

## THE DIENER SCHOOL CONDITIONAL USE & FOREST CONSERVATION PLAN NO. CU202306



### Description

Request for Conditional Use approval to allow conversion of an existing office building to a private educational institution in Phase 1, with a building addition for a gymnasium in Phase 2, for up to 120 students and 57 Staff Members and associated Forest Conservation Plan.

No. CU202306

Completed: 4-10-2023

MCPB

Item No. 8

5-04 2023

2425 Reddie Drive

Floor 14

Wheaton, MD 20902

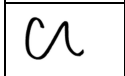
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### LOCATION/ADDRESS

9312 Old Georgetown Road, 550 feet north of  
Alta Vista Road

### MASTER PLAN

1990 Bethesda Chevy Chase Master Plan

### ZONE

R-60

### PROPERTY SIZE

2.52 acres

### APPLICANT

Kathy Chumas  
The Diener School

### ACCEPTANCE DATE

November 16, 2022

### REVIEW BASIS

Chapter 59

### HEARING EXAMINER PUBLIC HEARING

May 12, 2023



## Summary:

- Staff recommends approval of the Conditional Use with conditions and transmittal to the Hearing Examiner.
- Staff recommends approval of the associated Forest Conservation Plan with conditions.
- The Subject Site has an existing two-story office building with approximately 25,783 square feet of office space and is subject to existing Special Exception, CBA 2202 for a medical office building.
- The Proposal includes abandonment of the existing special exception and conversion of the existing office building to a private educational institution use for up to 120 students and 57 staff members. All students and staff will be included in the first of the two phases.
- The Applicant has submitted a Preliminary Forest Conservation Plan with the Conditional Use Application. This Plan provides an initial assessment of Forest Conservation Requirements, including a variance request for impacts to specimen trees, for the project. If approved, a Final Forest Conservation Plan will be required with subsequent applications.
- With this proposal, the Applicant is requesting waivers for certain parking setbacks and perimeter screening requirements in accordance with Chapter 59.6.2.10.
- Staff has not received any public correspondence as of the date of this Staff Report.

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## SECTION 1: EXECUTIVE SUMMARY

This Application proposes to convert an existing two-story office building, currently occupied by special exception holder the American Podiatric Medical Association (SE Case No. BA 2202), into a private educational institution, otherwise known as a private school. The Diener School is a non-profit independent school that supports the academic and social needs of students from kindergarten to eighth grade with learning differences. Currently located in North Bethesda, this Conditional Use Application supports the relocation of the Diener School to the Subject Property located at 9312 Old Georgetown Road in Bethesda on 2.5-acres in the R-60 Zone. Private educational institutions are designated as a conditional use in the R-60 Zone, therefore, this Application has been submitted in order to address the required findings of Chapter 59 of the County Code, Sections 3.4.5 and 7.3.1. and compliance with Chapter 22A Forest Conservation Law.

The Conditional Use Application is the first step in the regulatory process for this proposed relocation. If the Planning Board supports the Conditional Use, comments will be transmitted to the Office of Zoning and Administrative Hearings (OZAH) for review and ultimate approval. If OZAH approves the use, the Applicant will be required to submit a Preliminary Plan application with the Montgomery County Planning Department for Planning Board approval.

The Applicant proposes two phases of work. The first phase will focus on interior renovations and required frontage improvements while the second phase will add a gymnasium onto the rear of the existing building. All proposed students and staff will be accommodated in the first phase. Along with the Conditional Use Application, the Applicant has submitted, as required by Forest Conservation Law, a Preliminary Forest Conservation Plan. While the proposal limits construction activity mainly to the already-developed portions of the site, afforestation requirements and a variance request for the impact to mature trees will be addressed per the requirements of Chapter 22A Forest Conservation Law.

## SECTION 2: RECOMMENDATIONS AND CONDITIONS

### CONDITIONAL USE NO. CU202306

Staff recommends approval of The Diener School ("The School"), Conditional Use No. CU202306, for a conversion of an office use to a private educational institution use for up to 120 students and 57 staff, in the R-60 zone, subject to the following conditions:

#### **Enrollment and Operations**

1. Enrollment is limited to 120 students in kindergarten through 8<sup>th</sup> grade with up to 57 teachers and staff during the academic school year.
  - a. Enrollment and participation in after-school clubs will not exceed 50 students and 20 staff.
  - b. The School may operate summer school and/or a summer camp with a maximum combined enrollment of up to 65 students and 32 faculty and staff.
2. Hours of operation for the Subject Conditional Use Application for the Diener School will be limited as follows:
  - a. For academic school days, including before-school and after-school care, Monday through Friday from 7:00 AM to 5:00 PM.
  - b. Maximum of 12 special events per year to which the entire school community is invited, including students and parents, and eight special events to which smaller groups are invited.
  - c. Whole-school weekend events will be limited to five times per year and weekday evening events to eight times per year.
  - d. The academic school year extends from late-August to mid- June.
  - e. Summer school and/or summer camp to be a maximum of seven weeks. Hours of operation should be the same or shorter than during the school year.
3. Before approval of a record plat or any demolition, clearing or grading for the Subject Property, the Applicant must receive approval for the abandonment of the existing Special Exception/Conditional Use (CBA 2202) on the Site.

#### **Transportation and Access**

4. Before issuance of any Use and Occupancy Certificate on the Site the Applicant must replace the existing Old Georgetown Road sidewalk with a new 11-foot, asphalt side path, separated from the roadway by a vegetated street buffer measuring at least eight feet wide.
5. The Applicant must maintain at least two bus routes to reduce Site-generated trips. More routes can be added at the discretion of The School without further review by OZAH where sufficient ridership can be attained.
6. No vehicles may queue on the adjacent public street(s) while accessing the Site.

- a. During morning drop-off and afternoon pick-up periods, Diener School Staff will be stationed at the northern driveway entrance and will either direct cars to queue in the bus drop-off area, if spaces is available, or wave cars past the Site if there is insufficient space on site for additional cars to queue.
  - b. Parents will be informed of this practice upon enrollment and will be directed to drive past The School and loop back to try again if school staff indicate there is no room on site for additional cars to queue.
7. Deliveries will occur outside the designated morning and afternoon pick-up/drop-off periods to avoid conflicts with pick-up/drop-off operations.
8. The School will enter into a binding agreement with the Planning Board at the time of Preliminary Plan to perform in perpetuity a Transportation Management Plan. This plan will be reviewed and updated on an as needed basis.
9. The School must designate a Transportation Coordinator to oversee the implementation of the TMP and to be a liaison with the surrounding community on traffic and traffic-safety issues.
10. Final approval of the Transportation Impact Study by MDOT SHA will be required at the time of Preliminary Plan.

#### **Parking**

11. A minimum of three vehicle parking spaces must be reserved for carpool use on site.
12. The Site must accommodate a minimum of 46 off-street vehicle parking spaces.
13. The Applicant must provide six short-term bicycle spaces and six long-term bicycle parking spaces in a secure and weather-protected area within the building for use by faculty, staff, and visitors. Any bicycle parking provided for students will be above and beyond this requirement.

#### **Landscaping and Screening**

14. Site landscaping and perimeter screening must be provided in accordance with the Conditional Use Landscape Plan.

#### **Lighting**

15.
  - a. All new onsite exterior area lighting must be in accordance with the latest IESNA outdoor lighting recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded).
  - b. All new onsite down-lights must have full cut-off or BUG-equivalent fixtures.
  - c. Deflectors will be installed on all new fixtures to prevent excess illumination and glare.
  - d. Illumination levels generated from on-site lighting must not exceed 0.1 footcandles (fc) at the lot line, excluding areas impacted by streetlights within the right-of-way.



## FOREST CONSERVATION PLAN

Staff recommends approval of Preliminary Forest Conservation Plan No. CU202306 with the following conditions:

1. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches totaling 26 caliper inches. Planting locations must be shown on the Final Forest Conservation Plan ("FFCP"). Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
2. Applicant must submit a FFCP for review and approval before obtaining a Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for this Subject Property.
3. The FFCP must be consistent with the approved Preliminary Forest Conservation Plan.

## SECTION 3: NEIGHBORHOOD & SITE DESCRIPTION

### VICINITY/NEIGHBORHOOD

The 2.5-acre Property is located on the west side of Old Georgetown Road (MD 187) in Bethesda, just over ½-mile south of I-495. The Subject Property is bordered to the north by special-exception office uses and to the south by a vacant single-family detached unit (this property is under corporate ownership and not classified as a primary residence in state tax records); additional single-family homes border the property to the west. Non-residential uses, including medical offices and a veterinary hospital, lie just across Old Georgetown Road to the east.

The Staff-defined Neighborhood, outlined in a dashed black line in Figure 1 below, is primarily defined by Melvern Drive to the north, Sonoma Drive to the south, Ewing Drive to the west, and properties fronting on Old Georgetown Road to the East. This generally captures the neighborhoods of Alta Vista Terrace and Oakmont which border the Subject Property and consists primarily of single-family detached houses on small lots in the R-60 zone. The properties fronting on Old Georgetown Road primarily features non-residential uses; as recommended by the Master Plan, many of these properties feature existing special exceptions.

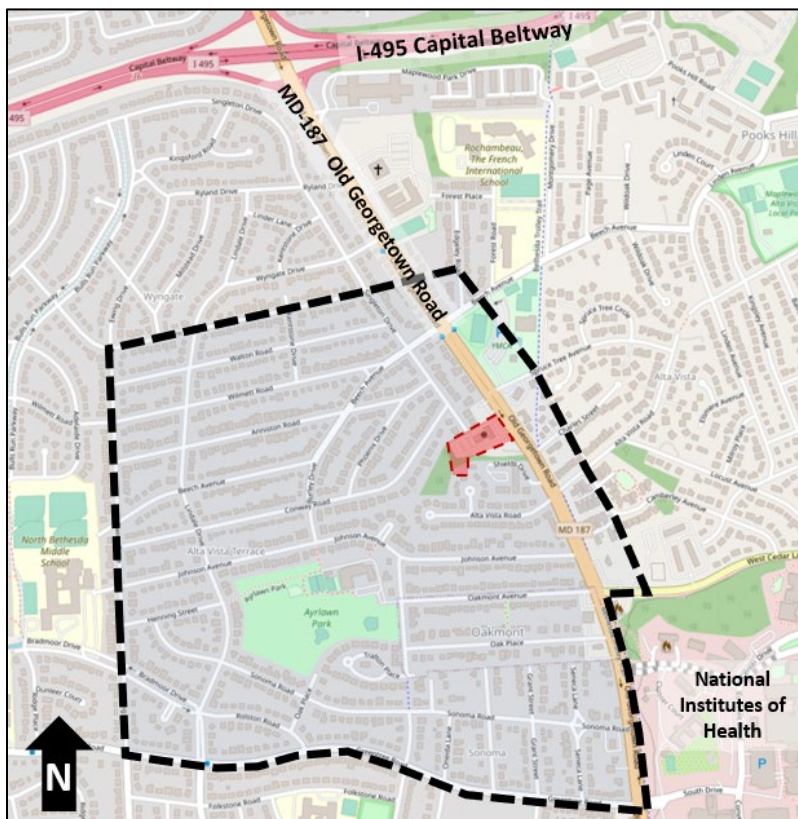


Figure 1: Vicinity/Staff-Defined Neighborhood (dashed black outline), with Property in red



## PROPERTY DESCRIPTION

The subject site (Subject Property, Property, or Project) consists of part of Parcels 1 and 2, P268, in the Gleaning subdivision. The Property measures approximately 2.52-acres and is located in the R-60 zone. It is currently developed with an office building occupied by special exception holder the American Podiatric Medical Association (SE Case No. BA 2202); the Applicant, The Diener School, will seek abandonment of the existing special exception onsite. The existing office building on the Subject Property has two stories and approximately 25,783 square feet of space, as well as surface parking distributed around the site perimeter and in two parking lots behind the building. Driveway openings at the north and south ends of the site frontage, linked by a long, semi-circular drive aisle that wraps around the building and parking areas, provide vehicular access to and from Old Georgetown Road. The Subject Property has extensive decorative landscaping along its road frontage and substantial, mature plantings providing a visual buffer along the north, west and south property lines. An undeveloped area at the rear of the site is dominated by bamboo and contains a small area of 0.19 acres designated as forest.



*Figure 2: Aerial view of the Subject Property (shaded in red)*





*Figure 3: North Entrance of Subject Property*



*Figure 4: South End/Exit Driveway of Subject Property*

## SECTION 4: PROJECT DESCRIPTION

### PROPOSAL

The Diener School (“The School”) is currently located on Danville Road in North Bethesda and has a population of 72 students and 39 staff members. With this request to convert the existing office use to a private educational institution, the Applicant proposes to relocate The School to the Subject Property as part of a phased enrollment expansion to accommodate up to 120 students and 57 staff members. Grade levels will remain at kindergarten through 8<sup>th</sup> grade with school hours Monday through Friday, 8am to 3pm (staff hours are expected to be 7:45 am through 3:45 pm). Tutoring and private therapy are provided to a small number of students (generally between one and five students) in the school building from 7:00 to 8:00 am and again between 3:00 and 5:00 p.m. Students also have the option to participate in after-school clubs from 3:00 to 4:00 p.m. three days a week.

Outdoor activities are a part of The Diener School’s proposed curriculum for both educational and recreational purposes. For educational purposes, students will generally be outside in groups ranging from 8-12 or 16-24, accompanied by staff members at a minimum staff-to-student ratio of 1:6. Recreational outdoor activities may involve cohort groups of 16-24 or larger groups of up to 48 students, and will be accompanied by staff members at a minimum staff-to-student ratio of 1:10. Additionally, The Diener School hosts two outdoor events per year. These events, a Halloween Parade and an Olympics event, are held during school hours. In addition to these outdoor events, The School offers six special events, to which parents are invited, about six times per year. These events are held indoors during school hours. After-hours weekday events include Back to School Night, parent presentations three to four times per year, and a middle school Valentine’s Dance. Weekend events consist of a Fall Harvest Festival (which is partly outdoors and may continue to be held off-site), an end-of-year party held outdoors, an alumni gathering for 20-40 people held partially outdoors, and Summer Playdates held two to four times per summer, outdoors, for 20-50 people.

This Application proposes a phased approach to construction, the timing of which is dependent upon fundraising efforts. The Applicant expects an estimated timeframe of five to seven years between Phase 1 and Phase 2. Phase 1 will focus on the essential elements required for the function of The School’s program as well as required frontage improvements and access/circulation. The main component Phase 2 is the proposed 11,000 square-foot gymnasium addition to the rear of the building. A breakdown of the proposed components of each phase is further detailed below:



Phase 1:

- Full interior renovation of the existing office building to accommodate The School use for up to 120 students and 57 staff
- Removal of the existing surface parking lot at the front of the property
- Landscaping and frontage improvements
- Installation of stormwater management facilities
- Construction of pedestrian access path with staircase and ADA-compliant access
- Removal of one asphalt parking area, to be replaced with a grassy playground area
- Installation of gated entrances, setback within the property, to enclose the rear of the site
- Installation of signage along Old Georgetown Road and along drop-off route

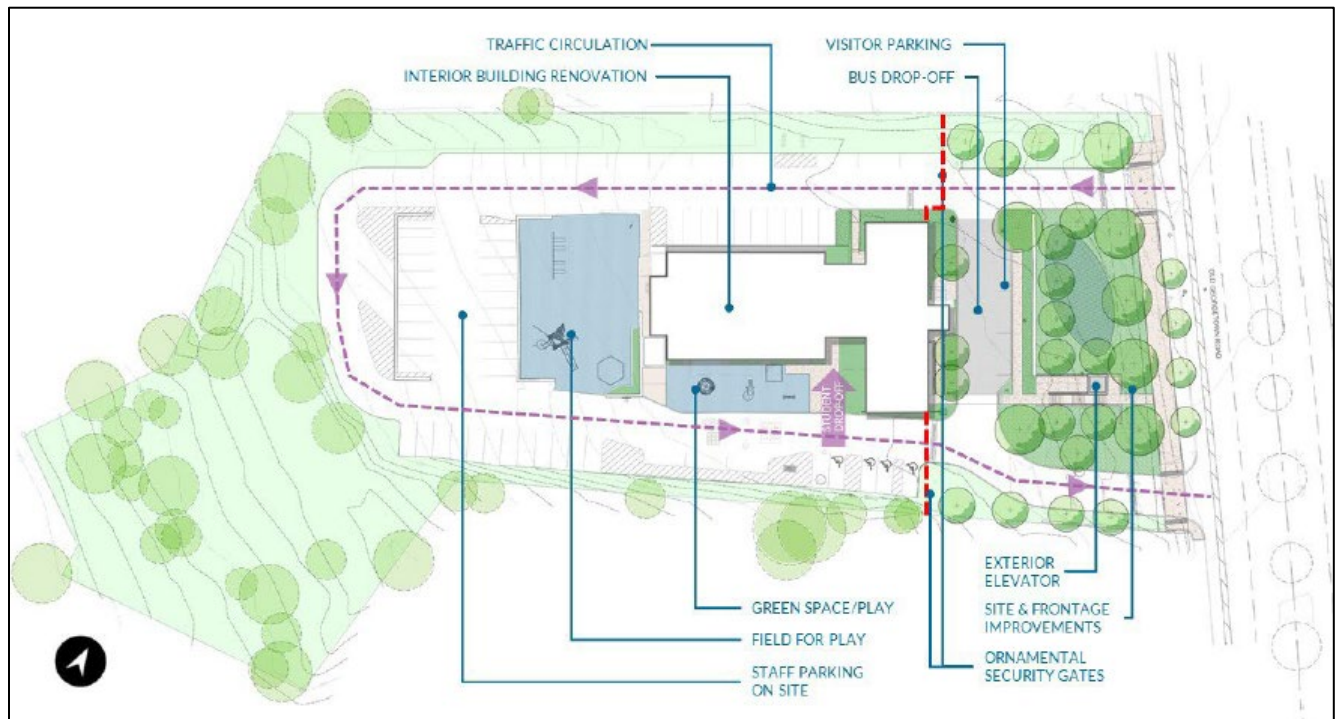


Figure 5: Phase 1 – Site Layout



*Figure 6: Phase 1 Perspective*



Phase 2:

- Construction of an 11,000 square-foot gymnasium addition
- Construction of outdoor classroom and play areas
- Adjustments to site parking and landscaping.

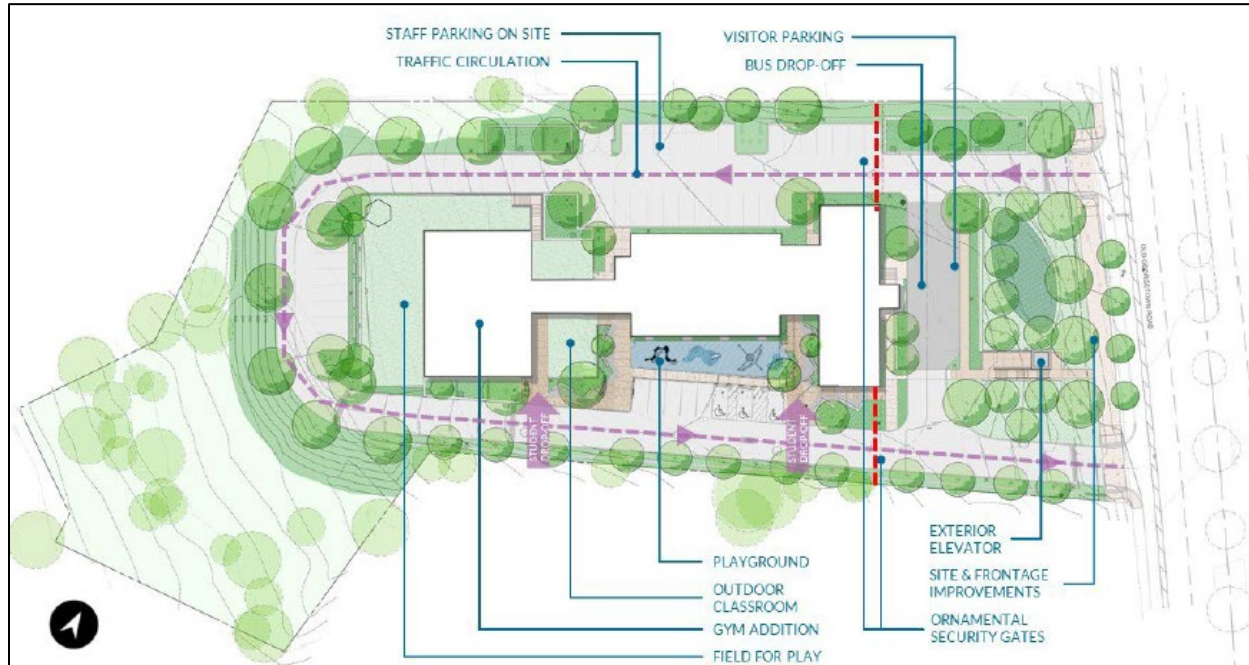


Figure 7: Phase 2 – Site Layout



Figure 8: Phase 2 Gym Addition

## ACCESS, CIRCULATION, PARKING

The Applicant is proposing two phases and Planning, MCDOT, and MDOT SHA staff evaluated both phases for safe Site access and internal circulation. The transportation impact study evaluated the potential impacts for highest student enrollment and higher than proposed employment of staff and faculty. The summary below addresses both phases included in the Subject Application.

All access to the Property for both phases of development will be provided by the two existing driveways on Old Georgetown Road: one for ingress (northern driveway) and one for egress (southern driveway). Due to the presence of an existing concrete median on Old Georgetown Road, the egress-only driveway will function as a right-out only in the southbound direction.

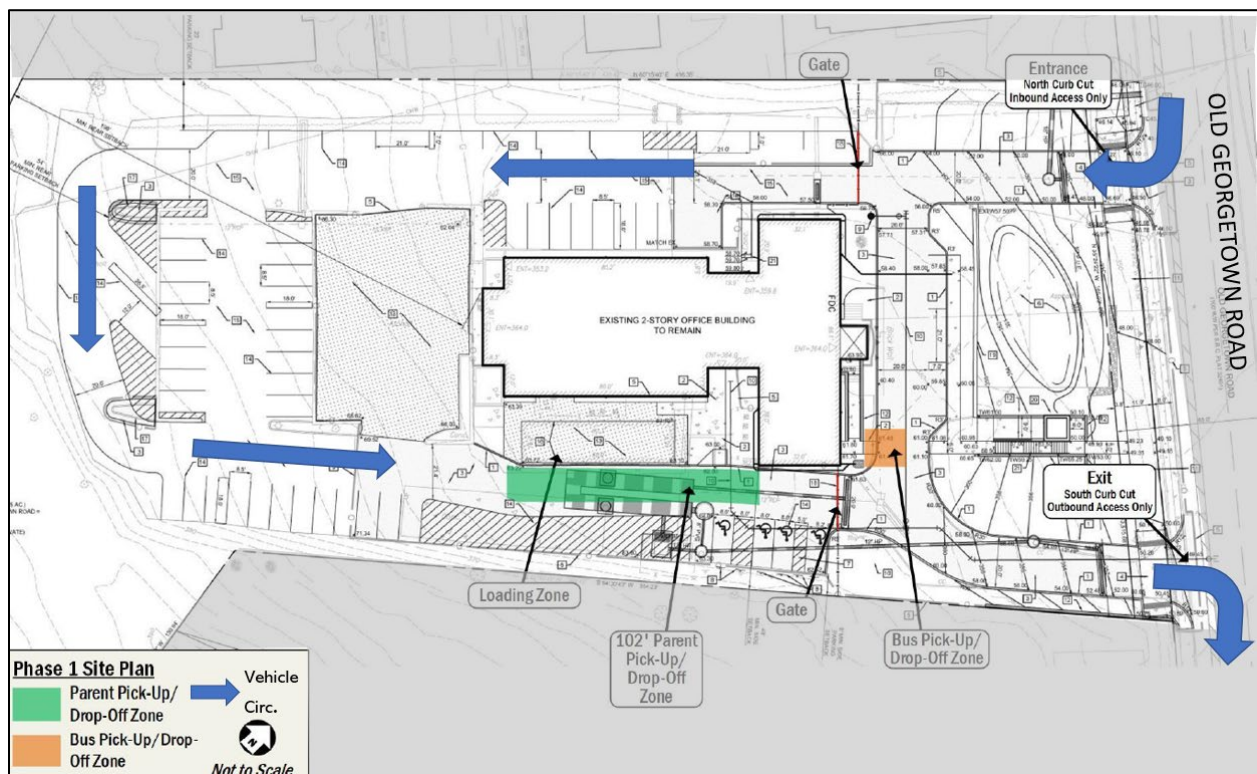


Figure 9: Phase 1 Site Circulation Plan



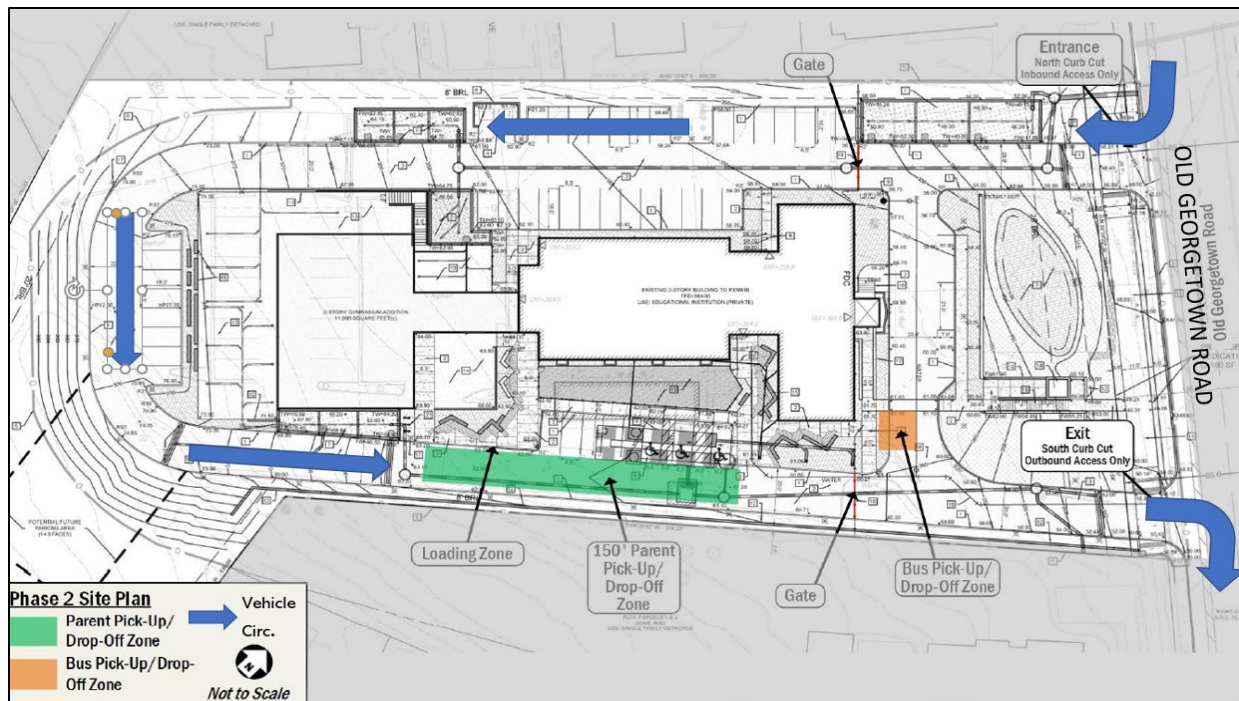


Figure 10: Phase 2 Site Circulation Plan

As stated previously, the Applicant conducted a transportation impact analysis to identify transportation deficiencies within the adjacent public transportation network, and to ensure that queuing would not occur on Old Georgetown Road. The Applicant received approval on the access and circulation in MDOT SHA and MCDOT's letters dated November 16, 2020 and December 16, 2020, respectively. Further refinement and approval of the final design will be required from MDOT SHA at the time of access permit.

On-site vehicular circulation is divided into two separate routes; one that will be used by buses operated by the Diener School and the other by passenger vehicles (parents and staff). The Site access points are the same in both phases. The changes to the onsite circulation between both phases are minimal and described in further detail below.

#### Parents and Staff

- As shown in Figure 10, parents will loop around the back and south sides of the Site to access the drop-off and pick-up zone.
- Pick-up/Drop-off operations occur in both phases along a pick-up/drop-off zone on the south side of the building. This zone is approximately 102' (four (4) vehicles) in Phase 1 and 150' (six (6) vehicles) in Phase 2.
- Parents will be instructed to drive up to an unoccupied space along the pick-up/drop-off zone. Each space is manned by a school staff person to assist students exiting and entering the vehicle. Parents are to stay in the vehicle at all times.
- Once parents are finished in the pick-up/drop-off zone they can bypass the queue and continue forward to exit the Site.

The Applicant has demonstrated that more than 50 private vehicles can queue on the Site in Phase 1 and 42 private vehicles in Phase 2. The on-site queuing operations for both Phase 1 and Phase 2 were included in the transportation impact study. In all simulations there was no spillback on Old Georgetown Road. However, in the event that the queue does back up towards the entrance of the Site, the Applicant has a plan to avoid spillback queuing onto Old Georgetown Road. During morning drop-off and afternoon pick-up periods, The School Staff will be stationed at the northern driveway entrance and will wave cars past the Site if there is insufficient space on site for cars to queue. Parents will be informed of this practice upon enrollment and will know to drive past The School and loop back to try again. Given that the Site can turnover roughly 100 cars in 10 minutes, it is likely that the need to wave off parents will be rare occurrence.

### *Buses*

The Applicant proposes a minimum of two buses that can hold up to 50 students in each vehicle to reduce trips in and out of the Site in the peak hour. Buses arriving on-site will enter the Site via the northern driveway and make an immediate left across the front entrance of The School. The buses will make use of the designated bus pick-up and drop-off zone at The School's front entrance. The buses will make another left turn onto the outbound driveway. Staff will be present to help buses and private vehicles safely negotiate access to the outbound driveway.

### Parking and Loading

The Applicant proposes a total of 46 vehicular parking spaces on the Site. After accounting for all eligible parking reductions per Section 59-6.2.3.7a.

Under Montgomery County Zoning Code 59-6.2.8, private educational institutions with 25,001 to 250,000 SF of gross floor area are required to provide a minimum of one (1) loading space. Loading facilities will be located in the aforementioned pick-up/drop-off zone. Deliveries will occur outside the designated morning and afternoon pick-up/drop-off periods to avoid conflicts with pick-up/drop-off operations.

### Transportation Management Plan

Although not required, the Applicant has agreed to uphold a perpetual Transportation Management Plan (TMP) that will specifically identify strategies to minimize vehicle traffic generated by the Site, to manage of on-site traffic and to minimize the impacts of special events on site. The TMP was shared with the Maplewood and Wyngate Citizen's Associations and reflects their requested edits. The TMP is included as an attachment to this staff report.

### Bicycle and Pedestrian Improvements

Bicycle and pedestrian access to the Site will be improved along the Site frontage on Old Georgetown Road. In compliance with the Complete Street Design Guide, the Applicant will be required to replace the existing sidewalk with a buffered sidepath along the entire length of the property during Phase 1

of the Project. The exact dimensions of the Project will be finalized with the forthcoming Preliminary Plan.

### Agency Approvals

Although not required at the time of Conditional Use, the Application was reviewed by public agencies for conformance with the County Code and best practices for site design. Formal review of these elements and subsequent approvals letters will be incorporated as conditions as part of the forthcoming Preliminary Plan application.

### ENVIRONMENT

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) 420230070 for this Property was approved on October 17, 2022. The NRI/FSD identified the existing man-made and natural features associated with the Property, such as the buildings, associated parking, street trees and landscape elements. As shown on the NRI/FSD, the Site is currently developed with an existing office building and associated surface parking areas along the frontage as well as in the rear of the building. Generally, the Site slopes downward toward Old Georgetown Road and is bordered on three sides by a wooded area which features mature trees. A portion of the wooded area is impacted by invasive bamboo, however adjacent to this bamboo stand, within the southwest corner of the Property, a forest stand of approximately 0.19-acres was identified.

This Project is subject to Chapter 22A, Forest Conservation Law, the requirements of which will be detailed in the findings below.



## SECTION 5: ANALYSIS AND FINDINGS

### CONDITIONAL USE NO. CU202306

- 1. Per Section 59.7.3.1.E., to approve a conditional use application, the Hearing Examiner must find that the proposed development:**

- a. satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended.**

Not Applicable; The only previous approvals were for unrelated special exceptions, including SE Case No. BA 2202 for a medical office building, for which abandonment has been requested; approval of this abandonment request has been included as a condition of Approval for this Application.

- 2. satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6; Use Standards for Educational Institution (Private)-Section 59.3.4.5**

*Where an Educational Institution (Private) is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section [7.3.1](#), Conditional Use, and the following standards:*

- a. The Educational Institution (Private) will not constitute a nuisance because of traffic, number of students, noise, type of physical activity, or any other element that is incompatible with the environment and character of the surrounding neighborhood.**

The Diener School will not constitute a nuisance. The present application proposes a modest number of students relative to the size of the site; has a detailed plan in place to manage arrivals and departures without adverse impacts on local traffic conditions; will create no noticeable noise except the sound of children playing, a typical noise from schools, private and public, which are often embedded in residential neighborhoods; and will have less physical activity than many schools, given that Diener's students do not play on organized sports teams and the student body is relatively small. No aspect of The School will rise to the level of creating a nuisance.

As conditioned, the Applicant must accommodate all queuing vehicles on-site. Vehicles will not be permitted to queue on Old Georgetown Road. There is space for over 40 cars to

queue on site in each of the two phases. As stipulated in the Transportation Management Plan, this requirement will be communicated to the parents and to ensure that cars do not spill back onto Old Georgetown Road during drop-off and pick-up, The School will station staff at the entrance driveway to wave off cars if the on-site queue backs up to the driveway entrance.

- b. The Educational Institution (Private) will be in a building compatible with the residential character of the surrounding neighborhood, and, if the Educational Institution (Private) is located on a lot of 2 acres or less, in either an undeveloped area or an area substantially developed with detached houses, the exterior architecture of the building must be similar to a detached house design, and at least comparable to any existing homes in the immediate neighborhood.***

The existing building has been part of the neighborhood for many years – State Department of Taxation and Assessment Records indicate that the building was constructed in 1966. The building is comparable in scale and function to other non-residential buildings along this stretch of Old Georgetown Road, all of which buffer the adjoining residential neighborhoods from the noise and constant activity of traffic on Old Georgetown Road. The Subject Property is more than two acres in size, therefore the architectural review is not required. The building will not be visible from surrounding residential properties due to distance, mature landscaping and its modest height, making it fully compatible with the character of the surrounding neighborhood. The gymnasium planned for Phase 2 of the project, located behind the existing building, will be consistent with the existing building in size and scale and will complement its architecture while bringing a slightly more modern aesthetic to the site. The gym integrates into the existing context by using roof forms and scale that are consistent with the existing building. It also strategically uses a complementary brick to ground the project in the site and create a strong aesthetic relationship with the existing building. The gym uses school colors for the façade of the building to both create greater connection to The School's history and aid in defining its future.

- c. The Educational Institution (Private) will not, in and of itself or in combination with other existing uses, affect adversely or change the present character or future development of the surrounding residential community.***

The School will not, either on its own or in combination with other existing uses, affect the surrounding residential community adversely or change its character or future development. The surrounding neighborhood combines predominantly non-residential uses fronting on Old Georgetown Road, in buildings of modest size and scale, with mature, stable neighborhoods of well-maintained, attractive single-family homes fronting on side

streets. The slightly larger scale of most of the non-residential buildings helps to insulate nearby homes from the impacts of persistently heavy levels of traffic on Old Georgetown Road. The co-location of residential and non-residential uses in this area over many years has created a stable relationship in which the residential communities continue to thrive and to attract new investment, as evidenced by a number of new homes that appear to have been built on blocks near the Subject Property in recent years. The proposed conditional use will not convert a residential use to a non-residential one, build a taller building than the area is accustomed to, or otherwise make a significant change in the character of the area. Rather, the Applicant proposes to convert the site to a new use while maintaining the existing building in phase 1. The proposed gymnasium addition in phase 1 will be located at the rear of the site. The existing grade of the Subject Property, which rises towards the rear, as well as the mature trees both serve to minimize visibility of the addition from Old Georgetown Road and the adjacent neighborhoods. The new use proposed for the site is one that will serve Montgomery County children, including from the surrounding residential community, is appropriate for the size and location of the site, and will maintain significant setbacks and screening on all sides of the Subject Property.

***d. The number of pupils per acre allowed to occupy the premises at any one time must be specified by the Hearing Examiner considering the following factors:***

***(a) traffic patterns, including:***

***(i) impact of increased traffic on residential streets;***

***(ii) proximity to transit services, Area Connectors, Town Center Streets, Downtown Streets, Boulevards, and Controlled major highways; and***

***(iii) provision of measures for Transportation Demand Management in Chapter 42 (Section 42A-21).***

The submitted traffic study concludes that the proposed project will not increase delays or critical lane volumes beyond the relevant allowable congestion standards along the Old Georgetown Road corridor, which includes three study intersections of Old Georgetown Road with a residential street. The traffic study's analysis of trip distribution (the routes vehicles will likely use to travel to and from the site) indicates that about 80% of inbound site traffic will arrive via I-495, Old Georgetown Road (classified as a major highway) and Cedar Lane (classified as an arterial) without using any nearby residential roads, and that roughly 80% of outbound site traffic will leave the site using Old Georgetown Road and Cedar Lane, leaving only 20 percent of site traffic using any of the local residential roads. These modest traffic increases are not expected to have a noticeable impact on residential streets.

The traffic study also concludes that the Subject Property is served by convenient and efficient transportation options via transit, bicycle, walking and driving. The Subject Property benefits from an extensive regional and local transportation system including

bus routes, Metro within 1.5 miles, pedestrian and bicycle facilities and excellent vehicular access to the Capital Beltway and multiple arterial roadways from its location on a major highway.

The Applicant has submitted a proposed Transportation Management Plan that will address salient transportation issues including trip reduction efforts, including the Applicant's Pick-up/Drop-Off Plan to prevent off-site queuing and preventing off-site parking (except as permitted for special events).

***(b) adequacy of drop-off and pick-up areas for all programs and events, including on-site stacking space and traffic control to effectively deter vehicle queues on adjacent streets;***

The Subject Property is designed to maximize on-site queuing space, with a two-lane, one-way drive aisle leading from the sole vehicular entrance, around the site perimeter to the drop-off/pick-up area and thence to the sole vehicular exit. The on-site drive aisle can accommodate approximately 44 vehicles in Phase 1 and 42 vehicles in Phase 2. As described in detail in the traffic study, school staff will be stationed at key locations to facilitate the efficient movement of students between the school building and vehicles, and parents will be instructed to remain in their cars to increase efficiency. As discussed in depth above, both parents and staff will be strictly prohibited from standing or waiting on Old Georgetown Road at any time, and this prohibition will be enforced by the Applicant (per the recommended conditions of approval). These steps, as well as measures outlined in the Transportation Management Plan such as bussing students, will effectively deter vehicle queuing on Old Georgetown Road.

***(c) adequacy of student and visitor parking; and***

No student parking is needed due to the ages of Diener's students. Adequate visitor parking will be provided at the front of the site, near the school entrance.

***(d) noise or type of physical activity.***

Like other elementary and middle schools, Diener students will have periods of outdoor activity, as detailed above, with typical sounds of children playing. The proposed school can be expected to generate less noise than many schools due to the small size of the student body and the absence of organized sports teams. The Subject Property can easily accommodate Diener's expected maximum enrollment.

- e. Density greater than 87 pupils per acre may be permitted only where the Hearing Examiner finds that:***
- i. the program of instruction, special characteristics of students, or other circumstances justify reduced space and facility requirements;***
  - ii. the additional density will not adversely affect adjacent properties; and***
  - iii. additional traffic generated by the additional density will not adversely affect the surrounding streets.***

The Applicant seeks a density of 48 pupils per acre, well below the listed threshold.

- f. Outdoor recreation facilities are screened from abutting residential properties under Division [6.5](#).***

The proposed recreational facilities are limited to small play areas. Diener does not propose ball fields or other large play areas that are common to many private educational institutions. General perimeter screening is not required per Section 59.6.5.3.4 because parking areas are situated between the building/outdoor play areas and the property lines on all three sides that abut residential properties. However, the project is subject to parking lot screening requirements under Section 59.6.2.9. The Applicant seeks minor waivers, per Chapter 59.6.2.10., from certain elements of the parking lot screening requirements due to site constraints such as a narrow shape, re-using a building that sits in the center of the site, and steep slopes. The waivers requested are:

- Side Parking Setbacks (59-6.2.5.K.2.b.) – 16’ required, 8’ provided on the south and 12’ provide on the north
- Perimeter Planting Width (59-6.2.9.C.3.a.i.) – 10’ required, 8’ provided
- Minimum of 2 understory trees planted for every canopy tree

As the waivers represent minor deviations from the requirements, the proposed site design and layout satisfy the intent of the sections referenced while providing safe and efficient access and parking and adequate screening made possible by the existing, dense vegetation and slopes. If granted, the waivers would not result in unsafe or adverse conditions onsite or to the neighboring community; due to a combination of factors including the adaptive reuse of an existing building in the center of a narrow site, topography that restricts parking space locations, and the priority to align the drive aisle with existing curb cuts, strict adherence to the standards listed are not possible without further site disturbance which would cause cascading effects including increased variance tree impacts, slope disturbance, and a more expansive redesign of the existing site. The drive aisle width must be increased to meet emergency vehicle access requirements, which puts pressure on the width of the side planting strips. To satisfy parking



requirements, parking spaces have been placed in areas in close proximity to school entrances and where the existing grades are the flattest. This includes the north and south sides of the site, where the standard side setback requirement cannot be met. Other areas of the site, such as the west side, have steeply sloping topography. Providing parking in those areas in lieu of the north and south sides would require introducing retaining walls, removing additional trees and extending the limits of disturbance, which would increase stormwater management requirements.

The understory plantings proposed fall short of the standard due to space constraints. Specifically, in some locations the anticipated light poles interfere with the placement of trees. The Applicant considered it more important to provide as many canopy trees as possible, so some understory trees are not provided where they would interfere with a light pole. Additionally, the requirement of the planting buffer size requires shrubs of a significant size. The Applicant's landscape architects found that in some areas, providing these large shrubs as well as understory trees would overcrowd the space and not allow the plants adequate room to thrive. Finally, along the southern property line a retaining wall splits the available planting width in half.

Nonetheless, the trees and shrubs provided to satisfy the parking lot screening, in combination with setbacks and the existing tree and plant material that is to remain, will provide an effective visual screen between neighboring residential properties and the proposed outdoor recreation facilities. Under these circumstances, the minor waivers requested can be granted without interfering with the intent of the parking design standards.

***g. Any lighting associated with outdoor recreation facilities must satisfy Section [6.4.4](#).***

All site lighting will comply with Section 59.6.4.4. Fixtures will be full or partial cut-off and illumination levels will be 0 footcandles along all property lines other than Old Georgetown Road, where illumination will be 0.2 footcandles due to existing street light fixtures.

***h. If an Educational Institution (Private) operates or allows its facilities by lease or other arrangement to be used for: (i) tutoring and college entrance exam preparatory courses; (ii) art education programs; (iii) artistic performances; (iv) indoor and outdoor recreation programs; or (v) summer day camps, the Hearing Examiner must find, in addition to the other required findings for the grant of a conditional use, that the activities in combination with other activities of the institution, will not have an adverse effect on the surrounding neighborhood due to traffic, noise, lighting, or parking, or the intensity, frequency, or duration of activities. In evaluating traffic impacts on the community, the Hearing Examiner must take into consideration the***

*total cumulative number of expected car trips generated by the regular academic program and the after school or summer programs, whether or not the traffic exceeds the capacity of the road. A transportation management plan that identifies measures for reducing demand for road capacity must be approved by the Hearing Examiner.*

Diener's limited summer tutoring and therapy will have a modest level of participation and will not, in combination with school-year activities, have an adverse effect on the surrounding neighborhood. A Transportation Management Plan has been submitted for review as part of this application process.

*i. The Hearing Examiner may limit the number of participants and frequency of events.*

The Applicant requests approval of the Conditional Use with the limitations on number of participants and frequency of events listed below.

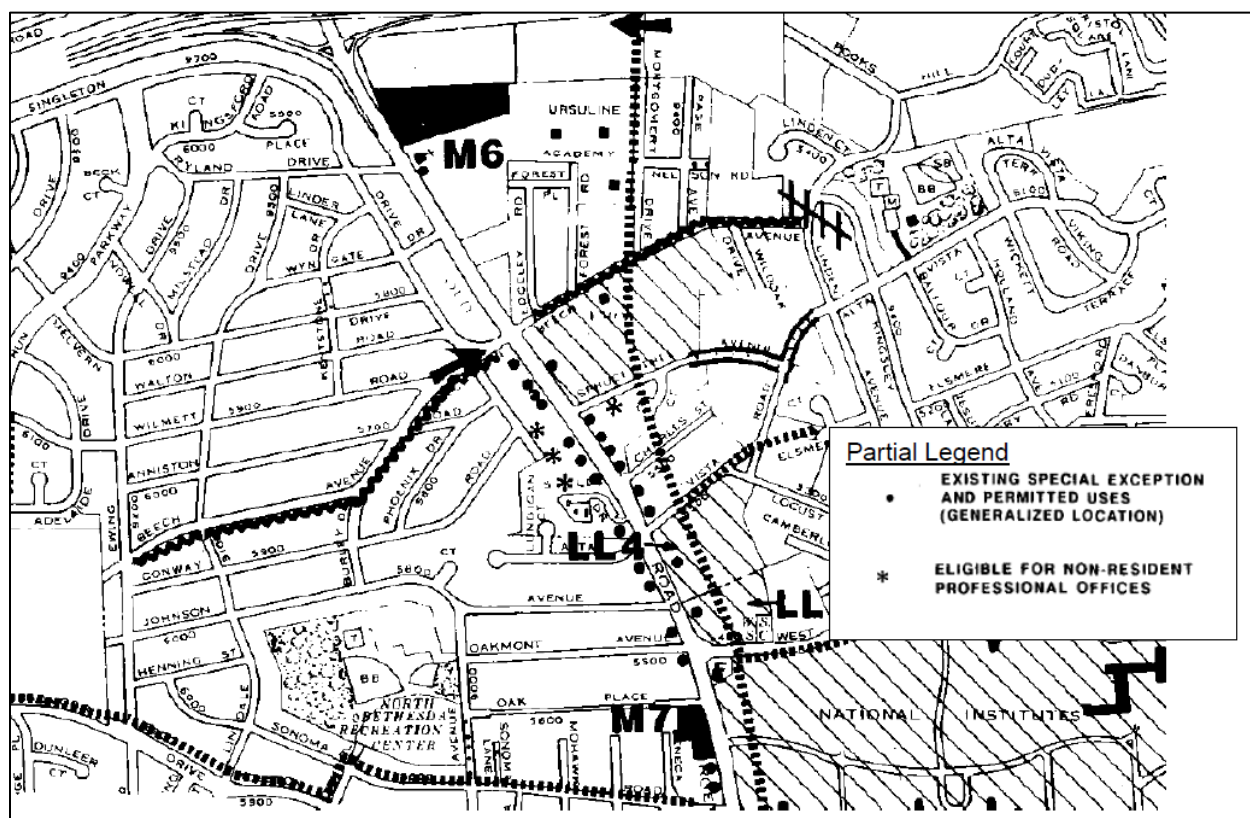
1. Maximum student enrollment of 120, Kindergarten through 8<sup>th</sup> grade.
2. Maximum 57 staff members.
3. School year extending from late August to mid- June.
4. School day running from about 7:00 a.m. to 5:00 p.m. including before and after care.
5. Tutoring and therapy for up to 20 students per school day, before school from 7:00 to 8:00 a.m. and after school from 3:00 to 5:00 p.m.
6. School clubs meeting between 3:00 and 4:00 p.m. up to three times per week, with up to 50 students and 20 staff members participating.
7. Maximum of seven weeks of summer school or summer camp, with a maximum student enrollment of 65 and maximum staffing of 32.

Maximum of 12 special events per year to which the entire school community is invited, including students and parents, and eight special events to which smaller groups (up to 60 attendees) are invited. Whole-school weekend events will be limited to three times per year and weekday evening events to eight times per year.

**3. substantially conforms with the recommendations of the applicable master plan;**

The Site is located within the 1990 *Bethesda Chevy-Case Master Plan* (Master Plan) area, which has recommendations and goals towards protecting the quality of life and residential character of neighborhoods within the plan area. Specifically, the Old Georgetown Road corridor has recommendations which include maintaining residential character along major highways through a Green Corridors policy that discourages front-yard parking and encourages landscaping; discouraging concentration of office-related uses except in designated locations; and discouraging new special

exception (i.e. conditional use) approvals except for community-serving uses. The Master Plan also notes that a 1981 master plan for this area designated certain properties as suitable for non-residential professional offices, including 9300 and 9020 Old Georgetown Road, and confirms this designation in the area relevant to the present application. While the address 9312 Old Georgetown Road is not among those listed, the Old Georgetown Road Plan drawing designates the geographic area from 9300 to 9020 Old Georgetown Road, including the Subject Property, as suitable for non-residential professional offices.



*Figure 11: Master Plan Excerpt – Old Georgetown Road Corridor*

The proposed conditional use is substantially consistent with the Master Plan and its recommendations for the Old Georgetown Road corridor. The Subject Property is within an area designated for non-residential professional offices, indicating that non-residential use is acceptable at this location. Moreover, the proposed school will contribute to quality of life in the surrounding area by providing a community-serving use, offering an educational option for children whose needs would be met by Diener's special focus (the Applicant is aware of at least three current and former Diener families that live in the immediate vicinity of the Subject Property). Thus, the proposed conditional use is appropriate at this location because the location is master-plan-designated as appropriate for a non-residential use and The School does not perpetuate the over-concentration of office uses in the

area; rather, the proposal will convert an existing office use into a community-serving use, which the Master Plan considers appropriate throughout the plan area.

The proposed project will maintain the attractive, well-landscaped appearance of the Subject Property's front yard, implementing many of the applicable landscape and design guidelines. The vast majority of the parking will be at the sides and in the rear, leaving landscaping and an attractive building façade as the main features visible from Old Georgetown Road. The proposed addition will be at the rear of the site, barely visible (if at all) from Old Georgetown Road or neighboring properties and will increase the square footage of the existing building by less than 50%. The addition has been carefully designed to be compatible with and complement the architecture and scale of the existing building and will look like a seamless extension of the building with some modern updates. Lighting has been designed to meet all applicable standards. Signage, as shown on the plan, is expected to meet zoning code standards, as approved by the Montgomery County Department of Permitting Services (DPS) in the future. Signage will be designed to be compatible with the surrounding area. As detailed above, school hours will be limited, with a modest number of evening and weekend activities to minimize impacts on residential neighbors outside of normal business hours.

#### *Master-Planned Roadways and Bikeways*

The Site fronts on Old Georgetown Road, which is master planned as a Major Highway with a total right-of-way width of 130 feet. At the time of subdivision, the Applicant will dedicate the necessary right-of-way to achieve 65 feet between the property line and the roadway centerline.

The 2021 *Complete Streets Design Guide* (CSDG) classifies Old Georgetown Road as a Boulevard. In compliance with the CSDG, the Applicant will install an eight-foot-wide vegetated street buffer, and an 11-foot-wide asphalt sidepath along the Site frontage.

- 4. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan; The proposal is harmonious with, and will not alter the character of, the surrounding neighborhood.***

As described above in connection with the Master Plan, the proposed conditional use will be harmonious with the surrounding neighborhood and will not alter its character as a stable, attractive single-family neighborhood bordered by a series of well-maintained, well-landscaped non-residential uses along a major highway.

- 5. will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;***

For all of the reasons described above in connection with the Master Plan, the proposed conditional use substantially conforms to the recommendations of the Master Plan and will not, when considered

together with existing special exceptions/conditional uses in the same Residential Detached zone, affect the area adversely or alter the character of the nearby residential neighborhoods.

- 6. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:**
- i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage, or**
  - ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage, and**

Adequate water and sewer facilities will be available at the Property. The Property is designated water category W-1 and sewer category S-1. Adequate Fire and Rescue and Police services also serve the Property. The nearest fire station is approximately 0.3 miles away and the nearest police station is approximately 1.8 miles away.

This Application is required to receive approval of a subsequent Preliminary Plan, as conditioned; the future Preliminary Plan will further address the findings for adequate public facilities. Based upon the traffic analysis submitted with the Subject Application, the Applicant has demonstrated that sufficient transportation capacity exists to serve the proposed Conditional Use.

### **Transportation**

#### *Local Area Transportation Review*

#### Academic School Day Operations

The Applicant is proposing a maximum enrollment of 120 children. As such, the Site is expected to generate approximately 150 net new peak-hour person trips in the peak travel period, and therefore a traffic study was completed to comply with the 2022 Local Area Transportation Review (LATR) Guidelines.

The trip generation for the Diener School was derived from existing operations and trip generation observed at The School's existing location on Danville Drive during morning arrival, school dismissal



and evening commuter peak periods. The data accounts for travel modes, travel times (before- and after-care). From this data, a private vehicle rate per-student was determined. As the auto-driver trips were based on actual user data rather than the ITE Trip Generation Manual as is typically required by the 2022 LATR Guidelines, the vehicle rates were not adjusted for the Policy Area. This represents a more accurate and conservative estimate of trips generated by the Site and was approved by Staff at the time of scoping the transportation impact study.

Nearly all of those accessing the Site will travel by either personal vehicles or Diener School-provided buses. Trips made by public transit, walking and biking are unlikely or estimated to be very few, based on the transportation survey data collected. For this reason, the Applicant was not required to estimate the total number of trips by non-auto driver modes.

Due to the Diener School's hours of operation, the Applicant studied two evening peak hour periods: one during The School's afternoon peak hour (3:00-4:00 PM) and the other during the regional travel network's evening peak hour (5:00 PM-6:00 PM), as determined by the observed turning movement counts. This was done to ensure that the Applicant accounted for both the Diener School's time of peak volume, and the surrounding travel network peak volume. The study determined that the peak trip generation was during the morning peak period (7:30-8:30 AM), which coincides with the regional travel network peak. The breakdown of the trip generation by peak travel period is shown in Table 1.

*Table 1: Trip Generation for the Proposed Use*

	<b>AM Peak Hour</b>	<b>School PM Peak Hour</b>	<b>Regional Network PM Peak Hour</b>
<b>Existing</b>			
Office, 25,783SF	42	35	44
<b>Proposed</b>			
Students, 120 <sup>1</sup>	154	115	0
Buses, 2	4	4	0
Staff/Faculty, 66 <sup>2</sup>	34	30	10
<b>Net New Trips</b>			
	<b>150</b>	<b>114</b>	<b>-34</b>

Source: Gorove/Slade Transportation Impact Study dated January 20, 2023

### Vehicle Adequacy

<sup>1</sup> As described in the body of the staff report, this number represents the rate at which personal vehicles will be used to transport students to and from the Diener School.

<sup>2</sup> The conditions of approval limit the number of faculty and staff persons on-site to 57 at any given time, but at the time the traffic study was conducted a conservative estimate of 66 was studied.

With approximately 150 net new trips estimated during the morning peak period, the Applicant was required to study one tier of intersections for motor vehicle adequacy. The Applicant evaluated a total of eight intersections, (including the two Site driveways), in proximity to the Site. A map of the intersections studied are shown in Figure 12.



Figure 12: Study Intersections

The Site is in the Bethesda/Chevy Chase Policy Area, which is designated as an Orange Policy Area by the 2020-2024 Growth and Infrastructure Policy. Traffic congestion in Orange Policy Areas is measured using Highway Capacity Manual (HCM) delay-based level of service standards, which applies to all signalized study intersections. The HCM average vehicle delay standard for the Bethesda/Chevy Chase Policy Area is 80 seconds. In compliance with the 2022 LATR Guidelines, all eight intersections were evaluated collectively as a corridor to determine the average vehicle delay along Old Georgetown Road between the I-495 outer loop ramps and W. Cedar Lane. The Old Georgetown Road corridor and were found to be within the 80-second delay standard for the Bethesda/Chevy Chase Policy Area. As a result, no mitigation is necessary to satisfy the vehicular adequacy test. A summary of the results of this analysis are included in Table 5.

*Table 2: Motor Vehicle Adequacy  
Highway Capacity Manual Methodology  
Seconds of Vehicular Delay*

Intersection	Congestion Standard	Existing			Background			Total Future		
		AM	School PM	Regional Network PM	AM	School PM	Regional Network PM	AM	School PM	Regional Network PM
1. Old Georgetown Road Corridor	80 seconds	12	10	14	28	22	40	30	25	40

*Source: Gorove/Slade Transportation Impact Study dated January 20, 2023*

As of the posting date of this staff report, MDOT SHA has not issued final comments on the TIS. The Applicant is coordinating with MDOT SHA staff to acquire final comments and address any outstanding issues as quickly as possible, ideally prior to the Planning Board meeting on April 20, 2023. As conditioned, final approval of the TIS by MDOT SHA will be required at the time of Preliminary Plan.

#### *Summer Camp*

The Applicant proposes offering a Summer Camp on the Subject Property outside of the Academic Program offered during the fall and spring semesters. The operating hours of the camps will be from 8:00 AM to 4:00 PM Monday through Friday. The daily enrollment will be limited to a maximum of 50 students and up to 24 staff. Because summer activity is does not exceed the school-year trip generation no additional analysis was conducted or needed.

#### *Peak Hour Traffic Signal Warrant Analysis*

A partial traffic signal warrant analysis was conducted at the Old Georgetown Road and Spruce Tree Avenue intersection and the Old Georgetown Road and Alta Vista Road intersection to determine if future volumes with The School warrant a traffic signal based on MDOT SHA Standards.

The warrants were performed using methodologies prescribed in Section 4C.04 of the MDOT SHA Manual on Uniform Traffic Control Devices (MDMUTCD), 2011 Edition. Neither of the two intersections met the Warrant 3 “Peak Hour Vehicle Volume”, and therefore signalization is not warranted. MDOT SHA agreed with these findings and the Applicant was not required to participate in the installation of a new traffic signal at either intersection.

#### *Pedestrian, Bicycle, and Bus Transit Adequacy Tests*

In March of 2022 the Planning Board updated the Local Area Transportation Guidelines (2022 LATR) to provide guidance on establishing the maximum costs of improvements an applicant is required to construct or fund to address deficiencies identified in the review of Pedestrian System Adequacy, Bicycle System Adequacy, and Bus Transit System Adequacy. Section VIII of the 2022 LATR includes a

methodology by which the extent of development determines the maximum cost of mitigation projects.

$$LATR \text{ Proportionality Guide} = \left( \frac{\text{Extent of Development}}{\text{Development}} \right) \times \left( \frac{\text{LATR Proportionality Guide Rate}}{\text{Guide Rate}} \right) \times \left( \frac{\text{LATR Proportionality Guide Adjustment Factor}}{\text{Adjustment Factor}} \right)$$

*Source - Page 54 of the 2022 LATR*

For the Subject Application, the maximum cost of construction for mitigation project is \$22,622. After evaluating the adequacy of each of the required transportation modes, the Applicant identified a comprehensive list of deficiencies, by which a prioritized list of mitigation improvements was submitted to staff for review. A total of 22 deficiencies were identified and the Applicant provided cost estimates for each of them. Unfortunately, none of the deficiency projects were estimated to cost less than \$22,622.



Figure 13: Off-Site Deficiencies

After discussing the list of deficiencies with MCDOT, consensus was reached that in this very specific instance, MCDOT would be willing to accept a payment for select mitigation elements based on the cost estimates provided for Deficiency items 17 and 18 which included updating curb ramps at the intersection of Charles Street at Old Georgetown Road to be ADA compliant. The payment of \$19,713 would be collected by MCDOT into P509325 ADA Compliance and will be included as a condition of approval for the Preliminary Plan and the payment must be made before the first above-grade building permit or right-of-way permit (whichever comes first).



Table 3: LATR Mitigation Payment Cost Breakdown

Description	Quantity	Unit Cost	Price
Remove and dispose sidewalks & Ramps	600	\$2.70	\$1,620.00
Aggregate stone base	70	\$6.75	\$473.00
Asphalt Paving	20	\$45.00	\$900.00
Concrete Curb	70	\$26.00	\$1,820.00
Concrete Sidewalk	465	\$10.00	\$4,650.00
Sidewalk ramp w. detectable warning surf.	2	\$2,500.00	\$5,000.00
Crosswalk striping	40	\$50.00	\$2,000.00
Temporary Traffic Control	1	\$3,000.00	\$3,000.00
Sodding	25	\$10.00	\$250.00
		<b>Total</b>	<b>\$19,713.00</b>

**7. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:**

- i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;**
- ii. traffic, noise, odors, dust, illumination, or a lack of parking; or**
- iii. the health, safety, or welfare of neighboring residents, residents, visitors, or employees.**

An analysis of inherent and non-inherent adverse effects considers size, scale, scope, light, noise, traffic, and environment. Every conditional use has some or all of these effects in varying degrees. Thus, inherent effects associated with the use have to be determined. In addition, non-inherent effects have to be determined as these effects may, by themselves, or in conjunction with inherent effects, form a sufficient basis to deny a conditional use. It must be determined during the course of review whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Staff determined that the inherent physical and operational characteristics include buildings with an institutional design dictated by licensing and building code requirements, pick-up and drop-off areas and times, extracurricular activities and events, outdoor play areas, and sufficient lighting. From an operational perspective, the use proposes educational activities and events, faculty and support staff, and traffic associated with transporting students and staff.

The School would be housed within an existing office/ institutional campus, which will undergo interior modifications and one modest addition to the rear without compromising either the existing building scale or appearance due from the front of the property; the rear of the property is adequately obscured due to slope and mature trees.

Adequate parking is provided to accommodate the parking needs of the facility and there would be no negative impacts on the adjoining residential community. The facility will be substantially distanced from the nearest residences and ample vegetative screening provides a buffer between the Site and adjacent properties. Noise associated with outdoor play will be limited to daytime hours during the and will not begin prior to 8:00 AM. Parking and drive aisles on-site will meet the intent of the screening requirements, aided by the existing environmental site conditions which include slopes and dense mature tree cover.

The existing buildings on the Site were subject to prior Special Exception and found to be in harmony with the general character of the neighborhood. Alterations proposed as part of the Subject Application are located interior to the Site away from adjacent properties and will not be detrimental to the surrounding neighborhood. The proposed Private Educational Institution Use is consistent with all applicable standards of the R-60 Zone and satisfies all applicable requirements. The lighting concept, as depicted on the lighting plan, demonstrates that proposed lighting levels along the perimeter of the Property are in compliance with the maximum foot candles permitted under Section 59-G-1.23(h) of the Zoning Ordinance.

#### *Traffic Generated by The School*

As conditioned, and as covered in the Transportation Management Plan (TMP), parents will not be allowed to queue on the Old Georgetown Road. A queuing analysis is included as part of the Transportation Impact Study (TIST). The Site can accommodate up to 42 vehicles in Phase 2 (44 in Phase 1) and will operate an efficient pick-up and drop-off process. In the event that there a queue line does extend to the ingress driveway, staff will be present to wave parents past the driveway, and to loop back to the School entrance.

#### *Parking and Drop-Off/Pick-Up*

Adequate parking is provided to accommodate the parking needs of the facility and there would be no negative impacts on the adjoining residential community. The TMP requires that no staff or parents are permitted to park on adjacent, local streets and walk to the campus.

The total vehicular parking capacity available on the Site is approximately 56 spaces in Phase 1 and 46 spaces in Phase 2. Per Section 59-6.2.4.B, a Private Education Institution with 57 faculty must provide a minimum of 46 parking spaces. At full buildout of Phase 2 parking, will be provided along all four sides of the building. Faculty and staff parking will be provided in perpendicular spaces on either side of the northern driveway and the rear of the building. Pick-up and drop-off will occur along the south side of the building. Accessible parking spaces compliant with ADA design guidelines are positioned the southern building entrance. The three parallel parking spaces opposite the main lobby entrance will be reserved for visitors. The existing surface parking in front of the building, at the lower level will be removed and replaced with landscaping.

The Diener School's two buses will use the interior drive aisle across the main lobby entrance for boarding and disembarking students. Buses will merge with private vehicles onto the egress driveway onto southbound Old Georgetown Road.

The Applicant will be required to provide bicycle parking on-site. Six long-term parking spaces are required for the staff and six short-term spaces are required for student and visitor use. All parking installations will comply with the County's Bicycle Parking Guidelines.

#### *Loading and Trash Collection*

Loading facilities will be located in the pick-up/drop-off zone. As conditioned, deliveries will occur outside the designated morning and afternoon pick-up/drop-off periods to avoid conflicts with pick-up/drop-off operations and to reduce disturbances to the surrounding neighborhoods.

The existing generator and trash dumpster will remain unchanged as a result of the Subject Application and, as conditioned, trash collection will occur mid-day during the week to limit disruptions to the adjacent properties.

Staff determined that the Proposal will not have any non-inherent effects at this location.

***8. Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.***

As described above, there are instances of existing conditional use/special exceptions within the neighborhood. Further, along the Old Georgetown Road corridor, commercial uses with neighboring/abutting detached residential buildings are typical. The Subject Property proposes to maintain and enhance the landscaping on the site which serves to provide screening for the adjacent homes.

***9. The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and is not sufficient to require conditional use approval.***

As conditioned, the proposed conditional use satisfies the standards and requirements for approval of a Private Educational Institution conditional use. Further analysis is provided below under the development standards associated with Chapter 59.

Table 4: Conditional Use Development and Parking Standards (R-60 Zone)

<b>Development Standard Section 3.4.5</b>	<b>Permitted/ Required</b>	<b>Proposed (Phase 1)</b>	<b>Proposed (Phase 2)</b>
Minimum Lot Area	6000 SF	106,616 SF	106,616 SF
Minimum Lot Width at Front Building Line	60 SF	202 SF	202 SF
Minimum Lot Width at Front Lot Line	25 SF	211 SF	211 SF
Maximum Density	7.26 (UNITS/ACRE)	27,000 SF <sup>3</sup>	39,000 SF <sup>4</sup>
Maximum Lot Coverage	20%	8%	12.9%
Minimum Front Setback	25 FT	93 FT	93 FT
Minimum Side Setback	8 FT	48 FT	38 FT
Minimum Sum of Side Setbacks	18 FT	97 FT	87 FT
Minimum Rear Setback	20 FT	198 FT	101 FT
Maximum Height	35 FT	30 FT	30 FT
<b>Vehicle Parking Requirement (Section 59.6.2.4.B)</b>	46 spaces (min) <sup>2,3</sup>	56 spaces	46 spaces
<b>Bicycle Parking (short-term/long-term) (Section 59.6.2.4.C)</b>			
Employees	0/6		
Students	6/0		
<b>Total</b>	6/6	6/6	6/6
<b>Loading</b>	1	1	1

<sup>2</sup> 1 space for each staff member on the largest shift.

<sup>3</sup> 20% NADMS Reduction Applied. Section 59-6.2.3.7.a.i.

**10. In evaluating the compatibility of an agricultural conditional use with surrounding Agricultural or Rural Residential zoned land, the Hearing Examiner must consider that the impact does not necessarily need to be controlled as stringently as if it were abutting a Residential zone.**

Not Applicable

**11. The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood:**

**a) Filling Station;**

<sup>3</sup> Existing building, to remain, is approximately 25,783 square feet.

<sup>4</sup> Gymnasium addition is proposed to be 11,000 square feet

- b) Light Vehicle Sales and Rental (Outdoor);**
- c) Swimming Pool (Community); and**
- d) the following Recreation and Entertainment Facility use: swimming pool, commercial.**

Not Applicable

**12. The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood:**

- a) Funeral Home; Undertaker;**
- b) Hotel, Motel;**
- c) Shooting Range (Outdoor);**
- d) Drive-Thru**
- e) Landfill, Incinerator, or Transfer Station; and**
- f) a Public Use Helipad, Heliport or a Public Use Helistop.**

Not Applicable

## PRELIMINARY FOREST CONSERVATION PLAN

**All Forest Conservation Law, Chapter 22A requirements are satisfied.**

### FOREST CONSERVATION PLAN

This Application is subject to Chapter 22A, Forest Conservation Law, and has included a Preliminary Forest Conservation Plan with this Application. The Preliminary Forest Conservation Plan shows that the Subject Property contains 0.19 acres of forest. This minor area of forest will be maintained and efforts to reduce the impact of the nearby invasive bamboo stand will be implemented in order to enhance the overall wooded area onsite. Although the forest will be maintained, a forest conservation easement is not proposed for the site given the small size of forest and isolated location in the rear of the Property; these factors create an obstacle for maintaining the integrity of the easement on a routine basis. As such, the 0.19 acres of forest are counted as cleared in the Forest Conservation Worksheet. In total, as a result of the tract area, the 0.19 acres of forest onsite not being proposed for an easement, as well as the institutional use of this project, the Forest Conservation Worksheet included in the Forest Conservation Plan shows a calculated afforestation/reforestation requirement of 0.57 acres which will be met via fee-in-lieu, as conditioned.

### FOREST CONSERVATION VARIANCE

Section 22A-12(b)(3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to



these trees, including removal of the subject tree or disturbance within the tree’s critical root zone (“CRZ”) requires a variance under Section 22A-12(b)(3) (“Variance”). Otherwise, such resources must be left in an undisturbed condition. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that: measure 30 inches or greater DBH; are part of an historic site or designated with an historic structure; are designated as a national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species. The proposed project includes disturbance within the CRZs of trees which are subject to a variance due to their size measuring 30 inches DBH or greater.

### Variance Request

The Applicant submitted a variance request in a letter dated February 2, 2023 (Attachment D). Based on the tables in the request, the Applicant proposes to impact 4 trees and remove 3 trees that are 30 inches or greater DBH and are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law

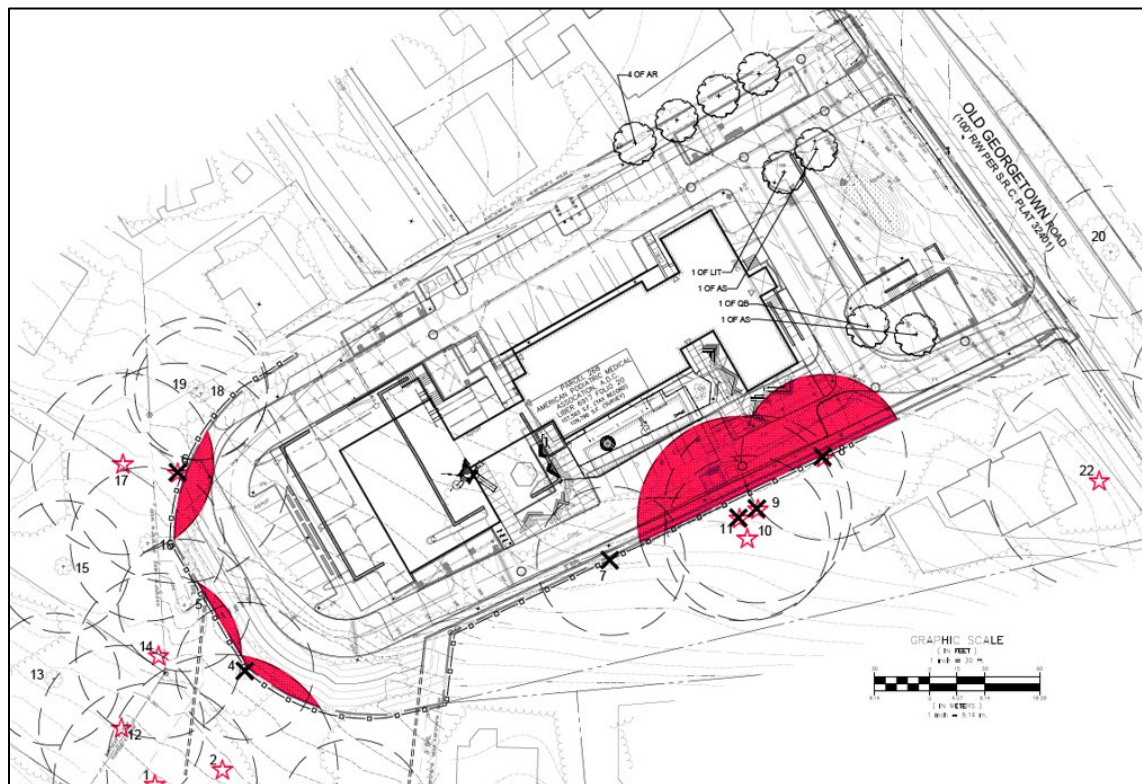


Figure 14: Protected Tree Impacts/Removals

*Table 5: Trees to be Impacted but Retained*

<b>TREE #</b>	<b>TYPE</b>	<b>DBH</b>	<b>Percent of CRZ Impacted by LOD</b>	<b>CONDITION</b>	<b>PROPOSED STATUS</b>
2	White Oak	42"	1%	Good	<b>SAVE</b>
10	Tulip Poplar	30"	19%	Good	<b>SAVE</b>
14	Tulip Poplar	30"	1%	Good	<b>SAVE</b>
17	Tulip Poplar	33"	1%	Good	<b>SAVE</b>

*Table 6: Protected Trees to be Removed*

<b>TREE #</b>	<b>TYPE</b>	<b>DBH</b>	<b>Percent of CRZ Impacted by LOD</b>	<b>CONDITION</b>	<b>PROPOSED STATUS</b>
*6	Tulip Poplar	40"	30%	DEAD	<b>REMOVE</b>
8	Tulip Poplar	30"	48%	Good	<b>REMOVE</b>
9	Tulip Poplar	34"	36%	Fair	<b>REMOVE</b>
11	Tulip Poplar	37"	37%	Poor	<b>REMOVE</b>

\*Tree 6 was confirmed dead prior to this Application and is thus not included in variance mitigation calculations.

### Unwarranted Hardship Basis

Per Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship, denying the Applicant reasonable and significant use of its property. In this case, the unwarranted hardship results from the composition of the existing building and surface parking lot. The trees to be removed are all located within close proximity to the proposed circular access/egress route around the existing building and require removal in order to implement safe and adequate access which meets the current standards and provides protection to the steep slopes which exist on the Property. The protected trees are located within this sloped area which is also near the curb/paved area of the site. In order to implement a route of circulation that does not impact the outdoor areas nearest to The School, which is needed for a safe environment for the students to conduct outdoor activities, impacts to the critical root zones of protected trees are required. Specifically, a retaining wall along the southern property line is needed to meet the access requirements of the site. The construction of this wall will impact trees 8, 9, 10 and 11 which are located along the property line and are in close proximity to the disturbance for the retaining wall. This amount of impact is too much for trees 8, 9, and 11 to be able to survive. The limited space between the existing building to remain and the property line does not give adequate room to shift the wall away from the trees. Tree 10, a Tulip Poplar in Fair condition, will be impacted but saved. It is further away from the disturbance than trees 9 and 11 and is smaller than

both tree 9 and 11 and is in better condition than tree 11. Trees 9 and 11 will be removed carefully from the Applicants' side of the property potentially using temporary root matting and/or a lift bucket. Tree #10 will be protected with stress reduction measures as needed to prevent any disturbance during the removal of trees 9 and 11. In the rear of the Property the grading change also impacts trees #2, #14, and #17. These impacts are minor and these trees will be saved as well. The project is carefully designed to balance protection of the natural resources and environmental qualities of the Planning Area (also per the Master Plan recommendations) while generally keeping the redevelopment limited to the areas of existing development in order to provide an adaptive reuse of the existing building. With this proposed reuse of the existing office building, the disturbance proposed for the site is minimized; as such, the resulting variance request represents impacts which are much lower than the impacts which would occur if this site were to be completely cleared and redeveloped. However, since the site perimeter is mostly encompassed by subject trees, the proposal would not be possible without some impacts and removal of subject trees. Therefore, the Applicant has demonstrated a sufficient unwarranted hardship to justify a variance request.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted.

### Variance Findings

To approve the Variance, the Planning Board must find that the Variance:

- 1. Will not confer on the applicant a special privilege that would be denied to other applicants.***

The landowner's rights to develop their property as is done by others in similar areas would be deprived by not allowing the removal and impacts to the subject trees. As detailed above, both the removals and the root zone impacts are unavoidable in order to develop the Property to meet access and circulation requirements. The inability to remove and impact the subject trees would limit the development of the Property. This creates a significant disadvantage for the Applicant and deprives the Applicant of the rights enjoyed by the neighboring and/or similar properties not subject to this approval process.

- 2. Is not based on conditions or circumstances which are the result of the actions by the applicant.***

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions and necessary design requirements of this project, such as the existing sloped topography and the paved parking area and site circulation route which lie very near to existing specimen trees. In order to provide safe and adequate access while limiting overall site disturbance, impacts to some specimen trees are necessary.

**3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.***

The requested variance is a result of the existing conditions on the Property, specifically the slopes and narrowness of the Site, and not as a result of land or building use on a neighboring property.

**13. *Will not violate State water quality standards or cause measurable degradation in water quality.***

The variance will not violate State water quality standards or cause measurable degradation in water quality. The site is not located in the vicinity of a stream buffer, wetland or special protection area.

The landscape plan for this site includes areas of shrub and tree plantings which, in addition to the planting of variance mitigation trees, will address water quality goals by providing shading, water retention and uptake, and evapotranspiration.

Additionally, the area of proposed redevelopment generally coincides with the areas of existing development. The existing conditions have considerable impervious areas with very little existing stormwater management. Ultimately a stormwater management plan addressing water quality through Environmental Site Design will be provided for the development, for subsequent review and approval by the Montgomery County Department of Permitting Services, at the time of Preliminary Plan. At this time, the Applicant has proposed a stormwater management treatment area onsite which makes use of environmental site design methods and provides a vegetated area for stormwater to flow into. Collectively these efforts are anticipated to ultimately have an improvement on water quality. Therefore, the project will not violate State water quality standards or cause measurable degradation in water quality.

**Mitigation for Trees Subject to the Variance Provision**

There are 3 specimen trees proposed for removal in association with the Application. There will also be disturbance to CRZs of another 4 specimen trees that will be retained. Planting mitigation for the removals should be at a rate that approximates the form and function of the trees removed. Replacement should occur at a ratio of approximately one inch caliper for every four inches DBH of removal, using onsite trees that are a minimum of three inches caliper, overstory trees native to the Piedmont Region of Maryland. For the 101 diameter-inches of protected trees to be removed, the Applicant must provide mitigation of at least 26 caliper-inches of replacements. In this case, the Applicant proposes to plant 8 trees of 3-inch to 4-inch caliper size, however the final locations and quantities will be determined as part of the FFCP review. Additionally, no mitigation is required for trees that are impacted, but retained.



## Variance Recommendation

As a result of the above findings, Staff recommends that the Board approve with conditions the Applicant's request for a variance from Forest Conservation Law to remove 3 protected trees and to impact, but retain, 4 other protected trees associated with the site.

## SECTION 6: COMMUNITY CORRESPONDENCE

The Applicant held pre-submittal meetings for this project on Wednesday, October 12, 2022 and has complied with all submittal and noticing requirements. As of the date of this Staff Report, Staff has not received any letters of correspondence from the community.

## SECTION 7: CONCLUSION

The proposed conditional use complies with the general conditions and standards of a Private Educational Institution, subject to the recommended conditions of approval. The proposed use is consistent with the goals and recommendations of the 1990 *Bethesda Chevy-Chase Master Plan*, will not alter the residential character of the surrounding neighborhood, and will not result in any unacceptable noise, traffic, or environmental impacts on surrounding properties. Staff recommends approval of the Conditional Use with conditions and transmittal of comments to the Hearing Examiner and approval of the associated Preliminary Forest Conservation Plan.

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## ATTACHMENTS

- Attachment A: Conditional Use Site Plan
- Attachment B: Transportation Management Plan (TMP)
- Attachment C: Forest Conservation Plan
- Attachment C: Forest Conservation Variance Request