

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
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Rockville, Maryland 20850
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IN THE MATTER OF:
THE DIENER SCHOOL
 Applicant

Kathy Chumas
 Patrick LaVay
 Katherine Wagner
 Josh Andrews
 Dylan Macro
 Jillian Copeland
 Katherine Coleman
 Eric Weinberg
 Chris Padilla

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OZAH Case No. CU 23-06

For the Applicant

Francoise Carrier, Esquire
 Attorney for the Applicant

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Allen Myers

Neither in Support nor Opposition

* * * * *

Before: Lynn Robeson Hannan, Hearing Examiner

HEARING EXAMINER’S REPORT AND DECISION

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I. STATEMENT OF THE CASE

Filed on December 5, 2022, The Diener School (Diener or Applicant) seeks a conditional use to operate a private educational institution under Section 59.3.4.5 of the Montgomery County Ordinance on property located at 9312 Old Georgetown Road, Bethesda, Maryland 20814. The property is zoned R-60. Exhibit 1.

Diener amended the application before the public hearing, once on January 20, 2023, and once on March 9, 2023. Notice of the public hearing and the motions to amend were mailed on March 28, 2023. The notice established a hearing date of Friday, May 12, 2023. Exhibit 26.

Staff of the Montgomery County Planning Department (Planning Staff or Staff) issued a report recommending approval of the conditional use application on May 4, 2023, subject to the following conditions (Exhibit 30, pp. 4-5):

Enrollment and Operations

1. Enrollment is limited to 120 students in Kindergarten through 8th 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 adjacent public street(s) while accessing the Site.
 - a. During morning drop-off and afternoon pick-up periods, the 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 [sic] 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 on-site exterior 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.

On May 5, 2023, the Planning Board issued its recommendation to approve the conditional use with the conditions recommended by Staff. Exhibit 31.

The public hearing proceeded as scheduled on May 12, 2023. Diener presented five witnesses, including a representative of the school and four expert and fact witnesses. Diener presented expert testimony and evidence that, while the Montgomery County Department of Transportation (MCDOT) and the Planning Department had both approved the traffic study and a

Transportation Management Plan (TMP), the Maryland State Highway Administration (SHA) had not. To respond to SHA’s concerns regarding delays exiting side streets, the Applicant provided certain mitigation options to SHA. An option to prohibit U-turns was opposed by the Maplewood Citizens Association (Maplewood). Mr. Allen Myers, President of Maplewood, appeared to express his membership’s concerns. During the May 12th hearing, Mr. Myers and the Applicant agreed to meet with Maplewood. T. 113. For this reason, the Hearing Examiner continued the public hearing. OZAH noticed the second public hearing for May 25, 2023. Exhibit 49.

The May 25th public hearing convened as scheduled. Diener’s expert in transportation engineering, Ms. Katherine Wagner, and Mr. Myers testified that they met with SHA, who agreed to approve the traffic study without prohibiting U-turns. Diener submitted the letter from SHA approving the study. T. 210-212; Exhibit 52. The Applicant also submitted minor amendments to the conditional use plan and the revised TMP approved by SHA. T. 205; Exhibits 48(a) and (b). The Hearing Examiner left the record open for 10 days to receive sealed copies of the additional plans and the transcript. The record closed on June 5, 2023.

As explained below, the Hearing Examiner finds that the application meets all standards for approval, with the conditions imposed in Part IV of this Report.

II. FACTUAL BACKGROUND

A. Subject Property

Staff advises that the subject property is located on the west side of Old Georgetown Road about ½ mile south of the Beltway exit ramp. Exhibit 30. Consisting of 2.52 acres, it is improved with a 25,783 square foot office building formerly occupied by the American Podiatric Medical Association under a special exception. Surface parking lines the site perimeter and additional parking is behind (west of) the building. There are two access points to Old Georgetown Road at

the north and south ends of the site frontage. According to Staff, “extensive decorative landscaping” exists along Old Georgetown Road and “substantial mature plantings provide a visual buffer along the north, west and south properties lines.” Exhibit 30, p. 8. There is 0.19 acres of forest on the site, and bamboo in the undeveloped area. Diener provided an aerial photograph of the subject property in its Amended Statement of Justification (Exhibit 25, p. 4, below) and a view of the existing frontage (*Id.*, p. 9, on the next page).



B. Surrounding Area

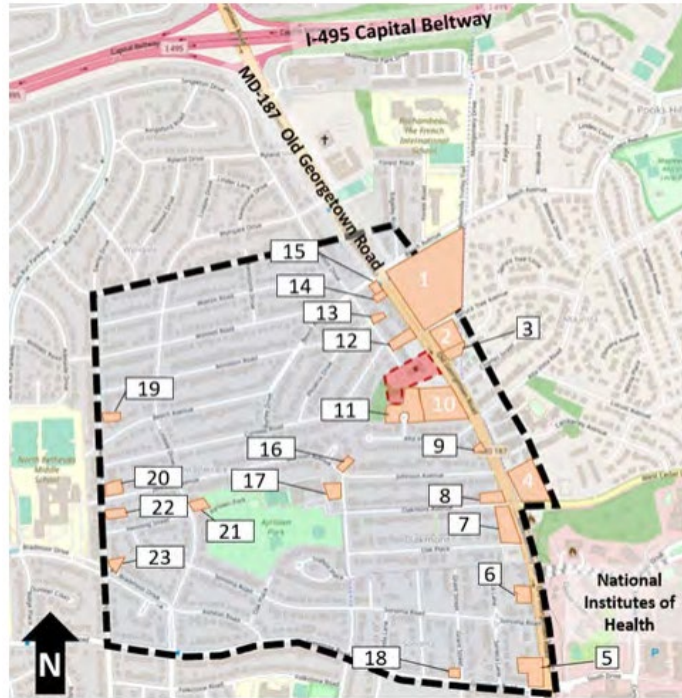
The “surrounding area” of a proposed conditional use is the area that will experience the direct impacts of the use. It is defined and then characterized in a conditional use case to determine whether the proposed use will be compatible with the properties that will be affected. Once



**Existing Site Frontage from Old
Georgetown Road
Exhibit 30, p. 9**

delineated, the Hearing Examiner must assess the character of the area to determine whether impacts of the proposed conditional use will adversely affect that character.

Staff defined the neighborhood boundaries as Melvern Drive to the north, Greentree Road to the south, Ewing Drive to the west, and properties fronting on Old Georgetown Road to the east. *Id.*, p. 7. Staff reasoned that this area “generally captures the neighborhoods of Alta Vista Terrace and Oakmont which border the subject property...” *Id.* These neighborhoods consist primarily of single-family detached dwellings on small lots in the R-60 Zone. Staff also points out that properties fronting on Old Georgetown Road are primarily non-residential uses, many of which are subject to existing special exceptions. *Id.* Staff provided a graphic of the surrounding area, along with a list of the existing special exceptions/conditional uses keyed by number (Exhibit 40, on the next page).



Map No.	Address	CU/SE No.	Use
1.	9401 Old Georgetown Road	S92 YMCA of Metro Washington	Eleemosynary (charitable) and philanthropic institution
2.	5612 Spruce Tree Avenue	S1446	Professional Office
3.	9309 Old Georgetown Road	S2326 Mobile Medical Care, Inc	Eleemosynary (charitable) and philanthropic institution
4.	9101 Old Georgetown Road	S615 FAES	Private Club
5.	8900 Old Georgetown Road	S1320	Eleemosynary (charitable) and philanthropic institution
6.	9010 Old Georgetown Road	S1676	Non-resident medical practitioner’s office
7.	9030 Old Georgetown Road	CBA1534	Scientific Society Headquarters
8.	9100 Old Georgetown Road	Oncology for Women S1143MO	Private School
9.	9112 Old Georgetown Road	S1325	Home Occupation
10.	Beall’s Rd, Burtonsville, MD	S529M0	Two-Family Dwelling
11.	9200 Old Georgetown Road	S294	Private Tennis Court
12.	9400 Old Georgetown Road	S2875	Home Occupation
13.	9307 Singleton Drive	S1951	Accessory Apartment
14.	9414 Old Georgetown Road	S144	Non-resident medical practitioner’s office
15.	5700 Beech Avenue	S283	Operation of a Rooming House
16.	5623 Johnson Avenue	S1837	Accessory Apartment
17.	9104 Hempstead Avenue	S1504	Accessory Apartment
18.	5601 Greentree Road	S2065	Accessory Apartment
19.	9203 Ewing Drive	S994	Accessory Apartment
20.	6015 Johnson Avenue	CU201710 Smart Kids Bilingual Daycare	Daycare Facility (up to 12 children)
21.	9021 Lindale Drive	S1349	Home Occupation
22.	9011 Ewing	S356M0	Home Daycare
23.	8925 Bradmoor Drive	S1893	Accessory Apartment

Upon review of the aerial photographs submitted, Staff’s rationale for determining the surrounding area, and the list and location of conditional uses/special exceptions, the Hearing Examiner agrees with the boundaries of the surrounding area delineated by Staff. The character is primarily residential, single-family detached homes, with non-residential special exceptions/conditional uses concentrated along Old Georgetown Road.

C. Proposed Use

Ms. Katherine Chumas, Head of School, testified that Diener serves children from kindergarten through eighth grade that have learning differences. Diener may serve students with a formal learning disability in reading, writing, or math, children with language delays, sensory processing concerns, or executive function challenges. From a diagnostic standpoint, many of their students fall under a diagnosis of ADHD, high-functioning autism, or generalized anxiety. T. 51-52. Since opening 16 years ago, Diener has strived to provide a nurturing yet challenging educational environment. The curriculum is built on four cornerstones of learning. These are multi-sensory instruction using hands-on learning materials, recognizing the connection between movement and learning, and individual instruction that can focus on each child’s strengths and weaknesses. The last cornerstone is collaboration among different professionals. T. 42-43.

Diener is currently located on Danville Road in North Bethesda and has an enrollment of 72 students and 39 staff. Exhibit 30, p. 10. Ms. Chumas testified that Diener realized its increasing enrollment would require it to grow. In 2019, the school had 51 students. It now has 72 and next year will have 75, with a wait list. Their current location consists of 13,000 square feet and they are very crowded. They want a location with more space for outdoor activities, classrooms, and specialty rooms. They have nine classrooms now, but they would like at least 10-12. T. 44. One room acts as a classroom, a science room, an art room, and a field lab. The proposed project

includes separate science rooms, art rooms, and a gym. They also felt that the location proposed for the campus is relatively convenient for students who live in Virginia, D.C., and Maryland. The subject property has sufficient space to retain their current system for managing drop-off and pick-up. T. 45-46. Diener plans to increase enrollment to 120 students in grade levels kindergarten through 8th with 57 staff. The project will be completed in two phases, depending on fundraising. These are described below. Exhibit 30, p. 10.

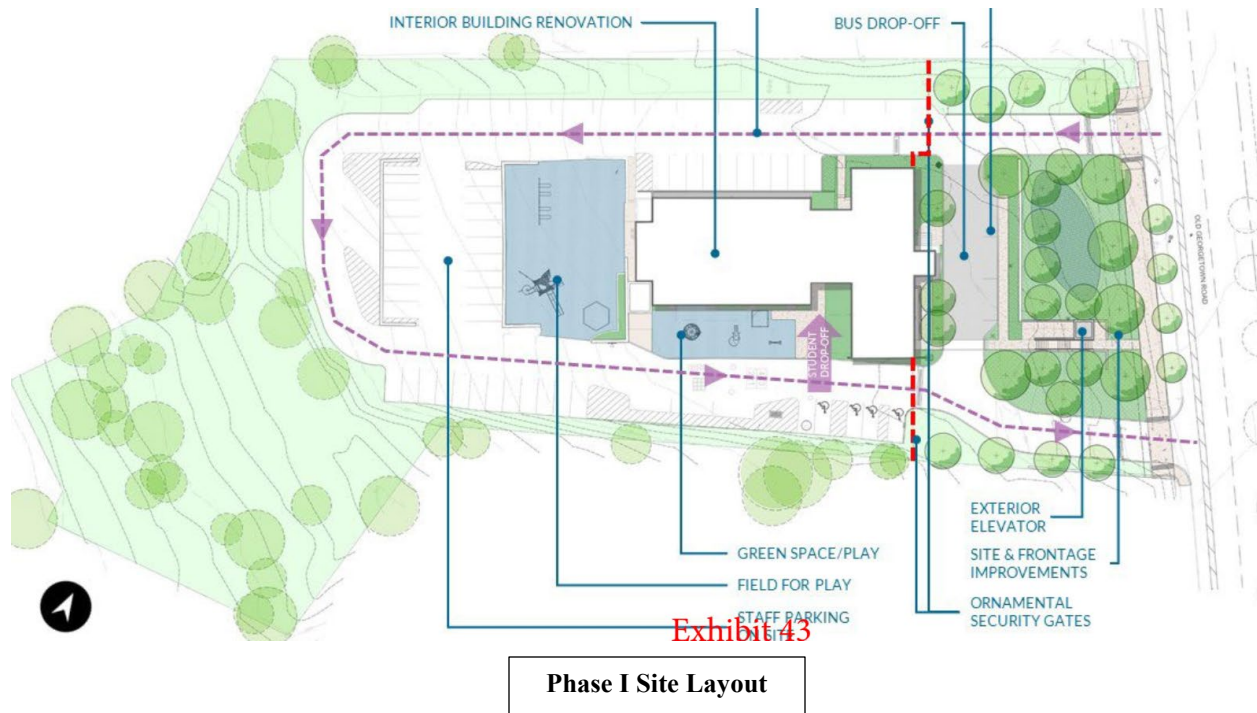
1. Phase I

Phase I improvements are those necessary to convert the existing office building and site to a functional school. Staff detailed the Phase I improvements (below) and included a Phase I site layout (on the next page) in their Report (*Id.*; Exhibit 43):

- Full interior renovation of the existing office building to accommodate The School use for up to 120 students and 57 staff
- Removal of 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 stairway 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

Excerpts from the Phase I conditional use plan are shown on the page 13 of this Report. Mr. Josh Andrews, Diener’s expert in architecture, testified that exterior improvements in Phase I will occur primarily between the front of the existing building and Old Georgetown Road. They will be removing a lot of the asphalt and parking near the road and creating a much nicer frontage. There are bioretention facilities that will be landscaped. T. 159.

Mr. Patrick LaVay, Diener’s expert in civil engineering and land planning, testified that Diener will remove the existing 5-foot wide sidewalk along Old Georgetown Road and replace it

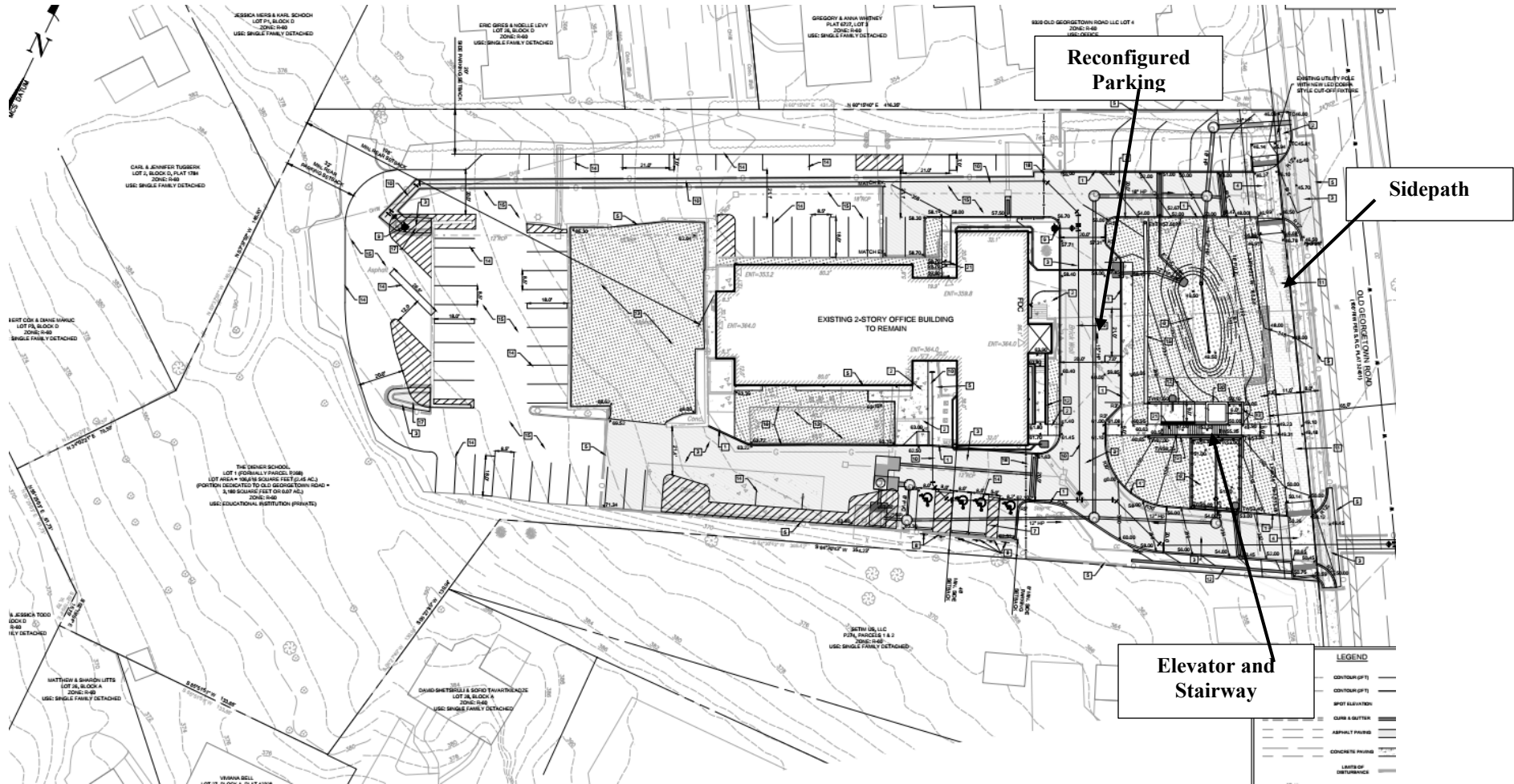


with an asphalt 11-foot-wide hiker/biker “sidepath”. It will be separated from the curb by an eight-foot landscape buffer according to the 2021 Montgomery County Complete Street Standards. T. 140.

Mr. Andrews testified that Phase I will also include an exterior elevator and stair in this area due to the significant change in topography between Old Georgetown Road and the building entrance. These will connect to an accessible ramp that will allow entry to the front door of the school and provide access to those entering from Old Georgetown Road. They plan to have three parallel parking spaces in front of the school, which will be a significant improvement from the existing head-in parking that had been highly visible from Old Georgetown Road. After completion, the parking will be “pretty much” hidden by landscape and hardscape changes. T. 160-161. Diener submitted a rendering of these improvements (Exhibit 44, on page 14).

2. Phase II

The major component of Phase II will be construction of an 11,000 square foot gymnasium

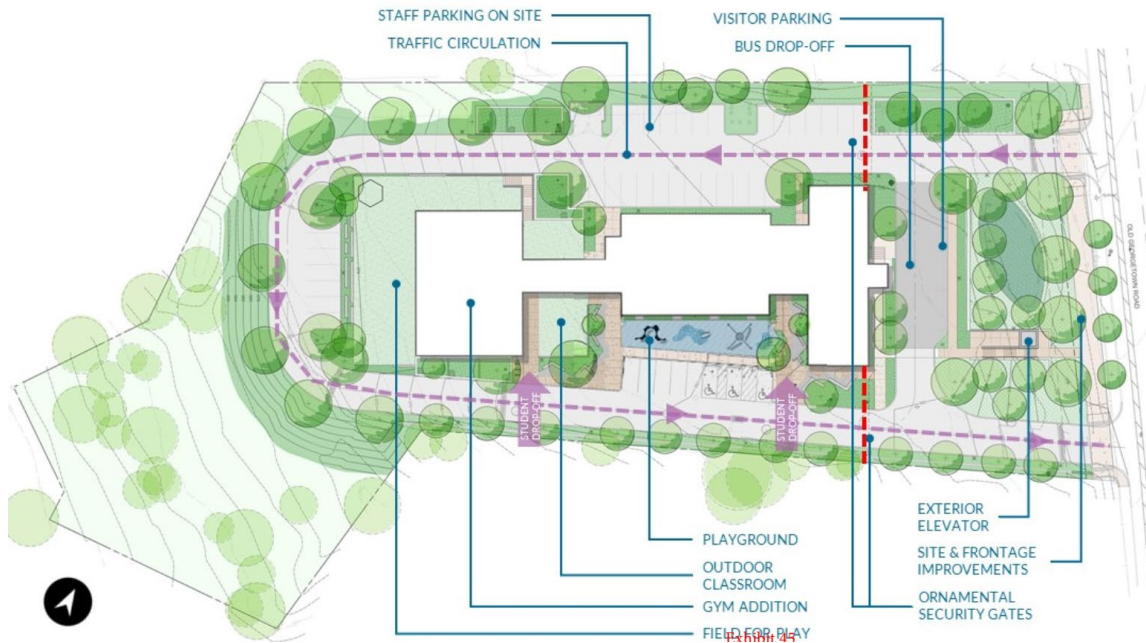


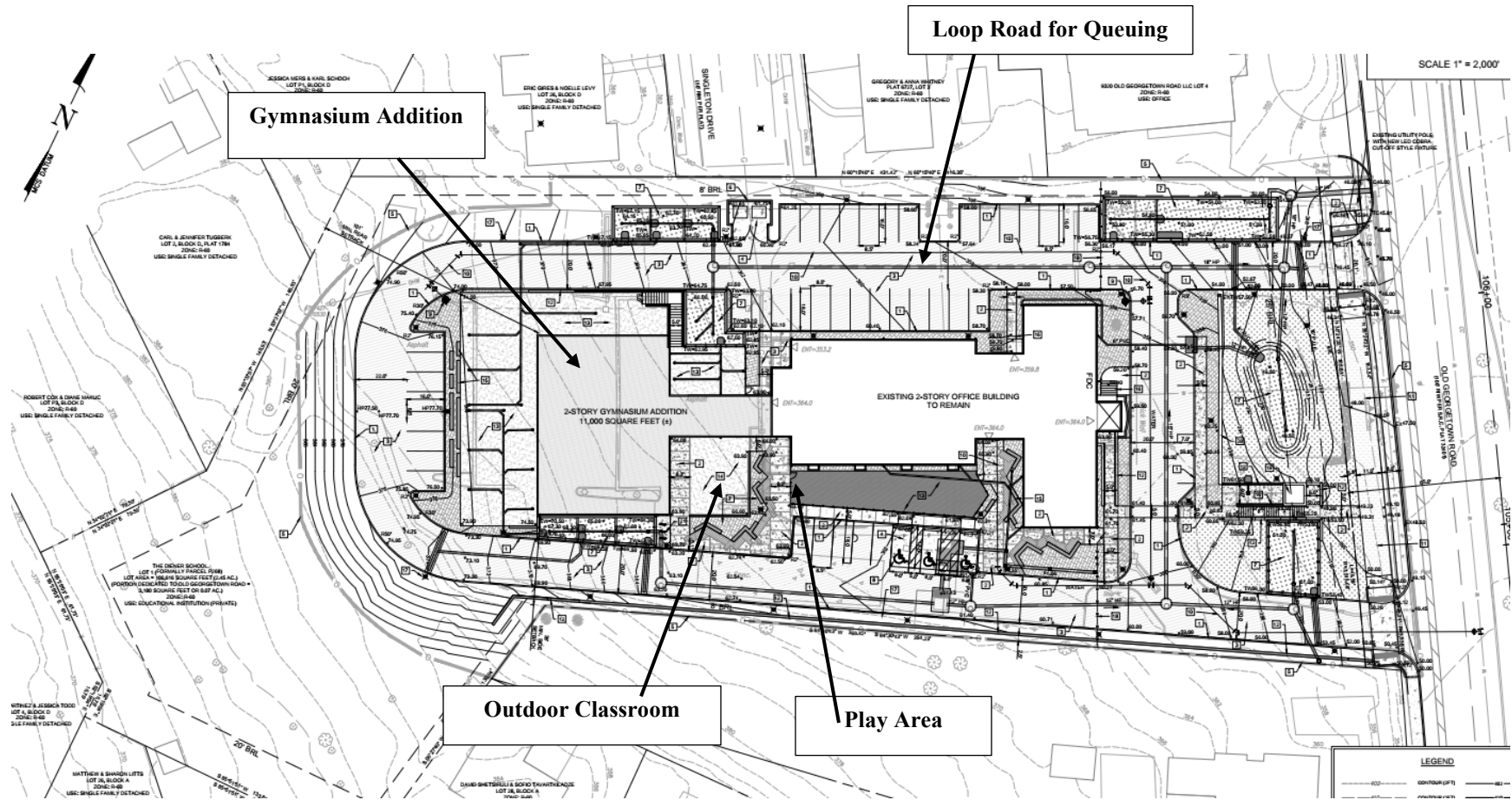
Phase I Conditional Use Site
Plan (Ex. 48(a))



Phase I Rendering (Ex. 44)

on the western portion of the site behind the existing building. Additional elements will include construction of an outdoor classroom and corresponding adjustments to site landscaping and parking. Exhibit 30, p. 13. An excerpt from the conditional use site plan depicting Phase II improvements is on the next page. A site layout from the Staff Report (Exhibit 30, p. 11; Exhibit 45, below) highlights the Phase II changes:





Phase II Site Plan
Exhibit 48(a)

3. Access, Circulation, and Parking

Mr. LaVay testified that the number of existing parking spaces will be reduced in Phases I and II to accommodate a drive aisle for student drop-off, pick-up, and emergency vehicles, as well as play areas. Phase I will have a total of 65 spaces. The angled spaces on the north side of the building will be converted to parallel spaces to widen the drive aisle to the required width for emergency vehicles. Spaces on the west side of the site will be removed for a play area. At completion of Phase I, the site will have 65 spaces. Nineteen more spaces will be removed in Phase II mostly due to the gymnasium addition, leaving a total of 46 spaces on-site. T. 137-138.

Diener plans to use the two existing access drives from Old Georgetown Road for ingress and egress. The northern one will be for ingress only and the southern will be for egress only (right-out only). Staff included two circulations layouts for Phases I and II in its Staff Report. The layout for Phase I (Exhibit 30, p. 11) is below and the Phase II layout (Exhibit 30, p. 13) is on the next page.





Ms. Wagner testified that access is wide enough for buses and vehicles. Diener operates two buses. These will make an immediate left after entering and use parking spaces in front of the entrance. Exhibit 30, p. 15. Vehicles will proceed through a gate that is open during drop-off and pick-up. Cars can double-stack on the access road to prevent queues from backing up onto Old Georgetown Road. About 150 feet of driveway near the entrance is designated for vehicles to drop-off and pick-up students. To ensure that the queue isn't delayed, there is Staff will be present along this area to assist children out of cars and into the building. Once children are dropped off or picked up, vehicles proceed to the driveway on the south side of the property and turn right onto Old Georgetown Road. A gate on the southern egress drive will remain open during drop-off and pick-up but close during the school day for security. T. 78. The final TMP approved by SHA (Exhibit 52), requires Diener to analyze its impact on side street delays after one year of opening. Exhibit 52.

4. Operations

Diener’s academic school day will run from 7:00 a.m. to 5:00 p.m. including before- and after-care. The academic year runs from late August to June. Diener also proposes to run summer camps for seven weeks. Hours of the summer camps will be no longer than those during the academic year. Exhibit 30, p. 4. Diener proposes to have no more than 12 “special events” per year. According to Diener’s TMP, parking for special events will be handled differently for each phase of development. Exhibit 52. The TMP provides different options based on anticipated attendance. The first option is to use valet-managed on-site parking. Using this system, they will be able to fit 114 parking spaces on-site in Phase I and 87 spaces in Phase II. T. 70.

The larger events (when the school knows that it will need more spaces than the provided with the valet system) would be to provide shuttles to nearby Metro stations. That permits parents and staff to take the Metro, or park at Metro, and use the shuttle to reach the school. Diener is also exploring the possibility of renting parking spaces from nearby facilities. T. 70-71.

D. Community Response

Mr. Allen Myers, President of Maplewood, initially appeared to express his community’s opposition to one of the mitigation options presented to SHA. Diener suggested these options to address SHA’s concerns about existing delays experienced by vehicles exiting side streets onto Old Georgetown Road. According to Mr. Myers, he expects considerable opposition to the proposal to eliminate U-turns on Old Georgetown Road. T. 19. This would either force traffic that wanted to go north to cut through the neighborhood or would cause people to turn into the neighborhood and do a U-turn in the middle of the neighborhood street. T. 19. He doesn’t know the community’s position on the left turn restrictions. He expected there would be opposition to this proposal as well. Residents on Alta Vista Road have told him that cars trying to turn left on Alta Vista to proceed south on Old Georgetown Road cause a backup and people on the first block

can’t exit their driveways. T. 19. The delay on Alta Vista is important because Alta Vista is an aggregator road that collects traffic from other streets. T. 23. If you put a “no left turn” restriction on Alta Vista, it may draw traffic over to Spruce Street. T. 19-20. Spruce Street is a cul-de-sac. The only entrance is from Old Georgetown Road. Right now, there is no reason for anyone to enter. T. 23.

After meeting with the community and participating in a meeting with representatives of SHA and the Applicant, Mr. Myers testified at the May 25th hearing. He stated that Maplewood residents held a meeting on May 17th to discuss proposed mitigation options. Residents of Spruce Tree Road spoke and opposed U-turn restrictions. According to them, traffic signals at Beech Avenue and West Cedar Lane created enough gaps to make a left turn and they didn’t see a need for the U-turn restrictions. T. 216-217. Mr. Myers did not object to SHA’s final approval of the traffic study, which did not impose U-turn restrictions. It did require an analysis from Diener summarizing its impact on side street delays one year after opening. T. 216-217.

Several parents with students at the school supported the application. They testified that the school had been “transformative” for their children and allowed them to “thrive” in an environment that wasn’t available at private or public schools throughout the area. T. 30, 123-124, 126. Several described the difficulty finding a school with the services that Diener offers. *See, e.g.*, T. 34, 121, 125-126. OZAH received several letters from those supporting the project for similar reasons. Exhibits 29(a) – (f). Particularly persuasive is a letter from Mr. Matthew Andrew Padilla, Student Government President of the Diener School, explaining how his 7-year tenure at the school has fostered his success. Exhibit 29(e).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A conditional use is a zoning device that authorizes certain uses provided that pre-set

legislative standards are met. Pre-set standards are both specific (to a particular use) and general (applicable to all conditional uses). The specific standards applied for a private educational institution are in Section 59.3.4.5.C.2 of the Zoning Ordinance. The general standards (termed “Necessary Findings”) for all conditional uses are found in Section 59.7.3.1.E. An applicant must prove that the use proposed meets all specific and general standards by a preponderance of the evidence. The Hearing Examiner concludes that Applicant has done so in this case, with the conditions of approval included in Part IV of this Report.

A. Necessary Findings (General Standards, Section 59.7.3.1.E)

The general standards for approval of all conditional uses listed below with the Hearing Examiner’s findings for each standard.

E. Necessary Findings

1. 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;

Conclusion: Staff concluded that this is not applicable because the previously approved special exception will no longer be in operation. The Hearing Examiner agrees and imposes a condition requiring abandonment of the existing special exception before approval of a record plat.

b. 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;

Conclusion: This subsection requires review of the development standards of the R-60 Zone contained in Article 59.4.49(b); the use standards for a private education institution contained in Article 59.3; and the applicable development standards contained in Article 59.6. Each of these

Articles is discussed below in Parts III.B, C, and D, of this Report, respectively. For the reasons explained there, the Hearing Examiner finds that the application satisfies these requirements.

c. substantially conforms with the recommendations of the applicable master plan;

Conclusion: Staff advises that the property is governed by the recommendations of the *1990 Bethesda-Chevy Chase Master Plan* (Master Plan or Plan). Staff found that the project conformed to the Plan’s goal to protect the quality of life and residential character of neighborhoods. The Plan recommends a “Green Corridors” policy along Old Georgetown Road that discourages front-yard parking and encourages landscaping. The Plan discourages concentration of office uses except in certain areas and discouraged new conditional use approvals unless they served the community. Exhibit 30., pp. 24-25. Staff also noted that the Plan recognized that a 1981 master plan designated certain properties as suitable for non-residential professional offices and “confirms this designation in the area relevant to the present application.” Staff continues, “[w]hile the address 9312 Old Georgetown Road is not among those [specifically] 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.”

Staff found the project conformed to the Plan’s guidance because it falls within the area designated for non-residential professional offices and it will contribute to the quality of life in the surrounding area by offering an educational option to the community for children with special needs.

Staff determined that the project also meets the “Green Corridors” policy of the Plan (*Id.*, p. 26):

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.

The Hearing Examiner agrees with Staff that the project meets the “Green Corridor” and landscaping guidelines in the Master Plan. It will remove visible parking fronting Old Georgetown Road, install a wider, landscaped sidepath, and include significant landscaping. While Diener proposes some structures fronting the street, these are needed to make the front entrance accessible and have been attractively designed to blend with the existing structure and identify the school. The testimony and letters from parents and students support Staff’s conclusion that the Diener is a community-serving use and is not one of the conditional uses discouraged by the Plan. The Hearing Examiner finds that this criterion has been met.

d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;

Conclusion: Staff concluded that this standard was met (Exhibit 30, p. 26) for the same reasons discussed in the preceding section, adding:

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.

Diener’s expert land planner testified that conversion of the existing office to a school will be more consistent with the surrounding residential character of the neighborhood. T. 152.

The Hearing Examiner agrees with Staff and the Applicant. Diener proposes to utilize a building that has existed for many years and is already part of the character of the neighborhood. Phase I will include extensive improvements to the property’s frontage along Old Georgetown Road, and the topography screens the gymnasium addition from street views. The Applicant’s expert in transportation engineering, Ms. Katie Wagner, testified that all queuing can occur on-site without spilling over into Old Georgetown Road. Even if the ingress is blocked, Diener staff are positioned at the entrance to signal parents to continue on Old Georgetown and loop back to the entrance. This standard has been met.

e. 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;

Conclusion: Staff concluded that the proposed project complies with this standard because it conforms to the Master Plan. Exhibit 30, p. 26. While there are a relatively large number (23) of special exceptions and conditional uses in the surrounding area, the Hearing Examiner finds that the proposed development does not increase the number, intensity, or scope of conditional uses or alter the predominantly residential nature of the area. It is not adding to the number of special exceptions/conditional uses but replacing one. As Mr. LaVay testified, it replaces an existing, more commercial special exception with a community-serving conditional use that is more compatible with the residential character of the area. The character of the area already includes several special exceptions/conditional uses along Old Georgetown Road. This use complies with the Master Plan’s goals for “Green Corridors” and will substantially improve screening, landscaping, and visual buffers on the property.

f. 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

Conclusion: Ms. Wagner testified that Diener prepared a full traffic study under the Local Area Transportation Review (LATR) Guidelines. Exhibit 6. The Guidelines require them to analyze multi-modal improvements. This includes a review of pedestrian and bicycle stress, capacity of the road and transit network, and a Vision Zero statement. T. 65-66. They agreed upon the scope of the study with Staff of the Planning Department, MCDOT, and SHA. The Study analyzed the performance of the Old Georgetown Road corridor as opposed to individual intersections. A new bicycle lane installed along the road frontage displaced some vehicle lanes, and, in her opinion, the corridor analysis is more appropriate. Under the Guidelines, the maximum delays at intersections may be no greater than 80 seconds. Their study concluded that all intersections studied met that standard, as demonstrated by the study. T. 66; Exhibit 6.

Their analysis of pedestrian stress found some deficiencies. More crosswalks are needed in the study area and there are some deficiencies in curb cuts. The study also identified deficiencies

in the bicycle system due to improvements that have not yet been implemented. T. 66.

Two transit stops within the area studied were found to be deficient and their Vision Zero evaluation found that there were occurrences of speeding and crashes within the study area. MCDOT and SHA have implemented safety improvements in the area. T. 66-67.

According to Ms. Wagner, it is not uncommon to have a “fair number” of deficiencies in these studies, which is why the studies now look at multi-modal impacts rather than solely vehicular aspects. T. 67. All the deficiencies are off-site. Id. The Applicant will install frontage improvements on their property that will improve the existing sidewalk. The Council added the obligation to contribute to off-site improvements when it expanded the scope of the Traffic Study to include multi-modal transportation such as transit, pedestrian, and bicycle facilities. T. 68. The Planning Department and MCDOT developed a “proportionality guide” that establishes the amount of a fee an Applicant must pay for off-site improvements within the Study area. T. 67.

Here, the Applicant will be required to install the side path, 8-foot-wide landscaping strip, and a 2-foot maintenance strip along the frontage of Old Georgetown Road. It will also have to pay \$19,713 to improve curb cuts within the study area. This was the only improvement that fit within the County’s “proportionality” guide maximum of \$22,622. T. 67-68. As noted, SHA approved Diener’s Traffic Study and the project if all conditions of the TMP were implemented. The revised TMP includes a condition requiring the school to analyze its impact on side streets within one year after opening. Exhibit 51.

Mr. LaVay opined those other public facilities, like water and sewer, presently serve the property, and nearby fire and rescue services are adequate. T. 162.

There is no evidence in this record that the public facilities will not be adequate to serve the proposed project. During her testimony, Ms. Wagner presented detailed information and

expert opinion that side street delays presently exist, and the school would contribute only marginally to additional delays, if at all. Mr. Myers testified that the community did not want a prohibition on U-turns, which was originally proposed as an option to mitigate the existing side street delays. SHA approved the traffic study without this restriction. The Hearing Examiner agrees with Ms. Wagner that the school will have little impact on side street delays even without prohibiting U-turns. Compliance with the TMP as finalized by the Planning Board will be made a condition if approval of this conditional use. As conditioned, the proposed use meets this criterion for approval.

g. 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, visitors, or employees.***

Conclusion: This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use on the surrounding area. Inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” *Zoning Ordinance*, §1.4.2. Inherent adverse effects, alone, do not justify the denial of a conditional use. Non-inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* Non-inherent adverse effects may be a basis to deny a conditional use, alone or in

combination with inherent effects, if they cause “undue” harm to properties in the surrounding area.

Staff concluded that the following physical and operational characteristics are inherent to a private educational institution (Exhibit 30, p. 33):

...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.

Staff found that the proposed use has no non-inherent adverse impacts. For physical characteristics, they reasoned that Diener will be housed in an existing building with only a “modest” future addition, which will be well-screened from neighboring properties. *Id.*, p. 33. They found that screening will also mitigate other activities, such as parking and drive aisles and the amount of on-site parking was sufficient to avoid adverse impacts on neighboring properties. Noise from outdoor activities would not be unusual given that it wouldn’t begin until 8:00 a.m. Exhibit 30, p. 34.

Traffic from the use will not have a non-inherent impact if Diener complies with its TMP. Ms. Wagner testified that TMP has three goals. The first is to minimize vehicular traffic through initiatives like encouraging students and Staff to carpool. Diener provides two buses for students, so a significant number of students will be arriving by bus. It also provides multi-modal transportation options for staff, encouraging them to think about other means of transportation than a single-occupancy vehicles.

Another goal is to ensure efficient transportation operations on-site. This covers the operating procedures for drop-off and pick-up already described. The third area covers parking special event operations. T. 70. The TMP requires the Diener School to appoint a Transportation

Coordinator to implement the TMP., including educating parents on transportation options and procedures. T. 69. The TMP prohibits queuing on Old Georgetown Road and establishes a drop-off and pick-up process designed to ensure this. It will utilize staff to ensure that children are escorted from their vehicles efficiently and to signal parents not to enter if the drive aisles are full.

Mr. LaVay testified that the inherent adverse impacts of a private school were those of a non-residential use, such as parking lots, site lighting, and larger buildings. He opined that Diener’s proposal had no non-inherent impact because these exist today and have for a very long time. The transition from office to school will be more compatible with the area. Due to small enrollment and lack of organized sports at the school, inherent impacts such as noise, traffic will be minor. T. 153.

The Hearing Examiner agrees with Staff’s identification of the inherent adverse impacts of private schools, but words them slightly differently: (1) larger, institutional-type buildings, (2) queuing for drop-off and pick-up, (3) parking for students, parents, and staff, (4) traffic to and from the school, (5) outdoor lighting, and (6) noise associated with outdoor activities such as playgrounds.

The Hearing Examiner agrees that the degree of impacts from these items are inherent to the use proposed. As Mr. LaVay pointed out, the building in Phase I already exists and is part of the character of the neighborhood; changes to adapt it to Diener’s use are primarily interior to the structure. She also agrees with Staff that the extent of the addition in Phase II is relatively modest, will not be significantly visible from Old Georgetown Road, and will be well-screened by existing vegetation and landscaping from adjoining properties. Mr. LaVay testified that the school has a much smaller enrollment than many private educational institutions, and lack of athletic programs means there would be very little exterior noise and physical activity after hours. T. 143-144. The

Traffic Study contained a queuing analysis concluding that future conditions on Old Georgetown Road with Diener in operation would not significantly alter existing queues. Exhibit 6(a), p. 23. The Study also indicates that there is room for stacking 50 cars on the loop drive in Phase I and 46 vehicles in Phase II. Ms. Wagner opined that the site design combined with the drop-off/pick-up operations detailed in the TMP and transport by bus will accommodate pick-up and drop-off of 120 students within 30 minutes. These will prevent queuing on Old Georgetown Road. T. 104-105. Based on this uncontroverted evidence, the Hearing Examiner finds that any impacts from the proposed school are inherent and will be compatible with the surrounding area.

2. 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.

Conclusion: As already described, the neighborhood character consists of single-family residential homes on the interior with special exception/conditional uses on the perimeter along Old Georgetown Road. Diener plans to repurpose and improve an existing special exception to a use more compatible with the community. The additional landscaping, relatively small student enrollment, streetscape improvements, and conversion from an office to community-serving use will enhance the current character of the neighborhood.

Section 59.7.3.1.E.3. 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, in itself, is not sufficient to require conditional use approval.

Conclusion: The application satisfies all specific requirements for the conditional use, and with the conditions imposed, meets the standards required for approval.

B. Development Standards of the Zone (Article 59.4 and 59.6)

To approve a conditional use, the Hearing Examiner must find that the application meets the development standards R-60 Zone in Section 59.4.49(b).

Conclusion: The Staff Report contains a table comparing the required standards with the proposed project (Exhibit 30, p. 36):

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

Development Standard Section 3.4.5	Permitted/ Required	Proposed (Phase 1)	Proposed (Phase 2)
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 ³	39,000 SF ⁴
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

Nothing contradicts Staff’s assessment of compliance with the development standards of the R-60 Zone. The Hearing Examiner finds that the proposed use meets these standards.

**C. Use Standards for a Private Educational Institution
(Section 59.3.4.5.C.2)**

The specific standards for approval of a private educational institution are set out in Section 59.3.4.5.C.2 of the Zoning Ordinance and are listed below with the Hearing Examiner’s findings on each.

2. 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.

Conclusion: Staff determined that Diener would not constitute a nuisance with the conditions recommended. Staff felt that the plan for drop-off and pick-up memorialized in the TMP would prevent queues from backing up into Old Georgetown Road. A condition of approval prohibits queuing on Old Georgetown Road. Because of the relatively small enrollment compared to other

public and private schools, and the lack of organized sports teams, Staff determined that noise would be less than that typically associated with a school

Mr. LaVay opined that the school will not constitute a nuisance for similar reasons. Schools are common components of residential communities and this school’s enrollment is very low compared to others. It does not have organized sports teams. Therefore, there are minimal impacts from exterior noise, light, and traffic. The school also has a very efficient plan in place to manage drop-off and pick-up. T. 142. In his opinion, most of the commercial impacts on the site occurred in the 1960’s when the existing office building was constructed. It conforms to an established non-residential character of this portion of Old Georgetown Road. T. 143.

The Hearing Examiner is persuaded that Diener will not constitute a traffic nuisance by the queuing analysis included in the traffic study, the description of staff operations during drop-off and pick-up, and the fact that compliance with the TMP will be made a condition of approval. The photometric plan demonstrates that illumination at the property lines abutting single-family detached homes will be 0.0 footcandles, under the maximum permitted as discussed below.

Nothing in the record contravenes Staff’s conclusion and the expert testimony of Mr. LaVay that noise from the school will be less than that normally associated with this use. This finding is supported by the fact that Diener does not run an organized sports program. As conditioned, noise from the use will not be a nuisance to neighbors.

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.

Conclusion: Staff reports that records of the Maryland State Department of Assessments and Taxation (SDAT) show that the existing building was originally constructed in 1966 and has contributed to the character of the neighborhood for many years. Staff found that the character of the building is comparable in scale to other non-residential buildings fronting Old Georgetown Road in this location and buffers the interior residential homes from noise and traffic. The property exceeds 2 acres and does not have to mirror detached single-family homes. Due to mature landscaping the size of the property, the gymnasium will not be significantly visible to nearby properties. Exhibit 30, p. 19

The Hearing Examiner agrees with Staff. The existing building is in an area where non-residential uses have existed along Old Georgetown Road for many years and have formed the character of the neighborhood. The relatively minor modifications to the site frontage only soften and remove existing commercial characteristics of the of the site, such as front yard parking. There is no evidence contravening Staff’s conclusion that the addition will not be significantly visible from Old Georgetown Road due to the site topography and will be barely visible to adjoining neighbors due to its low height and existing mature landscaping. The Hearing Examiners finds that the proposed improvements will be compatible with the existing character of the neighborhood.

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.

Conclusion: Staff reiterated that the application only repurposes a building that has been part of the character of the neighborhood for many years and that the proposed addition will be well-screened and not visible from Old Georgetown Road.

Much of the evidence and expert opinion already described in this report support a finding that this standard has been met. The Hearing Examiner agrees with Staff that repurposing an existing building for school use with a moderate enrollment and no organized sports will not affect the present character of the neighborhood. There is no evidence that other existing uses will increase the impact of the school in any way, particularly given the circulation system memorialized in the TMP. This standard has been met.

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:

i. traffic patterns, including:

(a) impact of increased traffic on residential streets;

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

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

ii. 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;

iii. adequacy of student and visitor parking; and

iv. noise or type of physical activity.

Conclusion: Diener’s 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...” Exhibit 30, p. 20. According to Staff, the Traffic Study also demonstrates that 80% of the traffic to the site will come from the Beltway to enter the property; only 20% will use local roads. *Id.*

Expert testimony and evidence demonstrate that the on-site drive aisle around the property’s border has sufficient stacking to accommodate drop-off and pick-up without spilling onto Old Georgetown Road. Ms. Wagner provided an expert opinion that there is sufficient

stacking to prevent queues from extending into Old Georgetown Road, with the drop-off and pick-up operations included in the TMP. T. 106-107. A condition of approval will further require that no traffic from the school shall queue on Old Georgetown Road.

Ms. Wagner also testified that the number of parking spaces are adequate to serve visitors. There is no need for student parking because the oldest students will be in 8th grade. She testified that three visitor spaces will be adequate for the use based on information provided by the school. T. 106-107.

Staff found that the subject property can easily accommodate the requested enrollment without impacts due to noise or physical activity (Exhibit 30, p. 21):

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.

Based on this record, the Hearing Examiner finds that the site will be able to accommodate the requested enrollment in a manner compatible with the surrounding area.

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.*

Conclusion: Staff advises that the density proposed is 48 students per acre, “well under” the threshold requiring additional scrutiny. Exhibit 30, p. 22. This criterion does not apply to this application.

f. Outdoor recreation facilities are screened from abutting residential properties under Division 6.5.

Conclusion: Mr. LaVay opined that recreational facilities will be well screened in both phases. These facilities are located to the rear of the existing building and there is significant vegetation to the northwest and south sides that will screen these facilities. T. 144. Staff advises that the recreational facilities proposed are limited to small play areas rather than athletic fields common to other private educational institutions and general perimeter screening is not required because parking areas are located between the outdoor play areas on the three sides that abut residential property. Exhibit 30, p. 22. Requirements for screening of parking facilities, including the drive aisle, are discussed in the next part of this Report. The Hearing Examiner finds that the screening proposed along with existing vegetation will mitigate any impacts from the play areas.

g. Any lighting associated with outdoor recreation facilities must satisfy Section 6.4.4.

Conclusion: Section 6.4.4. states “Outdoor lighting for a conditional use must be directed, shielded, or screened to ensure that the illumination is 0.1 footcandles or less at any lot line that abuts a lot with a detached house building type, not located in a Commercial/Residential or Employment zone.” Diener submitted a photometric (Lighting) plan demonstrating that illumination levels would be 0.0 footcandles at these property lines. Exhibit 8(f); Exhibit 30, p. 23. This standard has been met.

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.

Conclusion: Staff writes (Exhibit 30, p. 23):

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.

The parameters of Diener’s summer program are specified by condition and there is no evidence to refute Staff’s conclusion that it will not have an adverse effect on the neighborhood. Compliance with the school’s TMP will be a condition of approval of this application.

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

Conclusion: This application has been premised on a detailed list of types and frequency of events, which are included in the conditions of approval. There is no evidence that this level of activity will adversely impact the surrounding area and the Hearing Examiner includes these parameters as a condition of approval.

D. General Development Standards (Article 59.6)

Article 59.6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. These requirements need be satisfied only “to the extent the Hearing Examiner finds necessary to ensure compatibility.” *Zoning Ordinance*, §59.7.3.1.E.1.b. The applicable requirements, and whether the use meets these requirements, are discussed below.

1. Parking and Loading

Parking and loading standards are governed by Division 6.2 of the Zoning Ordinance.¹

¹ Queuing requirements apply only to uses with a drive-thru, and therefore do not apply to this use. *Zoning Ordinance*, §59.6.2.7.A.

Conclusion: Staff confirms that the application provides the requisite number of vehicle and bicycle parking spaces and loading spaces (Exhibit 30, p. 36, below).

Vehicle Parking Requirement (Section 59.6.2.4.B)	46 spaces (min) ^{2,3}	65 spaces	46 spaces
Bicycle Parking (short-term/long-term) (Section 59.6.2.4.C)	Employees	0/6	
	Students	6/0	
	Total	6/6	6/6
Loading	1	1	1

² 1 space for each staff member on the largest shift.

³ 20% NADMS Reduction Applied. Section 59-6.2.3.7.a.i.

Based on the record summarized above, the Hearing Examiner finds that the parking meets the requirements of Section 59.6.2 of the Zoning Ordinance.

2. Site Landscaping and Screening

Staff advises that the application is not subject to general site perimeter landscaping requirements in Section 59.6.5.3 of the Zoning Ordinance but is subject to the requirements for parking lot screening in Section 59.6.2.9.C. That section sets forth landscape requirements for parking lots (including drive aisles) with 10 or more spaces. Diener requests three waivers to these requirements (Exhibit 30, p. 22):

- Side Parking Setbacks (59-6.2.5.K.2.b)—16’ required, 8’ provided on the south and 12’ 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

Section 59.6.2.10 of the Zoning Ordinance permits a waiver from these requirements:

The deciding body may waive any requirement of Division [6.2](#)... if the alternative design satisfies Section [6.2.1](#)...

Section 59.6.2.1 contains the intent of the parking regulations:

The intent of the vehicle and bicycle parking, queuing, and loading requirements is to ensure that adequate parking is provided in a safe and efficient manner.

Characterizing these waivers as “minor”, Staff concluded that the site design satisfied the intent of the parking regulations because it provides safe and efficient access and existing dense vegetations and slopes already screen the parking facilities. Mr. LaVay reinforced Staff’s conclusion, opining that the existing vegetation made the additional landscaping unnecessary. T. 150.

Conclusion: Having no evidence to refute Staff and Mr. LaVay’s expert opinions, supported by a review of aerial photographs of the site and the Phase I and II conditional use plans, the Hearing Examiner grants the requested waivers. Extensive expert testimony from Ms. Wagner (already summarized) established that site circulation will be safe and efficient.

3. Outdoor Lighting

Conclusion: The outdoor lighting proposed for the conditional use was discussed in Part III.C. of this Report and Decision. As indicated there, illumination from the proposed use abutting properties improved with single-family detached homes will be under the maximum permissible lighting levels. Staff advises that lighting has been designed to meet Zoning Ordinance requirements, and this is reflected in Diener’s Photometric (Lighting) Plan. Exhibit 8(f). Compliance with the Lighting Plan will be incorporated as a condition of approval.

Based on the undisputed evidence described above, the Hearing Examiner finds that the outdoor lighting proposed conforms to the requirements of the Zoning Ordinance.

I. CONCLUSION AND DECISION

As set forth above, the application meets all the standards for approval in Articles 59.3, 59.4, 59.6 and 59.7 of the Zoning Ordinance.

Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of The Diener School (OZAH Case No. CU 23-06) for a conditional use under Section 59.3.4.5.C.2 of the Zoning Ordinance to operate a private educational institution on property located at 9312 Old Georgetown Road, Bethesda, Maryland 20814, Maryland, and the *requested waivers* from the parking lot landscaping requirements, are hereby **GRANTED**, subject to the following conditions:

1. All development on the property shall conform to the approved Conditional Use Plan (Exhibit 48(a)), Landscape Plan (Exhibit 54), and the Lighting Plan (Exhibit 8(f)).
2. Enrollment is limited to 120 students in Kindergarten through 8th 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 Applicant may operate summer school and/or a summer camp with a maximum combined enrollment of up to 65 students and 32 faculty and staff.
3. Hours of operation 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.
4. 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).

5. Before issuance of any Use and Occupancy Certificate, 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.
6. The Applicant must maintain at least two bus routes to reduce Site-generated trips. Diener may add more routes where sufficient ridership can be attained without modification of this conditional use provided it does not require changes to the Conditional Use, Landscape, or Lighting Plans.
7. The Applicant will enter into a binding agreement with the Planning Board at the time of Preliminary Plan to perform in perpetuity a Transportation Management Plan. The Applicant must comply with all terms and conditions of the Transportation Management Plan approved by the Planning Board.
8. No vehicles may queue on adjacent public street(s) while accessing the Site.
 - a. During morning drop-off and afternoon pick-up periods, employees must be stationed at the northern driveway entrance to either direct cars to queue in the bus drop-off area, if spaces are 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 procedure upon enrollment.
9. Deliveries will occur outside the designated morning and afternoon pick-up/drop-off periods to avoid conflicts with pick-up/drop-off operations.
10. The Applicant 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.
11. The Applicant must reserve three vehicle on-site parking spaces for carpool use.
12. 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.
13. The Applicant must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Applicant shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements, including the annual payment of conditional use

administrative fees assessed by the Department of Permitting Services.

Issued this 26th day of June 2023.



Lynn Robeson Hannan
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Any party of record may file a written request to appeal the Hearing Examiner’s Decision by requesting oral argument before the Board of Appeals, within 10 days issuance of the Hearing Examiner’s Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

The Board of Appeals will consider your request for oral argument at a Worksession. Agendas for the Board’s Worksessions can be found on the Board’s website and in the Board’s office. You can also call or email the Board’s office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the Worksession.

Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such *ex parte* communications are prohibited by law. If you have any questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600, emailing BOA@montgomerycountymd.gov, or visiting the Board’s website: <http://www.montgomerycountymd.gov/boa/>.

Additional procedures are specified in Zoning Ordinance §59.7.3.1.f.1. Contact information for the Board of Appeals is:

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850

(240) 777-6600

[http://www.montgomerycountymd.gov/boa/
BOA@montgomerycountymd.gov](http://www.montgomerycountymd.gov/boa/BOA@montgomerycountymd.gov)

NOTIFICATION OF DECISION TO BE SENT TO:

Francoise Carrier, Esquire
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Allen Myers, Maplewood Citizens Association
Barbara Jay, Executive Director, Montgomery County Board of Appeals
Jillian Copeland
Eric Weinberg
Chris Padilla
Katherine Coleman
Elza Hisel-McCoy, Planning Department
Stephanie Dickel, Planning Department
Tsaiquan Gatling, Planning Department
Greg Nichols, Manager, Department of Permitting Services
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Michael Coveyou, Director, Finance Department