

**2. MONTESSORI HIGH SCHOOL OF KENTUCKY ZONING MAP AMENDMENT & BURLEY TOBACCO GROWERS (MONTESSORI HIGH SCHOOL OF KENTUCKY) ZONING DEVELOPMENT PLAN**

- a. MARV 2012-10: MONTESSORI HIGH SCHOOL OF KENTUCKY (9/1/12)\* – petition for a zone map amendment from a Wholesale & Warehouse Business (B-4) zone to a Professional Office (P-1) zone, for 0.6478 net (0.7185 gross) acre, for property located at 620 South Broadway.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 5) recommends Professional Services (PS) for the subject property, which is within the boundaries of the Newtown Pike Extension Corridor Plan, adopted as an element of the Comprehensive Plan. The petitioner proposes P-1 zoning in order to use the existing structure for offices and a school for academic instruction. The Montessori High School of Kentucky plans to have 25 students in attendance at this location. Dimensional variances are also being requested with this zone change application.

The Zoning Committee Recommended: Approval, for the reasons provided by staff.

The Staff Recommends: Approval, for the following reasons:

1. The requested Professional Office (P-1) zone is in agreement with the 2007 Comprehensive Plan and its recommendation for a Professional Services (PS) land use for the subject property.
2. The proposed mixture of uses for this portion of the South Broadway corridor, adjoining a portion of the Oliver Lewis Way corridor, is supportive of the vision statement from the Newtown Pike Extension Corridor Small Area Plan as adopted by the Planning Commission in 2003, and wholly incorporated into the 2007 Comprehensive Plan.
3. This recommendation is made subject to approval and certification of ZDP 2012-52: Burley Tobacco Growers (Montessori High School of KY), prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

b. REQUESTED VARIANCES

1. Reduce the minimum off-street parking requirements by 50%, from 62 spaces to 31 spaces.
2. Reduce the required vehicular use area screening from 5 feet to 0 feet.

The Zoning Committee Recommended: Approval of both requested variances.

The Staff Recommends: Postponement of the requested landscaping variance, for the following reasons:

- a. The Landscape Review Committee is scheduled to meet on July 10, 2012, and may choose to make a substantive recommendation on the requested landscaping variances at that meeting.
- b. It appears that all of the otherwise required landscaping is not necessary for this proposed change of use, but there is some existing area on the subject property that could be made available for trees or shrubs.

The Staff Recommends: Approval of the requested parking variance, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity as the existing structure was originally built about 90 years ago, in an age of street cars and public transportation - long before off-street parking issues became prevalent, locally. The office and school uses of the subject property will still be supported by ample off-street parking for their visitors and daily occupants, without adversely impacting their neighbors or the neighborhood.
- b. Approval of the variances will not result in an unreasonable circumvention of the Zoning Ordinance. The new high school use would result in a reduced off-street parking requirement compared with the parking necessary to support 2,000 square feet of office use. Since no physical expansion of the building on the subject property is requested, there would be no circumvention of the existing Ordinance.
- c. There are special circumstances that apply uniquely to the subject property. Some 38 spaces immediately adjacent to the subject property are controlled by the appellant, half of which are available for use by the school and office on the subject property, in addition to those on site.
- d. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship to the applicant, and would likely prohibit the location of the proposed high school at this location, which will be partnering with the nearby University of Kentucky College of Education.
- e. The circumstances surrounding this request are not the result of actions taken by the applicant since the adoption of the Zoning Ordinance in 1969. The subject property has not physically changed much since that time, or since its original development in the 1920s. However, our Zoning Ordinance has undergone numerous changes in the past 90 years, including those to the provisions for parking and landscaping.

This recommendation of approval is made subject to the following conditions:

1. Provided the Urban County Council rezones the property P-1; otherwise, any Commission action of approval of this variance is null and void.
2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, or as amended by a future Development Plan approved by the Commission, or as a Minor Amendment permitted under Article

\* - Denotes date by which Commission must either approve or disapprove request.

- 21-7 of the Zoning Ordinance.
3. A note shall be placed on the Zoning Development Plan indicating the variance that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
  4. Prior to any construction, the applicant shall obtain a Zoning Compliance Permit, a building permit and all applicable Federal, State, and Local approvals.
- c. ZDP 2012-52: BURLEY TOBACCO GROWERS (MONTESSORI HIGH SCHOOL OF KY) (9/1/12)\* - located at 620 South Broadway. (Carman and Associates)

The Subdivision Committee Recommended: Postponement. There were questions about access and the variances requested.

Should this plan be approved, the following requirements should be considered:

1. Provided the Urban County Council rezones the property P-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree preservation plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
8. Provided the Planning Commission grants the requested variances and waivers.
9. Delete duplicate note #7.
10. Denote contact information for developer.
11. Clarify floor area devoted to high school use.
12. Discuss need for access improvements and controls.
13. Discuss variances and the need for some interior landscaping and/or tree canopy.
14. Discuss possible turn lane improvements.

Zoning Presentation: Ms. Wade presented the staff report on the zone change, stating that the petitioner is proposing to rezone the subject property from B-4 to P-1. The property is located on the southeast side of South Broadway, approximately 250' from that roadway's intersection with Bolivar Street. There are other properties in the vicinity with the B-4 zoning designation, including parts of the University of Kentucky property; some parcels on the opposite side of South Broadway; and the adjacent parcel that is being used for parking for the subject property. Other zoning categories in the vicinity include two parcels to the southwest, which are zoned P-1; the Tolly-Ho restaurant building to the north, which is zoned B-1; and some residential zoning to the rear of the property, across the area that used to be part of the railroad, which is currently used for the UK art department. The South Broadway corridor has a mixture of commercial uses in this vicinity, which is included in the area of the Newtown Pike Extension Corridor Plan. That Small Area Plan was adopted by the Planning Commission in 2003, and it became an adopted element of the 2007 Comprehensive Plan.

Ms. Wade stated that the petitioner is proposing to rezone the subject property in order to utilize approximately 2,000 square feet of the existing building for a school for academic instruction. The owner and current user of the building is the Burley Tobacco Growers Cooperative Association, which has been in existence at this location since approximately 1920. The building is two stories in height and includes a basement. That portion of the building that is not proposed to be used for the Montessori school will continue to be occupied by the Co-op Association.

Ms. Wade said that the Newtown Pike Extension Corridor Plan recommends Professional Services use for the subject property, as well as the two parcels to the southwest that are already zoned P-1. That Plan creates a vision for the area surrounding the property to become part of the vital core of the city; to exhibit a mixture of uses; and to create a place where residents can live, work, and play in a network of neighborhoods. Ms. Wade stated that, since the petitioner is requesting P-1 zoning and the Comprehensive Plan recommends a Professional Services use, the staff finds that this request is in agreement with the Plan's recommendation. In addition, the staff believes that the proposed rezoning supports the vision of the NPE Corridor Plan by adding a school to the existing mixture of uses in the vicinity. Ms. Wade noted that the petitioner's justification emphasizes the need for the Montessori High School to be located near the UK Department of Education, with which they have a partnership. The school is currently located on Rose Street, but they are experiencing parking and instructional space limitations, which precipitated this rezoning request. Ms. Wade concluded by noting that the Zoning Committee and the staff are recommending approval of this request, for the reasons as listed in the staff report and on the agenda.

Development Plan Presentation: Mr. Taylor presented the corollary zoning development plan, noting that the Commission members had received copies of the revised recommendation for this plan. He stated that the existing structure on the subject property has a footprint of approximately 23,000 square feet; the petitioner is proposing to utilize approximately 2,000 square feet of that area. There are three existing accesses to the subject property and its asso-

\* - Denotes date by which Commission must either approve or disapprove request.

ciated parking, all of which the petitioner is proposing to use for the school, as well as an access through the Tolly-Ho property to Bolivar Street, in order to provide the opportunity for drivers to make left-hand turns onto South Broadway from Bolivar Street.

Mr. Taylor stated that, since the Subdivision Committee meeting, the staff has had further discussions with the Division of Traffic Engineering about condition #12, which refers to the need for access improvements and controls. The petitioner supplied a copy of their circulation plan to the Division of Traffic Engineering. Mr. Taylor displayed the circulation plan on the overhead projector, noting that the preferable access point for the petitioner's primary entrance would be the second access point to South Broadway, the middle access point of the three depicted on the plan. Drivers could then proceed to the drop-off area located near the building, and choose to exit via a right-hand turn onto South Broadway, or access Bolivar Street behind Tolly-Ho. The petitioner's other access option would have drivers use the first access to the property, and drop off students at the rear of the building. Mr. Taylor stated that the petitioner's proposed circulation plan was accepted by the Division of Traffic Engineering, who was comfortable with the circulation pattern, given the limited scope of the proposed school. They did request, however, that a condition be added to the development plan to set a maximum number of 40 students allowed for the school. The petitioner is currently proposing to allow 25 students. Displaying an aerial photograph of the property on the overhead, Mr. Taylor said, with regard to condition #14, that the Newtown Pike Extension Corridor Plan includes proposed turn lanes and other improvements on the opposite side of South Broadway from the subject property. The staff believes it would be acceptable, therefore, for the Commission to delete that condition.

Commission Question: Mr. Penn asked if the Bolivar Street access to the subject property, which is located behind the Tolly-Ho restaurant, is provided via an access easement or an agreement with the owner of that parcel. Mr. Taylor answered that that access is provided via a letter of agreement with the owner of the adjacent lot. Mr. Penn asked if that letter provides access only to the petitioner, or to the Burley Tobacco Co-op as well. Mr. Taylor responded that that agreement is between the Montessori School and the owner of the Tolly-Ho property at this time. Mr. Penn asked if it is appropriate to grant access to a tenant on the subject property, and not to the property owner. Mr. Taylor answered that the school's proposed primary access would be to South Broadway. They were attempting to secure permission to use the Bolivar Street access in order to provide a safer option for drivers who need to make a left-hand turn onto South Broadway, but no access easement was granted. Mr. Penn asked if it would be a safer alternative for that agreement to be made between the owners of the subject property and the Tolly-Ho property. Mr. Taylor answered that the Bolivar Street access might be a safer alternative for any users of the building. Mr. Penn said that he does not believe it makes sense to grant an access easement solely for the use of a tenant who only occupies a small portion of the building on the subject property. Mr. Sallee responded that the access proposed is via a private agreement, not an easement. Mr. Taylor said that, if the development plan included the use of the entire building on the subject property, the conversation about granting access to Bolivar Street would be much the same. Mr. Penn said that, if the Commission is going to grant a zone change for the entire subject property, not just for an area to be used by the proposed school, then the access agreement should be made with the owner of the property, not the tenant.

Ms. Plumlee asked if left turns are currently permitted onto South Broadway. Mr. Taylor answered that left-hand turns are permitted on that roadway.

Mr. Owens asked for clarification of Mr. Taylor's answer to the previous question, noting that he has received a copy of a statement from Mr. Neal requiring that all traffic accessing the Montessori School should be right-in/right-out only from South Broadway. Mr. Taylor responded that there is no signage proposed on the development plan to restrict traffic in that manner. He said that that should be considered as more of an on-site management agreement rather than something denoted on the development plan. Mr. Taylor added that that issue should be part of the Division of Traffic Engineering's sign-off on the plan, so the staff would know that it needs to be included.

Ms. Blanton stated that the petitioner had noted in the Zoning Committee meeting that such signage would be provided.

Variance Presentation: Mr. Sallee presented the staff's report on the requested variances, noting that the staff had distributed a handout that lists findings for all of the requested variances. In addition, the staff prepared a supplemental staff report on the requested landscape variance, which had been placed in the Commission's notebooks. Mr. Sallee stated that, at the Zoning Committee meeting three weeks ago, the staff recommended approval of the requested parking variances, and postponement of the landscaping variance. Since that time, the Landscape Review Committee has met, and the staff's supplemental report reflects the discussion at that meeting.

Mr. Sallee stated that the petitioner is proposing two variances as part of this rezoning request: first, a parking variance seeking to reduce the required off-street parking from 62 spaces to 31; second, to reduce the required vehicular use area screening from 5' to 0'. Article 18 requires that, when a change of use is proposed for a property, a landscape buffer be provided along the perimeter of the property adjacent to the paving of 5' in width. In that buffer, a tree is required every 40 feet, as well as a continuous hedge, planting wall, or earth mound. Mr. Sallee noted that, if that requirement were fully implemented, according to the area of the subject property, the staff estimates that there

would be approximately a 25% tree canopy provided on the site. He said, with regard to the requested parking variance, that the proposed use of the subject property as a school would result in a parking requirement that is approximately four spaces less than the current use, because the parking generator for a school is not as high. The staff would also like to note that the parking immediately to the north east of the subject property, which is not part of the zone change, is available and controlled by the petitioner. They currently lease about half of those 38 spaces to the Tolly-Ho Restaurant, but they retain the use and ownership of the other 19 spaces. Mr. Sallee stated that the subject property is somewhat walkable, as there are existing sidewalks, although the nearby railroad underpass creates a challenge for pedestrians.

Mr. Sallee reported that, at the Zoning Committee meeting, the members requested information about public transportation availability for the subject property. Mr. Sallee displayed a rendered photograph on the overhead projector for the Commission, explaining that it depicts the locations of all existing LexTran bus stops in the area, including one stop near the corner of Bolivar Street and South Broadway, and another directly across the street from the subject property. He noted that the staff and the Zoning Committee recommended approval of the requested parking variances.

Mr. Sallee referred to the supplemental staff report with regard to the requested landscape variance. He said that, at the Landscape Review Committee meeting, the petitioner was very concerned about the timing of the landscaping requirements and the expense that might be involved. The staff believes that there would be some challenges in implementing the required perimeter landscaping buffers. Along one of the property lines, a tall building is located very near the boundary; it would be difficult to keep landscape materials alive under such environmental conditions. The green space along the rear of the property, which is a former railroad spur, is owned by the University of Kentucky and is proposed for future use as a greenway. Therefore, the provision of landscaping in that location is not of critical importance, in the staff's estimation. On the other side property line, any landscape installation would go through the center of the parking lot and would make it extremely difficult for vehicles to move in and out of the site safely, as well as compromise the ability of the landscape materials to survive. Mr. Sallee stated that the staff and the Landscape Review Committee agreed, however, they also were in agreement that the front of the property could be a potential area in which to provide some landscaping. He displayed a photograph of that portion of the property, noting that hedges could be planted in the existing grass area, in addition to two trees in each of the existing islands in the parking area. The timing of the installation and size of the material was also discussed by the Landscape Review Committee, who agreed that it would be appropriate to allow smaller than usual plantings, in order to reduce costs for the petitioner. The Committee members also believed that installation and maintenance of the landscape material could be used as part of the school's curriculum as well. Mr. Sallee noted that, if trees smaller than the usually required caliper are to be planted, they might require more frequent limbing and pruning in order to maintain the required height for vehicle clearance.

Mr. Sallee stated that the staff is recommending approval of the requested landscape variance, for the following reasons:

The Staff Recommends: Approval of the requested landscape variances, for the following reasons:

- a. Granting the requested variance, conditioned upon the planting over time of at least some landscape material on the front of the subject property, will not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity since no physical expansion of the existing building or parking lot is requested.
- b. Approval of the requested landscape variances will not result in an unreasonable circumvention of the Zoning Ordinance, as some plantings would still be required in the front of the property, and the high school would use the care and maintenance of this new landscape material as a tool for teaching students about the care and maintenance needs for this plant material.
- c. The greenway owned by the University of Kentucky to the rear of this site, the tall building located on the southwestern property line, and the existing parking lot on the opposite site of the property are all special circumstances that contribute to the need for the requested landscape variances.
- d. Strict application of the requirements of the Zoning Ordinance would create an unnecessary and undue hardship to the applicant, and would likely result in landscape material that would not likely survive the lack of sunshine from adjacent buildings or the intrusion of vehicles in the parking lot on a daily basis. The installation of a fully-compliant perimeter landscape buffer would not permit a reasonable use of the subject property, as the main drive aisle in the existing parking lot would become bifurcated by the buffer, and would not permit vehicles to safely enter and exit the existing parking spaces.
- e. The fact that the school will locate in the building without any physical exterior changes to the property is indicative that this variance request is not the result of actions of the applicant since the Zoning Ordinance adoption in 1969.

This recommendation of approval is made subject to the following conditions:

1. Provided the Urban County Council rezones the property P-1; otherwise, any Commission action of approval of this variance is null and void.
2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, or as amended by a future Development Plan approved by the Commission, or as a Minor Amendment permitted under

\* - Denotes date by which Commission must either approve or disapprove request.

Article 21-7 of the Zoning Ordinance.

3. A note shall be placed on the Zoning Development Plan indicating the variance that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
4. Prior to any construction, the applicant shall obtain a Zoning Compliance Permit, a building permit and all applicable Federal, State, and Local approvals.
5. Six trees shall be planted on the front ½ of the subject property, with no more than two in each existing landscape island or planting area. Trees may be from any list in the Planting Manual, if recommended for parking lot screening or interior landscaping areas. Trees shall be at least 1" caliper at the time of planting, but limbed to prevent damage to any vehicle under their branches. A minimum of two trees per year shall be planted on the subject property within 36 months of the approval of this zone change.
6. Hedges shall be planted in the existing grass area adjacent to the sidewalk on South Broadway. Hedge plantings may be from any list in the Planting Manual, if recommended for parking lot screening. Hedges shall be a minimum of 12" in height at time of planting, and their planting shall commence in the next 18 months, and be completed within 36 months of the approval of this zone change.
7. Planting and maintenance of these plantings are encouraged to become a part of the school's curriculum within the next three years.

Mr. Sallee stated that conditions 5 – 7 are a direct result of the Landscape Review Committee meeting, concerning the landscaping installations recommended on the front portion of the property.

Commission Questions: Ms. Blanton asked if the proposed hedges would be located directly adjacent to the sidewalk. Mr. Sallee answered that they would be. Ms. Blanton stated that she is concerned that hedges planted in that location might obstruct the view of a driver exiting the property. Mr. Sallee explained that a 12" hedge should not obstruct a driver's view, and he added that Article 18 requires that such plantings be of sufficient height to block vehicle headlights, but not grow tall enough to cause sight triangle issues.

Newtown Pike Ordinance Report: Mr. Emmons stated that the Newtown Pike Ordinance, which was passed by the Urban County Council in 2009, applies to certain properties that are located along the South Broadway and proposed Newtown Pike Extension corridors. There are 13 categories of guidelines in that Ordinance, which cover building exteriors, parking, site design, pedestrian accommodations, etc. Mr. Emmons said that, since the petitioner is proposing no physical changes to the subject property or the existing structure there, the staff reviewed each of the standard recommendations and determined that most of them are not applicable to this request. The petitioner is proposing to install the required bike racks for bicycle accommodations.

With regard to the landscaping requirements, Mr. Emmons noted that the landscaping recommended as part of the variance request for this property would meet the provisions of the Newtown Pike Corridor requirements. He said that the staff is recommending approval of the Newtown Pike Extension Ordinance requirements, with the noted provisions for any future amendments to the development plan.

The Staff Recommends Approval, for the following reasons:

1. The applicant has demonstrated significant compliance with the few applicable NPE Standards for this proposal.
2. The applicant has provided a reasonable justification with their request noting which design standards are not applicable because the applicant is not modifying the existing structure or lot.

This approval recommendation is subject to the following conditions:

- A. Should a revised development plan which would modify the existing structure or lot be submitted, a re-review of these NPE design standards and guidelines will be necessary.
- B. The following notes shall be added to the development plan:
  1. Any amended development plan will require a review of the NPE Design Standards & Guidelines.
  2. Site lighting shall comply with Article 28-6(g) of the Zoning Ordinance, which is the same as required in the Mixed Use zones.
  3. Any new signage installations shall comply with Article 17 of the Zoning Ordinance and the NPE Standards.
  4. Landscape materials installed on the front ½ of the property shall comply with the recommended variance conditions of approval, to ensure compliance with the NPE Standards.
  5. If the location of the dumpster is changed, or an additional dumpster is requested by the Division of Waste Management, then the dumpster(s) will be screened according to the "Dumpster Service Guide."
- C. The location of at least 6 bicycle parking spaces shall be noted near the entrance(s) to the building on the development plan.

Petitioner Presentation: Janet Shedd, an employee of the Montessori High School, stated that the petitioner will comply with all of the staff's recommendations. She requested approval of these requests.

Commission Questions: Mr. Penn asked if the petitioner sees this proposed location for the school as a temporary or long-term solution to their needs. Ms. Shedd answered that the petitioner intends to sign at least a three-year lease for the portion of the subject property to be used for the school. She explained that the subject property is particularly

attractive to the school because of its location in close proximity to the UK Department of Education. Mr. Penn asked if the petitioner has discussed the proposed landscape requirements with the property owner. Ms. Shedd answered that the property owner is not currently aware of that requirement, but the school intends to inform them of it as soon as possible. She added that the school could possibly seek grants to assist with the cost of the landscaping, and that students will be caring for the plantings as part of the school's curriculum.

Ms. Blanton asked, with regard to her earlier question about possible right-turn only access to the property, if the petitioner is proposing to restrict turning movements. Ms. Shedd answered that she does not believe that the school has the authority to post signage to that effect, but they intend to inform parents via their handbook that only right-hand turns into and out of the property will be permitted.

Mr. Owens asked why the school needs to be located close to the University of Kentucky. Ms. Shedd responded that the Montessori High School operates under a working partnership with the College of Education. They use those facilities for Internet and library access, and the Dean of the College of Education serves on the school's Board of Directors. Mr. Owens asked if students will be traveling back and forth from the subject property to the UK campus. Ms. Shedd answered that students and teachers would be walking to the UK campus, and UK staff will be walking to the school facility. Mr. Owens asked how many people are employed by the Montessori High School. Ms. Shedd responded that there are currently 12 employees, but only three of them are full-time. Mr. Owens asked how many employees will be present during the school day. Ms. Shedd answered that approximately four or five employees would be on the campus during the instructional period.

Mr. Penn stated that he is very familiar with the Burley Tobacco Co-op, and asked why they are not involved with this request to rezone their property, and why the petitioner will be responsible for the landscaping, since they do not own the property. He said that the proposed zone change to P-1 would be to the Co-op's advantage, and he cannot understand why they are not more involved. Ms. Shedd answered that, during the rezoning process, the petitioner has worked exclusively with the Co-op's office manager, who recently resigned his position. She added that the president of the Co-op was required to sign the application for the rezoning, and that he supports this proposal. Mr. Penn said that he is concerned that the Planning Commission is being asked to rezone a property for a use that will only occupy 2,000 square feet of the building, when the property owner has not been involved in the process and is not aware of the recommended landscaping requirements.

Ms. Roche-Phillips stated, with regard to Mr. Penn's question, that she believes that the proposed P-1 zoning is more appropriate for the existing and proposed uses of the subject property, and that the property owner will benefit from the rezoning. Mr. Penn said that he believed that the property owner should install the landscaping.

Ms. Mundy stated that she agreed with Mr. Penn, and she was concerned about the possibility of granting a zone change for an entity that is not the property owner. Ms. Wade stated that the Kentucky Revised Statutes do not allow a tenant to rezone a property without the owner's permission. She noted that the petitioner in this case was required to have the owner's permission in order to file the request, and that the only way a rezoning can move forward without the owner's approval is if the Planning Commission or Urban County Council initiates the request. Ms. Wade emphasized that the Burley Tobacco Co-op is fully aware of this request, and knows that the petitioner is requesting the P-1 zone, which is in agreement with the Comprehensive Plan.

Director Comment: Mr. King stated that there are probably as many cases wherein the owner of the property is not the applicant, as there are cases where the owner is the applicant. He confirmed Ms. Wade's assertion that the petitioner in this case had to have the written permission of the property owner in order to proceed with this request.

Discussion: Mr. Penn said that he does not believe it is appropriate to require a tenant to make an improvement to a property about which the owner has not been made aware. He said that he is concerned that the process got to this point without the owner's participation. Mr. King said that, in the end, the property owner will have to give approval for the installation of the required landscaping, or the petitioner will be forced to withdraw their plans for the property. He added that, at this point, the Planning Commission is charged with recommending what the plan should be when the time comes to install the plantings. Mr. Penn asked if the property owner will be required to sign off on the plan. Mr. King answered that the owner will be required to sign the development plan. Mr. Sallee added that the proposed landscaping conditions will also be required to be added to the development plan. In addition, the conditions for the landscaping have been structured such that it can be installed by either the property owner or the tenant.

Mr. Owens asked if it would be possible to include signage restricting turning movements into and out of the subject property to right-hand turns only. Ms. Roche-Phillips commented that the Zoning Committee encouraged the use of the Bolivar Street access point to discourage parents from attempting to make a left turn onto South Broadway. Mr. Neal answered that the Division of Traffic Engineering staff did not believe it would be appropriate to restrict all drivers entering and exiting the subject property to right turns only, given that the petitioner's use will comprise only a small portion of the property. He added that he supports the petitioner's suggestion to add that restriction to their handbook, but he would prefer not to use official signage at this point. Mr. Owens said that if a turn lane for the New-

town Pike Extension is going to be constructed in front of the subject property at some point, it might be appropriate to make improvements to the traffic situation with this development plan. Mr. Neal responded that the school's proposal to restrict traffic to the property via their handbook is similar to the situation in place at many of the local public schools, and should be acceptable as long as they adhere to the submitted circulation plan.

Zoning Action: A motion was made by Mr. Wilson, seconded by Mr. Penn, and carried 8-0 (Beatty, Berkley, and Brewer absent) to approve MARV 2012-10, for the reasons provided by staff.

Variance Action: A motion was made by Mr. Wilson, seconded by Ms. Roche-Phillips, and carried 8-0 (Beatty, Berkley, and Brewer absent) to approve the requested landscape and parking variances, for the reasons provided by staff, subject to the seven conditions as listed in the staff recommendation.

Development Plan Action: A motion was made by Mr. Wilson, seconded by Mr. Penn, and carried 8-0 (Beatty, Berkley, and Brewer absent) to approve ZDP 2012-52, subject to the 12 revised conditions as recommended by staff.

Newtown Pike Ordinance: A motion was made by Mr. Wilson, seconded by Mr. Penn, and carried 8-0 (Beatty, Berkley, and Brewer absent) to accept the staff's recommendation on the Newtown Pike Ordinance requirements, for the reasons provided by staff in their report.