

# THE DIENER SCHOOL PRELIMINARY PLAN NO. 120230040 & FINAL FOREST CONSERVATION PLAN NO. CU202306



## Description

Preliminary Plan to create 1 new lot, measuring approximately 2.52 acres, to accommodate the adaptive reuse of an existing office building for conversion to a private school for up to 120 students and 57 Staff members and associated Final Forest Conservation Plan.

Preliminary Plan No. 120230040  
Final Forest Conservation Plan  
No. CU202306  
Completed: 7-10-2023

MCPB  
Item No. 6  
7-20-2023

Montgomery County  
Planning Board  
2425 Reedie Drive, Floor 14  
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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, Chapter 50, Chapter 22A



### Summary:

- Staff recommends approval of the Preliminary Plan and Final Forest Conservation Plan with conditions.
- The Applicant received one 5-month extension from the Planning Board, extending the 120-day review period from March 16, 2023 to July 27, 2023, per Section 50.4.1.E of the Zoning Ordinance for the Preliminary Plan review period.
- The Planning Board recommended approval of the Conditional Use and transmittal of comments to the Hearing Examiner and approval of the Preliminary Forest Conservation Plan on May 4, 2023.
- The Hearing Examiner held a public hearing on May 12<sup>th</sup>, continued May 25<sup>th</sup>, and issued an approval for the Conditional Use Application on June 29, 2023.
- 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.
- Staff has not received any public correspondence as of the date of this Staff Report.

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## SECTION 1: EXECUTIVE SUMMARY

Staff reviewed Preliminary Plan No. 120230040 for conformance with the applicable requirements of Montgomery County Code Chapter 50 Subdivision of Land and Chapter 22A Forest Conservation Law. The application proposes to create one lot of approximately 2.5 acres to support the conversion of an existing office building for use as a private educational institution, otherwise known as a private school, for up to 120 students and 57 staff members. 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 Preliminary Plan Application represents the final regulatory requirement to 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.

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 Preliminary Plan Application, the Applicant has submitted a Final Forest Conservation Plan as required by Chapter 22A. 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. As discussed in this report, and subject to the conditions recommended herein, the proposal conforms with the applicable requirements of Chapter 50 and Chapter 22A. Staff recommends the Planning Board approve the applications with conditions provided in this report.

## SECTION 2: RECOMMENDATIONS AND CONDITIONS

### PRELIMINARY PLAN

Staff recommends approval with conditions for Preliminary Plan 120230040 to convert office use to 25,783 square feet of private educational institution on one new lot. All site development elements shown on the latest electronic version of the Preliminary Plan as of the date of this Staff Report submitted via ePlans to the M-NCPPC, are required except as modified by the following conditions.

### GENERAL APPROVAL

1. This Preliminary Plan is limited to 1 lot for 27,783 square feet for a private educational institution.
2. The Applicant must comply with the conditions of approval enumerated in the June 26, 2023 Notification of Decision letter from the Montgomery County Office of Zoning and Administrative Hearings approving Conditional Use No. CU202306.

### ADEQUATE PUBLIC FACILITIES AND OUTSIDE AGENCIES

3. The Adequate Public Facilities (“APF”) review for the Preliminary Plan will remain valid for five (5) years from the initiation date (as defined in Montgomery County Code Section 50.4.3.J.5).

### PLAN VALIDITY PERIOD

4. The Preliminary Plan will remain valid for three (3) years from its initiation date (as defined in Montgomery County Code Section 50.4.2.G), and before the expiration date of this validity period, a final record plat for all property delineated on the approved [Preliminary Plan/Administrative Subdivision Plan] must be recorded in the Montgomery County Land Records or a request for an extension filed.

### OUTSIDE AGENCIES

5. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated February 17, 2023 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations in the letter, which may be amended by MCDOT if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
6. Before recording a plat for the Subject Property, the Applicant must satisfy MCDOT’s requirements for access and improvements.
7. The Planning Board has reviewed and accepts the recommendations of the Maryland State Highway Administration (“MDOT SHA”) in its letter dated May 24, 2023 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the

recommendations in the letter, which may be amended by MDOT SHA if the amendment does not conflict with any other conditions of the Preliminary Plan approval.

8. Before the issuance of access permits, the Applicant must satisfy the Maryland State Highway Administration's requirements for access and improvements.
9. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") – Water Resources Section in its stormwater management concept letter dated June 5, 2023 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations in the letter, which may be amended by MCDPS – Water Resources Section if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
10. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS"), Fire Department Access and Water Supply Section in its letter dated March 20, 2023 and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.

#### OTHER APPROVALS

11. Before approval of a record plat or any demolition, clearing or grading for the Subject Property, the Applicant must receive Staff certification of this Preliminary Plan.

#### ENVIRONMENT

12. Forest Conservation & Tree Save
  - a) The Final Forest Conservation Plan (FFCP) must be consistent with the approved Preliminary Forest Conservation Plan (PFCP).
  - b) The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
  - c) The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
  - d) The Limits of Disturbance ("LOD") shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.
  - e) 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.



- f) Before recordation of the plat and the start of any demolition, clearing, grading, or construction, whichever comes first, for this development Application] the Applicant must:
  - i. Execute a five-year Maintenance and Management Agreement (“MMA”) in a form approved by the M-NCPPC Office of the General Counsel. The MMA is required for all mitigation tree plantings, including variance tree mitigation plantings, and landscape plantings credited toward meeting the requirements of the FCP. The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff.
  - ii. Submit the forest conservation fee-in-lieu payment to the M-NCPPC Planning Department for the 0.57 acres of afforestation/reforestation requirement.
  - iii. Submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the mitigation trees and maintenance, including invasive species management controls, credited toward meeting the requirements of the FCP.

## TRANSPORTATION

### Existing Frontage Improvements

- 13. The Applicant must provide the following dedications and show them on the record plat(s) for the following existing road:
  - a) All land necessary to accommodate sixty-five (65) feet from the existing pavement centerline along the Subject Property frontage for Old Georgetown Road.
- 14. 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.

### Off-Site Improvements Local Area Transportation Review (LATR)

- 15. Before issuance of first above-grade building permit or right-of-way permit (whichever comes first), the Applicant must make a payment of \$19,713.00 to the Montgomery County Department of Transportation towards the construction of ADA pedestrian crossing improvements in the Bethesda/Chevy Chase Policy Area. The payment will be indexed to the Federal Highway Administration’s National Highway Construction Cost Index from the mailing date of the Planning Board resolution to the date of application for the first above-grade building permit or right-of-way permit (whichever comes first). Proof of payment is required.
- 16. Within 12 months of the school’s opening the Applicant will submit a Follow-up Report to evaluate delays, queues and safety to MCDOT, MDOT SHA and Planning staff.
  - a. The report will cover the following locations:
    - i. School driveways on Old Georgetown Road
    - ii. Westbound Spruce Tree Avenue at Old Georgetown Road
    - iii. Eastbound and westbound Alta Vista Road at Old Georgetown Road

- b. If necessary, the Follow-Up report will also include potential mitigation measures to address delays, queueing, and/or safety concerns at the locations listed above.

## SURETY

17. Before issuance of any building permit or sediment control permit, whichever comes first, the Applicant must enter into a Surety and Maintenance Agreement with the Planning Board in a form approved by the M-NCPPC Office of General Counsel that outlines the responsibilities of the Applicant. The Agreement must include a performance bond or other form of surety, with the following provisions.
  - a) A cost estimate of the materials and facilities, which, upon Staff approval, will establish the surety amount.
  - b) The cost estimate must include site lighting, landscaping, open space amenities, walkways, trash enclosures, etc. as shown in the approved preliminary and CU plans.
  - c) Completion of all improvements covered by the surety will be followed by inspection and potential reduction of the surety.
  - d) The bond or surety for each item shall be clearly described within the Surety & Maintenance Agreement, including all relevant conditions.

## RECORD PLATS

18. There shall be no clearing or grading of the site before recordation of plat(s).

## Easements

19. The record plat must show necessary easements.
20. The record plat must reflect common ingress/egress and utility easements over all shared driveways.
21. The record plat must reflect the following building restriction lines as shown on the Preliminary Plan:
  - a) A 25-foot BRL from the front setback for the lot.
  - b) A 20-foot BRL from the rear setback for the lot.
  - c) An 8-foot BRL from side setbacks for the lot.

## Notes and Labels

22. The record plat must reflect all areas under common ownership.
23. The record plat must reference the Common Open Space Covenant recorded among the Montgomery County Land Records at Book 28045 Page 578 (“Covenant”).



## CERTIFIED PRELIMINARY PLAN

24. The certified Preliminary Plan must contain the following notes:
- a. *Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of issuance of building permit(s). Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot.*
  - b. *The Applicant must schedule an on-site preconstruction meeting with M-NCPPC inspection staff before any demolition, clearing, or grading occurs on-site. The Applicant, along with their representatives, must attend the pre-construction meeting with the M-NCPPC inspector. A copy of the approved Certified Preliminary Plan is required to be on-site at all times.*
25. Before approval of the Certified Preliminary Plan, the Applicant must make the following changes:
- a) Show resolutions and approval letters on the certified set;
  - b) Include the approved Fire and Rescue Access plan in the certified set; and
  - c) Provide notes regarding invasive species management and replanting to address bamboo in the rear of the property.

## SECTION 3: 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, Greentree Road 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

### PREVIOUS APPROVALS

#### CONDITIONAL USE NO. CU202306

On May 4, 2023, the Planning Board recommended the Hearing Examiner approve a conditional use for a private educational institution on the Subject Property to allow the conversion of the existing office building to a private school for up to 120 students and 57 staff. The conditional use was approved with conditions by the Hearing Examiner on June 26, 2023. An associated Preliminary Forest Conservation Plan was approved by the Planning Board on May 4, 2023.

### 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. Pending approval of the subject applications, the Applicant proposes to convert the existing building, which currently houses an office use, to a private educational institution. The Applicant proposes to relocate The Diener School to the Subject Property as part of a phased enrollment expansion to accommodate up to 120 students and 57 staff members.

During Phase 1 of the project, Diener proposes a full interior renovation of the existing building to accommodate the school’s needs. Changes to the exterior of the site during Phase 1 will focus on the area between the building and the street. Most of the existing parking in front of the building will be removed, leaving only three visitor parking spaces in the front driveway. The landscaping and parking that currently occupy the space between the two driveway entrances will be replaced by more extensive landscaping, stormwater management facilities, a pedestrian path with a staircase leading up to the front entrance, and an exterior elevator providing ADA-compliant access. The elevator and pedestrian routes are planned next to one another, joining at the upper level of the site to follow the same path across the drive aisle for the visitor parking spaces to reach the school’s front entrance. A ramp will be provided along the face of the building to allow for an ADA accessible route to the front entry from the drive aisle path.

Other site changes will include identification signage; removal of one rear asphalt parking area to be replaced with a grassy playground area; removal of a metal storage structure on the south side of the building, to be replaced with a playground area; installation of signage and/or markings to designate the semi-circular drive aisle as a one-way, two-lane queuing area for student drop-off/pick-up; and the installation of gated entrances on both sides of the school building. In addition, the Applicant proposes frontage improvements consistent with Complete Streets guidelines, including a new, 11-foot wide, sidepath with an 8-foot landscape buffer along Old Georgetown Road and new street trees along the property’s frontage.



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 of 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

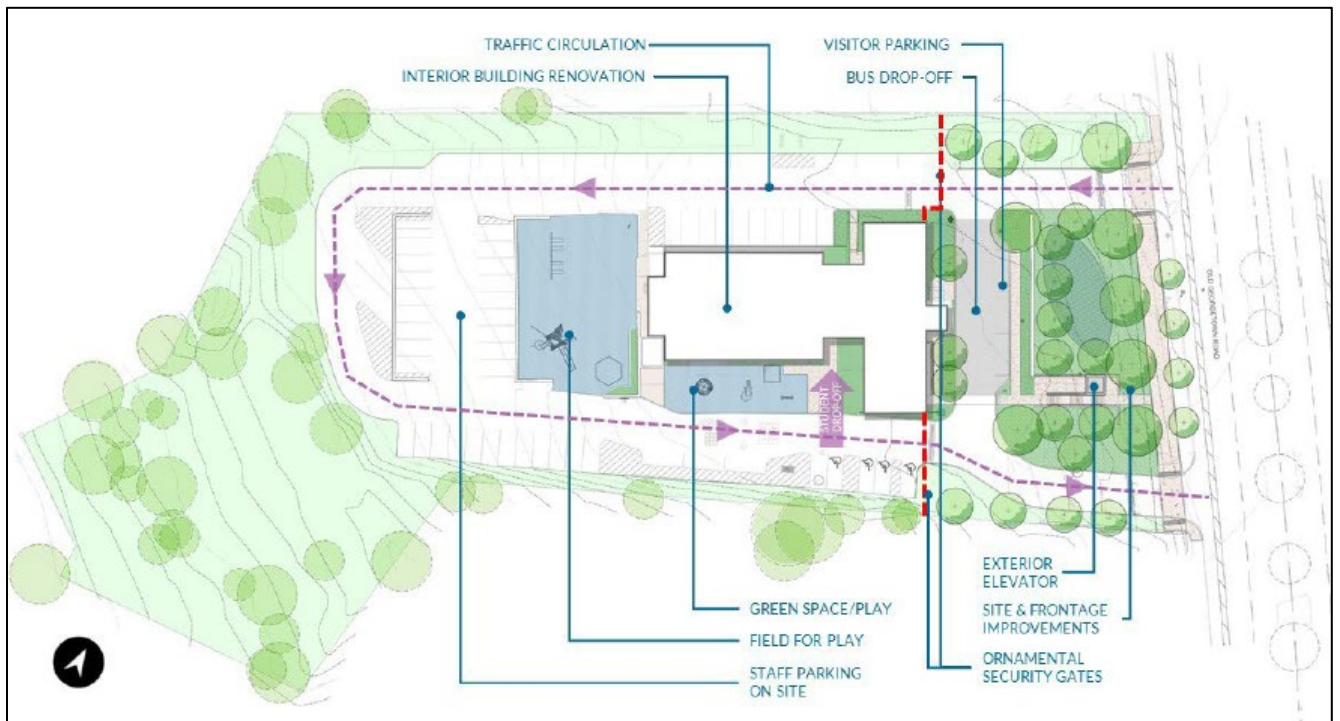


Figure 5: Phase 1 – Site Layout



Phase 2:

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

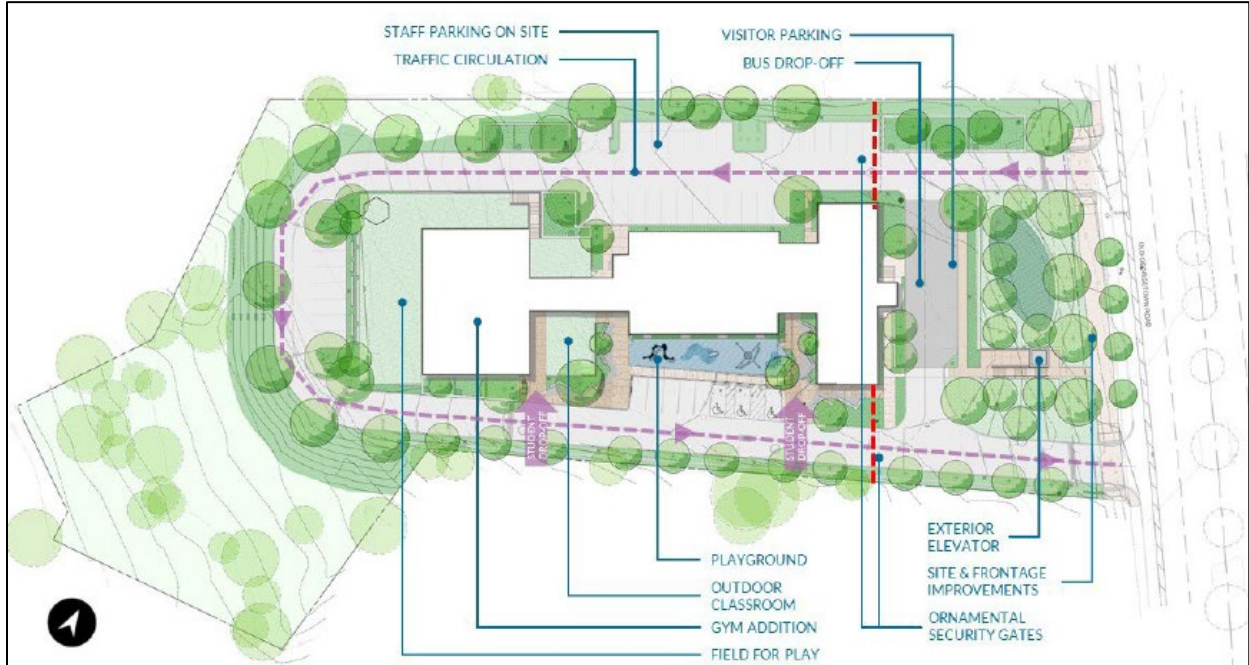


Figure 6: Phase 2 – Site Layout



Figure 7: Phase 2 Perspective

## BUILDING/ARCHITECTURE

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. As previously mentioned, during Phase 1 the exterior building design will remain substantially similar to that of the existing office building. One significant architectural change proposed for this initial phase is the pedestrian and ADA accessible entry as shown in Figure 8 below. The design of this feature is proposed to compliment the existing brick façade of the building while also providing a location for graphic signage to identify the school.

The Applicant also proposes to add ornamental gated entrances on both sides of the school building, to be kept closed outside of pick-up and drop-off periods, so that students cannot unintentionally wander off site and individuals not associated with the School can enter only through the main doors. This supports the security concerns for the School, which hosts a neuro-divergent student population.



*Figure 8: Diener Frontage Perspective*

The central element of Phase 2 will be an 11,000-square-foot gymnasium addition at the rear of the site, connected to the main school building by a breezeway. The addition will have two stories plus a basement. Natural daylighting and views are thoughtfully integrated into the design. The entry floor façade is strategically ‘carved away’ to reveal a large transparent zone that creates a strong relationship between interior and exterior. This transparent zone relates directly to the collaborative courtyard situated between the existing building and the gym. It allows for direct access from the gym



via glass garage doors and one of the main entries to the building. The connector provides for daylighting into the new open stair connecting all levels, and the stair running to the upper level is expressed on the exterior façade. The gym provides ample daylighting and views via the glazing at the upper portion of the space.



*Figure 9: Phase 2 Gym Addition*

## LANDSCAPE

The existing condition of the site includes a small portion of forest in the rear of the Property with mature trees and shrubs providing a dense perimeter along the rear and sides. A lawn area and additional trees are found along the frontage as well. The proposed project will maintain the attractive, well-landscaped appearance of the Subject Property's open space as shown in the project's landscape plan which includes additional tree and shrub plantings, a vegetated stormwater management facility, as well as a tree-lined bus drop off along the front of the site.

## TRANSPORTATION

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.

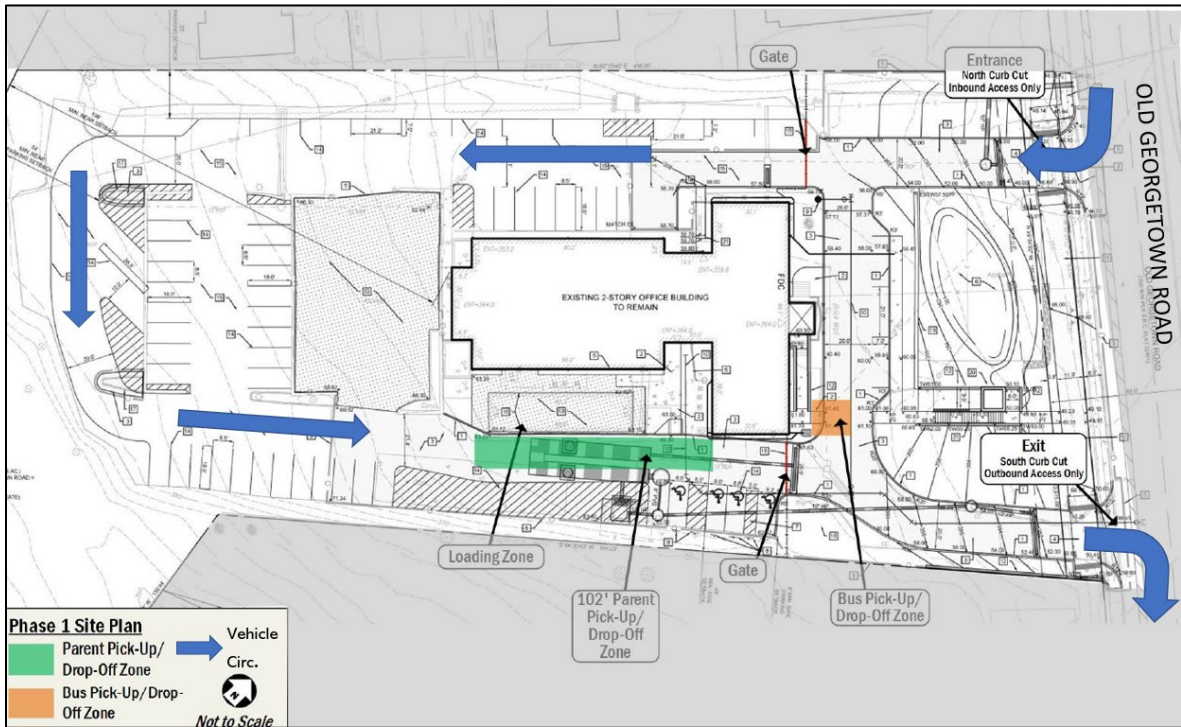


Figure 10: Phase 1 Site Circulation Plan

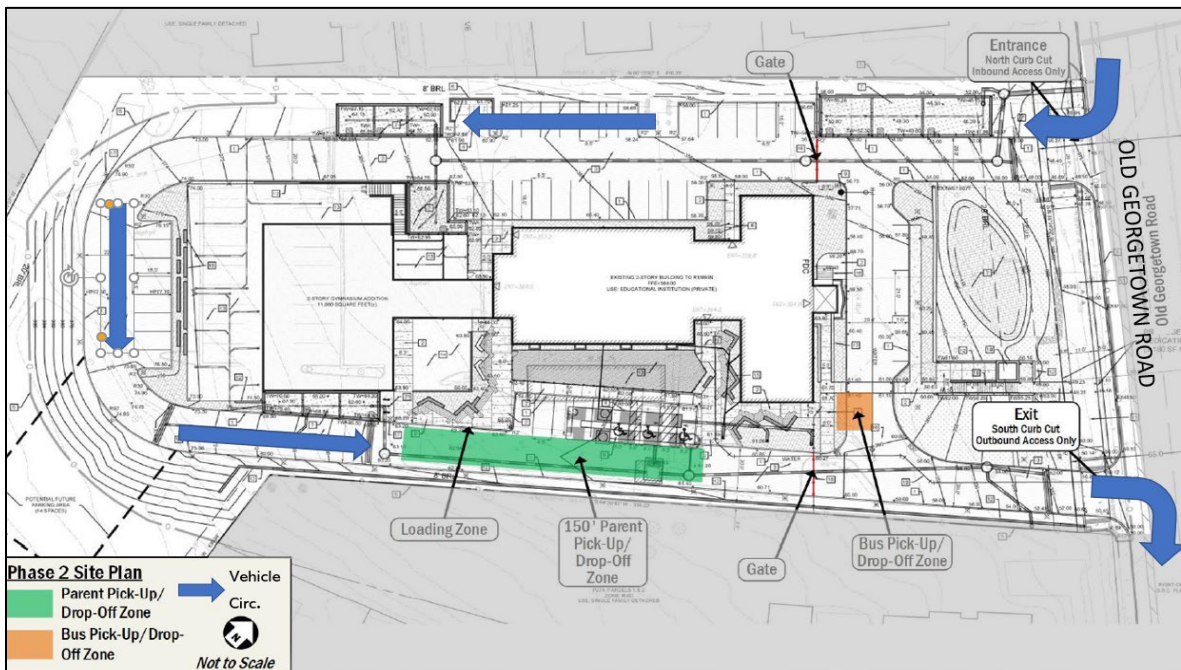


Figure 11: Phase 2 Site Circulation Plan

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 11, 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 Diener 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 Diener 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.

#### *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, avoid queuing on Old Georgetown Road, 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.

### Parking and Loading

The Applicant proposes a total of 65 vehicular parking spaces on the Site in Phase 1 and 65 in Phase 2. 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.

### Local Area Transportation Review

As stated previously, the Applicant conducted a Transportation Impact Analysis (TIS) to identify transportation deficiencies within the adjacent public transportation network, and to ensure that queuing would not occur on Old Georgetown Road. A summary of the TIS findings and proposed mitigation is included in the Preliminary Plan Findings section of 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 2021 *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 asphalt sidepath will be a shared facility between bicyclists and pedestrians, and it will be 11 feet in width. The sidepath will be buffered from motorists by an eight-foot-wide vegetated street buffer.

### Agency Approvals

The Application was reviewed by public agencies for conformance with the County Code and best practices for site design. MCDOT and MDOT SHA staff issued approval letters approving the site access and the TIS. Further refinement of the site access will be determined by MDOT SHA at the time of access permit.

## 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: PRELIMINARY PLAN 120230040 FINDINGS AND ANALYSIS

The Preliminary Plan would create 1 lot, measuring approximately 106,616 square feet or 2.42 acres of Site area, for a maximum density of up to 36,000 square feet of private educational institution uses. This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, Subdivision Regulations. The Application has been reviewed by other applicable State, County and City agencies.

- 1. The layout of the subdivision, including size, width, shape, orientation and density of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59.***

The proposed lot has been reviewed for compliance with Chapter 50, the Subdivision Regulations. The layout of the single-lot subdivision, including its size, width, shape, orientation is appropriate for a private educational institution within the R-60 Zone.

- a) The block design is appropriate for the development or use contemplated***

The block design is existing and appropriate for the proposed development and use. The length, width and shape of the block are compatible with the development patterns in the Bethesda Chevy-Chase area.

- b) The lot design is appropriate for the development or use contemplated***

The Preliminary Plan proposes one lot of approximately 2.5 acres. The size and dimensions of the lot currently serve an existing office use and are appropriate for the Project location and proposed private educational institutional use. The full length of the Site's eastern lot line abuts Old Georgetown Road, a public right-of-way.

- c) The Preliminary Plan provides for required public sites and adequate open areas***

The Preliminary Plan satisfies these requirements. The layout and density are appropriate for the use and the area. The surrounding area has lots of varying sizes and shapes interspersed among lots that are rectangular and of a similar size and includes a substantial number of non-residential lots with irregular sizes and shapes. The proposed

subdivision will continue that pattern while combining parts of two parcels into a single lot. The proposed subdivision satisfies the applicable requirements of Chapter 59, with the exception of minor deviations from certain parking lot design standards which were reviewed and approved as part of the previous Conditional Use Application. The parking lot design and landscaping as proposed will satisfy the intent of the Zoning Code parking standards under Section 59.6.2.1 to ensure that adequate parking is provided in a safe, efficient and appropriate manner.

i. ***Master Planned Sites***

The Subject Property is not specifically identified in the Master Plan for a site specific recommendation. However, as described more fully below, the proposed Application complies with the vision of the neighborhood as described in the Master Plan.

ii. ***Local Recreation***

The proposed subdivision does not include dedication of land for public recreation purposes. Recreation for the proposed use will be provided onsite. Dedication along the right-of-way and frontage improvements are included in this Application.

iii. ***Transportation and Utilities***

***d) The Lot(s) and Use comply with the basic requirements of Chapter 59***

The Preliminary Plan meets all applicable sections of the Subdivision Regulations. The size, width, shape, and orientation of the proposed lot are appropriate for the zone, location and residential use proposed for the Site. As shown in Table 1 below, the proposed lot will comply with the applicable development standards for the R-60 zone.

Table 1: Preliminary Plan 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>1</sup>	39,000 SF <sup>2</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>3,4</sup>	65 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

**2. The Preliminary Plan substantially conforms to the Master Plan.**

**a) Land Use**

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

<sup>1</sup> Existing building, to remain, is approximately 25,783 square feet.

<sup>2</sup> Gymnasium addition is proposed to be 11,000 square feet

<sup>3</sup> 1 space for each staff member on the largest shift.

<sup>4</sup> 20% NADMS Reduction Applied. Section 59-6.2.3.7.a.i.

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.

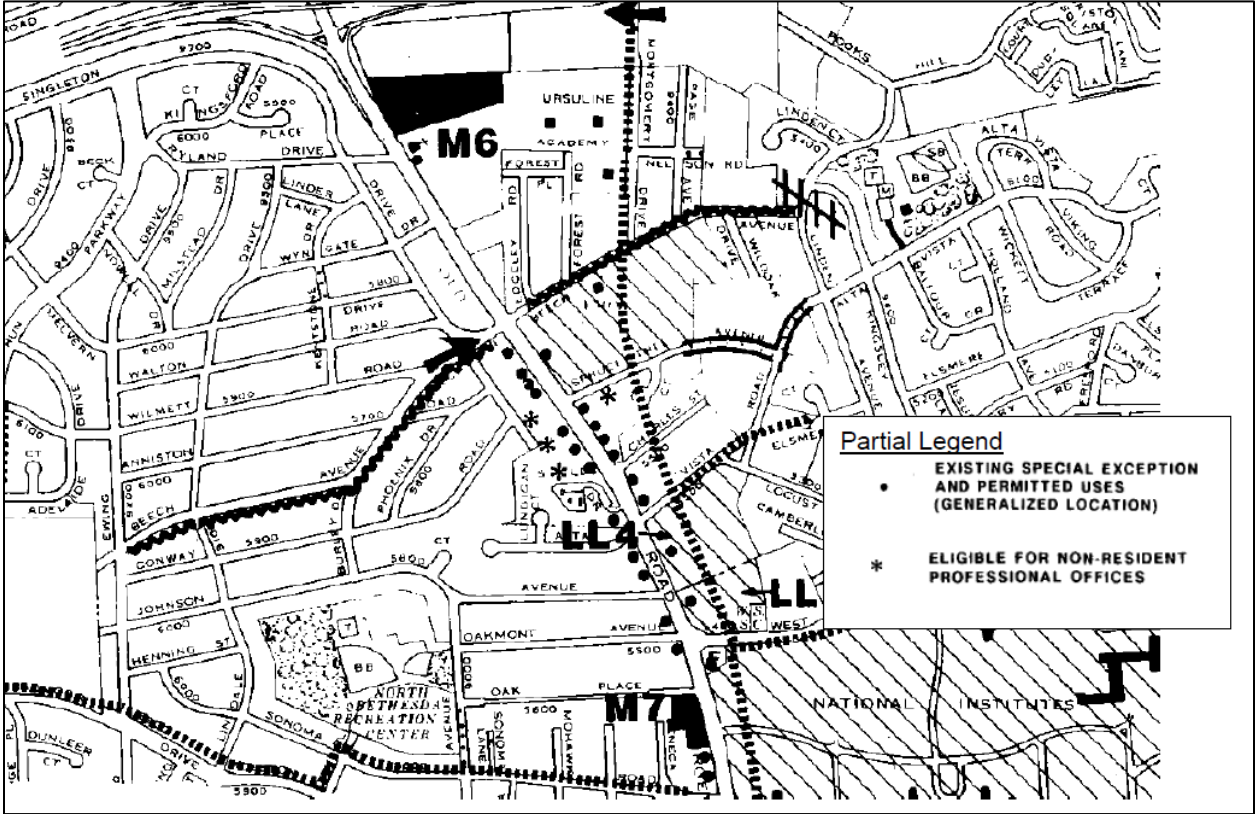


Figure 12: Master Plan Excerpt – Old Georgetown Road Corridor

The proposed 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, this Application 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.

#### **b) Environment**

The Master Plan contains general recommendations for the preservation of sensitive environmental features such as forest, mature trees, and steep slopes. Further, Old Georgetown Road is identified as a Green Corridor with recommendations to maintain and enhance the planting of vegetation along the roadway.

Although necessary tree impacts/removals are proposed to support the full implementation of the project, the Applicant proposes to preserve and enhance the natural resources that exist on-site as much as possible; the Project preserves a majority of the existing tree canopy that exists on-site today and will add to the tree canopy through the required variance mitigation plantings as well as additional landscape plantings as part of the frontage improvements. While implementation of a conservation easement is impractical due to enforcement and access issues, the existing forest and mature tree cover at the rear of the property is proposed to be maintained and enhanced through replanting and invasive species management practices. Additionally, as an adaptive reuse project, the impact to steep slopes onsite is limited to that which is necessary to provide adequate circulation which meets current standards; a project proposing demolition and full redevelopment in this location would include far greater impacts to these sensitive environmental features.

**c) Transportation**

*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. As conditioned, 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, and as conditioned, the Applicant will install an eight-foot-wide vegetated street buffer, and an 11-foot-wide asphalt sidepath along the Site frontage.

**3. Public facilities will be adequate to support and service the area of the subdivision.**

**a) Roads and other Transportation Facilities**

**i. Existing Facilities**

The Site fronts on Old Georgetown Road which has a master-planned right-of-way of 130 feet. As conditioned the Applicant will dedicate the necessary right-of-way to achieve 65 feet between the property line and the roadway centerline.

**ii. Proposed public transportation infrastructure**

As conditioned, the Applicant will construct a buffered sidepath along the Site frontage. The sidepath grade and materials will continue across the two driveways to remind motorists that they are entering a potential conflict with bicyclists and pedestrians. The new CSDG compliant frontage improvements will taper on either side of the Site to provide a continuous pathway with the existing sidewalks off-site.

**iii. Proposed private transportation infrastructure**

Sidewalks and pedestrian pathways interior to the Site will be ADA compliant and reflect best practices for design. Wheel stops will be installed to ensure a minimum of 5-feet of clear width where parking confronts pedestrian pathways and to ensure safety of play areas.

**b) Local Area Transportation Review (LATR)**

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 Transportation Impact Study (TIS) 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 2.

Table 2: Trip Generation for the Proposed Use

	AM Peak Hour	School PM Peak Hour	Regional Network PM Peak Hour
<b>Existing</b>			
Office, 25,783SF	42	35	44
<b>Proposed</b>			
Students, 120 <sup>3</sup>	154	115	0
Buses, 2	4	4	0
Staff/Faculty, 66 <sup>4</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

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 13.

<sup>3</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>4</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.



Figure 13: 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 (GIP)*. 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 was found to be within the 80-second delay standard for the Bethesda/Chevy Chase Policy Area. Per the 2022 LATR Guidelines, no mitigation is required for motor vehicle adequacy.

*Table 3: 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	24	22	37	26	24	37

*Source: Gorove/Slade Transportation Impact Study dated January 20, 2023, Revised April 25, 2023*

It should be noted that during review of the TIS, MDOT SHA also requested supplemental analysis of the individual intersections and updated signal timings. Review of these results prompted concerns on behalf of MDOT SHA staff about potential queuing on Old Georgetown Road and as well as possible delays to and from the side streets intersecting with Old Georgetown Road. In response, the Applicant revised the Transportation Management Plan (TMP) such that it included a commitment to conduct a follow-up report to evaluate delays, queues, and safety at the following locations:

1. School driveways on Old Georgetown Road (ingress and egress)
2. Westbound Spruce Tree Avenue at Old Georgetown Road
3. Eastbound and westbound Alta Vista Road at Old Georgetown Road

The objective of the Follow-Up Report is to determine whether the proposed school operations result in a measurable increase in delays and queues at the locations listed above. This will be done by comparing traffic volumes analyzed in the 2022 LATR, before the Diener School relocates to the Old Georgetown Road Site, and after the proposed relocation. A review of crash data at the listed locations will also be included in the Follow-Up Report. If necessary, the Follow-Up report will also include potential mitigation measures to address delays, queueing, and/or safety concerns at the locations listed above.

The report will be submitted to MDOT SHA, MCDOT, Montgomery County Planning staff, the Maplewood Citizens' Association, and the Wyngate Citizens' Association within 12 months of the school's opening.

*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 needed or conducted.

### *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. MCDOT and Planning staff agreed with these findings and the Applicant was not required to participate in the installation of a new traffic signal at either intersection. MCDOT and MDOT SHA have agreed that the necessary warrants for new traffic signals have not been met and therefore implementation of new traffic signals was not included as a condition of approval.

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

The 2022 LATR Guidelines provides 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.

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

*Source - Page 54 of the 2022 LATR Guidelines*

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 14: 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 4: LATR Mitigation Payment Cost Breakdown

<b>Description</b>	<b>Quantity</b>	<b>Unit Cost</b>	<b>Price</b>
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>

**c) Schools**

Not applicable to this Application as no additional dwelling units are proposed, thus there is no impact on school capacity.

**d) Other Public Facilities and Services**

Public facilities and services are available and will be adequate to serve the proposed development. The Subject Property is proposed to be served by public water and public sewer. The Application has been reviewed by the Montgomery County Fire and Rescue Service which has determined that the Subject Property will have appropriate access for fire and rescue vehicles. Other public facilities and services, such as electrical, telecommunications, gas, police stations, firehouses, and health services are operating according to the Growth and Infrastructure Policy resolution currently in effect and will be adequate to serve the Property.

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

**a) Forest Conservation Plan/Exemption**

This Project is subject to Chapter 22A, Forest Conservation Law, and has included a Final Forest Conservation Plan with this Application. The Final 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 intended use of the project as a private educational institutional, 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, due to the constrained size and limited access of the site.

#### 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 E). 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

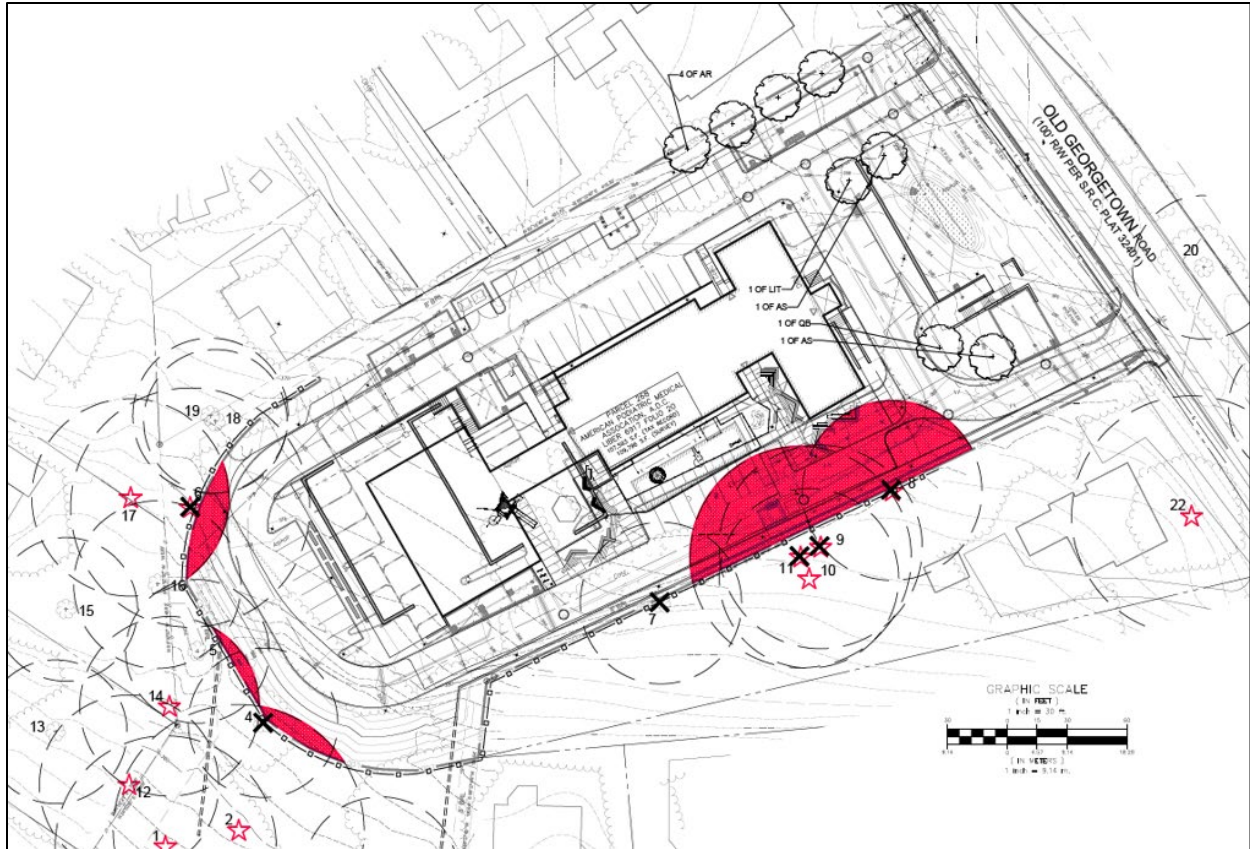


Figure 15: Protected Tree Impacts/Removals

Table 5: Trees to be Impacted but Retained

TREE #	TYPE	DBH	Percent of CRZ Impacted by LOD	CONDITION	PROPOSED STATUS
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

TREE #	TYPE	DBH	Percent of CRZ Impacted by LOD	CONDITION	PROPOSED STATUS
*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 Applicant's proposal to reuse and expand the existing building onsite greatly reduces the impacts that would otherwise occur if the Applicant proposed demolition of the existing building and construction of a completely new building and infrastructure. 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. With these factors considered, Staff concludes the variance request would be granted to any applicant in a similar situation and does not represent a special privilege granted to this Applicant.

- 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.

- 4. 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 onsite, however the final locations and quantities will be confirmed at the direction of the MNCPPC Forest Conservation Inspector. 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.

**5. All stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied.**

This Application meets the stormwater management requirements of Chapter 19 of the County Code. The Applicant received a stormwater concept approval from MCDPS Water Resources Division on June 5, 2023. There are no known stormwater management facilities existing on the Property. The Application will meet stormwater management goals through micro-bioretenion and a storm filter to treat stormwater runoff without the use of waivers. A detailed stormwater management review will

occur at the time of detailed plan review and all facilities will be designed using the latest MCDPS guidelines.

- 6. Any burial site of which the applicant has actual notice or constructive notice or that is included in the Montgomery County Cemetery Inventory and located within the subdivision boundary is approved under Subsection 50-4.3.M.**

Not applicable to this Property.

- 7. Any other applicable provisions specific to the property and necessary for approval of the subdivision is satisfied.**

No other provisions apply to the Subdivision.

## SECTION 6: COMMUNITY OUTREACH

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

As conditioned, the Preliminary Plan each satisfy the findings under the applicable standards of the Zoning Ordinance, substantially conform to the recommendations of the 1990 *Bethesda Chevy-Chase Master Plan* and satisfy the findings of the Subdivision Regulations, Chapter 50. Therefore, Staff recommends approval of the Preliminary Plan with the conditions as noted in this report and approval of the associated Final Forest Conservation Plan.

### ATTACHMENTS

*Attachment A: Preliminary Plan*

*Attachment B: Conditional Use-Hearing Examiner's Report and Decision*

*Attachment C: Agency Letters*

*Attachment D: Forest Conservation Plan*

*Attachment E: Variance Request*