



## Interoffice Memorandum

DATE: March 28, 2019

TO: Mayor Jerry Demings  
-AND-  
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Director  
Planning, Environmental, and Development Services Department

CONTACT PERSON: Carol L. Knox, Manager, Zoning Division  
407-836-5585

SUBJECT: April 9, 2019 – Board Called Public Hearing  
Applicant: Bryan Potts  
BZA Case #SE-19-03-198, February 7, 2019; District #1

Board of Zoning Adjustment (BZA) Case # SE-19-03-198, located on Windermere Road, in District #1, is a board called public hearing to be heard on April 9, 2019. The applicant is requesting a special exception in the R-CE zoning district to allow a preschool for up to 200 students. There was a previous special exception approved on this property in August 2015 (SE-15-08-070) to allow a religious use facility.

The subject property is located on the east side of Windermere Rd., south of Roberson Rd. The front portion of the property is located in the West Windermere Rural Settlement.

At the February 7, 2019 BZA hearing, staff recommended approval of the special exception. The BZA stated that the preschool was designed to fit in with the community; the architectural style will complement the area, and the project will only impact 3 acres of the 22-acre site. The BZA approved the special exception with a 6-1 vote.

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 BCC. A copy is available upon request in the Zoning Division.

If you have any questions regarding this matter, please contact Carol Knox at 6-5585 or Sean Bailey at 6-5806.

**ACTION REQUESTED:** Approve the applicant's request; or approve the applicant's request with modifications and/or conditions; or deny the applicant's request. District #1.

**PLANNING, ENVIRONMENTAL, AND DEVELOPMENT SERVICES DEPARTMENT**  
**ZONING DIVISION PUBLIC HEARING REPORT**  
**April 9, 2019**

The following is a board called public hearing before the Board of County Commissioners on April 9, 2019 at 2:00 p.m.

**APPLICANT:** BRYAN POTTS

**REQUEST:** Special Exception in the R-CE zoning district to allow a preschool for up to 200 students.

**LOCATION:** East side of Windermere Rd., south of Roberson Rd.

**TRACT SIZE:** 22.46 acres

**ZONING:** R-CE

**DISTRICT:** #1

**PROPERTIES NOTIFIED:** 118

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

The applicant is proposing to construct a 15,000 sq. ft. preschool with a playground, parking lot, garden area, and pavilion. The applicant is planning to reserve an acre on either side of the proposed preschool for potential future residential lots.

Staff presented the case, outlined the area, showed the site plan and site photos, and stated that a community meeting was held for this case. Staff also mentioned there was a special exception approved on this property in 2015.

The applicant stated this is a preschool designed to support the community, the architectural style will complement the area, the project will only impact 3 acres of the 22 acre site, the site will have sufficient space for stacking, and the school was designed with neighbor's in mind.

Four (4) people spoke in favor of the application at the public hearing and nine (9) people spoke in opposition of the request. The opponents raised concerns over traffic, vehicle stacking, noise pollution, and stated this is a commercial intrusion into a residential area.

The BZA had a discussion regarding the request and stated that a preschool should not have a stacking issue like an elementary school would. The BZA commissioners made comments regarding the request, including varying opinions on the compatibility of the proposed use in the area. The District 1 Commissioner made a motion to approve the request, and added an additional condition regarding adding a fence and buffer along the east side of the proposed playground. The motion passed with a 6-1 vote.

**BZA HEARING DECISION:**

A motion was made by Carolyn Karraker, seconded by Wes A. Hodge and unanimously carried to APPROVE the Special Exception request in that the Board finds it met the requirements governing Special Exceptions as spelled out in Orange County Code, Section 38-78, and that the granting of the Special Exception does not adversely affect general public interest; further, said approval is subject to the following conditions (unanimous):

1. Development in accordance with the site plan and elevations dated January 18, 2019 and all other applicable regulations. Any deviations, changes, or modifications to the plan are subject to the Zoning Manager's approval. The Zoning Manager may require the changes be reviewed by the Board of Zoning Adjustment (BZA) for administrative approval or to determine if the applicant's changes require another BZA public hearing.
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. No outdoor speakers or other audio amplification.
5. The applicant shall submit construction plans through the commercial site plan review process within 3 years of final approval or this approval is null and void.
6. The applicant shall combine Parcel ID's 06-23-28-0000-00-005 and 06-23-28-0000-00-056 through the Orange County Property Appraiser's Office.
7. No more than four (4) outdoor special events per calendar year and the hours of such events shall be limited from 8:00 a.m. to 9:00 p.m. The use of outdoor amplified sound and music is prohibited. All outdoor special events shall be reviewed and approved by the Orange County Fire Marshal's Office. The applicant shall submit applications/plans to the Fire Marshal's Office a minimum of 30 days prior to the date of each event.
8. Signage shall be in accordance with 31.5-75, Orange County Code.
9. No more than 200 children shall be permitted without further approval by the BZA.
10. Building perimeter landscaping shall be provided consistent with Section 24-4(d) Type C Landscape buffers shall be provided along the north and south property lines which abut the future residential lots.

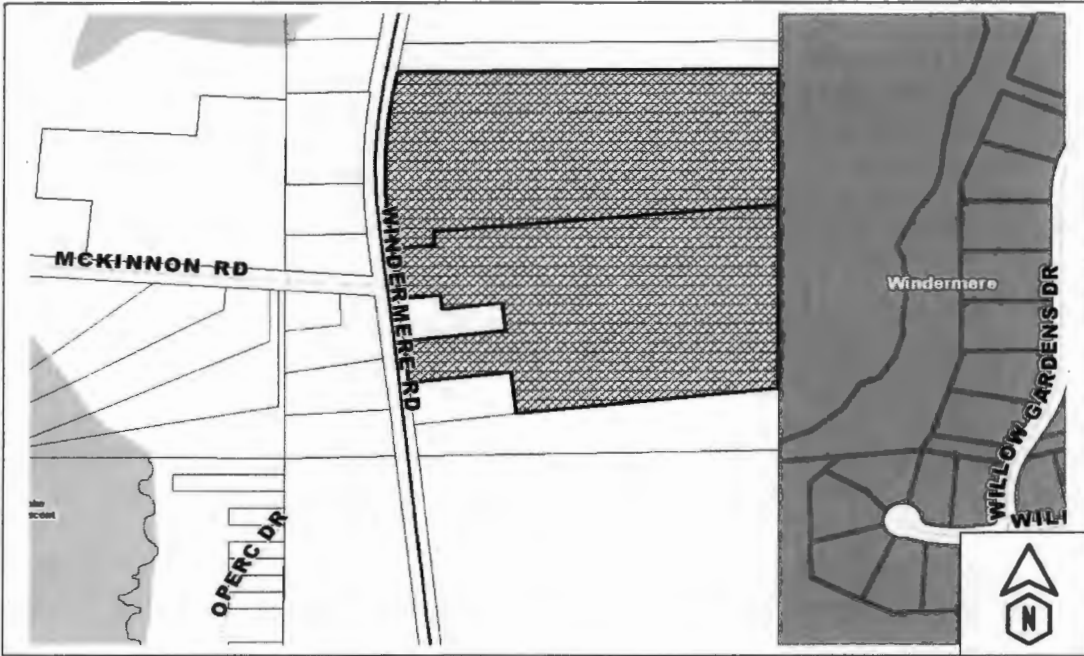
Board Called Hearing – April 9, 2019 – SE-19-03-198 BRYAN POTTS

11. There shall be no impacts or encroachments to any Orange County Conservation Areas unless approved by Orange County.
12. Hours of operation shall be limited to 8:00 a.m. to 6:00 p.m., Monday through Friday.
13. The applicant shall install an 8 ft. high vinyl fence along the east side of the proposed playground adjacent to the wetlands and an additional Type C landscape buffer per Section 24-5(a)(3).

## STAFF RECOMMENDATIONS

Approval subject to the conditions in this report.

### LOCATION MAP



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**SITE & SURROUNDING DATA**

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	Property	North	South	East	West
Current Zoning	R-CE	R-CE	R-CE	City of Windermere	R-CE
Future Land Use	RS 1/1, R 1/10	R 1/10	RS 1/1, R 1/10	City of Windermere	RS 1/1
Current Use	Vacant	Single family residential	Single family residential	Vacant (conservation area)	Single family residential and vacant

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**BACKGROUND AND ANALYSIS**

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**Description and Context**

The subject property is zoned R-CE, Country Estate, which allows for primarily single family development on five (5) acre lots and certain rural uses. Preschools are permitted through the special exception process in the R-CE zoning district.

The property was re-zoned to R-CE in 1966 and a portion of it is located in the West Windermere Rural Settlement, which has a density of 1 unit per acre. The Future Land Use on the rear portion of the lots is Rural (1 unit/10 acres).

The eastern portion of the property is encumbered by wetlands and the applicant does have a CAD for the property (CAD-15-05-057). The applicant is not proposing to impact any of these wetlands and EPD has reviewed the plan submitted and has not provided any opposition.

The applicant is proposing a preschool for up to 200 children, ages 18 months up to 6 years old. The site plan proposes a 15,000 sq. ft. main building, a playground, a parking lot, and a 2,000 sq. ft. ancillary building. The applicant owns two parcels and will be required to combine these parcels if the application is approved.

The property is located in a predominantly residential area comprised of single-family homes on larger lots. Immediately to the east is the City of Windermere's jurisdiction.

Lake Whitney Elementary is located approximately 1/2 mile to the north of subject property on Windermere Rd.

The proposed plan has two single family lots depicted on either side of the proposed development. The applicant will be required to submit for a lot split through Orange County Zoning to subdivide either of these lots at a later date.

A community meeting was held on January 30, 2019 for this application. The District 1 Commissioner, District 1 Aide, District 1 BZA Commissioner, and staff were in attendance. Approximately 56 residents were in attendance, they expressed concerns over traffic on Windermere Rd., vehicle stacking, impacts to the wetlands, and potential noise created by the use.

Orange County Transportation Planning has reviewed the request and provided a traffic study. The study states that the proposed use will generate 822 new daily trips and 52 new weekday PM peak hour trips. The

applicant will be required to submit a traffic study prior to building permit approval if the special exception is approved.

There was a previous special exception approved on this site in 2015 (SE-15-08-070).

#### **District Development Standards**

	Code Requirement	Proposed
Max Height:	35	35
Min. Lot Width:	130	680
Min. Lot Size:	1 acre	22.46 acres

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

	Code Requirement	Proposed
Front:	35	123
Rear:	50	over 500
Side:	10	195
NHWE:	n/a	n/a

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#### **STAFF FINDINGS**

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#### **SPECIAL EXCEPTION CRITERIA**

**The use shall be consistent with the Comprehensive Policy Plan.**

The Future Land Use of the parcels are Rural Settlement along Windermere Rd. and Rural in the rear portion. Approval of the special exception will render the use consistent with the Comprehensive Plan.

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

The proposed use as preschool is a neighborhood commercial use and shall serve the residents in the area. There is an elementary school located less than ½ mile to the north along Windermere Rd. and another one located less than 1 mile to the southwest.

**The use shall not act as a detrimental intrusion into a surrounding area.**

The proposed site plan will preserve 1 acre on each side of the development for future residential development, which will provide a transition from the existing residential development. Also, the operating hours of the preschool are proposed to be Monday through Friday, 8:00AM - 6:00 PM. In addition, the playground will be situated in the rear of the building facing the wetland area, which will buffer it from the existing homes nearby.

**The use shall meet the performance standards of the district in which the use is permitted.**

The proposed site plan is meeting setback, open space, parking and height requirements as required per code.

**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 use will include a majority of indoor uses and activities which shall not produce any uncharacteristic dust, glare, odor, noise or heat in the immediate area. The outdoor uses will be limited to the playground behind the structure and there will be a condition of approval limiting any outdoor special events in other areas.

**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 landscape plan provided overall meets the requirements of Chapter 24-5. The applicant will need to add building perimeter landscaping and shrubs along the north and south property lines (per condition of approval).



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## CONDITIONS OF APPROVAL

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- Development in accordance with the site plan and elevations dated January 18, 2019 and all other applicable regulations. Any deviations, changes, or modifications to the plan are subject to the Zoning Manager's approval. The Zoning Manager may require the changes be reviewed by the Board of Zoning Adjustment (BZA) for administrative approval or to determine if the applicant's changes require another BZA public hearing.
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 Zoning Adjustment shall be resubmitted for the Board's review or the plans revised to comply with the standard.
  4. No outdoor speakers or other audio amplification.
  5. The applicant shall submit construction plans through the commercial site plan review process within 3 years of final approval or this approval is null and void.
  6. The applicant shall combine Parcel ID's 06-23-28-0000-00-005 and 06-23-28-0000-00-056 through the Orange County Property Appraiser's Office.
  7. No more than four (4) outdoor special events per calendar year and the hours of such events shall be limited from 8:00 a.m. to 9:00 p.m. The use of outdoor amplified sound and music is prohibited. All outdoor special events shall be reviewed and approved by the Orange County Fire Marshal's Office. The applicant shall submit applications/plans to the Fire Marshal's Office a minimum of 30 days prior to the date of each event.
  8. Signage shall be in accordance with 31.5-75, Orange County Code.
  9. No more than 200 children shall be permitted.
  10. Building perimeter landscaping shall be provided consistent with Sec. 24-4 (d). Type C Landscape buffers shall be provided along the north and south property lines which abut the future residential lots.

c: Bryan Potts  
2494 Rose Spring Drive  
Orlando, FL 32825

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## COVER LETTER

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Orange County, Florida  
Comprehensive Policy Plan  
Special Exception  
Justification Statement

**PROJECT DESCRIPTION AND JUSTIFICATION STATEMENT**

Subject Property

The subject property represents +/- 22.46 acres comprised of Orange County Tax Parcel Identification Numbers 06-23-28-0000-00-005 & 06-23-28-0000-00-056 (the "Property"). The Property is currently designated Rural 1/1 on the County Future Land Use Map ("FLUM"). The Property has a street addresses of 1841 Windermere Road, and is owned by Certi-Fine Fruit Co Inc. ("Owner").

Project Description

The proposed project consists of a +/- 15,000 square foot single story school and a 2,000 square foot pavilion with associated parking and infrastructure (the "Project"). It is anticipated that stormwater attenuation and treatment will be provided on site.

Purpose of Proposed Changes

The current application seeks a Special Exception allowing for a Preschool on the property. (the "Proposed Change").

We are proposing an environmentally friendly preschool for up to 200 students. We have 30 teachers and 4 administrators who are trained in the best practices of the Montessori Curriculum. Our students will include children between the ages of 18 mo. and 6 years, placed in heterogeneous groups. Hours of operation will be 8:00AM to 6:00 PM weekdays with rare special events including; Back to School Night, Graduation, and our Annual Gala. We will have an Organic Garden to prepare the children for an ecologically responsible future.

The site is currently an undeveloped pasture parcel with a large wetland to the rear. We are proposing a 15,000 SF single story building, a 2,000 SF pavilion and a dumpster enclosure, with associated utilities and paved parking area.

The outdoor areas will consist of a 15,000 SF playground area, a pavilion and a large garden area to allow the children an outdoor area to play as well as to learn about agriculture. Bring this aspect to the Project provides more compatibility to the surrounding rural area.

The Project will provide a transition from existing residential developments in the form of platted one-acre single family lots to each side (north and south) not adjacent to the wetlands or right of way. The Project is designed to allow for all traffic to circulate on site and not cause stacking in the right of way.

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ORANGE COUNTY  
ZONING DIVISION

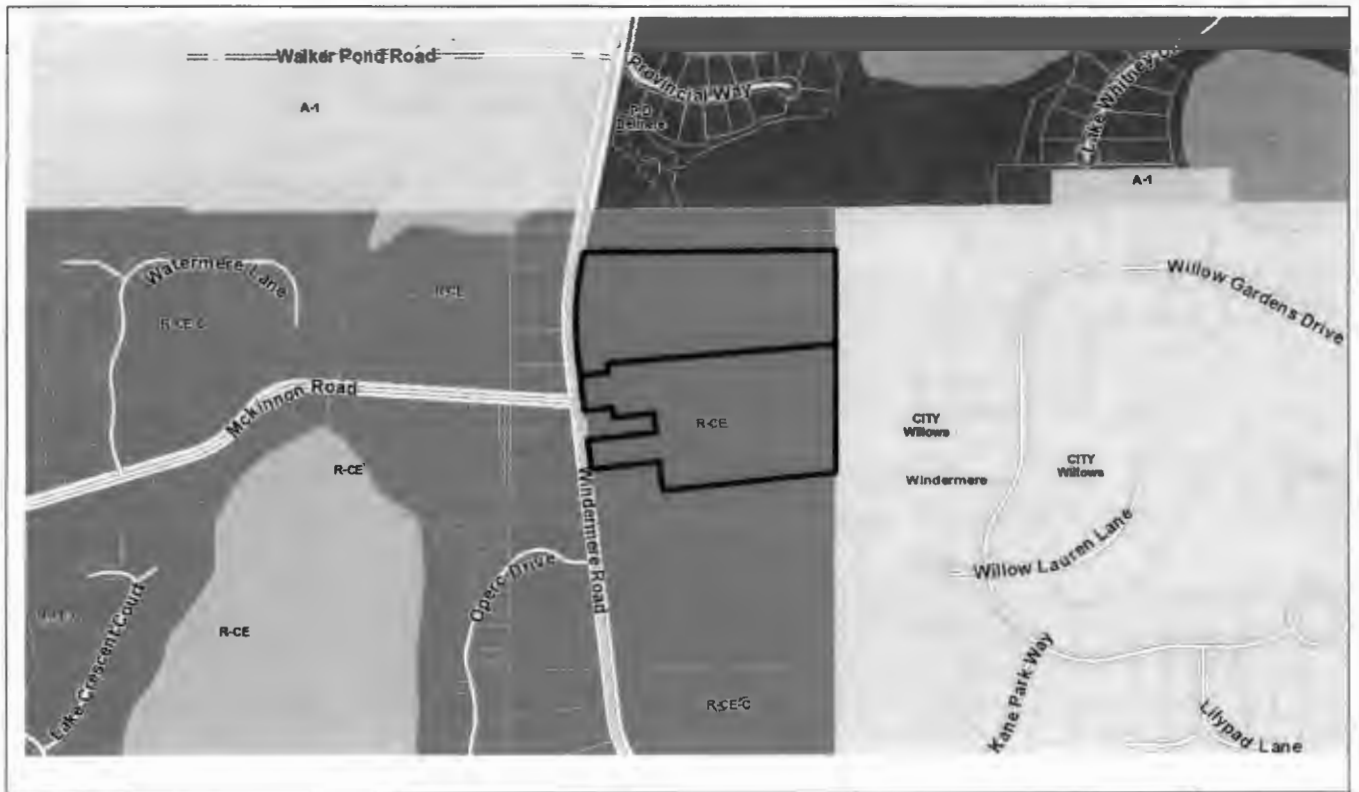
All landscaping and landscape buffer yards on the Project will meet or exceed Section 24-5 of the Orange County Code. The Project also proposes to preserve the natural wetlands on the property rather than making any attempts to mitigate this natural resource.

The noise associated with the Project will be limited to the time the children are utilizing the outdoor facilities during normal hours of operation.

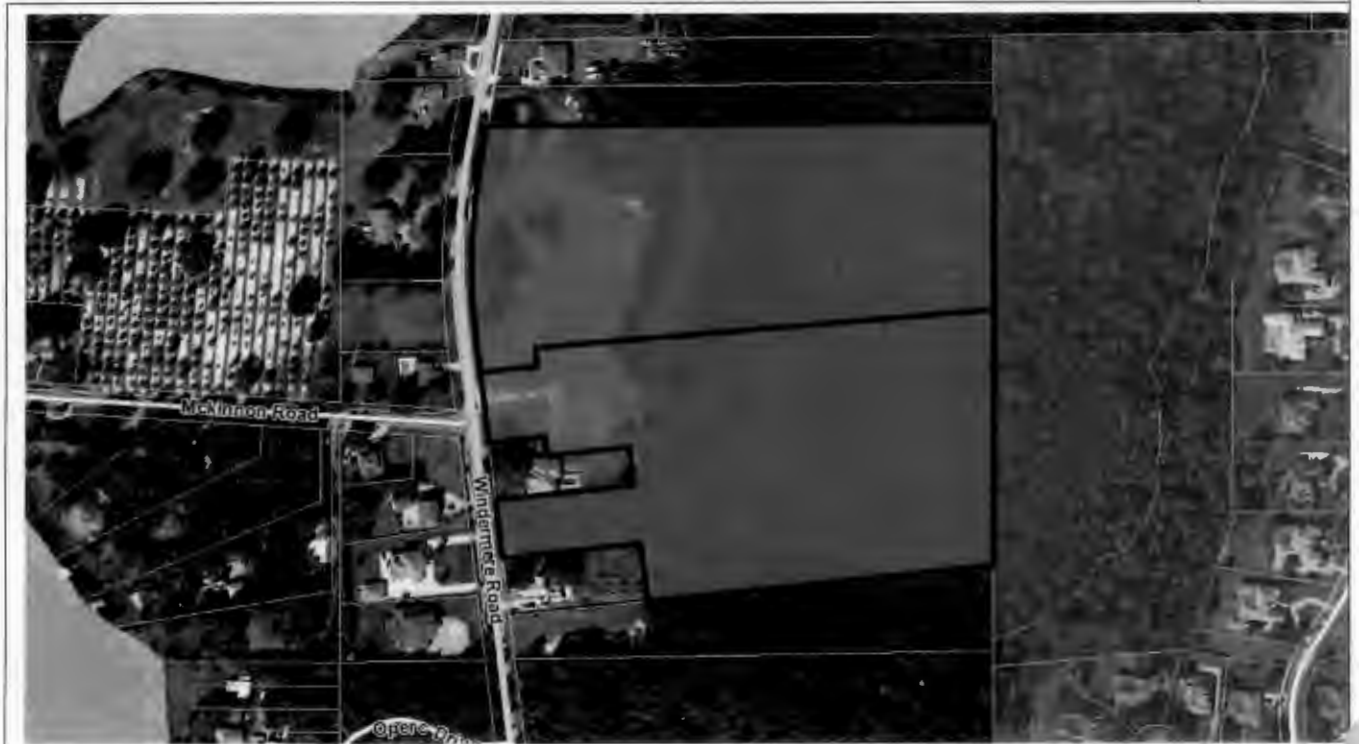
#### Conclusion

Allowing the Project on the property will enhance the area by giving local parents a convenient, friendly and safe place for their children to be cared for. The Project will allow the children to learn about agriculture and become friendly with the environment. While preserving natural wetlands and providing a relief to other area preschools that may be on the verge of overcrowding.

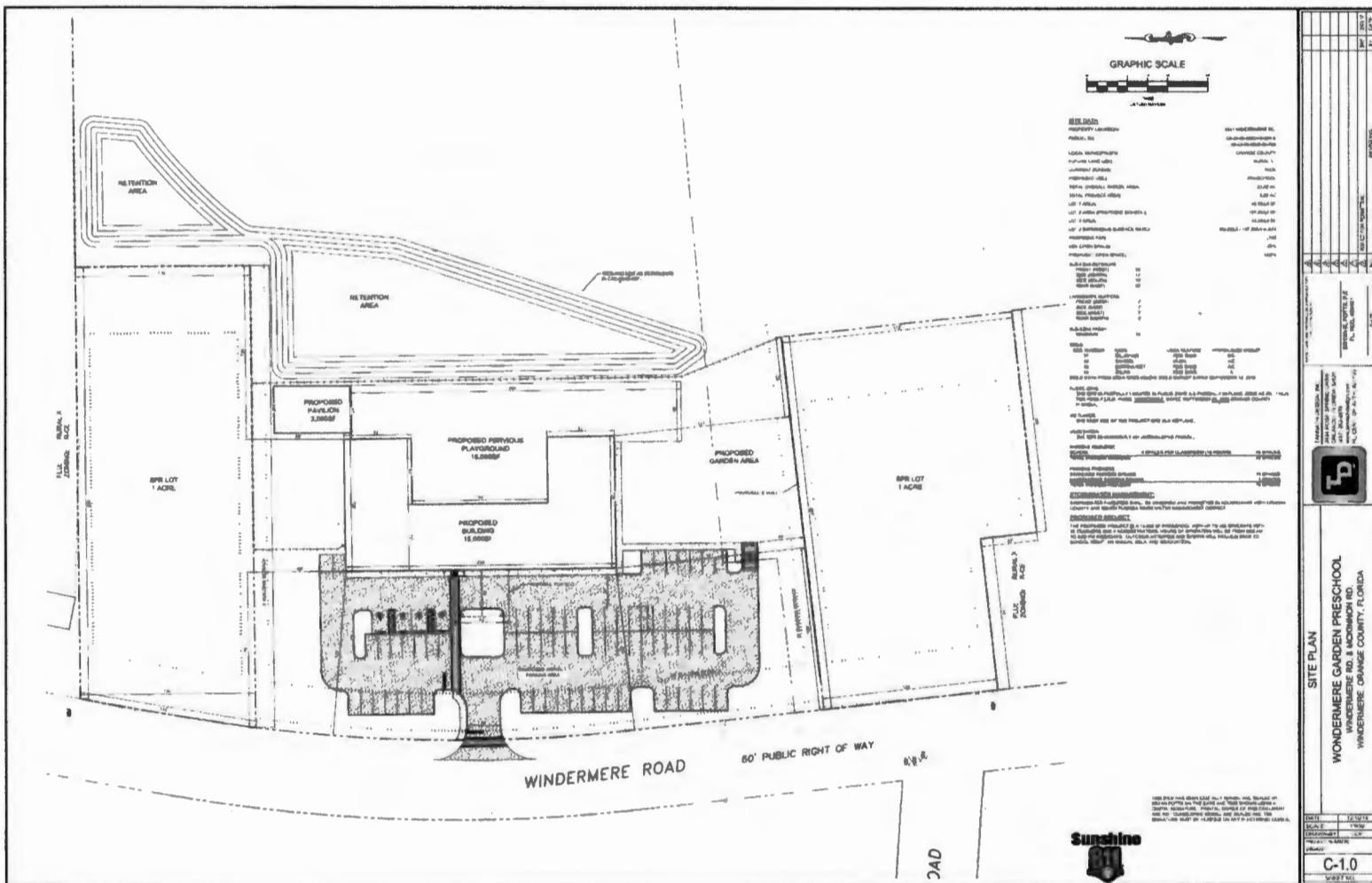
## ZONING MAP



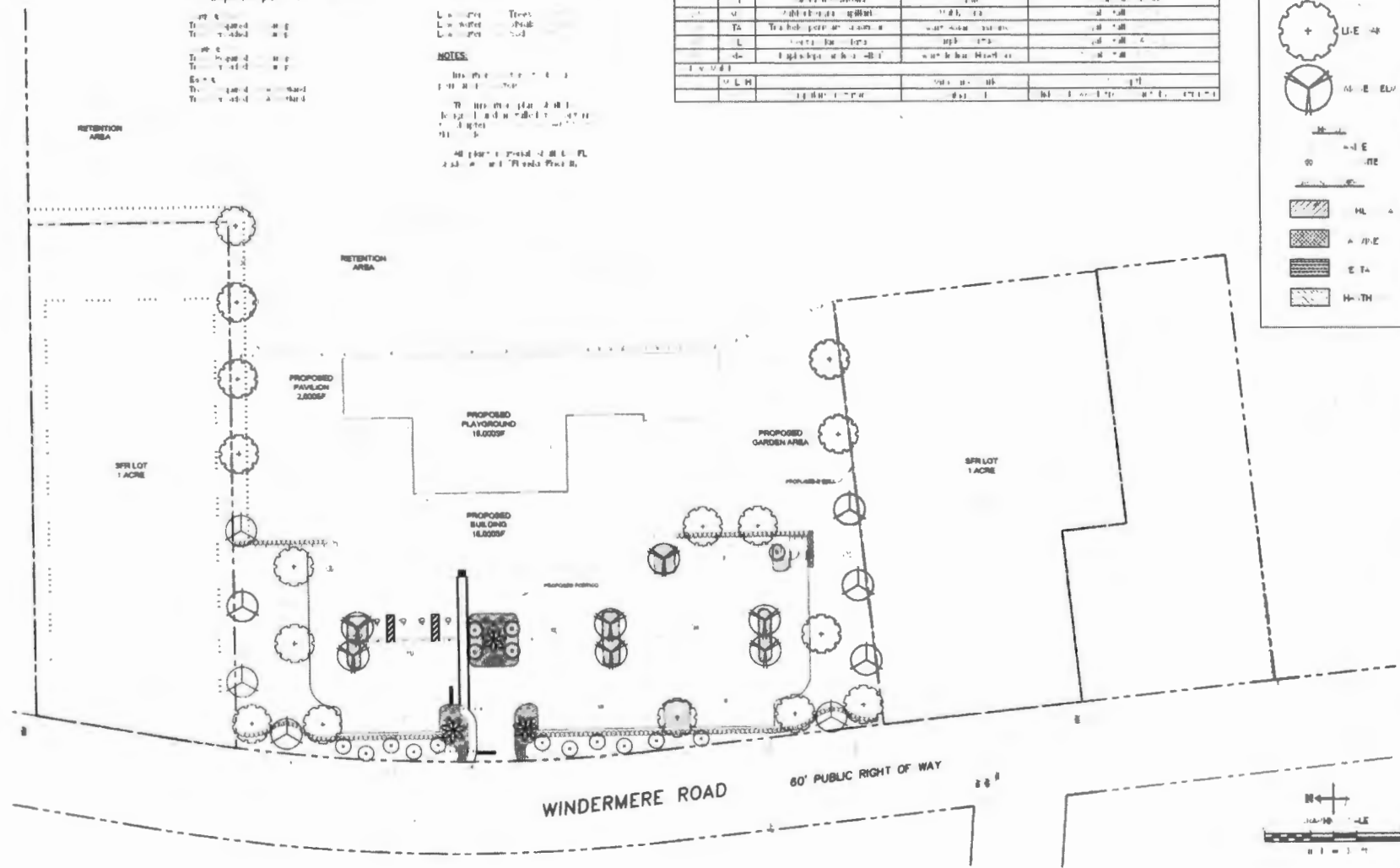
## AERIAL MAP



## SITE PLAN / SURVEY



DATE 8-10-88	FOR MAINTENANCE 8-10-88	CREATED BY: MD	FILE: Landings	RECORDS 1: 89
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ELEVATION

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WINDERMERE GARDEN PRESCHOOL

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SITE PHOTOS

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Subject Property





View Looking north along Windermere Rd.



Intersection of Windermere Rd. and  
McKinnon Rd.



View Looking South along Windermere Rd.