signature] Date: 1-17-2023

STATE OF Florida
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 17th day of January, 2023, by McGregor Love who is personally known to me or who has produced identification and who did/did not take an oath.

[Signature]
Notary Public Signature



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.



MCGREGOR T. LOVE

Associate

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215 North Eola Drive, Orlando, Florida 32801-2028

T: 407-418-6311 | F: 407-843-4444

MAIN NUMBER: 407-843-4600



January 17, 2023

Jennifer Moreau
Orange County Zoning Division
201 S. Rosalind Avenue
Orlando, FL 32802

**Re: Growing Minds Montessori – Appeal of Board of Zoning Adjustment Denial
(SE-22-07-047)**

Dear Jennifer:

This law firm represents Growing Minds Montessori (the “Applicant”) with respect to its applications for a special exception and variance (the “Applications”) for the proposed 8,500 SF private Montessori school to be developed at the property located at 8841 Palm Lake Drive. At the January 5, 2023 meeting of the Board of Zoning Adjustment (“BZA” or “Board”), the BZA approved a motion to deny the special exception application by a vote of four (4) to three (3) (the “BZA Denial”)¹.

At the hearing and within the written materials provided to the BZA in connection with the Applications, the Applicant presented competent substantial evidence to demonstrate that the Applications met all criteria for approval under the Land Development Code. In response, no countervailing competent substantial evidence was presented to demonstrate that the special exception application did not meet the requirements for approval under the County’s Land Development Code. Instead, the Board based the BZA Denial on speculation, which does not rise to the level of competent substantial evidence. As a result, the BZA Denial was not supported by competent substantial evidence and, therefore, was improper under Florida law:

“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

¹ During the Board’s deliberation prior to the vote, Board members stated that the variance would automatically be denied if the special exception were denied, in which case no vote on the variance would be necessary. When the Applicant’s counsel attempted to clarify he was told that he could not speak during Board deliberation. Accordingly, the term “BZA Denial,” as used in this letter, encompasses the Board’s denial of the Applicant’s special exception and the “automatic denial” of the Applicant’s variance request.



Jennifer Moreau
January 17, 2023
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to which the applicant is entitled *unless* the zoning authority determines according to the standards of the zoning ordinance that such use would adversely affect the public interest." *Rural New Town, Inc. v. Palm Beach County*, 315 So.2d 478, 480 (Fla. 4th DCA 1975).

This letter constitutes the Applicant's formal appeal of the BZA Denial. The Applicant requests a *de novo* hearing before the Board of County Commissioners on its Applications.

Sincerely,

A handwritten signature in dark ink, appearing to read 'McGregor Love', with a horizontal line extending to the right.

McGregor Love

BZA STAFF REPORT

Planning, Environmental & Development Services/ Zoning Division

Meeting Date: **JAN 05, 2023**

Commission District: **#1**

Case #: **SE-22-07-047**

Case Planner: **Ted Kozak, AICP (407) 836-5537**
Ted.Kozak@ocfl.net

GENERAL INFORMATION

APPLICANT(s): MCGREGOR LOVE FOR GROWING MINDS SCHOOL

OWNER(s): IQBAL GAGAN, SALMA RAFAT

REQUEST: Special Exception and Variance in the R-CE zoning district as follows:

- 1) Special Exception to allow for an 8,500 sq. ft. day care center and private school (kindergarten) with 146 students.
- 2) Variance to allow a south front setback of 10.4 ft. in lieu of 35 ft.

PROPERTY LOCATION: 8841 Palm Lake Dr., Orlando, FL 32819, north side of Palm Lake Dr., east of S. Apopka Vineland Rd., west of Dr. Phillips Blvd., south of Conroy Windermere Rd.

PARCEL ID: 22-23-28-6560-01-030

LOT SIZE: +/- 1.7 acres

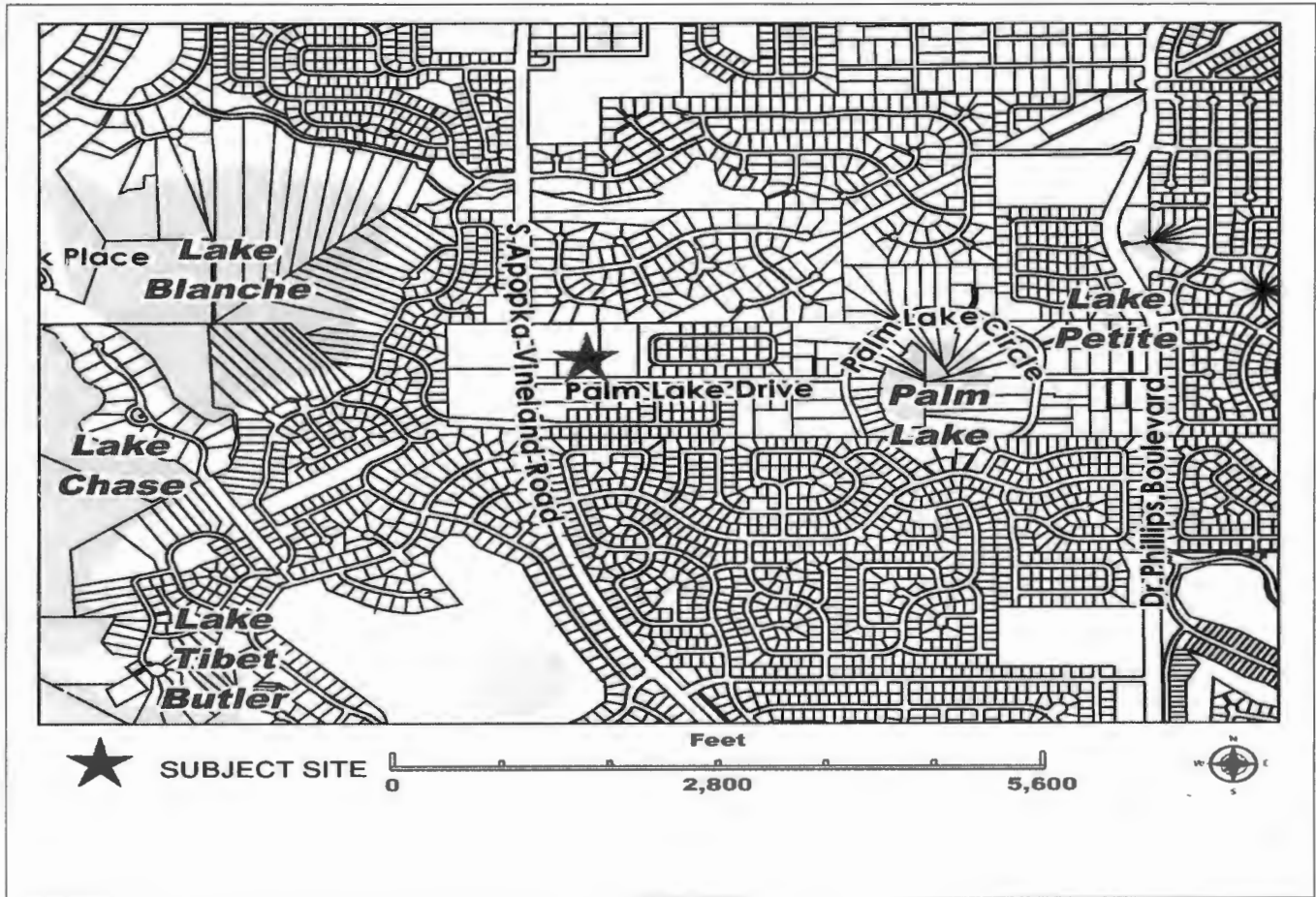
NOTICE AREA: 600 ft.

NUMBER OF NOTICES: 54

STAFF RECOMMENDATIONS

Approval of the Special Exception, subject to the conditions in this report, and denial of the Variance. However, if the BZA should find that the applicant has satisfied the criteria necessary for the granting of the Special Exception and 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	R-CE	R-CE	R-CE	R-CE	R-CE
Future Land Use	LDR	LDR	LDR	LDR	LDR
Current Use	Vacant	Religious Institution	Vacant	Duke Energy substation	County retention pond

BACKGROUND AND ANALYSIS

DESCRIPTION AND CONTEXT

The subject property is located in the R-CE, Rural Country Estate district, which allows single family homes and certain agricultural uses with a minimum lot area of one (1) acre. Certain non-residential uses, such as day cares and private schools, are permitted through the Special Exception process. The Future Land Use is Low Density Residential (LDR), which is inconsistent with the Zoning District. Per Comprehensive Plan Policy FLU8.2.5.1 (2), a rezoning may not be required for properties with inconsistent zoning and Future Land Use Map (FLUM).

designations for non-residential and residential uses when the proposed use is permitted in the existing zoning district.

The subject property is a vacant 1.7 acre lot, platted in 1953 as Lot 3, Block A of the Palm Lake Manor Plat that conforms to the minimum lot requirements of the zoning district. The property is bounded on the north side by an undeveloped portion of a religious institution, to the west by a County retention area, to the east by a Duke Energy substation and to the south by Palm Lake Dr. and single-family residences. There is a 170 ft. utility easement for overhead power lines through the center of the property.

In 2014, a previous request for a Special Exception and Variance (SE-14-01-003) on the subject site to allow a 13,000 sq. ft. religious institution and unpaved drive aisles and parking spaces in lieu of paved was denied by the Board of County Commissioners.

The current request is a Special Exception for an 8,500 sq. ft. day care and private school. The 8,500 sq. ft. building is proposed to be located at the southeast corner of the property to avoid the 170 ft. wide power line easement which traverses the center of the site. The proposed building includes ancillary offices and classrooms and an outdoor play area. The proposal includes 73 children for the day care and 73 students/ children for the private school. The proposed building meets the north, east and west setback requirement for the R-CE district, but is located 10.4 ft. from the front property line adjacent to Palm Lake Dr., requiring a Variance. Vehicular access to the site will be provided from Palm Lake Dr.

The parking requirements for the overall campus are as follows:

- 1) School: 4 classrooms @ 4 parking spaces per classroom, requiring 16 spaces
- 2) Day care: 73 children, @ 1 parking space per 10 children, when a drop off lane is provided, requiring 8 spaces

The total parking spaces required for the entire campus is 24 parking spaces. The proposed parking area contains 32 parking spaces, including 2 handicap spaces, thus meeting the parking code requirement. All parking spaces will be paved.

The proposed landscape plan for the project will include canopy trees and clusters of shrubs along the north and west property lines adjacent to the church and County retention area, respectively, to the east adjacent to the substation and to the south along Palm Lake Dr., which includes a 6 ft. high wall, to provide for screening of the outdoor play area. The majority of the perimeter landscaping areas are encumbered by the 170-foot power line easement and as such is subject to the review and approval of Duke Energy and at this time, documentation of such review and approval by Duke Energy has not yet been provided. Clustering of shrubs in some portions of the buffers, along with the provision of shade trees every 40 ft. on-center, has been proposed which requires deviations from Chapter 24. Per Sec 24-3(h), administrative deviations by the Zoning Manager from the strict conformance of the Landscape Code, Chapter 24, is authorized where the application of this Chapter to a specific site would result in a practical difficulty affecting economic use of the property. After documentation is provided to the Zoning Manager, a determination will be made of the requested deviations of the Landscape Code due to the easement and site constraints.

The proposed hours of operations provided are 7:30 a.m. to 5:30 p.m., daily. Also proposed is a queuing plan to stagger drop-off in order to limit impacts.

The County Transportation Planning Division reviewed a traffic study accompanied by a detailed operational analysis provided by the applicant's traffic consultant and has indicated that the proposed site plan along with the modified conga line proposed by County staff has adequate on-site queuing to accommodate the drop off/pickup of students. The proposed driveway is not expected to have significant queues to obstruct through traffic movements on Palm Lake Drive.

On Monday, December 5, 2022, a Community Meeting was held at Palm Lake Elementary School to allow for input. The meeting was attended by the applicant, County staff, and 138 attendees. The majority of the attendees spoke negatively about the proposal. Comments included concerns about traffic impacts and speeding on Palm Lake Drive, traffic impacts to S. Apopka Vineland Rd., including turning southbound, onsite drop-off and stacking issues, noise of the operations, negative affects to property values, the Duke Energy easement and the power lines, future expansion of the number of children, hours of operation, the number of spaces provided, the visual intrusion of the proposed setback from Palm Lake Drive, flooding in the area and concerns about child safety.

The applicant team responded that the operations will have minimal impact on traffic and stacking since there will be staggered arrival and dismissal times, and that there is no factual data that indicates negative effects of the power lines. The applicant reiterated that the operations do not operate as a traditional school relative to traffic impacts and will not be negative to the adjacent properties, which includes a retention area, a power substation, an undeveloped portion of a church property and Palm Lake Drive.

At the date of the writing of this report, 123 comments have been received in opposition to the request and 65 comments have been received in support of the request.

District Development Standards

	Code Requirement	Proposed
Max Height:	35 ft.	25.2 ft.
Min. Lot Width:	130 ft.	362.4 ft.
Min. Lot Size:	1 acre	1.7 acres

Building Setbacks (that apply to structure in question) (Measurements in feet)

	Code Requirement	Proposed
Front:	35 ft. (Palm Lake Dr.)	10.4 ft. (South - Variance)
Rear:	50 ft.	80 ft. (North)
Side:	10 ft.	223 ft. (West) 11.25 ft. (East)

STAFF FINDINGS

SPECIAL EXCEPTION CRITERIA

Consistent with the Comprehensive Plan

The 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.

Similar and compatible with the surrounding area

The proposed operations will be 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 Dr. to the south. Further, the operations are to be over 100 feet from the closest single-family residence to the southeast.

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. In addition, 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.

Meet the performance standards of the district

Staff has recommended denial of the requested Variance and therefore the building size would be required to be reduced to meet the required front setback and as such will meet the performance standards of the district. Alternatively, if the Variance is granted, then the request would also meet the performance standards of the district.

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.

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

The applicant has provided modified landscaping at the north property line buffer, at the south right-of-way adjacent to Palm Lake Dr., and to the west and east. However as conditioned, landscaping will be in accordance with Chapter 24 (Landscaping, Buffering and Open Space) of the Orange County Code.

VARIANCE CRITERIA

Special Conditions and Circumstances

There are no special conditions and circumstances. Although the site is constrained with a 170-foot wide power line easement, the proposed building could be reduced in size and redesigned in a manner that meets the setback requirements of the code.

Not Self-Created

The need for the Variance is self-created since there are other options available.

No Special Privilege Conferred

Granting this request would confer special privilege since there are no other similar requests for setback Variances approved within the area.

Deprivation of Rights

There is no deprivation of rights as the owner has the ability to construct a building that complies with the County Code by reducing the building envelope and therefore could reduce or eliminate the need for the Variance.

Minimum Possible Variance

The requested Variance is not the minimum possible, as the requested building envelope could be reduced in order to meet the required front setback.

Purpose and Intent

Approval of the requested Variance, relative to the site constraints pertaining to the 170-foot wide power line easement through the center of the site, will allow improvements to the site which will be in harmony with the purpose and intent of the Code, and with the proposed screening and landscaping, will not be detrimental to adjacent properties.

CONDITIONS OF APPROVAL

1. Development shall be in accordance with the site plan, landscape plan and elevations dated November 18, 2022, except as modified to meet the front yard setback, 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. A permit shall be obtained within 3 years of final action on this application by Orange County or this approval is null and void. The zoning manager may extend the time limit if proper justification is provided for such an extension.
5. Hours of operation shall be 7:30 a.m. to 5:30 p.m., daily.
6. The number of children for the day care shall not exceed 73 and the number of students for the private school shall not exceed 73, for a cumulative total of 146 children.
7. Landscaping shall be in accordance with Chapter 24 (Landscaping, Buffering and Open Space).

C: McGregor Love
215 N. Eola Drive
Orlando, FL 32801

COVER LETTER



MCGREGOR T. LOVE

Associate

mcgregor.love@lowndes-law.com

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T: 407-418-6311 | F: 407-843-4444

MAIN NUMBER: 407-843-4600



December 21, 2022

Jennifer Moreau
Orange County Zoning Division
201 S. Rosalind Avenue
Orlando, FL 32802

**Re: Application for Special Exception to Allow School at 8841 Palm Lake Drive (PID:
22-23-28-6560-01-030)**

Dear Jennifer:

This law firm represents Iqbal H Gagan and Salma Rafat, the owners of the above-referenced Property, with respect to the application for special exception for the proposed 8,500 SF private Montessori school (the "School") to be developed at the Property. The Property has a Comprehensive Plan Future Land Use designation of Low-Density Residential. Consistent with this designation, the Property is zoned R-CE (Country Estate District). The Property is currently undeveloped.

The Property is 1.75 acres and is subject to a power line utility easement in favor of Duke Energy (the "Duke Energy Easement") and is located immediately north of Palm Lake Drive and to the east of Apopka Vineland Road. The Property is bounded by a church to the north, a lake to the west, a powerline substation to the east, and undeveloped property to the south. The Future Land Use designations of the parcels surrounding the Property are Low-Density Residential.

The pending BZA application seeks a special exception to develop the Property as an 8,500 SF School, as is depicted in the enclosed site plan. The proposed height of the School is 25 feet 2 inches. Additional details regarding the anticipated operation of the School are as follows:

- Hours of Operation: 7:30 AM – 5:30 PM
 - Dropoff and pickup to be staggered, as outlined in Exhibit "A."
- Number of Students: 146
- Ages of Students: 3 months – six years old

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Jennifer Moreau
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- The School will have two main programs: Infant/Toddler and Pre-K/K. The estimated number of students in each program will be as shown in Exhibit "A."
- Number of Buildings: one
- Number of classrooms: eight (see proposed Floor Plan)

Orange County Code, Section 38-79(103), permits private schools as a special exception. Section 38-78 of the Code details the specific criteria that must be met for all special exception requests. In this case, all of the criteria have been met as is discussed in more detail below.

(1) The use shall be consistent with the comprehensive policy plan.

The proposed School is consistent with the goals, objectives and policies of the County's Comprehensive Plan. The proposed School will further the County's objectives of providing a community of support for the positive development and growth of all (GOAL PS1). Moreover, the proposed School will further the County's objective of enhancing community/neighborhood design through effective school facility design and siting standards (OBJ PS2.2).

(2) The use shall be similar and compatible with the surrounding area and shall be consistent with the pattern of surrounding development.

The proposed School is consistent with the character and pattern of development of the surrounding area. The School would be located directly adjacent to Palm Lake Drive and just to the east of Apopka Vineland Road, a major roadway. While the surrounding area as a whole is primarily residential, the area immediately surrounding the Property is either undeveloped or used for non-residential purposes. At 8,500 SF, the proposed School would be low intensity and constitute a Floor Area Ratio (FAR) of 0.11. As a result, the proposed School would be compatible with the surrounding area and consistent with the pattern of development.

(3) The use shall not act as a detrimental intrusion into a surrounding area.

The proposed School will not act as a detrimental intrusion into the character of the surrounding area. As outlined above, the surrounding area and low intensity of the proposed School make it compatible with the surrounding area rather than a detrimental intrusion.

(4) The use shall meet the performance standards of the district in which the use is permitted.

The proposed School meets the performance standards set forth in Orange County Code.

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(5) The use shall be similar in noise, vibration, dust, odor, glare, heat producing and other characteristics that are associated with the majority of uses currently permitted in the zoning district.

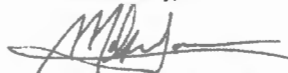
The proposed School will produce no noise, vibration, dust, odor, glare, or other characteristics dissimilar with the uses permitted in the zoning district.

(6) Landscape buffer yards shall be in accordance with section 24-5 of the Orange County Code. Buffer yard types shall track the district in which the use is permitted.

The proposed School will be developed in accordance with Section 24-5 of the Orange County Code.

As illustrated above, the proposed School meets all of the required standards for a special exception that are set forth in the County Code. We appreciate the opportunity to request this special exception. Please let me know if you have any questions or require any further information.

Sincerely,



McGregor Love

COVER LETTER

Jennifer Moreau
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Exhibit "A" Schedule of Dropoff/Pickup by Program

	Before Care and Morning Arrivals			Morning Dismissals		Afternoon Arrivals	Afternoon Dismissals & After Care		
TIME WINDOW	7:30 – 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 – 5:30 PM
WINDOW LENGTH	80 min.	20 min.	20 min.	15 min.	20 min.	20 min.	30 min.	30 min.	90 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>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.</p> <p>The Infant-toddler program has options 2-5 days a week, where many children attend twice a week (half day or full day)</p> <p>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</p>								

*ITP = Infant/Toddler Program;

Pre-K/K = Pre-Kindergarten/Kindergarten



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MERITAS® LAW FIRMS WORLDWIDE

December 21, 2022

Ted Kozak
Chief Planner
Orange County, Florida
201 S. Rosalind Avenue
First Floor
Orlando, FL 32801

**Re: Application for Setback Variance for Proposed Private School Located at 8841
Palm Lake Drive (PID: 22-23-28-6560-01-030)**

Dear Ted:

This law firm represents Iqbal H Gagan and Salma Rafat, the owners of the above-referenced Property, with respect to the application for a setback variance that is enclosed herein and described in more detail below. The Property is 1.75 acres and is subject to a power line utility easement in favor of Duke Energy (the "Duke Energy Easement" or "Easement"). It is located immediately north of Palm Lake Drive and to the east of Apopka Vineland Road. The Property is bounded by a church to the north, a lake to the west, a powerline substation to the east, and undeveloped property to the south. The Future Land Use designations of the parcels surrounding the Property are Low-Density Residential.

The proposed use of the Property is an 8,500 SF School, as is depicted in the enclosed site plan included with this application. This request is for a variance to allow a portion of the School to be located 10.4 feet from the southern property boundary, in lieu of the thirty-five (35) foot front setback requirement under Code. Section 30-43(3) of the Orange County Code details the specific criteria that must be met for all variance requests. In this case, all of the criteria have been met, as is discussed in more detail below.

(1) Special Conditions and Circumstances.

Special conditions and circumstances exist which are peculiar to the Property which are not applicable to other lands in the same zoning district. In particular, the 170-foot-wide Duke Energy Easement that bisects the Property effectively limits development to the southeast corner of the Property. While Duke Energy has informally indicated that it will not object to paved parking within the



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December 21, 2022
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Easement area, Duke Energy will object to any portion of the School building being placed within the Easement area.

Moreover, as shown on the below image from the Orange County Property Appraiser's Map, the southern boundary of the Property is separated from the paved portion of Palm Lake Blvd. by more than 21 feet of grass (the "Grass Buffer").



As a result of the Grass Buffer, if the variance is approved, the School building would be setback nearly 32 feet from the paved ROW. For the foregoing reasons, special conditions and circumstances exists which justify the requested front setback variance.

(2) Not Self-Created.

The special conditions and circumstances presented by the Duke Energy Easement did not result from the applicant's actions.

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(3) No Special Privilege Conferred.

Approval of the requested variance will not confer on the applicant any special privilege that is denied to other lands or buildings in the same zoning district. As outlined above, the requested variance is justified by the highly peculiar special conditions and circumstances presented by the Duke Energy Easement, which limits the effective developable area of the Property. As a result, the applicant's justification for the requested variance would not apply to lands within the same zoning district which are not subject to similar private restrictions. Moreover, the applicant is not seeking the requested variance in order to construct a building that would not otherwise be permitted within Property's zoning district. Approval of the requested variance would allow a building of modest intensity with a Floor Area Ratio (FAR) of approximately 0.11. For the foregoing reasons, no special privilege would be conferred on the applicant by approving the requested variance.

(4) Deprivation of Rights.

The denial of the requested variance would deprive the applicant of rights commonly enjoyed by other property owners in the vicinity of the Property and would work unnecessary and undue hardship on the applicant. As discussed above, the Duke Energy Easement substantially limits the portion of the Property to be developed. Denial of the requested variance would prohibit the development of a building large enough to be reasonably used as a private school. As a result, literal interpretation of Code would deprive the applicant of the right to develop the Property.

(5) Minimum Possible Variance.

The requested variance is the minimum variance that will make possible the reasonable use of the land. Approval of the variance will allow development of a school large enough to accommodate a modest enrollment of approximately 146 students. A lesser setback variance would not allow a building large enough to make reasonable use of the land.

(6) Purpose and Intent.

The approval of the requested variance will be in harmony with the purpose and intent of Orange County Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. The proposed School is consistent with the character and pattern of development of the surrounding area. The School would be located directly adjacent to Palm Lake Drive and just to the east of Apopka Vineland Road, a major roadway. While the surrounding area as a whole is primarily residential, the area immediately surrounding the Property is either undeveloped or used for non-residential purposes. As a result, the proposed School would be compatible with the surrounding area and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

COVER LETTER

Ted Kozak
December 21, 2022
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In addition, approval of the requested variance will be in harmony with the purpose of setbacks. As outlined above, the southern boundary of the Property is separated from the paved portion of Palm Lake Blvd. by the 21-foot Grass Buffer, ensuring adequate separation of the School from the ROW.

As illustrated above, the proposed use meets all of the required standards for a variance that are set forth in the County Code. In support of this variance request, enclosed please find the following:

- (a) Application form;
- (b) Application fee payment;
- (c) OCPA Map of the Property;
- (d) Legal Description of the Property (copy of the deed);
- (e) Copies of site plan;
- (f) Agent Authorization;
- (g) Specific Project Expenditure Report;
- (h) Relationship Disclosure Form; and

We appreciate the opportunity to request this variance. Please let me know if you have any questions or require any further information.

Very truly yours,



McGregor T. Love

MTL/MTL

ZONING MAP

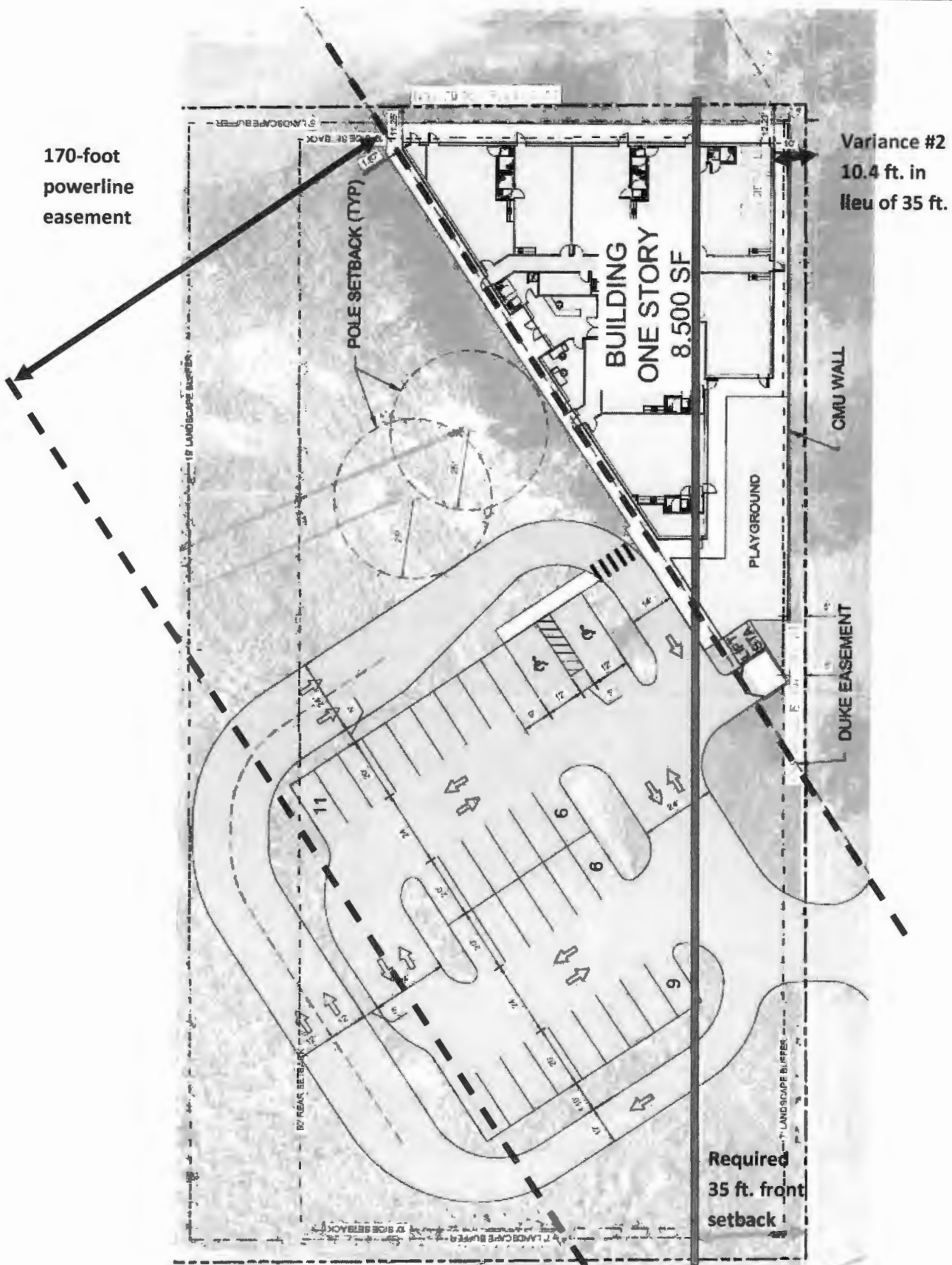


AERIAL MAP

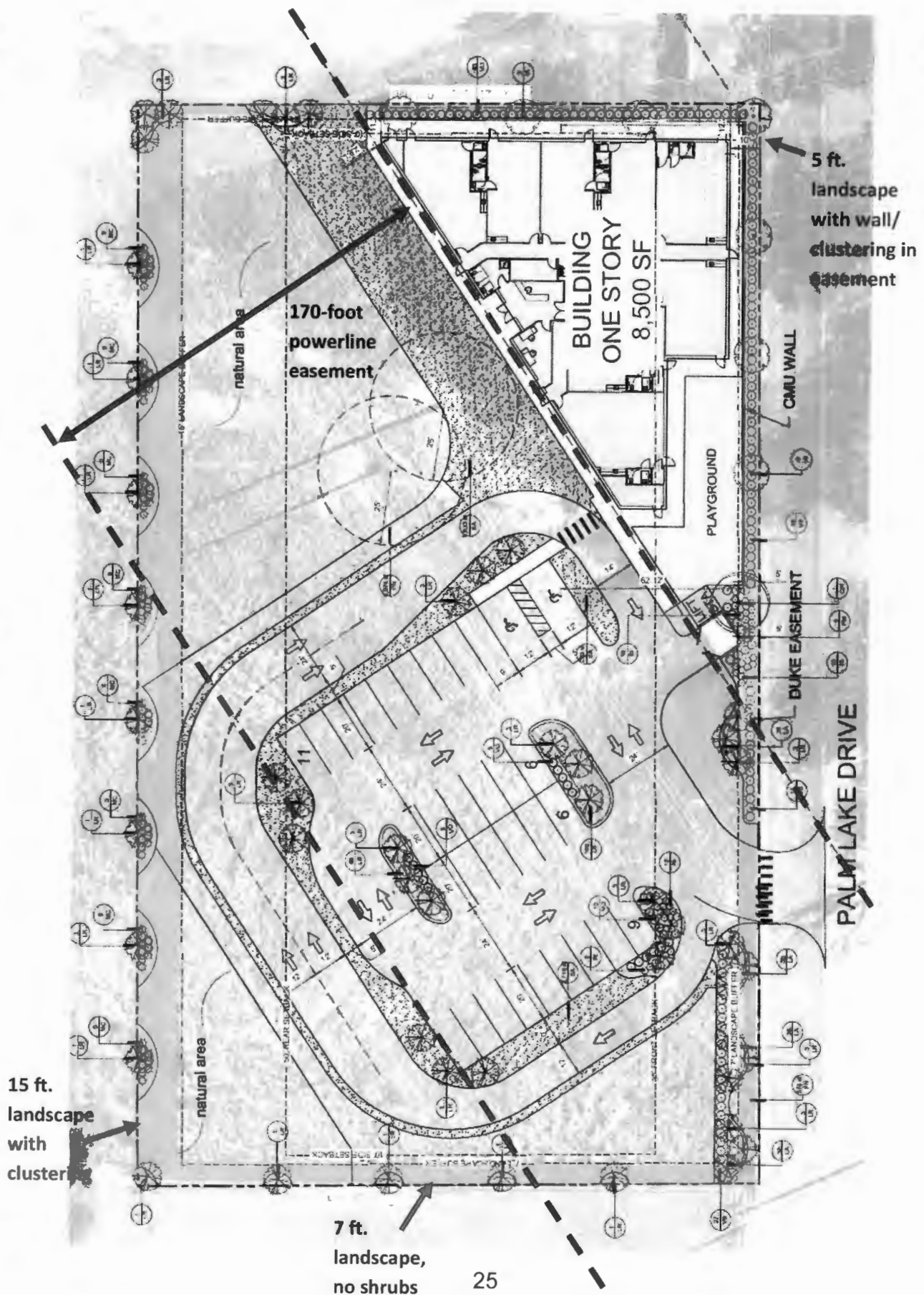




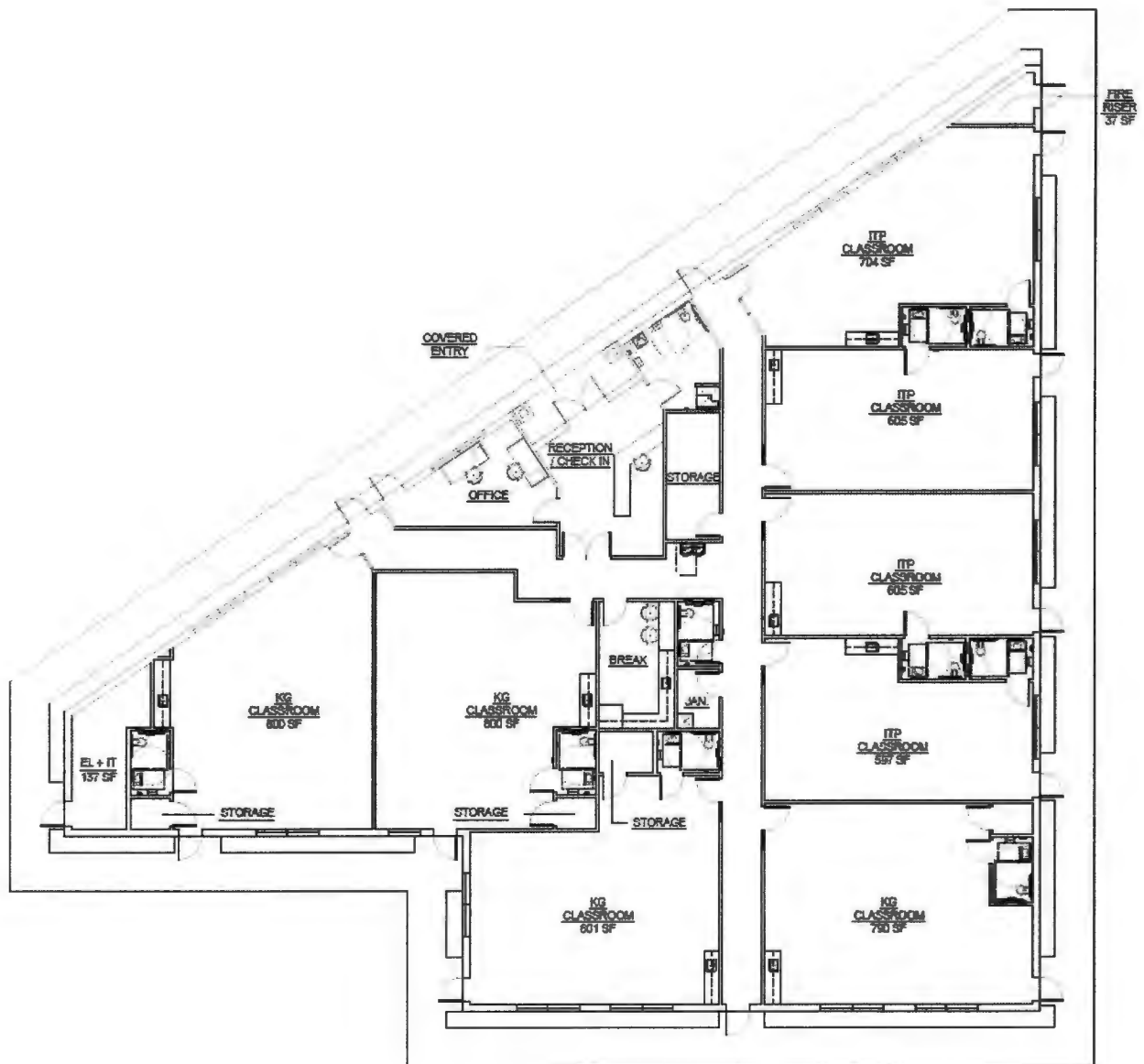
SITE PLAN



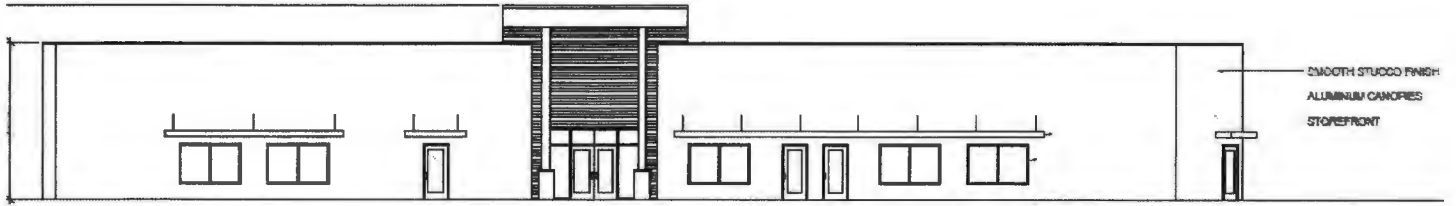
LANDSCAPE PLAN



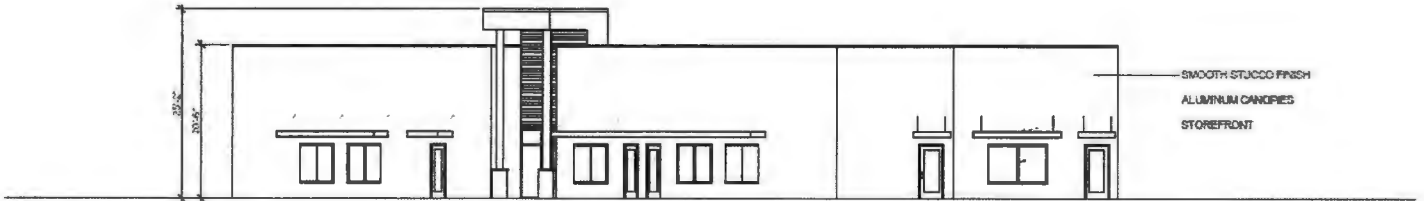
FLOOR PLAN



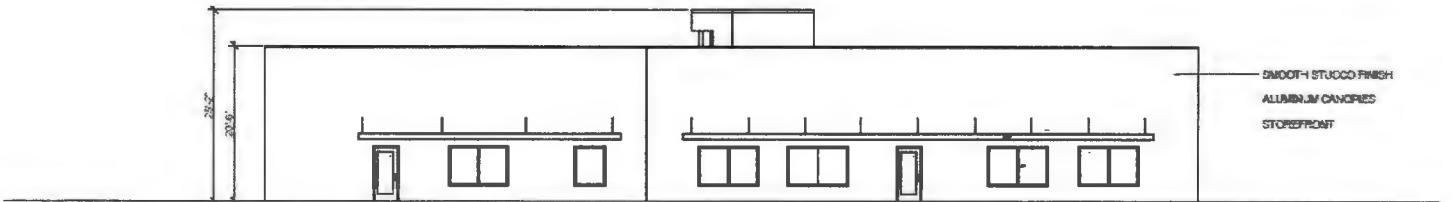
ELEVATIONS



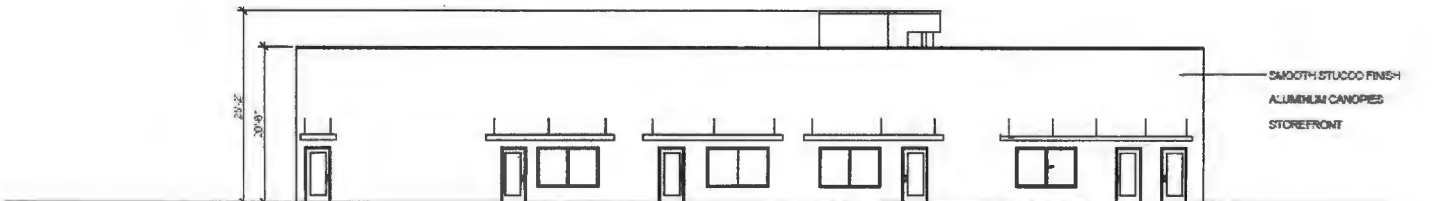
NORTHWEST ELEVATION – MAIN ENTRANCE



WEST ELEVATION



SOUTH ELEVATION – PALM LAKE DRIVE



EAST ELEVATION

SITE PHOTOS



Frontage facing northeast from Palm Lake Drive



Facing north from Palm Lake Dr. proposed building location at southeast property line

SITE PHOTOS



Frontage along Palm Lake Dr. at southwest property line facing north towards adjacent church at rear



Facing east along Palm Lake Dr. towards proposed building and parking location, Palm Lake Dr. to the right

SITE PHOTOS



Facing east from north property line towards Duke substation



East property line, facing south towards proposed building location and Palm Lake Dr.

SITE PHOTOS



Facing west from S. Apopka Vineland Rd. towards property in background behind retention pond



County retention pond located at the northeast corner of Palm Lake Dr. and S. Apopka Vineland Rd.