

Board of County Commissioners

Case No. SE-19-03-198

April 9, 2019

S. Brent Spain, Esquire
Board Certified by The Florida Bar in
City, County & Local Government Law

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Special Exception Standards Under Florida Law

- The applicant has the initial 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 initial 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.

Special Exception Criteria

Section 38-78 – The following criteria must be met for a special exception:

- 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 and other characteristics that are associated with the majority of uses currently 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.

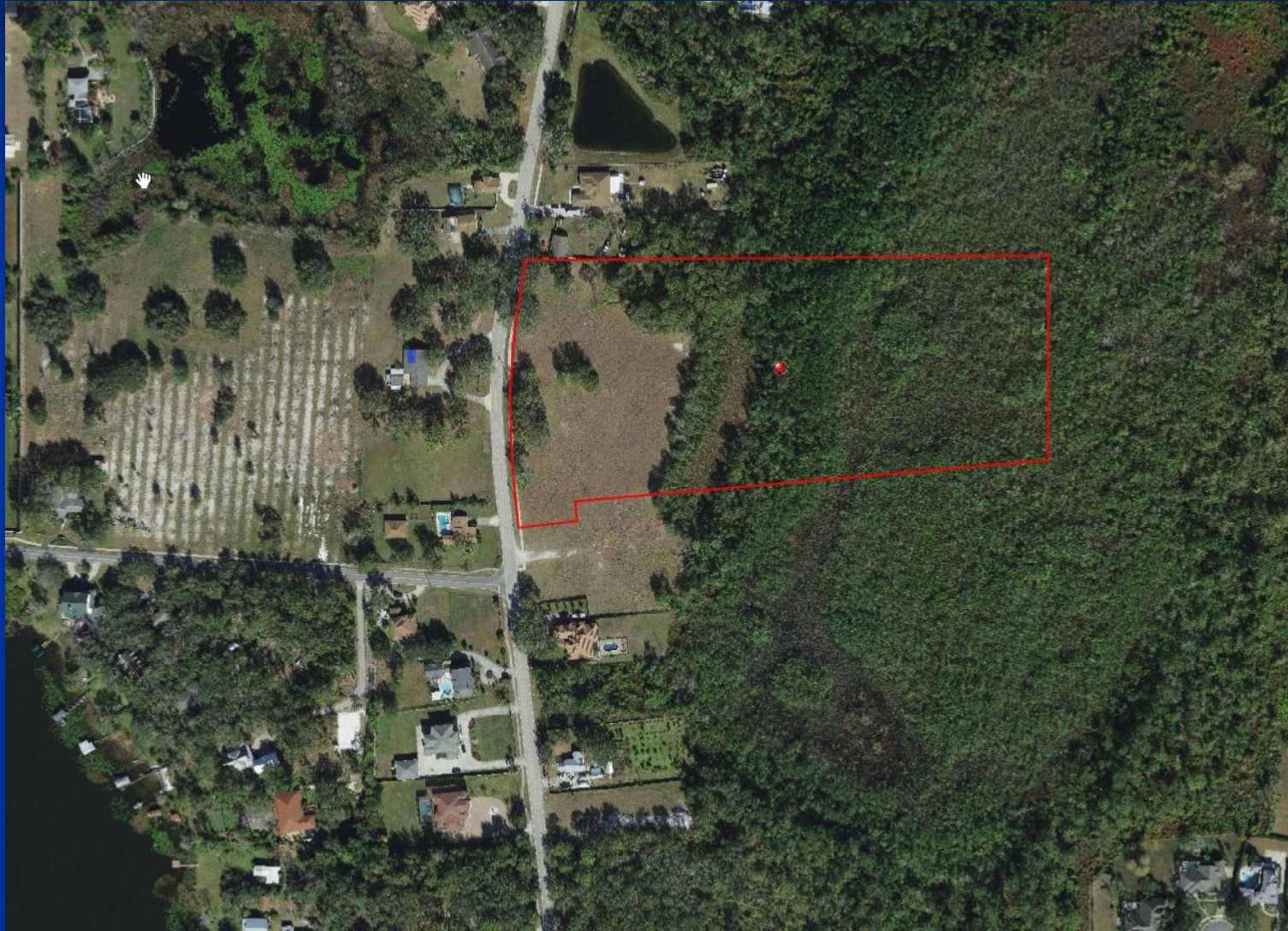
The proposed special exception does not meet criteria #1, 2, 3, 5, and 6.

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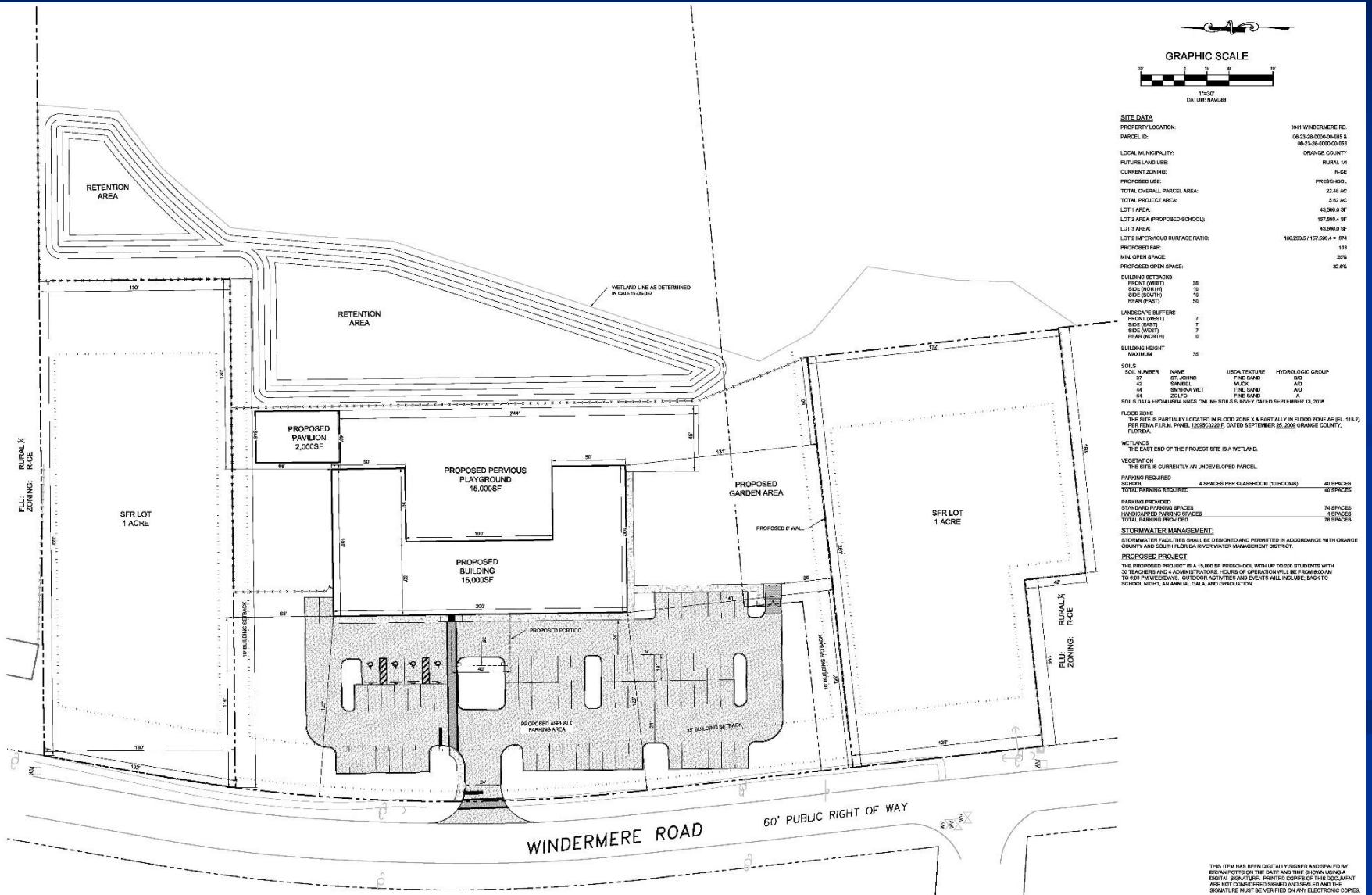
Planning Qualifications

- Master of Arts, Urban & Regional Planning – UF
- Ph.D., Urban & Regional Planning – UF
- Practicing in Florida for 22 years
- Member of AICP since 2001
- 11 EARs, 13 Comprehensive Plans, 3 LDCs
- Expert witness in 18 Florida counties, including Orange County
- Chair, Alachua County Board of Adjustment

SE-19-03-198



Proposed Site Plan



Criteria #1

Plan Consistency

- The application is inconsistent with:
 - FLU 1.4.15, 6.2.9, & 6.2.10
 - Only limited neighborhood commercial uses allowed in Rural Settlements – scale and intensity must be compatible, and limited to retail and personal services intended to serve immediate area.
 - FLU 1.4.3 & 1.4.4
 - Commercial development should be concentrated at major intersections, and disruption of residential areas by poorly located commercial activities shall be avoided
 - FLU 1.4.2, 8.2, 8.2.1, 8.2.11, & UD 2.2.2
 - Compatibility

Criteria #2

Similar, Compatible, & Consistent

The proposed child daycare center is:

- More intense than surrounding low-density residential uses
 - 15,000 square-foot building, 2,000 square foot pavilion, 15,000 square foot playground, 78-space parking lot, and two (2) stormwater basins on approximately 3.0 acres
 - Nearly six (6) times larger than closest houses to the site, which average 2,721 square feet
 - Building location and size not consistent with surrounding pattern of development of low density, single-family homes
- Hours of operation
 - 7:30 a.m. (early drop) to 6:00 p.m., Monday through Friday, with special events until 9:00 p.m.
- Additional 822 daily trips on Windermere Road, which is a County-maintained rural 2-lane road
- Inconsistent with pattern of development – no commercial uses on this segment of Windermere Road.

Criteria #3

Detrimental Intrusion

- Portion of the site on which the child daycare facility is proposed is located within the West Windermere Rural Settlement
- Project would place a 15,000 square-foot building, 2,000 square foot pavilion, 15,000 square foot playground, 78-space parking lot, and two (2) stormwater basins on an approximate 3.0 acre site in a rural, low-density residential area
- No non-residential uses along this segment of Windermere Road
- No provision for overflow parking for daily activity and special events, and site only has a single driveway access point
- Additional 822 daily trips on Windermere Road, which is a County-maintained rural 2-lane road – student population of 200 students bringing in traffic from outside the immediate neighborhood
- The intensity of a 78-space parking lot and the massing of a 15,000 square foot building facing the road will make the proposed child daycare facility the largest massed structure in the surrounding area

Previous BZA Denials

■ 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
- School hours: Mon-Fri, 8:00 a.m.-3:00 p.m.
- County denied special exception for school – did not comply with Section 38-78

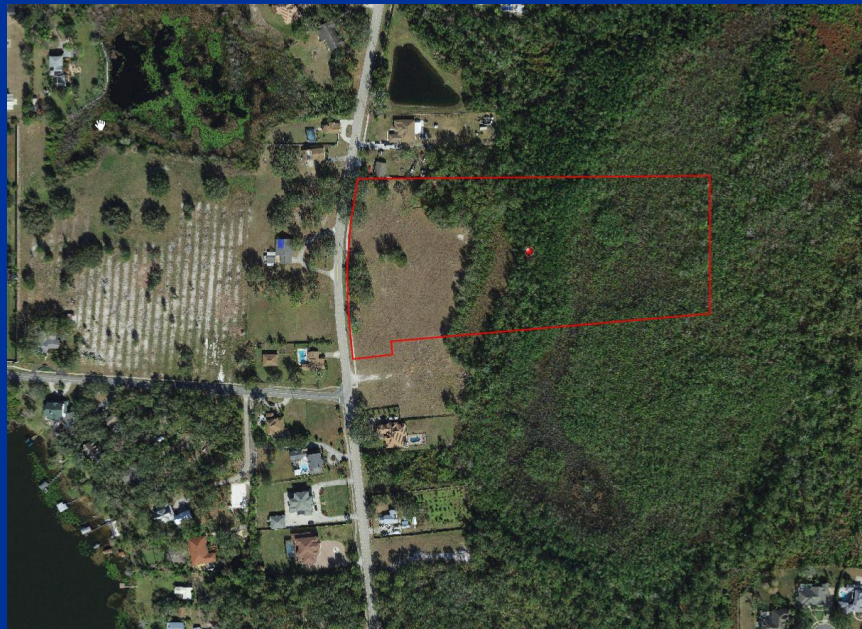
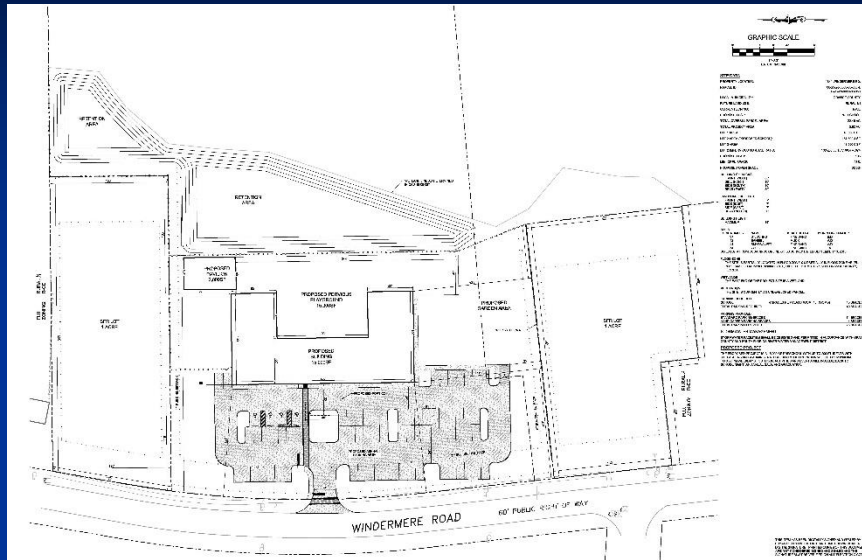
■ Casanova: SE-09-07-004

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

■ Preston: SE-11-11-089

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

Request Denial of SE-19-03-198



- Does *not* meet the Special Exception Criteria in Section 38-78
- Inconsistent with the County's Comprehensive Plan
- Not similar, consistent, or compatible with the surrounding low-density, single-family residential development
- Detrimental intrusion into the residential area
- Noise, lighting, and traffic impacts are dissimilar to existing residential uses
- Access and traffic/safety issues on Windermere Road