

LEGAL OPINION

TO: Planning and Historic Preservation Board (PHPB)
FROM: Office of the Town Attorney
DATE: December 15, 2025
RE: MACS Final Site Plan

Context:

The MACS Final Site Plan Review is scheduled to be heard on December 16, 2025. The MACS Preliminary Site Plan Review was conducted on October 7, 2025 at which the PHPB voted unanimously to approve the site plan with the following conditions:

1. Final review by the Town's contracted planner and engineer for LDC compliance
2. Review by Alachua County Fire Marshall
3. Implementation of a tree protection zone as recommended by the tree committee

The PHPB will determine on December 16, 2025 whether all of these conditions have now been met upon review of the correspondence attached to the Agenda and testimony presented at the hearing.

Issue #1:

Whether the Site Plan is compliant with the setback requirements set forth in the LDC.

Answer:

Yes. The section of the LDC referenced by citizens at the October 7, 2025 meeting applies to "accessory structures", which is defined as "[a] subordinate detached structure, the use of which is customarily and normally incidental to that of the principal use on the same lot and does not include residential uses." The septic system/drain field in the site plan is not an accessory structure. It is an underground system. Accordingly, these setback regulations do not apply.

Issue #2:

Whether the lot size for MACS is too small for the proposed number of students and therefore not compliant with the minimum lot size requirements of the LDC.

Answer:

No. Fla. Stat. § 1002.33, which became effective July 1, 2025, prohibits local governments from imposing greater standards and restrictions on charter schools than on public schools. Sec. 4.02.13 of the LDC setting forth the minimum lot size requirements only applies to "Private Schools/Charter Schools." See below:

4.02.13. PRIVATE SCHOOLS / CHARTER SCHOOLS.

A. Dimensional requirements.

1. Minimum lot area shall be the minimum lot area required for the specific zoning district where allowed (R-2 = 21,780 sf (0.5 acres) + C-1 = 10,000 sf (.23 acre); TOTAL = 31,780 sf (0.73 acres)) plus one (1) acre for every one hundred (100) students (or fraction thereof)(0.57 acres), except where the lot size is five (5) acres or more, based on building code capacity.

The LDC does not impose these same restrictions upon public schools. Accordingly, this section of the LDC imposing a minimum lot size upon a charter school is unenforceable and pre-empted by state law.

Charter schools that are not conversion schools are governed by the Florida Building Code.

Florida Building Code Sec. 453.8.2 states school facility size shall be subject to the standards set forth in the “size of space and occupant design criteria table” found in the Department of Education’s “State Requirements for Educational Facilities.”

However, Fla. Stat. § 1002.33(18)(a) states “[a] startup charter school shall utilize facilities which comply with the Florida Building Code pursuant to chapter 553 except for the State Requirements for Educational Facilities. . . .

Charter schools, with the exception of conversion charter schools, are not required to comply, but may choose to comply, with the State Requirements for Educational Facilities of the Florida Building Code adopted pursuant to s. 1013.37.

Fla. Stat. § 1013.36 provides that “[e]ach new site selected must be **adequate in size** to meet the educational needs of the students to be served on that site by the original educational facility or future expansions of the facility through renovation or the addition of relocatables.”

All of these statutory provisions address the size of the actual facility, not the size of the lot on which the facility is constructed.

Issue #3:

Whether MACS needs a special use permit since 1 parcel of the site is zoned R2 and Sec. 2.02.03(C) of the LDC states a special use permit is required for public and private schools in residential district.

Answer:

Yes. Fla. Stat. § 1002.33, which became effective July 1, 2025, prohibits local governments from imposing greater standards and restrictions on charter schools than on public schools. Because the LDC applies the same standard to public and private schools, it is not pre-empted by statute in this respect and MACS must obtain a special use permit to operate on the residential parcel.