

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:
INSPIRE, LLP

Applicant

Sandra Ventura

Joanne Carey-Vert

Paul Sill

Monty Rahman

For the Application

Rachel D. Breza, Esquire

Scott M. Breza, Esquire

Andrew Winick, Esquire

Attorneys for the Applicant

*
*
*
*
*
*
*
*
*
*
*
*
*

OZAH Case No. CU 18-09

Before: Martin L. Grossman, Hearing Examiner
 Director, Office of Zoning and Administrative Hearings

HEARING EXAMINER'S REPORT AND DECISION

TABLE OF CONTENTS

I. STATEMENT OF THE CASE	2
II. FACTUAL BACKGROUND	3
A. The Subject Property	3
B. Surrounding Neighborhood	6
C. Proposed Use	8
1. Site Plan.....	8
2. Access and Parking.....	10
3. Site Landscaping, Lighting and Signage	10
4. Operations.....	13
D. Community Response.....	13
III. FINDINGS OF FACT AND CONCLUSIONS OF LAW.....	14
A. Necessary Findings (Section 59.7.3.1.E.)	14
B. Development Standards of the Zone (Article 59.4).....	24
C. Use Standards for an Educational Institution (Private) (Section 59.3.4.5).....	26
D. General Development Standards (Article 59.6)	33
1. Site Access Standards.....	33
2. Parking Spaces Required, Parking Facility Design and Parking Lot Screening	34
3. Site Lighting, Landscaping and Screening	37
4. Signage	39
IV. CONCLUSION AND DECISION	40

I. STATEMENT OF THE CASE

On June 4, 2018, the Applicant, Inspire, LLP, filed an application for a Conditional Use pursuant to Zoning Ordinance Section 59.3.4.5. to allow operation of a Private Educational Institution in the existing two-story building at 4343 Sandy Spring Road, Burtonsville, Maryland 20866. The Subject Site, consisting of approximately 2.859 acres, is Parcel 277 on Tax Map LS11, and is described as part of Snowden's Manor Enlarged Subdivision. It is zoned R-200 and is subject to the *1997 Fairland Master Plan*. A conditional use is required for an Educational Institution (Private) in the R-200 Zone.

The property is owned by the Silver Spring Lodge No. 658 Loyal Order to Moose, Inc., with a Tax ID No. 05-00254623 (Exhibit 6). The Lodge currently holds Special Exception S-338 (Exhibit 21), which has allowed it to operate a private club (service organization) on the site since 2009,¹ and it consents to the subject application (Exhibit 10). The Applicant is the contract purchaser, and does not propose any external modifications to the site.

As described by the Applicant, in its Pre-Hearing Statement (Exhibit 67, p. 3), "Inspire, LLP intends to change the use from a fraternal organization into a religiously based educational organization. . . . Inspire, LLP has been serving the community for over 16 years as a Christian based organization with a broad mission of service to all people regardless of denomination."

The Office of Zoning and Administrative Hearings (OZAH) scheduled a public hearing to be held on September 28, 2018, by notice issued on August 16, 2018 (Exhibit 63). The Technical Staff of the Montgomery County Planning Department (Technical Staff or Staff) issued a report on August 24, 2018, recommending approval of the application, subject to ten conditions. Exhibit 69. On August 28, 2018, the Applicant filed an amended "Transportation Study Exemption Letter," dated August 25, 2018, to address comments made by the Technical

¹ Special Exception S-338 (Exhibit 21) was originally issued in 1974 to the Elks Club, which sold the property to the Moose Lodge in 2009.

Staff (Exhibit 67(b)). The Planning Board met on September 6, 2018, and voted unanimously (4-0) to recommend approval with the conditions recommended by Staff, but with changes to recommended Conditions 2 and 4. The Planning Board recommended that Condition 2 be modified to permit additional hours of operation and that Condition 4 be modified to allow non-amplified music for personal use in compliance with applicable noise regulations. These recommendations are contained in the Chair's letter of September 24, 2018. Exhibit 73.

No correspondence either for or against the application was received by either the Hearing Examiner or Technical Staff (Exhibit 69, p. 15).

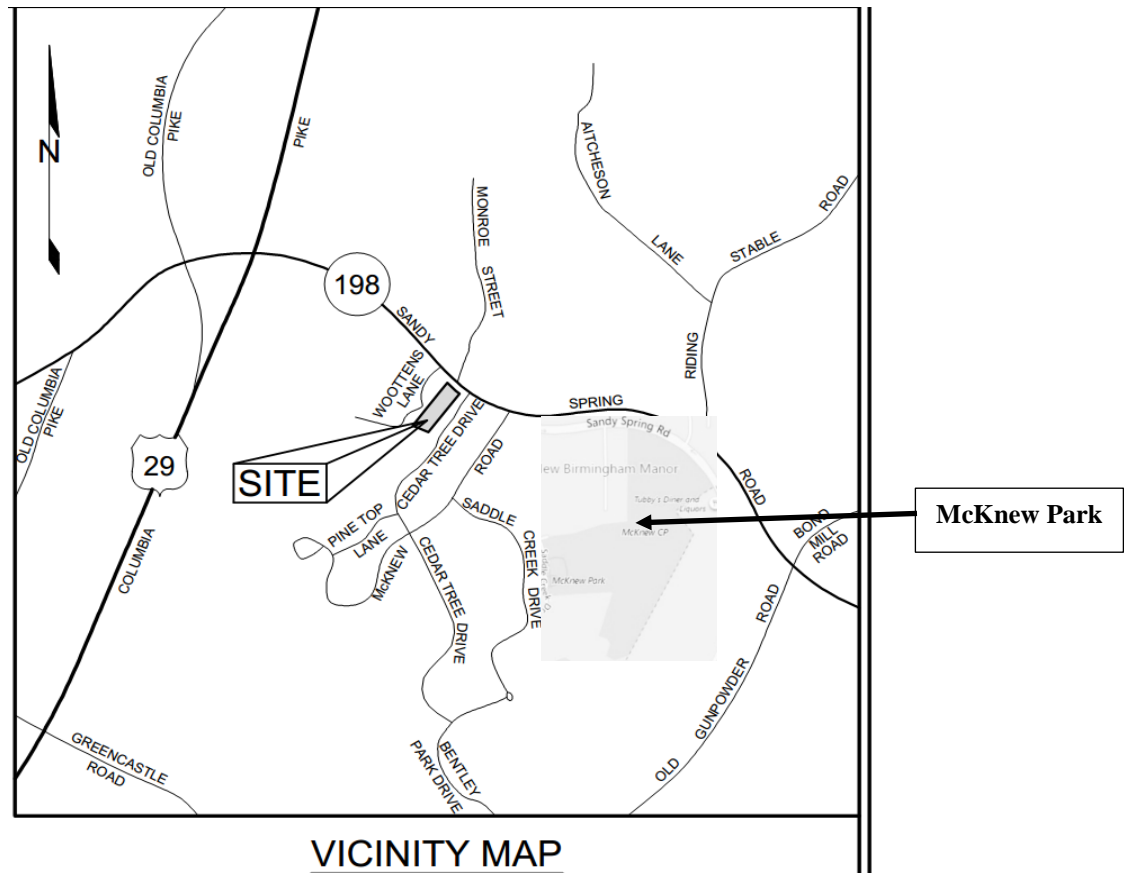
The public hearing proceeded as scheduled on September 28, 2018. The Applicant called four witnesses – Sandra Ventura, Applicant's representative; Joanne Carey-Vert, an expert in landscape architecture; Paul Sill, an expert in civil engineering; and Monty Rahman, an expert in traffic engineering. The Applicant withdrew its request to further modify permitted hours filed on September 26, 2018 (Exhibits 75 and 75(a)). Tr. 69-70. There were no other witnesses, and the record closed, as scheduled, on October 9, 2018, following receipt of the hearing transcript.

There is no opposition in this case, and as set forth in this Report and Decision, the application meets all the Zoning Ordinance standards for approval of the conditional use. The Hearing Examiner has therefore granted the application, with the conditions imposed in Part IV of this Report and Decision.

II. FACTUAL BACKGROUND

A. The Subject Property

The subject site is located at 4343 Sandy Spring Road, in Burtonsville, Maryland. It is in the R-200 Zone and is situated about halfway between Columbia Pike (Route 29) to the west, and McKnew Park to the east. It's location can be seen on a Vicinity Map provided by the Applicant in its Conditional Use Site Plan (Exhibit 25). It is reproduced below:



Technical Staff describes the property as follows (Exhibit 69, p. 5):

The property is situated south of Sandy Spring Road (MD 198) and west of Cedar Tree Drive in Burtonsville. Access to the property is from Sandy Spring Road. The 2.97-acre property² is mostly flat land. The parcel is generally rectangular in shape and has 200 ft. of frontage along Sandy Spring Road.

The property is developed with a 6,000 sq. ft. two-story wood-frame lodge building and a 1,544 sq. ft. one and one-half story brick and frame dwelling. The lodge building is setback approximately 199.6 ft from the front property line. The dwelling is setback approximately 61.9 ft. from the front property line. Presently, there is a 50 ft. wide asphalt driveway with access from Sandy Spring Road that serves a parking lot for 37 cars.

Landscaping is present on the remainder of the property. The landscape consists of ornamental lawn areas and variety of trees, shrubs, evergreens and invasive species along the northwestern and southwestern property lines. There is an approximately 165 ft. by 35 ft. area grove of trees, evergreens and bushes situated on the north-eastern portion of the property. The rear one-third of the property is maintained as an

² The Applicant lists the property as “approximately 2.859 acres+/- (previously referred to as 2.97 acres +/- in the Land Records of Montgomery County . . .” (Exhibit 67, p. 2).

open lawn area and is unimproved. A landscaped berm is present along the eastern property line between the property line and Cedar Tree Drive.

There are no streams, wetlands, or known rare or endangered species present. There are no historically significant structures or sites located on or near the property.

The site is depicted below in an aerial photo from the Staff Report (Exhibit 69, p. 4):



Several photographs of the site are attached at the end of the Staff Report (Exhibit 69):



Figure 1 – View toward front of property from Sandy Spring Road.



Figure 3 – View from driveway entrance from Sandy Spring Road with vacant dwelling unit in front and lodge building towards the rear.



Figure 5 - View of the rear side of the lodge building with parking lot.



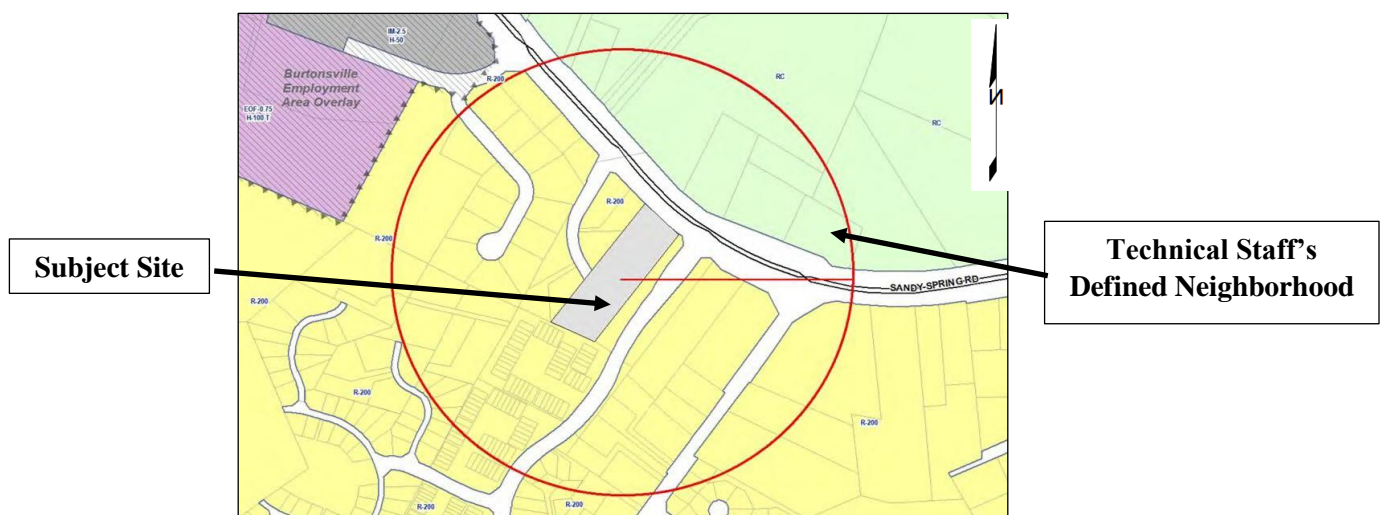
Figure 6 - Southwest view towards Cedar Tree Drive of the open lawn area with landscaped berm between property and Cedar Tree Drive.

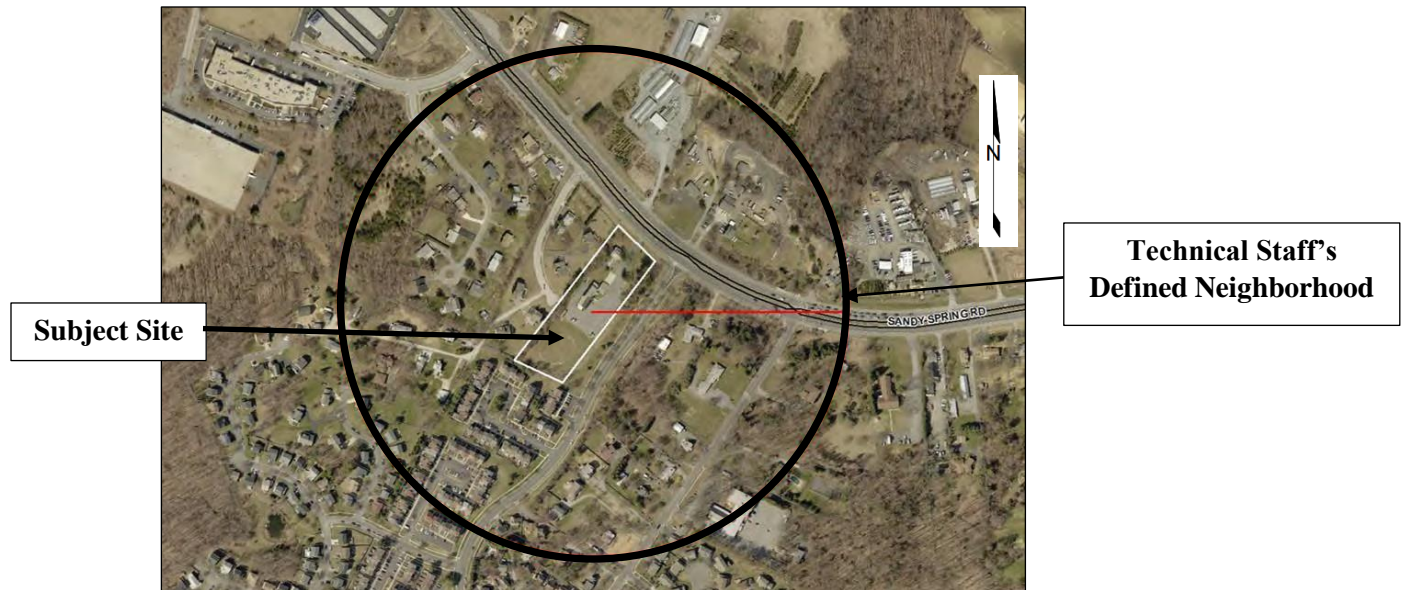
B. Surrounding Neighborhood

For the purpose of determining the compatibility of the proposed use, it is necessary to delineate and characterize the “surrounding neighborhood” (*i.e.*, the area that will be most directly impacted by the proposed use). Staff proposed defining the boundaries of the surrounding neighborhood as “property generally located within 1,000 ft. radius of the subject property.” Exhibit 69, p. 7.

The Applicant’s expert in landscape architecture and site planning, Joanne Carey-Vert, did not dispute this definition (Tr. 10), and the Hearing Examiner accepts it.

The neighborhood as proposed by Technical Staff is depicted in a vicinity map and an aerial photo from the Staff Report (Exhibit 69, p. 8):





Staff describes the surrounding neighborhood as “primarily consist[ing] of suburban residential, agricultural, and commercial uses including landscaping and plant nursery services, churches, and general building contractor yard.” Staff also notes that there are no pending or proposed project approvals in the neighborhood vicinity.

The subject site is itself in the R-200 Zone, as is the surrounding property to the south, east and west. Property to the north is in the Rural Cluster (RC) Zone. The existing land uses in the neighborhood, as reported by Staff (Exhibit 69, p. 7), are a vacant fraternal lodge and a single-family dwelling on the subject site; a landscaping and plant nursery, with outside storage and detached dwellings, to the north; a general contractor, landscaping supply and residential dwellings to the east; residential attached and detached dwellings, as well as a church, to the south; and residential detached dwellings to the west.

Staff also reports (Exhibits 69 and 71(a)) that, in addition to the special exception on the site (S-338), a fraternal service organization, there is also an accessory apartment special exception (S-2583) located at 15116 McKnew Road and a landscape contractor at 4512 Sandy Spring Road (S-2810), both within the defined neighborhood.

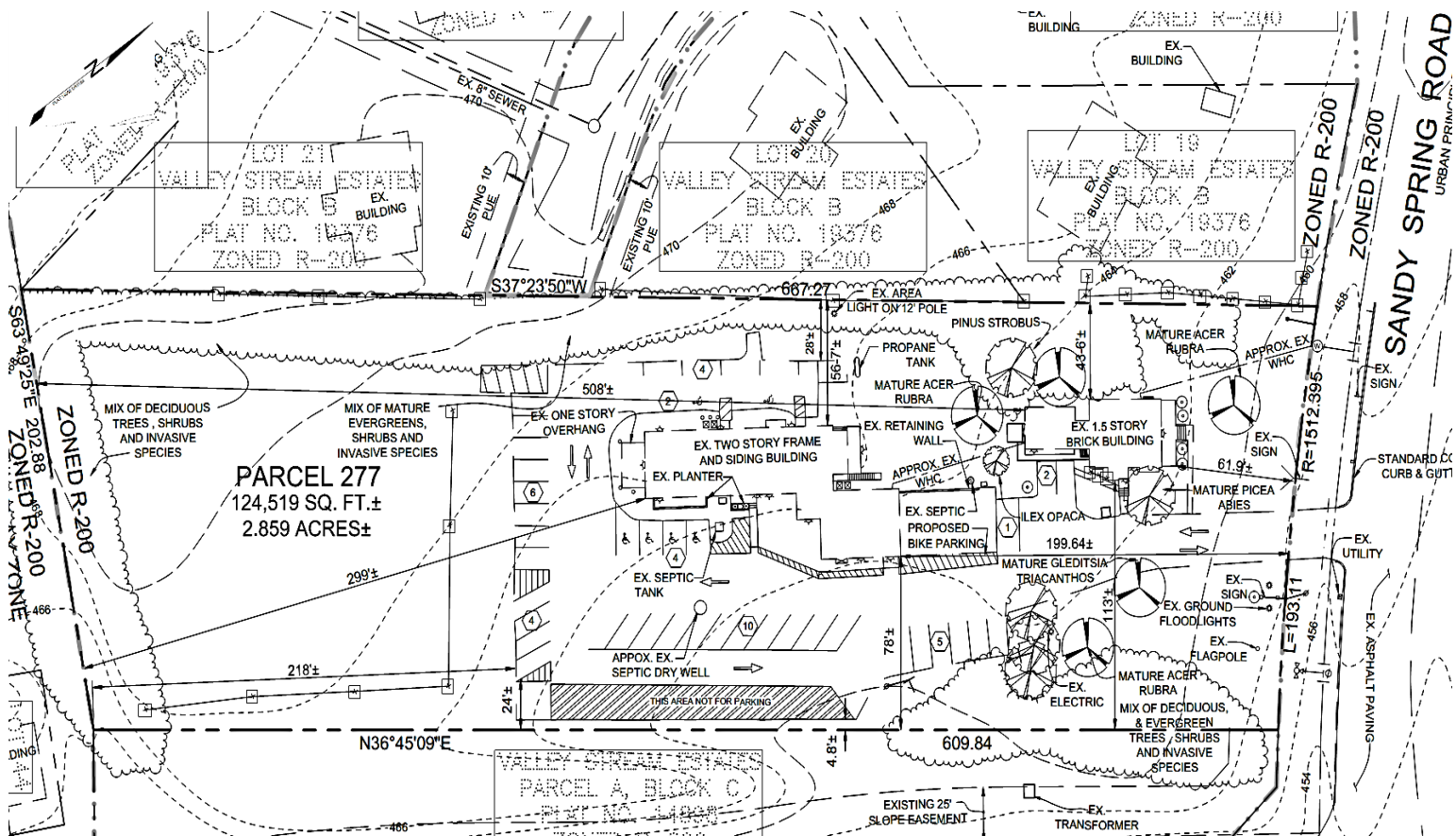
C. Proposed Use

As described by the Applicant, in its Pre-Hearing Statement (Exhibit 67, p. 3), “Inspire, LLP intends to change the use from a fraternal organization into a religiously based educational organization. . . . Inspire, LLP has been serving the community for over 16 years as a Christian based organization with a broad mission of service to all people regardless of denomination.”

Currently, the 2.97-acre site is a developed with a 6,000 square foot lodge building and a 1,544 square foot vacant dwelling. The Applicant will retrofit the interior of the buildings to accommodate its needs, and no new development or exterior alterations are proposed. Exhibit 69, p. 4. There will be no changes in the landscaping, lighting or signage on the site. Ex. 69, p. 14.

1. Site Plan

The Applicant’s Conditional Use Site Plan (Exhibit 25) is reproduced below:



R-200 DEVELOPMENT STANDARDS- EDUCATIONAL INSTITUTION (PRIVATE)		
	PERMITTED/REQUIRED	PROVIDED
MIN. LOT AREA: 59-4.4.7B	20,000 SF.	124,519 SF.
MAXIMUM DENSITY (EDUCATIONAL INSTITUTION-PRIVATE) 59-2.4.5.E DENSITY (87 STUDENTS PER ACRE X 2.859 ACRES) 59-3.4.5.2.C.2(b) EXTERIOR ARCHITECTURAL REQUIREMENTS FOR LOTS LESS THAN 2 ACRES. PROPERTY IS GREATER THAN 2 ACRES, THEREFORE NOT APPLICABLE	248 STUDENTS PERMITTED	75 STUDENTS
LOT WIDTH AT FRONT BUILDING LINE	100 FT.	193.11 FT.
LOT WIDTH AT FRONT LOT LINE	25 FT.	193.11 FT.
MAXIMUM LOT COVERAGE	25%	5.45%
SETBACKS FOR EXISTING LODGE STRUCTURE (WHICH WILL BE REUSED AS THE SCHOOL)		
EXISTING LODGE STRUCTURE(TO BE USED AS SCHOOL) MINIMUM FRONT SETBACK	40 FT.	199.64 FT.
MINIMUM SIDE SETBACK 59-4.4.7.B.2	12 FT.	56.7 FT.
SUM OF SIDE SETBACKS	25 FT.	134.7 FT.
MINIMUM REAR SETBACK: 59-4.7.7.B.3	30 FT.	299 FT.
MAXIMUM HEIGHT 59-4.7.7.B.3	50 FT.	22 FT.
MINIMUM REAR PARKING SETBACK: 59-6.2.5.K.2.b	30 FT.	218 FT.
MINIMUM SIDE PARKING SETBACK: 59-6.2.5.K.2.b	24 FT.	28 FT. NORTH 24 FT. SOUTH
SETBACKS FOR EXISTING FRONT STRUCTURE (TO BE REUSED AS SCHOOL ADMINISTRATION IN FUTURE)		
MINIMUM FRONT SETBACK	40 FT.	61.9 FT.
MAXIMUM HEIGHT BUILDING	50 FT.	22 FT.
MINIMUM SIDE SETBACK	12 FT.	43.6 FT.
MINIMUM REAR SETBACK	30 FT.	508 FT.

NOTE: ALL DIMENSIONS ARE ±.

PARKING STANDARDS		
	PERMITTED/REQUIRED	PROVIDED
VEHICLE PARKING: 59-6.2.4.B 0.25 PER STUDENT 75 MAX. STUDENTS	19	37
1 PER EMPLOYEE, 8 MAXIMUM EMPLOYEES	8	
TOTAL	27	
ACCESSIBLE PARKING	2	6
BICYCLE PARKING SPACES	2	2

GENERAL NOTES

- SUBJECT PROPERTY ZONED R-200.
- THE BOUNDARY SHOWN HEREON IS BASED ON A FIELD RUN SURVEY PREPARED BY EYOTT, INC., FEBRUARY 2018.
- THE TOPOGRAPHY SHOWN HEREON IS BASED ON MONTGOMERY COUNTY GIS DATA.
- PROPERTY ADDRESS: 4343 SANDY SPRING ROAD.
- PROPERTY AREA: 2.85 AC ±, 124,519 SF ±.
- REFERENCE: LIBER 36879 FOLIO 467.
- INSPIRE, LLP IS A COMMUNITY SERVICE EMPLOYMENT TRAINING AND VOCATIONAL REHABILITATION SERVICE, WITH EIGHT EMPLOYEES; FOUR ADMINISTRATION AND FOUR STAFF. THE FOUR ADMINISTRATION TYPICALLY WORK 9 AM TIL 5 PM., MONDAY THRU FRIDAY, AND THE FOUR STAFF WILL WORK DURING CLASS AND ON CERTAIN SATURDAYS. CLASSES WILL BE OFFERED TUESDAYS AND THURSDAYS FROM 7:30 PM UNTIL 11:00 PM. ON OCCASION, CONFERENCES, SEMINARS AND WORKSHOPS WILL BE HELD ON SATURDAYS. MAXIMUM CLASS SIZE IS 48 STUDENTS AND THE MAXIMUM PARTICIPANTS ON SATURDAYS IS 75 ATTENDEES.
- PARKING:
 - REQUIRED SPACES: .25 PER STUDENT / 75 MAX. STUDENTS = .25 X 75 = 19. 1 PER EMPLOYEE / 8 EMPLOYEES = 1 X 8 = 8, 19 + 8 = 27 REQUIRED.
 - EXISTING SPACES: 37 INCLUDING 6 HANDICAP SPACES.
- NEAREST SIGNIFICANT FLOWING WATER TO THE SITE IS AN UNNAMED TRIBUTARY TO THE PATUXENT RIVER, USE CLASS I-P. IT IS APPROXIMATELY 1,963 FEET FROM THE PROPERTY.
- PER THE MONTGOMERY COUNTY PLANNING GIS SYSTEM, THERE ARE NO FOREST CONSERVATION EASEMENTS ON THE SITE, IT IS NOT LOCATED IN ANY HISTORIC DISTRICT, AND HAS NO HISTORIC RESOURCES ON SITE..
- THERE ARE NO KNOWN WETLANDS, STREAMS, OR THEIR BUFFERS ON SITE. PER FEMA, THE SITE IS NOT IN A FLOOD PLAIN.
- NO KNOWN RARE OR ENDANGERED SPECIES WERE OBSERVED ON SITE.
- THE SIGN MEASURES 6' WIDE, BY 3.4' HIGH. IT IS 1.6' ABOVE THE GROUND.THERE ARE FREE STANDING BRICK PIERS ON EITHER END OF THE SIGN, THAT ARE 1.3' SQUARE, AND THE SAME HEIGHT AS THE SIGN.
- DENSITY CALCULATIONS FOR R-200: 6 RESIDENTIAL UNITS WOULD BE PERMITTED PER THE CURRENT DENSITY CALCULATIONS. 2.859 AC X 2.18 UNITS PER ACRE = 6.23 UNITS.
- SCREENING ALONG NORTHERN AND REAR PROPERTY LINES COMPLIES WITH ARTICLE 59-6.5. SCREENING INCLUDES EXISTING TALL MATURE TREES AND THICK VEGETATION AND RUNS THE ENTIRE LENGTH OF THE NORTHERN AND REAR PROPERTY LINES.
- LIGHTING SHALL COMPLY WITH ARTICLE 59-6.4.4.B AS FOLLOWS: (1) ANY OUTDOOR LIGHTING FIXTURE WILL BE A FULL OR PARTIAL CUTOFF FIXTURE, AND (2) ALL FREESTANDING LIGHTING FIXTURES SHALL BE MAXIMUM 15 FEET IN HEIGHT. THE EXISTING LIGHT POLE IS 12 FEET IN HEIGHT.

2. Access and Parking

Technical Staff described access to the site and available parking (Exhibit 69, pp. 10-11):

Vehicular access is from Sandy Spring Road to a 50 ft. wide driveway which serves a parking lot for 37 vehicles with six accessible parking spaces. Two bicycle parking spaces are proposed. The parking lot is set back approximately 100 ft. from the front property line, 24 ft. from the south property line, 28 ft. from the north property line, and 218 ft. from the rear property line.

The Applicant has indicated that 30 to 50 percent of attendees currently carpool to attend classes, and that others who live nearby are likely to walk, bike, take public transport or use a ride-hailing service. Furthermore, many attendees do not own cars. For a typical class size of 20 persons, there are 10 cars plus an additional four cars for instructors. A total of 14 cars are on-site for a typical class. Applicant has indicated that parking for special events can be provided for on-site with the existing parking lot and through carpools, walking, biking, public transport, and ride-hailing services.

There is an existing vacant 1.5 story, 1,544 sq. ft. vacant dwelling situated between the front property line and the lodge building. The dwelling is set back 61.9 ft. from the front property line. Presently, there are no immediate plans for use of the dwelling. However, Applicant has indicated future plans may involve repurposing the dwelling for administrative uses. The current monument sign located along Sandy Spring Road will be continued and used.

As will be discussed in Part III.D. of this Report and Decision, the existing parking will more than meet the requirements of the Zoning Ordinance for the number of spaces and appropriate setbacks. In accordance with Staff's recommendation, the Hearing Examiner has imposed a condition requiring the Applicant to improve the existing parking facility, as shown on the Conditional Use Site Plan, by marking and striping the surface parking lot to provide for orderly and safe on-site vehicular movement.

3. Site Landscaping, Lighting and Signage

The landscaping, lighting and signage on the site will remain unchanged if the application is approved. The existing lighting and landscaping and signage location are shown on the Conditional Use Site Plan (Exhibit 25), reproduced in Part II.C.1. of this Report and Decision.

Existing perimeter landscaping is shown on the following aerial photograph provided by the Applicant (Exhibit 37) and reproduced below:



Using a photo array (Exhibit 77) and photo map key (Exhibit 77(a)), Joanne Carey-Vert, the Applicant's expert in landscape architecture, testified that the existing landscaping, including setbacks, a fence, open space, a berm, evergreens and other mature trees along the property line, would adequately screen the proposed use from the surrounding neighbors (Tr. 33-46). As explained by Ms. Carey-Vert, the photos reproduced below depict the following (Tr. 33-41):

- View 1: Looking southwest from the site entrance on Sandy Spring Road, at a bungalow house on the site.
- View 2: Looking east from the site towards the intersection of Sandy Spring Road and Cedar Tree Drive, showing mature growth of evergreens that screens the intersection.
- View 3: Looking west from Cedar Tree Drive into the parking area and showing screening from the berm and mature trees.
- View 4: Looking east towards the intersection along the berm that blocks the view of the parking lot.
- View 5: Looking southwest along the berm towards the off-site townhouse community and showing mature trees and evergreens screening that community.
- View 6: Looking north from the berm and showing the berm descending and the parking lot's lower elevation.

4. Operations

The Technical Staff described proposed operations at the subject site (Exhibit 69, pp. 10-11):

The Project will feature a training academy to educate adults through biblical workshops and seminars of various topics including personal growth, health, finance, and relationships. The maximum classroom size is 48 students. However, Applicant indicates that over the past year the average classroom size is 20 to 28 students. Occasional Saturday operations are expected to draw a maximum of 75 persons in attendance. Four administrative staff will be present Monday through Friday, during normal business hours. Four additional teaching staff are expected during evening and weekend classes. Classes will not be held on Sundays. The Applicant has indicated occasional recreational activities may occur. This may include putt golf, relay races, dodgeball, and the like. No music or sound enhancing equipment of any kind will be used outdoors.

The proposed educational programming schedule is as follows:

Tuesday and Thursday	One class of 20 students from 7:30 p.m. to 9:00 p.m. Second class of 20 students from 9:30 to 11:00 p.m.
Saturday	Up to three classes of about 2 hours each. Up to 20 students. Class begins at 9:30 a.m., 12:00 p.m. and/or 7:30 p.m. Saturday classes are held at varying intervals, but typically not every Saturday
Saturday special events	None are schedule or proposed at this time Applicant requests approval to hold such events, on occasion, limited to a maximum of 75 attendees.
Sunday, Monday, Wednesday, Friday	No classes or events are proposed

The Hearing Examiner has imposed conditions in Part IV of this Report and Decision limiting the number of on-site staff and hours of operation to minimize impacts on the neighborhood.

D. Community Response

No correspondence either for or against the application was received from the community by either the Hearing Examiner or Technical Staff (Exhibit 69, p. 15).

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 legislative standards are both specific and general. General standards are those findings that must be made for almost all conditional uses. *Zoning Ordinance*, §59.7.3.1.E. Specific standards are those which apply to the particular use requested, in this case, an Educational Institution (Private). *Zoning Ordinance* §59.3.4.5.

Weighing all the testimony and evidence of record under the “preponderance of the evidence” standard specified in *Zoning Ordinance* §59.7.1.1, the Hearing Examiner concludes that the conditional use proposed in this application, as governed by the conditions imposed in Part IV of this Report and Decision, would satisfy all of the specific and general requirements for the use.

A. Necessary Findings (Section 59.7.3.1.E.)

The general findings necessary to approve a conditional use are found in Section 59.7.3.1.E of the Zoning Ordinance. Standards pertinent to this review, and the Hearing Examiner’s conclusions for each finding, are set forth below:³

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: As noted by Technical Staff, the Silver Spring Moose Lodge, which has operated the existing private club (service organization) special exception (S-338) on the site for years, has contracted to sell the property to the Applicant. Exhibit 69, p. 4. Therefore, the Hearing Examiner has followed the recommendation of the Technical Staff and the Planning Board to

³ Although §59.7.3.1.E. contains six subsections (E.1. through E.6.), only subsections 59.7.3.1.E.1., E.2. and E.3. contain provisions that arguably apply to this application. Section 59.7.3.1.E.1. contains seven subparts, a. through g.

impose a condition requiring that S-338 be revoked by the Board of Appeals, as abandoned, prior to issuance of a use-and-occupancy permit for the proposed use on the site.

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 an analysis of the standards of the R-200 Zone contained in Article 59-4; the use standards for an Educational Institution (Private) contained in Article 59-3; and the applicable development standards contained in Article 59-6. Each of these Articles is discussed below in separate sections of this Report and Decision (Parts III.B, C, and D, respectively). Based on the analysis contained in those discussions, the Hearing Examiner finds, as did Technical Staff (Exhibit 69, p. 25), that the application satisfies the requirements of Articles 59-3, 59-4 and 59-6.⁴

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

The subject property lies within the geographic area covered by the 1997 *Fairland Master Plan*. Master Plan compliance is discussed in the Technical Staff report (Exhibit 69, pp. 12-13):

Numerous stream valleys, roadways, and varied topography physically divide the Fairland Master Plan boundary into plan subareas. The property is located in the Oak Fair/Saddle Creek subarea of the Fairland Master Plan. The property also lies in the Little Paint Branch watershed, which is described as the more environmentally sensitive watershed in the master plan area vicinity.

⁴ The Hearing Examiner notes that he does not agree with Technical Staff's statement that the development standards for the zone that must be applied to this use are those that existed in the 2004 Zoning Ordinance, not the current standards under the 2014 Zoning Ordinance. While it is arguable that the developmental characteristics of the existing physical site should not be evaluated under the 2014 Zoning Ordinance because they will not be changed by the proposed use, they also will not be automatically analyzed under the 2004 Zoning Ordinance, even if one accepts the application of the cited "grandfathering" provision (Zoning Ordinance §59.7.7.1.A.1.). Under that provision, the existing site need only have been "a legal structure or site design," under any applicable earlier Zoning Ordinance, when the new Zoning Ordinance went into effect on October 30, 2014. Moreover, the Hearing Examiner does not accept the proposition that the unchanged site design need not be reviewed for its adequacy when a new conditional use is proposed for the site. For example, if the new use proposed heavy outdoor activity by numerous students, the existing landscaping might be insufficient to properly screen the neighbors. Fortunately, that is not the case here. Unchanged lighting need not be reviewed at all per Zoning Ordinance §59.6.4.2. Overall compatibility requirements continue to apply.

The Master Plan discusses interrelated themes to address challenges and opportunities with land development to create a “. . . livable suburban community – a series of neighborhoods with sidewalks and [street trees],⁵ access to the natural environment and recreational facilities with employment and commercial areas emphasizing horizontal rather than vertical structures.” (Fairland Master Plan, 1997, p. 15).

There are no specific recommendations in the Fairland Master Plan concerning the [Subject] Property. However, the Project is compatible with the following general policies contained in the Master Plan:

- *Land Use Plan Map – Property identified as commercial land use category on the land use plan map (p. 29).*

The Project complies with the commercial category of the land use plan map because the proposed use is a private educational institution, which is a non-residential land use. As such, the Project is consistent with this policy.

- *Recommends limited impervious surfaces as much as possible, given the existing land use and zoning patterns (p. 135).*

The Project is a change of use with no new construction proposed. The Property is located in the Little Paint Branch watershed, which is described as having fair to poor water quality. The Project is within the Silverwood tributary which the Master Plan recommends as a Environmental Preservation Area where land uses should minimize additional imperviousness. Present lot coverage is less than 25 percent impervious coverage. The maximum lot coverage in the R-200 zone is 25 percent. The Project does not propose any new construction. As such, the Project is consistent with this policy.

- *Maintain low-density development pattern within the Residential Wedge and Patuxent water-shed (p. 16).*

The Property is located in the Residential Wedge of Fairland and . . . [is] identified as moderate density. The Project consists of a change of use from a private service organization club to a private educational institution. The proposed change of use will continue to be a low-density development pattern. Therefore, the Project is consistent with this policy.

Technical Staff added the following comments later in its report (Exhibit 69, p. 17):

. . . The Plan acknowledges that the property is commercial in use, surrounded by single-family residential with industrial uses recommended to the northwest on the south side of Sandy Spring Road (p. 29). While the Plan does not provide specific recommendations for the property, the Plan does include certain goal for new

⁵ In an apparent typographical error, Staff’s quote of the Master Plan left out the word “street” and used the word “tree” instead of “trees.” The corrected quote above is the actual Master Plan language

development. These themes include maintaining a low- density development pattern and to provide land uses that promote social interaction and a strong sense of community (pp. 16, 32). The Project is a change of use and does not include any new construction, additional floor area, or density. The current low-density development pattern will be maintained.

Additionally, the Applicant proposes to operate a private educational institution and provide instructional coursework, seminars and workshops with an emphasis on “leadership training, business and financial principles, couples’ conferences, corporate prayer, and personal development” (p. 3 Applicant Statement). Applicant indicates that most participants reside within a ten-mile radius of its current location in nearby Laurel, Maryland and are part of the local community. Such programs can help to promote social interaction and promote a strong sense of community.

. . . The Project will replace a more intensive conditional use with a less intensive conditional use. This demonstrates that the Project will be less impactful to the surrounding single-family dwellings than the fraternal lodge use.

Conclusion: Staff concluded that “the evidence presented supports a finding that the Project conforms to the recommendations of the Master Plan.” Exhibit 69, p. 17. There is no evidence to the contrary, and the Hearing Examiner therefore finds that the Applicant’s proposal substantially conforms with the recommendations of the applicable 1997 *Fairland Master Plan*.

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

Technical Staff found that the proposed use meets this standard for the following reasons (Exhibit 69, p. 17):

. . . The character of the surrounding area is primarily residential, consisting of single-family attached and detached homes south of Sandy Spring Road. To the north of Sandy Spring Road is a mix of commercial, industrial, and detached single-family residential. The Project will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan because the use is located within an existing commercial building, adequately buffered with landscaping, and sufficiently located away from any sensitive land uses or dwelling units. Staff concludes that the use will be harmonious with the surrounding uses.

These findings and conclusions were echoed in the testimony of Applicant’s landscape architect.

Joanne Carey-Vert. Tr. 48.

Conclusion: The Hearing Examiner concludes that the proposed use “*is harmonious with and will not alter the character of the surrounding neighborhood*” for the reasons stated by Technical Staff and Ms. Carey-Vert because no external changes will be made on the site (except appropriately marking the existing parking lot). The only other physical changes proposed are the internal renovation of the exiting main building to convert the space occupied by the abandoned private service organization special exception into a space suitable for the proposed private educational institution use. As noted above, the proposed use is consistent with the applicable Master Plan.

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: Technical Staff reports that the defined neighborhood contains the following special exceptions – the existing special exception on the subject site (S-338), which will be revoked as abandoned; an accessory apartment at 15116 Mcknew Road (S-2583); and a landscape contractor at 4512 Sandy Spring Road (S-2810). Exhibit 71(a). Staff found that “There are no residential areas that would be adversely affected or altered by the Project because the Project site is sufficiently buffered and located away from residential uses to the west and south.” Ex. 69, p. 18.

The Hearing Examiner finds that the substitution of the proposed conditional use for the existing special exception on the site will not result in an overconcentration of special exceptions or conditional uses in the area; nor will it affect the area adversely or alter the residential nature of the area. Moreover, the provision in question also specifies that “*a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area,*” and as noted above, the proposed use is consistent with the Master Plan. Thus, the Hearing Examiner finds that this standard has been met.

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: According to Technical Staff, the application does not require approval of a preliminary plan of subdivision since no new construction is proposed. Exhibit 69, pp. 18-19.

Therefore, under §59.7.3.1.E.1.f.i, quoted above, the Hearing Examiner must determine whether the proposed development will be served by adequate public services and facilities.

By its nature, a small educational institution, operating within an existing building with fewer patrons than the existing use, would not ordinarily create significant additional burdens for schools, police and fire protection, water, sanitary sewer and storm drainage. As observed by Technical Staff (Exhibit 69, p. 18):

. . . The Project is adequately served by public services and facilities, including schools, police, and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. . . . The property is served by public sewer and water and is located in the S-1 and W-1 water categories, respectively. Should the applicant wish to continue to utilize the existing on-site septic system, the Department of Permitting Service may require additional testing or permits.⁶ . . .

⁶ At the hearing, Applicant's counsel asked that Condition 9 proposed by Technical Staff be modified to allow the septic system to be tested prior to issuance of a use and occupancy permit, rather than prior to approval of the conditional use, because as the contract purchaser, the Applicant does not yet have access sufficient to allow the

Alternately, the Applicant may connect to the existing public sewer system. The Applicant has indicated that no new construction is proposed. Should the Applicant wish to increase the square footage of an existing building or construct a new building, a Preliminary Plan and record plat would be required.

Moreover, Technical Staff found that the proposed conditional use would not have significant impacts on transportation facilities. Technical Staff determined that a traffic study under Local Area Transportation Review (LATR) would not be required (Exhibit 69, p. 14):

With a total of eight employees who work traditional 9:00 a.m. to 5:00 p.m. hours and weekday classes offered from 7:30 p.m. to 11:00 p.m., the Project will not generate 50 or more peak hour person trips during either the morning or evening peak periods (6:30 to 9:30 a.m. and 4:00 p.m. to 7:00 p.m.). Therefore, the Project is exempt from Local Area Transportation Review.

Staff concluded, “. . . the property is adequately served by public roads and will not cause an undue burden on the road system.” Exhibit 69, p. 18.

This conclusion was supported by the report and testimony of the Applicant’s traffic engineer, Monty Rahman. Exhibit 67(b) and Tr. 84-85. Applicant’s civil engineer, Paul Sill, also testified that stormwater management on the site was compliant with applicable standards. Tr. 77.

Based on this record, the Hearing Examiner finds that the proposed development will be served by adequate public services and facilities. LATR standards have been met, to the extent they are applicable, and the substitution of the proposed conditional use for the existing special exception will not unduly burden public facilities.

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;

boring necessary to complete the septic system test. Tr. 8-11, 74-77. The Hearing Examiner agreed to that sensible change in Condition 9, as it will still require the satisfactory septic testing prior to occupancy. Thus, a revised Condition 9 is imposed in Part IV of this Report and Decision.

- 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, at the proposed location, on nearby properties and the general neighborhood.

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, §59.1.4.2. 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.

As specified in §59.7.3.1.E.1.g., quoted above, inherent adverse effects, alone, are not a sufficient basis for denial of a conditional use. However, non-inherent adverse effects in the listed categories, alone or in conjunction with inherent effects in those categories, are a sufficient basis to deny a conditional use. Nevertheless, the existence of a non-inherent adverse effect does not mean that an application for a conditional use must be denied. Rather, it means that it can result in denial if the Hearing Examiner finds that such a non-inherent adverse effect, either alone or in combination with inherent adverse effects, creates “undue harm to the neighborhood” in any of the categories listed in Zoning Ordinance §59.7.3.1.E.1.g.

Analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an Educational Institution (Private). Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics identified *or* adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects then must be analyzed, in the context of the subject property and the surrounding

neighborhood, to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

In analyzing potential adverse effects, Technical Staff determined that the following physical and operational characteristics are necessarily associated with (*i.e.*, are inherent in) a Private Educational Institution (Exhibit 69, p. 19):

- Vehicle and pedestrian trips to and from the property;
- Parking for participants and employees;
- Varied hours of operation;
- Noise or odors associated with vehicles; and
- Lighting.

Technical Staff noted that “These characteristics are inherent and typically associated with similar uses and do not exceed what is normally expected.” Staff concluded that “There are no non-inherent conditions as a result of this application.” Exhibit 69, p. 19. The Hearing Examiner agrees, in that there are no unusual site conditions; no external changes are planned; a similar, but more intensive use has existed on the site for many years; and planned activities appear to be typical for the proposed use.

Technical Staff also found (Exhibit 69, p. 19):

. . . The inherent physical and operational characteristics associated with the private educational institution will not cause undue harm to the neighborhood. . . .
. . . Residential uses adjoining the property to the west and south are well-buffered from the Project in distance and by existing landscape. Further, the Project must comply with the County Noise Control Ordinance (Chapter 31B of the County Code), and as such would not create excessive noise. The Project would cause no adverse effect with regard to inherent or non-inherent characteristics, or combination thereof, or in any of the following categories: the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood; traffic, noise, odors, dust, illumination or lack of parking; or the health, safety or welfare of neighboring residents, visitors or employees.

The Hearing Examiner agrees with Staff’s findings and its conclusion that the requirements of Zoning Ordinance §59.7.3.1.E.1.g. have been satisfied. While any conditional

use may have some adverse effects on the neighbors (*e.g.*, from traffic, parking and lighting), there is no characteristic of the proposed use or the site that would impose greater adverse effects on the neighbors than any other Private Educational Institution of similar size. Thus, the Hearing Examiner finds no non-inherent adverse effects.

Moreover, any potential adverse effects on the neighbors can be, and have been, addressed by conditions imposed by the Hearing Examiner in Part IV of this Report and Decision.

The Hearing Examiner finds that the proposed Educational Institution (Private), as limited by the conditions imposed in Part IV of this Report and Decision, will not cause undue harm to the neighborhood as a result of adverse effects in any of the categories listed in §59.7.3.1.E.1.g.

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 observed by Technical Staff (Exhibit 69, p. 19), this provision is “[n]ot applicable, [since t]he Project does not propose any construction, reconstruction, or alterations.”

The only alterations to the structure will be internal, so that the new conditional use can function in the space previously occupied by a Private Club, Service Organization. The Hearing Examiner therefore agrees with Staff’s conclusion that the proposed internal alterations to the structure will not alter compatibility with the neighborhood.

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 as discussed above, the proposed use will be compatible with the neighborhood. The Hearing Examiner concludes that, with the conditions imposed in Part IV of this Report and Decision, the conditional use should be approved.

B. Development Standards of the Zone (Article 59.4)

In order to approve a conditional use, the Hearing Examiner must ordinarily find that the application meets the development standards of the zone where the use will be located – in this case, the R-200 Zone. However, as discussed in an earlier footnote, Technical Staff argues that compliance with the current Development standards for the R-200 Zone in the 2014 Zoning Ordinance would not be required in a case, such as this one, where the existing structures and site design were legal when the 2014 Zoning Ordinance went into effect and will not be changed under the current proposal. According to Staff, they are “grandfathered” under 2014 Zoning Ordinance §59.7.7.1.A.1.

The Hearing Examiner agrees that where there is an existing legal structure and site design, “grandfathering” under 2014 Zoning Ordinance §59.7.7.1.A.1. obviates the need for compliance with the standards of the Zone set forth in 2014 Zoning Ordinance §59.4.4.7.B. (*i.e.*, lot size, density, coverage, building setbacks and height); however, that does not mean that the existing site design is automatically compliant with all applicable development standards, since the requirements of the specific conditional use set forth in Article 59-3 must be followed, and there is an overarching requirement for compatibility when an applicant seeks a new conditional use. *See* Zoning Ordinance §59.7.3.1.E.1.b. Moreover, the general requirements of Article 59.6 for parking lot setbacks, screening, landscaping, lighting and signage, while perhaps not strictly binding given the grandfathering, are useful guideposts for evaluating compatibility of a newly proposed conditional use, and they will be discussed in Part III.D. of this Report and Decision. An unchanged site design may be adequate for compatibility under an existing use but may be completely insufficient under a newly proposed conditional use that may impose greater burdens on the neighbors. Fortunately, that is not the case here, where the newly proposed use appears to be less intensive than the existing use. Tr. 20-21, 51, 48-53.

In a Development Standards Table on the Conditional Use Site Plan (Exhibit 25), the Applicant compared the existing conditions on the site with the development standards of the R-200 Zone specified in 2014 Zoning Ordinance §59.4.4.7.B. That Table is reproduced below:

R-200 DEVELOPMENT STANDARDS- EDUCATIONAL INSTITUTION (PRIVATE)		
	PERMITTED/REQUIRED	PROVIDED
MIN. LOT AREA: 59-4.4.7B	20,000 SF.	124,519 SF.
MAXIMUM DENSITY (EDUCATIONAL INSTITUTION-PRIVATE) 59-2.4.5.E DENSITY (87 STUDENTS PER ACRE X 2.859 ACRES) 59-3.4.5.2.C.2(b) EXTERIOR ARCHITECTURAL REQUIREMENTS FOR LOTS LESS THAN 2 ACRES. PROPERTY IS GREATER THAN 2 ACRES, THEREFORE NOT APPLICABLE	248 STUDENTS PERMITTED	75 STUDENTS
LOT WIDTH AT FRONT BUILDING LINE	100 FT.	193.11 FT.
LOT WIDTH AT FRONT LOT LINE	25 FT.	193.11 FT.
MAXIMUM LOT COVERAGE	25%	5.45%
SETBACKS FOR EXISTING LODGE STRUCTURE (WHICH WILL BE REUSED AS THE SCHOOL)		
EXISTING LODGE STRUCTURE(TO BE USED AS SCHOOL) MINIMUM FRONT SETBACK	40 FT.	199.64 FT.
MINIMUM SIDE SETBACK 59-4.4.7.B.2	12 FT.	56.7 FT.
SUM OF SIDE SETBACKS	25 FT.	134.7 FT.
MINIMUM REAR SETBACK: 59-4.7.7.B.3	30 FT.	299 FT.
MAXIMUM HEIGHT 59-4.7.7.B.3	50 FT.	22 FT.
MINIMUM REAR PARKING SETBACK: 59-6.2.5.K.2.b	30 FT.	218 FT.
MINIMUM SIDE PARKING SETBACK: 59-6.2.5.K.2.b	24 FT.	28 FT. NORTH 24 FT. SOUTH
SETBACKS FOR EXISTING FRONT STRUCTURE (TO BE REUSED AS SCHOOL ADMINISTRATION IN FUTURE)		
MINIMUM FRONT SETBACK	40 FT.	61.9 FT.
MAXIMUM HEIGHT BUILDING	50 FT.	22 FT.
MINIMUM SIDE SETBACK	12 FT.	43.6 FT.
MINIMUM REAR SETBACK	30 FT.	508 FT.

NOTE: ALL DIMENSIONS ARE ±.

Conclusion: As can be seen from the above Table, the proposed, unchanged site more than meets all the development standards of the R-200 Zone, as provided in Zoning Ordinance §59.4.4.7.B., and the Hearing Examiner so finds.

C. Use Standards for an Educational Institution (Private) (Section 59.3.4.5.)

The specific use standards for approval of an Educational Institution (Private) are set out in Section 59.3.4.5. of the Zoning Ordinance. Standards applicable to this application are:

Section 3.4.5. Educational Institution (Private)

A. Defined

Educational Institution (Private) means a private school or educational or training academy providing instruction or programs of learning. Educational Institution (Private) includes tutoring and college entrance exam preparatory courses, art education programs, artistic performances, indoor and outdoor recreation programs and summer day camps, any of which may serve individuals who are not enrolled as students in the institution's academic program. Educational Institution (Private) does not include schools operated by the County Board of Education or education conducted in the provider's home as a Home Occupation (See Section 3.3.3.H, Home Occupation).

Conclusion: The Applicant describes itself as follows in its Prehearing Statement (Exhibit 67, p. 3):

Inspire, LLP has been serving the community for over 16 years as a Christian based organization with a broad mission of service to all people regardless of denomination. Inspire, LLP consists of a staff of experienced life coaches, teachers, motivational speakers and ordained ministers. Inspire, LLP intends to use the Property as a training academy to educate adults through biblical workshops and seminars designed for personal growth and maturity. Classes include topics such as leadership training, business and financial principles, couples' conferences, corporate prayer, and personal development. These types of classes for adults are sought after by individuals and communities to improve peoples' quality of life with spiritual, religious, and inspirational opportunities not offered elsewhere.

As such, the Hearing Examiner finds that the proposed use meets the definition of an Educational Institution (Private).

B. Exemptions

A conditional use is not required for:

- 1. any private educational institution or parochial school that is located in a building or on premises owned or leased by any church or religious organization; the government of the United States; the State of Maryland or any State agency; Montgomery County; or any incorporated village or town within Montgomery County. This exemption does not apply to any Educational Institution (Private) that received conditional use approval by the Hearing Examiner to operate in a building or on a property that was not owned or leased by any church or religious organization at the time the decision of the Hearing Examiner was issued.*
- 2. any Educational Institution (Private) that is located in a building or on land that has been used for a public school or that is owned or leased by the County; however, site plan approval is required under Section 7.3.4 for:*
 - a. construction of an Educational Institution (Private) on vacant land owned or leased by the County; or*
 - b. any cumulative increase that is greater than 15% or 7,500 square feet, whichever is less, in the gross floor area, as it existed on February 1, 2000, of an Educational Institution (Private) located in a building that has been used for a public school or that is owned or leased by Montgomery County. Site plan approval is not required for:*
 - i. an increase in floor area of an Educational Institution (Private) located in a building that has been used for a public school or that is owned or leased by Montgomery County if a request for review under mandatory referral was submitted to the Planning Board on or before February 1, 2000, or*
 - ii. any portable classroom used by a private educational institution that is located on property owned or leased by Montgomery County and that is in place for less than one year.*

Conclusion: None of the listed exemptions apply to the proposed use in this case. The subject site is currently owned by the Silver Spring Lodge No. 658, Loyal Order to Moose, Inc. Although the Applicant is the contract purchaser of the site, it has not claimed a religious exemption.

C. Use Standards

- 1. Where an Educational Institution (Private) is allowed as a limited use, it must satisfy the following standards:*

a. In the CRN zone, if the subject lot abuts or confronts property zoned Agricultural, Rural Residential, or Residential Detached that is vacant or improved with an agricultural or residential use, site plan approval is required under Section 7.3.4.

b. In the IL and IM zones, Educational Institution (Private) is limited to trade, artistic, or technical instruction.

Conclusion: Not applicable. The proposed use requires a conditional use in the R-200 Zone.

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: Technical Staff states, in response to this provision (Exhibit 69, p. 21):

This standard is satisfied. The Project proposes to operate a private educational institution offering evening coursework and occasional weekend curriculum as described above in this report. Except for occasional recreation outside activities, classes are held inside the building. No music or sound enhancing equipment of any kind will be used outdoors. The average class size is typically 20 to 28 participants, with a maximum of 75. The existing conditional use operated a commercial kitchen, bar and provided a venue for wedding receptions and similar functions. The Applicant has indicated the bar and commercial kitchen will not be operated as such. No new construction is proposed. The impact of the Project is less than that of the existing conditional use for a private club. Therefore, the Project would not constitute a nuisance or be incompatible with the environment and character of the surrounding neighborhood.

The Hearing Examiner agrees with Technical Staff. The key is summarized in Staff's final three sentences, which specify that no new construction is proposed, and the intended use will be less impactful than the current use. The use will not create significant traffic; will not have large numbers of students; will not create significant noise or environmental impacts; and there is no evidence it will adversely affect the community. The Hearing Examiner therefore finds that the proposed use 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.

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: As stated by Technical Staff (Exhibit 69, p. 21):

This standard is satisfied. The Project will operate inside the existing building and is located on a lot that is larger than 2 acres in size. The property is 2.97 acres. Special Exception Case No. S-338 found that the existing building does not have a detrimental effect on the use of the surrounding residential properties. No new construction is proposed. As such, there would not be an adverse impact to the residential character of the surrounding neighborhood.

The Hearing Examiner agrees, and for the reasons stated by Staff, finds that the existing building, which will not be externally modified, is on a lot exceeding 2 acres and is compatible with the residential character of the surrounding 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: Technical Staff opined (Exhibit 69, p. 22):

This standard is satisfied. The Applicant proposes to operate a private educational institution inside an existing building which has been used as a private service club since at least 1974 (Elks Lodge and Moose Lodge). There is no new construction proposed that would increase floor area or height. No alcoholic beverages or food will be served, as is currently permitted by the private service club. As such, the Project would have less of an impact than the current use and not adversely affect or change the present character or future development of the surrounding community.

As indicated by Staff, the proposed change in use is not radically different from the present use of the building in terms of its impacts on the neighborhood. Given the Applicant's intent not to modify the externals of the building to be used, nor to modify the landscaping or lighting, the

Hearing Examiner finds that the proposed 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.

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, arterial roads, and 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: The Hearing Examiner has established limits, in Part IV of this Report and Decision, on the number of pupils (“attendees”) allowed to occupy the premises at any one time, in consideration of the factors listed in this provision and the recommendations of the Planning Board (Exhibit 73). As reported by Technical Staff (Exhibit 69, pp. 22-23), the current user held events with numbers of attendees far exceeding Applicant’s plans: there is nearby bus service; the educational services are for adults who will likely drive themselves, and as a result, there is no need for a “drop-off and pick-up” area; there is adequate queueing space provided by the approximately 150 feet driveway from Sandy Spring Road; the parking provided is adequate as discussed in Part III.D.2. of this Report and Decision; outside activity will be limited; and noise levels will be controlled by conditions imposed in Part IV of this Report and Decision. In sum, the Hearing Examiner finds that this provision has been satisfied.

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: The maximum number of students attending at one time will be 75. Since the size of the property is 2.97 acres, the maximum proposed density is 26 students per acre ($75 \div 2.97 = 25.25$ students per acre), well within the limit of 87 students per acre prescribed in this provision.

The Hearing Examiner therefore finds that this provision has been satisfied.

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

Conclusion: The existing screening is shown in an aerial photo (Exhibit 37) and other photos (Exhibits 77 and 77(a)), reproduced on pages 11 and 12 of this Report and Decision. As stated by Technical Staff (Exhibit 69, p. 23), there may be occasional outdoor recreational activities, such as putt-putt golf, relay races and dodgeball, but outdoor noise has been limited by a condition imposed in Part IV of this Report and Decision, and such outdoor activities will be sufficiently buffered by perimeter landscape screening and distance from abutting residential properties. The Hearing Examiner therefore finds that this provision has been satisfied.

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

Conclusion: As stated by Technical Staff (Exhibit 69, p. 23), no new lighting is proposed for the site. Under Zoning Ordinance §59.6.4.2., the requirements of the Zoning Ordinance apply only to “the installation of any new outdoor lighting fixture, and the replacement of any existing outdoor fixture.” Therefore, the Hearing Examiner finds that the requirements of this provision have been satisfied.

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: Technical Staff responded as follows to this provision (Exhibit 69, p. 24):

This finding is satisfied with recommended Condition No. 1 [which limits the number of staff to 8 and the hours of operation to business hours, plus hours during educational programs as set forth in Condition 2]. . . . [W]ith a total of eight employees who work traditional 9:00 a.m. to 5:00 p.m. hours and weekday classes offered from 7:30 p.m. to 11:00 p.m., the Project will not generate 50 or more peak hour person trips during either the morning or evening peak periods (6:30 to 9:30 a.m. and 4:00 p.m. to 7:00 p.m.). Therefore, the Project is exempt from Local Area Transportation Review and satisfies this standard.

Conclusion: The Hearing Examiner concludes that the inquiry of this provision goes beyond

Local Area Transportation Review (LATR) by requiring that “*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.*” [Emphasis added.] Nevertheless, it is clear from the revised

“Transportation Study Exemption Letter” (Exhibit 67(b)), the testimony of the Applicant’s traffic engineer (Tr. 80-86) and the description of this use in the Staff report (Exhibit 69) that, as limited by the conditions imposed in Part IV of this Report and Decision, “*the [proposed] 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.” The Hearing Examiner so finds. The adequacy of parking will be further discussed in Part IV.D.2., below.

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

Conclusion: Limits on the number of participants, frequency of events and hours of operation, have been imposed by the Hearing Examiner in Part IV of this Report and Decision, consistent with the recommendations of the Planning Board, which are supported by the record in this case.

In sum, the Hearing Examiner finds that the application satisfies all of the use standards for an Educational Institution (Private) in Zoning Ordinance §59.3.4.5., as well as the general Conditional Use standards contained in Zoning Ordinance §59.7.3.1, discussed in Part III.A., above.

D. General Development Standards (Article 59.6)

Article 59.6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. The applicable requirements, and whether the use meets these requirements, are discussed below.

1. Site Access Standards

Conclusion: Site access is discussed in Part II.C.2. of this Report and Decision. Technical Staff described it as follows (Exhibit 69, pp. 13-14):

Vehicular access is via an existing driveway on Sandy Spring Road (MD 198) that can only be accessed by vehicles heading eastbound on MD 198 due to a median in front of the property. There are no sidewalks along MD 198 in the vicinity of the site, but there is a shared use path on the south side of the road approximately 930 feet to the west which extends into Burtonsville. There is one bus, Metrobus Route Z7, that services the site at a bus stop approximately 625 feet to the east at McKnew Road.

Zoning Ordinance Division 59.6.1 governs “Site Access;” however, by its own terms, as stated in §59.6.1.2., Division 59.6.1 does not apply to development in single-family residential zones, such as the R-200 Zone involved in this case. Moreover, no site access issues have been raised

in this case, and Applicant's traffic engineer testified that access and circulation on the site will be safe and efficient. Tr. 85. We therefore turn to the issue of on-site parking.

2. Parking Spaces Required, Parking Facility Design and Parking Lot Screening

Conclusion: The standards for the number of parking spaces required, parking setbacks and parking lot screening are governed by Division 6.2 of the Zoning Ordinance. Technical Staff suggests that the proposed conditional use is exempted from the parking requirements of the 2014 Zoning Ordinance based on the previously discussed grandfathering provision of Zoning Ordinance §59.7.7.1.A.1., since the structure and site design will remain unchanged. The Hearing Examiner concludes that the grandfathering provision was not intended to automatically approve an existing parking facility when a new conditional use is proposed to utilize it. As mentioned previously, a new use, especially if it is one with vastly expanded community impacts, cannot expect to utilize an existing parking facility without any adjustments for increased need brought on by the expanded use. Fortunately, that is not the case here, and in fact Staff demonstrates that the existing parking facility is more than compliant with the requirements for the number of parking spaces to accommodate the newly proposed use.

a. Number and Design of Parking Spaces Required by Sections 59.6.2.4 and 5

The required number of spaces, and those that will be provided, are referenced in the Table on page 12 of the Staff report (Exhibit 69). It is reproduced below:

Development Standards	Required	Proposed
Parking Requirements (59.6.2.4) 0.25 spaces per student; 1 space per employee	Students: 19 Employee: 8 Total: 27 Accessible: 2 Bicycle: 2	Total: 37 Accessible: 6 Bicycle: 2

Conclusion: As can be seen from the above Table, Section 59.6.2.4.B. of the Zoning Ordinance requires a total of 27 vehicular parking spaces for the subject site. This is computed by multiplying the maximum number of students present on site (75) by 0.25 per student, which yields a student parking requirement of 19 spaces. Added to that are the 8 spaces required for the 8 employees, yielding a total vehicle parking space requirement of 27 spaces). The Applicant's existing parking lot will provide 37 vehicle spaces and 2 bicycle spaces.

Technical Staff and the Planning Board have also recommended a condition, adopted by the Hearing Examiner, specifying that prior to the issuance of a use-and-occupancy permit, "the Applicant shall improve the existing parking facility as shown on the site plan and as follows: Mark and stripe the surface parking lot to provide for orderly and safe on-site vehicular movement, subject to approval by Montgomery County Department of Permitting Services."

The Hearing Examiner finds that the proposal is sufficiently compliant with the Zoning Ordinance's vehicular parking space requirements to ensure compatibility, in accordance with Zoning Ordinance §59.7.3.1.E.1.b.

The Applicant will also comply with Sections 59.6.2.4.C by providing two bicycle parking spaces on the site.

b. Parking Setbacks, Screening and Landscaping

Conclusion: The parking lot setbacks required for a conditional use in the R-200 Zone are set forth in Zoning Ordinance §59.6.2.5.K.

K. Facilities for Conditional Uses in Residential Detached Zones

Any off-street parking facility for a conditional use that is located in a Residential Detached zone where 3 or more parking spaces are provided must satisfy the following standards:

1. Location

Each parking facility must be located to maintain a residential character and a pedestrian-friendly street.

2. Setbacks

- a. The minimum rear parking setback equals the minimum rear setback required for the detached house.*

- b. The minimum side parking setback equals 2 times the minimum side setback required for the detached house.*
- c. In addition to the required setbacks for each parking facility:*
 - i. the required side and rear parking setbacks must be increased by 5 feet for a parking facility with 150 to 199 parking spaces; and*
 - ii. the required side and rear parking setbacks must be increased by 10 feet for a parking facility with more than 199 parking spaces.*

The Applicant's landscape architect testified that by virtue of setbacks and screening from mature trees and a berm, the existing parking lot will maintain the residential character and a pedestrian-friendly street, satisfying the first prong of Section 59.6.2.5.K. Tr. 59-60, 67-68.

As to parking lot setbacks, Technical Staff states that "The parking lot is set back approximately 100 ft. from the front property line, 24 ft. from the south property line, 28 ft. from the north property line, and 218 ft. from the rear property line." Exhibit 69, p. 10.

Since the minimum rear building setback in the R-200 Zone is 30 feet, the existing rear parking lot setback of 218 feet more than meets that criterion. Since the minimum side building setback in the R-200 Zone is 12 feet, the existing 24-foot and 28-foot side setbacks for the parking lot fully meet the double-setback requirements of Section 59.6.2.5.K.2.b.

Zoning Ordinance Section 59.6.2.9.C. contains extensive and detailed requirements for screening and landscaping parking lots of 10 or more spaces. Although these detailed requirements of the 2014 Zoning Ordinance arguably do not apply because of the previously discussed grandfathering (as concluded by Technical Staff, Exhibit 69, p. 14), the Hearing Examiner must still find that the existing screening and landscaping is sufficient, with the new use, to ensure compatibility with the surrounding neighbors.

The Applicant's landscape architect testified that there was ample screening from the existing berm and mature trees, as well as the large lot size. Tr. 33-46. She also displayed photographic evidence (Exhibits 77 and 77(a)) demonstrating the sufficiency of the screening around the site. Those photos are reproduced on page 12 of this Report and Decision.

Although Technical Staff asserts that it does not have to review landscaping and screening on the site because of the previously discussed grandfathering, it does nevertheless find that (Exhibit 69, p. 19):

. . . Residential uses adjoining the property to the west and south are well-buffered from the Project in distance and by existing landscape. Further, the Project must comply with the County Noise Control Ordinance (Chapter 31B of the County Code), and as such would not create excessive noise. The Project would cause no adverse effect with regard to inherent or non-inherent characteristics, or combination thereof . . .

Conclusion: Based on this evidence, the Hearing Examiner finds that the Applicant's proposal satisfies the conditional use parking lot setback requirements of the Zoning Ordinance for parking lots in residential zones, and that it has sufficient setbacks, land contours and landscaping to adequately screen the neighbors.

In sum, the Hearing Examiner finds, per his authority under Section 59.7.3.1.E.1.b., that the parking arrangement, as provided in this proposal, is sufficient to ensure compatibility with the surrounding neighborhood.

3. Site Lighting, Landscaping and Screening

Standards for site lighting are set forth in Division 6.4 of the Zoning Ordinance, and the standards for landscaping and screening are mainly set forth in Division 6.5.

a. Lighting

Zoning Ordinance §59.6.4.4.E. provides:

E. Conditional Uses

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.

By its own terms (in §59.6.4.2), Division 6.4 does not apply to existing, unmodified lighting:

Division 6.4 applies to landscaping required under this Chapter, the installation of any new outdoor lighting fixture, and the replacement of any existing outdoor

fixture. *Replacement of a fixture means to change the fixture type or to change the mounting height or location of the fixture.* [Emphasis added.]

Technical Staff states (Exhibit 69, p. 14):

Outdoor lighting requirements are not part of this review because outdoor lighting is not being modified. Further, pursuant to section 59-7.7.1 A.1, the outdoor lighting is conforming (grandfathered) and may be continued so long as the floor area, height, or footprint of the structure is not increased. This standard is satisfied.

Conclusion: As discussed in Part II.C.3. of this Report and Decision, no new lighting is planned for this conditional use, and therefore the Hearing Examiner finds that the requirements of Division 6.4, regarding lighting, do not apply. Nevertheless, the Hearing Examiner must determine whether the existing lighting is compatible with the neighborhood, given the newly proposed use. Despite its grandfathering argument, Technical Staff did find that “The Project would cause no adverse effect with regard to . . . illumination. . .” Exhibit 69, p. 19. This finding was buttressed by the testimony of the Applicant’s landscape architect, Joanne Carey-Vert, who stated that the light fixtures were shielded and would not adversely affect the neighborhood. Tr. 65-66.

Based on this record, the Hearing Examiner finds that the site lighting is compatible with the neighborhood.

b. Site Screening and Landscaping

Conclusion: Although some provisions in this portion of the Zoning Ordinance contain very specific screening requirements, once again Technical Staff has stated (Exhibit 69, p. 14):

Landscaping is not part of this review because the landscaping plan is not being modified. Further, pursuant to section 59-7.7.1 A.1, the landscaping is conforming (grandfathered) and may be continued so long as the floor area, height, or footprint of the structure is not increased.

And once again, the Hearing Examiner finds that conclusion to be an inadequate examination of the potential effects of a new conditional use upon the surrounding neighborhood. Under

Section 59.7.3.1.E.1.b., and under the requirements for this particular type of conditional use (Section 59.3.4.5.C.2.), the Hearing Examiner must still find that the proposed use will be compatible with the surrounding neighborhood, and the screening provided by landscaping is a part of that evaluation.

In spite of its legal conclusion, Technical Staff did describe the existing landscaping and screening on the subject site as follows (Exhibit 69, p. 23):

. . . The property has perimeter landscape screening as shown on the Applicant's site plan. The property is 2.97 acres in size, and such outdoor activities are sufficiently buffered in distance from abutting residential properties.

Similarly, on page 19 of the Staff Report, Staff said. “. . . Residential uses adjoining the property to the west and south are well-buffered from the Project in distance and by existing landscape.”

Applicant's expert landscape architect also testified that the existing landscaping and screening was sufficient to maintain compatibility with the neighborhood. Tr. 33-46.

Based on this record, the Hearing Examiner therefore finds that the existing site landscaping and screening are sufficient to ensure compatibility with the surrounding neighborhood and thus will meet the requirements of the Zoning Ordinance.

4. Signage

Conclusion: The use of signage is governed by Zoning Ordinance Division 6.7. Although Zoning Ordinance §59.6.7.8.A.1 sets the standards for signs in Residential Zones, no new sign is proposed for the subject conditional use. Exhibit 69, p. 14. The existing Monument Sign will continue to be used. Therefore, the Hearing Examiner has imposed a condition in Part IV of this Report and Decision which will prohibit the Applicant from posting a new sign on the property, but will allow the continued use of the existing monument sign as long as the Applicant has a permit from the Department of Permitting Services allowing it.

IV. CONCLUSION AND DECISION

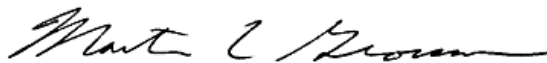
As set forth above, the application meets all the standards for approval in Articles 59-3, 59-4, 59-6 and 59-7 of the Zoning Ordinance. The proposed conditional use complies with the general conditions and the standards for approval of a conditional use for a Private Educational Institution, subject to the recommended conditions of approval. The proposed conditional use is consistent with the objectives and recommendations of the Master Plan, will not alter the residential character of the surrounding neighborhood, and will not result in any unacceptable noise, traffic, or environmental impacts on surrounding properties.

Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of Inspire, LLP (CU 18-09), for a conditional use under Section 59.3.4.5. of the Zoning Ordinance, to operate an Educational Institution (Private) in the existing two-story building at 4343 Sandy Spring Road, Burtonsville, Maryland 20866, is hereby **GRANTED**, subject to the following conditions:

1. The maximum number of staff is limited to a total of eight (8) staff, which includes four (4) administrative staff and four (4) teaching staff. Hours of operation for staff are limited to normal business hours and during educational programs.
2. The permitted hours of operation for educational programming are limited as follows:
 - a. Monday through Friday, 10:00 a.m. to 3:30 p.m., with a maximum of 48 attendees
7:30 p.m. to 11:00 p.m., with a maximum of 48 attendees
 - b. Saturday (regular events), 9:00 a.m. to 10:30 p.m., with a maximum of 48 attendees
 - c. Saturday (special events), 9:00 a.m. to 10:00 p.m., with a maximum of 75 attendees
(Only four Saturday special events are permitted per year.)
 - d. Sunday – No activity permitted.
3. Outside activities are limited to occasional recreation activities such as putt putt golf, relay races, dodgeball, and the like.
4. No amplified music or sound amplifying equipment shall be permitted outside of an enclosed building. Non-amplified musical instruments, radios or other similar devices designed for personal use may be operated in compliance with Montgomery County Noise Control Regulations (Chapter 31B).

5. The existing landscaping shall be maintained as shown on the Applicant's Conditional Use Site Plan (Exhibit 25).
6. No new outdoor lighting nor alterations to existing outdoor lighting are permitted. No new sign may be posted, but the existing monument sign may be used, as long as the Applicant has a permit from the Department of Permitting Services allowing it.
7. The 37 parking spaces shown on the Applicant's Conditional Use Site Plan must be maintained.
8. Prior to the issuance of a use-and-occupancy permit, the Applicant must improve the existing parking facility as shown on the Conditional Use Site Plan by marking and striping the surface parking lot to provide for orderly and safe on-site vehicular movement.
9. Prior to the issuance of a use-and-occupancy permit, the Applicant must obtain satisfactory septic system test results as required by Montgomery County Department of Permitting Service Well and Septic Program, or connect to the existing public sewer system.
10. Prior to the issuance of a use-and-occupancy permit, the Applicant must successfully apply to the Board of Appeals for revocation of the existing Special Exception No. S-338, as abandoned.
11. 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 12th day of October, 2018.



Martin L. Grossman
Hearing Examiner

NOTICE OF RIGHT TO REQUEST ORAL ARGUMENT

Any party of record may file a written request to present an appeal and oral argument before the Board of Appeals, within 10 days after the Office of Zoning and Administrative Hearings issues 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.

Contact information for the Board of Appeals is listed below, and additional procedures are specified in Zoning Ordinance §59.7.3.1.F.1.c.

The Board of Appeals may be contacted at:

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850
(240) 777-6600
<http://www.montgomerycountymd.gov/boa/>

The Board of Appeals will consider your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call 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 work session.

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 or visiting its website: <http://www.montgomerycountymd.gov/boa/>.

Copies To:

Inspire, LLP
Rachel D. Breza, Esquire
Scott M. Breza, Esquire
Andrew Winick, Esquire
Barbara Jay, Executive Director
Montgomery County Board of Appeals
Philip Estes, Planning Department
All parties of record
Ehsan Motazed, Department of Permitting Services
Greg Nichols, Manager, SPES at DPS
Alexandre A. Espinosa, Director, Finance Department
Charles Frederick, Esquire, Associate County Attorney
Gwen Wright, Director, Planning Department