

Board of County Commissioners

Case No. SE-22-07-047

March 7, 2023

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Board Certified Specialist by The Florida Bar in
City, County & Local Government Law



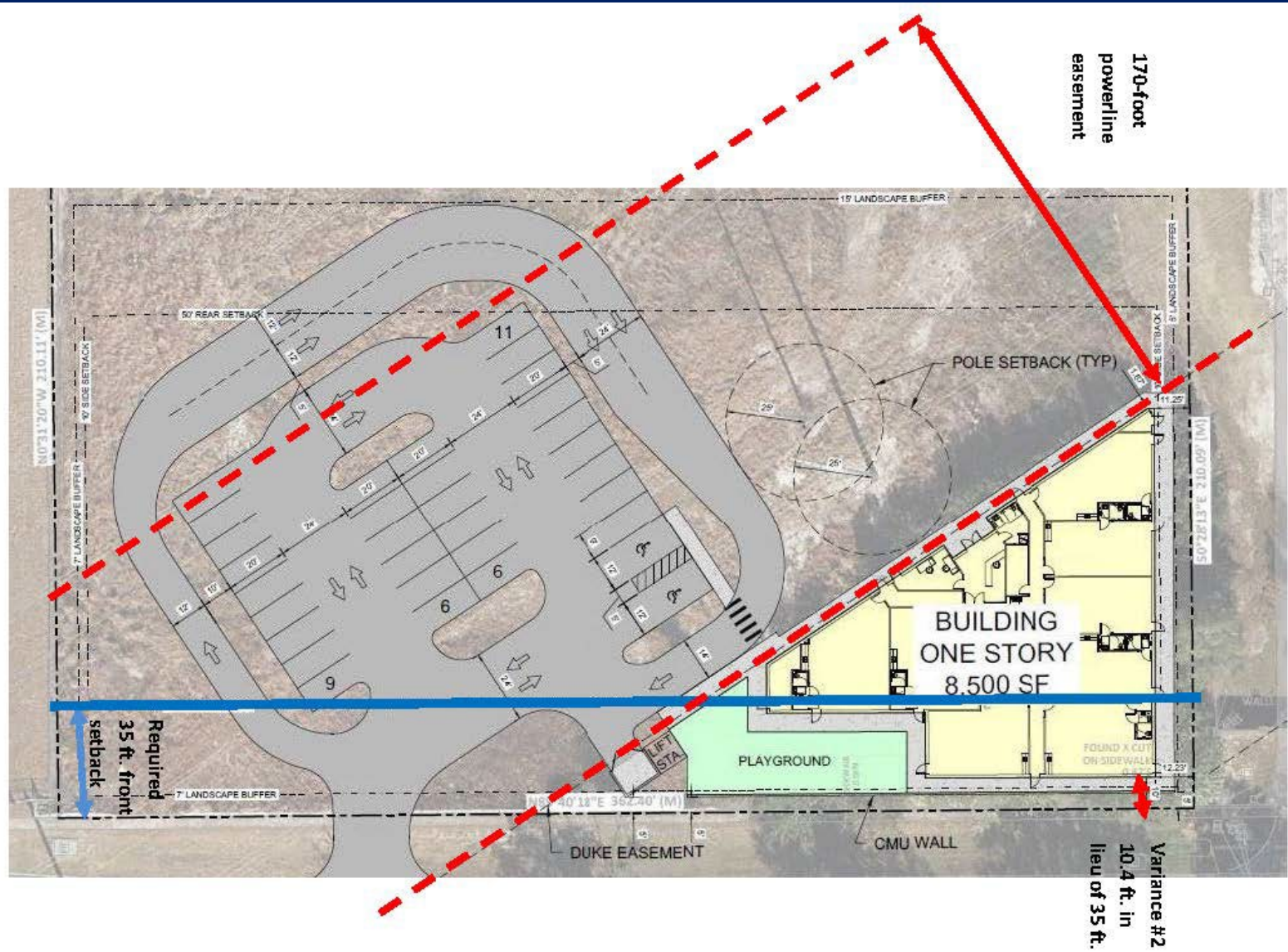
Special Exception & Variance Burdens

- The applicant has the burden of demonstrating that its request complies with all of the County's land use regulations and is not adverse to the public interest. If the applicant fails to meet its burden, the burden never shifts to those opposing the request to demonstrate through competent substantial evidence that the request does not meet the published criteria.
- A prerequisite to the granting of a zoning variance is the presence of an exceptional and unique hardship to the individual landowner. The hardship may not be self-created – *e.g.*, a voluntary agreement is self-created and provides no basis for variance (Maturo v. City of Coral Gables, 619 So. 2d 455 (Fla. 3d DCA 1993)); no hardship for variance where property bought with knowledge of restrictions that limited buildable area (Beattie v. City of Winter Park, 20 Fla L. Weekly Supp. 29 (Fla. 9th Cir. Ct. 2012)).

SE-22-07-047



Proposed Site Plan



Special Exception Criteria

Section 38-78 – The following six (6) criteria must **ALL** be met for a special exception to be approved:

- 1) The use shall be consistent with the comprehensive policy plan.
- 2) The use shall be similar and compatible with the surrounding area and shall be consistent with the pattern of surrounding development.
- 3) The use shall not act as a detrimental intrusion into a surrounding area.
- 4) The use shall meet the performance standards of the district in which the use is permitted.
- 5) The use shall be similar in noise, vibration, dust, odor, glare, heat producing currently permitted in the zoning district and other characteristics that are associated with the majority of uses.
- 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 special exception does **not** meet criteria #1, 2, 3, 5, and 6. (#4 also not met per variance).

Criteria #1

Plan Consistency

- The request is **not** consistent with the County's Comprehensive Plan:
 - Compatibility – “fundamental consideration in all . . . zoning decisions.” (FLU 8.2)
 - FLU 1.4.3 – “The location of commercial development shall be concentrated at major intersections . . .” **Not met**
 - FLU 1.4.4 – “The disruption of residential areas by poorly located and designed commercial activities shall be avoided.” **Not met**
 - UD 2.2.2 & 2.3.1 – “Building form should be compatible with surrounding buildings in size, shape, and scale” and “[b]uilding entrances should be . . . oriented toward the street . . .” **Not met**
 - FLU 1.4.6 – criteria for conversion of residential use to non-residential use. Does **not** meet 8 of the 9 criteria (pp. 7-8 of T&S Planning Analysis).
 - No change in surrounding area, not on a major street, not adjacent to any commercial uses, insufficient building area, incompatible with surrounding low-density residential use, and outside traffic will adversely impact the established neighborhood.

Criteria #2 & #3

Compatible & Similar/Detrimental Intrusion

The proposed child day care center/private school is **not** compatible, similar, and consistent with the surrounding pattern of development and **will be** a detrimental intrusion into the long-established Palm Lake neighborhood:

- **More intense than surrounding low-density, single-family residential uses:**
 - 8,500 square feet on 1.75 acres (0.11 FAR), plus an outdoor playground and 32-space paved parking lot (nearby church only has FAR of 0.02).
 - Hours of operation:
 - 7:00 a.m. to 6:00 p.m. daily – 11+ hours of daily site activity.
 - Building location and size not consistent with surrounding pattern of development of low density, single-family homes (more than 40% larger than the gross area of the six (6) closest homes on Palm Lake Drive).
 - The intensity of parking lot and the massing of an 8,500 square foot building with the rear/side facing Palm Lake Drive and set back only 10.4 feet will make the proposed child daycare center/private school the largest massed structure in the immediate area.
- **Inconsistent with, and not similar to, the existing pattern of development**
 - **No** commercial uses/activities on Palm Lake Drive

Cont. – Criterion #2 & #3

Compatible & Similar/Detrimental Intrusion

■ Adverse Traffic Impacts

- 597 “new” daily trips onto Palm Lake Drive – a local road with no striping, shoulder, etc. (p. 10, Applicant’s TIA).
- 115 a.m. peak hour trips and 118 p.m. peak hour trips on Palm Lake Drive (versus 1 peak hour trip for a single-family home on the site) (p. 10, Applicant’s TIA)
- “The minor westbound approaches at the intersections of Apopka Vineland Road with Palm Lake Drive . . . are projected to operate at Level of Service “F” due to delays caused by stop control at the Palm Drove [sic] westbound approach.” (p. 15, Applicant’s TIA)
- No provision for overflow parking for daily activity or special events, and site only has a single driveway access point (with traffic crossing at the driveway entrance)
- Proposed school and its 146 students will be pulling traffic from outside the immediate neighborhood into and through the Palm Lake community – at least 14% of the daily trips will cut through the Palm Lake neighborhood to Dr. Phillips Blvd. (p. 11, Applicant’s TIA).

Character of Palm Lake Drive



- Local neighborhood road
- Low traffic volume
- No pavement markings
- Hedges and walls as buffers
- Shallow swales
- No commercial uses or commercial activities



Cut-Through Traffic

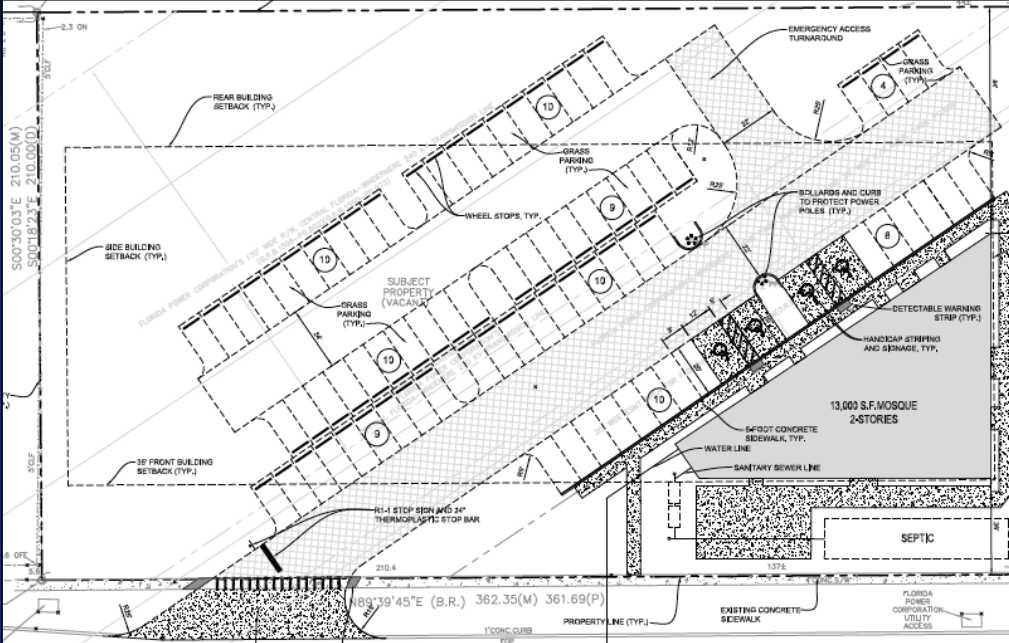


- 597 new trips onto Palm Lake Drive
- Applicant's own study predicts at least 14% of the trips will “cut-through” to Dr. Phillips Blvd.
- Cut-through traffic was one of the primary reasons for the BZA and the BCC's unanimous denial of the previous special exception request for a 9,000 square foot religious facility on this same property:
- BZA Members Moses, Johnson, and Drago each commented on the proposed child day care center/private school's detrimental intrusion and adverse traffic impacts, including the cut-through traffic, as well as the incompatibility of the proposed child day care center/private school.

To address the concerns of both the speakers at the BZA hearing that appeared in opposition to this request and the BZA's recommendation of denial, we now offer the following additional conditions:

- This is a reduction from the 13,000 square feet requested in the original application and is consistent with other structures in the Palm Lake Drive neighborhood.

- This will be accomplished through site design. This condition will direct all religious-use traffic to Apopka-Vineland Road to the west and away from the residential area to the east of this property.



- “I do think it’s not a similar and compatible use with the surrounding area, given that the entrance is off that residential road. . . . I think it will be a detrimental intrusion. And I think it will change the nature of the neighborhood, which is the definition of a detrimental intrusion. . . . I think that it’s not similar in a lot of ways. Because allowing the orientation of the building away from the street is something that you would not allow in a residential building there. . . .” (BZA Member Seybold, Transcript at 66-67).
- “[I]t’s on Palm Lake Road. And that does create a detrimental intrusion to the neighbors I also don’t think it goes along with the comp plan, truthfully. . . . Palm Lake Road was never created to handle any traffic above and beyond what a residential house would create.” (BZA Member Rey, Transcript at 68).
- The BCC unanimously upheld the BZA’s decision and its finding that the proposed use would be a detrimental intrusion to the Palm Lake neighborhood and inconsistent with the surrounding pattern of residential development.

Previous Special Exception Denials

■ Wondermere Preschool: SE-19-03-198

- R-CE zoning/RS 1/1 FLU – 3-acre development area
- Sought to develop Montessori pre-k through kindergarten school for up to 200 students
- Hours: Mon-Fri, 7:30 a.m.-6:00 p.m. (with 4 special events until 9:00 pm)
- County denied special exception – detrimental intrusion into established residential area

■ Faith Center Ministries: SE-14-03-003

- A-1 zoning/LDR FLUM; 2.75 acres
- Sought to covert existing residential structure into a religious facility with school for 63 students
- Hours: Mon-Fri, 8:00 a.m.-3:00 p.m.
- County denied special exception for school – did not comply with Sec. 38-78

■ Preston: SE-11-11-089

- R-1A zoning/LDR FLUM; ½ acre
- Sought to operate child day center on property for 50 children
- Hours: Mon-Sun, 6:00 a.m.-7:00 p.m.
- County denied special exception – did not comply with Sec. 38-78 – not in character with surrounding residential area

■ Casanova: SE-09-07-004

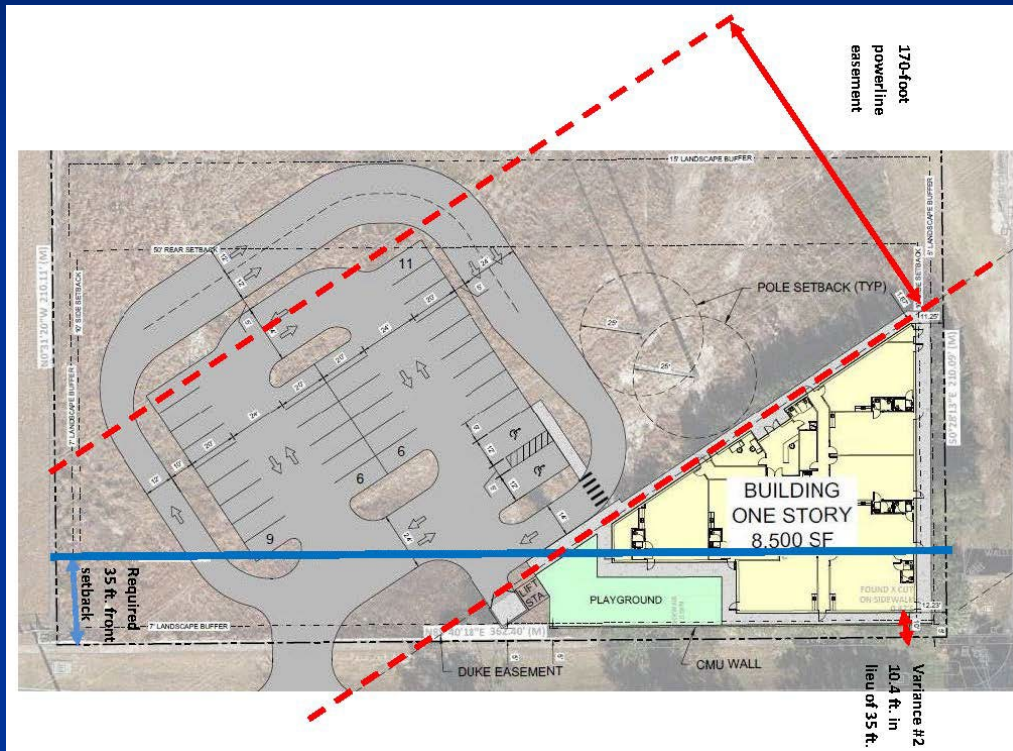
- A-2 zoning/Rural FLUM; 4.56 acres
- Sought to covert existing residential structure into a child day care center for 100 children
- Hours: Mon-Fri, 6:00 a.m.-6:00 p.m.
- County denied special exception – did not comply with Sec. 38-78(1), (2), & (3) – detrimental intrusion

Uphold BZA's Denial of Special Exception #22-07-047



- Does not meet Section 38-78
- Not consistent with the Comprehensive Plan.
- Not similar, consistent, or compatible with the surrounding low-density, single-family residential development
- Detrimental intrusion of a commercial use and activity into established residential area
- Access via a local residential road – no direct access from S. Apopka-Vineland Rd.
- Will route non-residential traffic through a residential area and promote cut-through traffic

Uphold BZA's Denial of Front Setback Variance



- The applicant has not demonstrated that its variance request complies with any of the criteria in Section 30-43(3)
- The applicant's predecessor-in-interest was paid for utility easement
- Easement is in the public record and applicant knew or should have known of such site limitations when property was purchased
- Purchase price of \$20k accounted for limitations of easement
- Any alleged "hardship" is self-created