

ORDINANCE NO. 146 -2017

AN ORDINANCE CHANGING THE ZONE FROM AN AGRICULTURAL RURAL (A-R) ZONE TO A NEIGHBORHOOD BUSINESS (B-1) ZONE, FOR 1.16 NET AND GROSS ACRES, AND FROM A NEIGHBORHOOD BUSINESS (B-1) ZONE TO AN AGRICULTURAL RURAL (A-R) ZONE, FOR 1.16 NET (2.71 GROSS) ACRES, FOR PROPERTY LOCATED AT 4974 OLD VERSAILLES ROAD (A PORTION OF). (NEWTON'S ATTIC; COUNCIL DISTRICT 12).

---

WHEREAS, at a Public Hearing held on August 24, 2017 a petition for a zoning ordinance map amendment for property located at 4974 Old Versailles Road (a portion of) from an Agricultural Rural (A-R) zone to a Neighborhood Business (B-1) zone for 1.16 net and gross acres, and from a Neighborhood Business (B-1) zone to an Agricultural Rural (A-R) zone, for 1.16 net (2.71 gross) acres, was presented to the Urban County Planning Commission; said Commission recommending conditional approval of the zone change by a vote of 10-0; and

WHEREAS, this Council agrees with the recommendation of the Planning Commission; and

WHEREAS, the recommendation form of the Planning Commission is attached hereto and incorporated herein by reference.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That the Zoning Ordinance of the Lexington-Fayette Urban County Government be amended to show a change in zone for property located at 4974 Old Versailles Road (a portion of) from an Agricultural Rural (A-R) zone to a Neighborhood Business (B-1) zone for 1.16 net and gross acres, and from a Neighborhood Business (B-1) zone to an Agricultural Rural (A-R) zone, for 1.16 net (2.71 gross) acres, being more fully described in Exhibit "A" which is attached hereto and incorporated herein by reference.

Section 2 - That the granting of this zone change is made subject to the following use restrictions as conditions of granting the zone change:

Under the provisions of Article 6-7 of the Zoning Ordinance, the following land use restrictions for the property B-1 zone shall be imposed on the subject property:

Prohibited Uses

- a. Automobile service stations, and automobile and vehicle refueling stations.
- b. Rental of equipment whose retail sale would otherwise be

- permitted in the B-1 zone.
- c. Banquet facilities.
- d. Self-service car washes.
- e. Extended-stay hotels.
- f. Drive-through facilities.

These restrictions are appropriate and necessary to protect the environmentally sensitive area along South Elkhorn Creek, and to protect the adjacent Ft. Springs rural settlement from incompatible development.

Section 3 - That the Lexington-Fayette Urban County Planning Commission is directed to show the amendment on the official zone map atlas and to make reference to the number of this Ordinance.

Section 4 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: October 12, 2017

MAYOR



ATTEST:

  
CLERK OF URBAN COUNTY COUNCIL

Published: October 19, 2017-1t

1004-17:TWJ:X:\Cases\PLANNING\17-LE0001\LEG\00586246.DOCX

LEGAL DESCRIPTION  
GRAVITY WINS, LLC PROPERTY

Zone Change from A-R to B-1

4974 Old Versailles Road

Lexington, Fayette County, Kentucky

A TRACT OF LAND BEING SITUATED IN THE SOUTHERLY OF AND ADJACENT TO OLD VERSAILLES ROAD IN LEXINGTON, FAYETTE COUNTY, KENTUCKY AND MORE FULLY DESCRIBED AND BOUNDED AS FOLLOWS:

**Zone Change from B-1 to A-R**

Beginning at a point in the centerline of Old Versailles Road, said point being situated approximately 133' from the southwest end of the bridge, thence with the centerline of Old Versailles Road, N 44°29'03" E – 52.47', N 47°01'37" E – 42.58', N 50°32'13" E – 75.77', N 55°43'21" E – 18.91' and N 59°52'38" E – 38.52' to a point, thence leaving the centerline of Old Versailles Road and continuing with the existing R-1D zone line, N 63°45'14" E – 385.32' to the centerline of Versailles Road, thence with the centerline of Versailles Road, N 85°03'39" E – 92.00' to the centerline intersection of Versailles Road and Old Versailles Road, thence leaving the centerline of Versailles Road and continuing with the centerline of Old Versailles Road, S 04°39'23" E – 76.00' to a point on the existing B-1 zone line, thence with the existing B-1 zone line, S 34°10'35" W – 119.16', S 04°05'14" E – 56.94' to a point, N 54°22'16" W – 45.24' and S 47°03'30" W – 44.69' to a point in the northerly property line of subject property, thence traversing through the lands of the subject property, S 51°50'51" W – 303.05' and N 68°08'46" W – 235.58' to a point on the westerly property line of subject property,

thence N 68°08'46" W – 31.75' to the beginning and containing a gross area of 2.71 acres and a net area of 1.16 acres, more or less.

### **Zone Change from A-R to B-1**

Beginning at a point in the southerly property line of the subject property, said point being located S 63°41'06" E – 88.46' from the southeasterly most corner of Mack & Nancy K. Bailey property (Deed Book 1027; Page 299), thence leaving the southerly property line of the subject property and traversing through the lands of the subject property, N 51°50'51" E - 276.89', S 68°02'45" E – 146.05', S 21°57'15" W – 210.00', N 79°50'21" W – 114.79' and S 05°15'54" W – 21.03' to a point on the southerly property line of the subject property, thence with the southerly property line of the subject property, N 63°41'06" W – 178.23' to the beginning and containing a gross area of 1.16 acres and a net area of 1.16 acres, more or less.

  
STATE of KENTUCKY  
JASON D.  
BANKS  
3848  
LICENSED  
PROFESSIONAL  
LAND SURVEYOR  
7-27-17

Rec'd by Bm

Date: 9-2-17

**RECOMMENDATION OF THE**  
**URBAN COUNTY PLANNING COMMISSION**  
**OF LEXINGTON AND FAYETTE COUNTY, KENTUCKY**

IN RE: **PLN-MAR-17-00025: NEWTON'S ATTIC** – a petition for a zone map amendment from an Agricultural Rural (A-R) zone to a Neighborhood Business (B-1) zone, for 1.16 net and gross acres, and from a Neighborhood Business (B-1) zone to an Agricultural Rural (A-R) zone, for 1.16 net (2.71 gross) acres, for property located at 4974 Old Versailles Road (a portion of). A conditional use permit and dimensional variances are also requested. (Council District 12)

Having considered the above matter on **August 24, 2017**, at a Public Hearing, and having voted **10-0** that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend **CONDITIONAL APPROVAL** of this matter for the following reasons:

1. The existing Agricultural Rural (A-R) zone and Neighborhood Business (B-1) zone configuration is inappropriate, and the proposed reconfiguration on the subject property is appropriate, for the following reasons:
  - a. The South Elkhorn Creek flows through the property and creates the northern and eastern edges of the site. The floodplain associated with the creek, as well as the 25-foot setback required by Article 19 of the Zoning Ordinance occupy more than 70% of the property, which significantly restricts the development potential of the site.
  - b. The existing B-1 zoning boundary followed the former right-of-way of Old Versailles Road, and therefore crosses the site at a 45-degree angle. When the roadway was realigned to create a more standard intersection with Versailles Road, the zoning boundaries were not modified, which left the majority of the B-1 zoning within the FEMA floodplain and with little development potential.
  - c. The existing 3.8-acre A-R zoned land is too small for a typical agricultural use, and the A-R zoning is more appropriately located along the environmentally sensitive area of the site. The requested zone swap will create a buffer of less intense zoning to protect a sensitive watershed.
  - d. The subject property is located between the Ft. Springs rural settlement boundary and the Bluegrass Airport/Rural Activity Center boundary, leaving little opportunity for development or further expansion beyond that requested now.
  - e. The proposed B-1 and A-R zoning more closely matches the developable area of the site and will allow the expansion of an existing school for academic instruction.
  - f. The proposed zone swap will result in a reduction of B-1 zoning, albeit in the right-of-way of Versailles and Old Versailles Road, that generally complies with the intent of the Rural Land Management Plan to protect the Rural Service Area from incompatible development patterns.
2. This recommendation is made subject to the approval certification of **PLN-MJDP-17-00082: Newton's Attic Property – Ft. Springs**, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. **Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions for the property B-1 zone shall be imposed on the subject property:**
  - Prohibited Uses**
    - a. Automobile service stations, and automobile and vehicle refueling stations.
    - b. Rental of equipment whose retail sale would otherwise be permitted in the B-1 zone.
    - c. Banquet facilities.
    - d. Self-service car washes.
    - e. Extended-stay hotels.
    - f. Drive-through facilities.

These restrictions are appropriate and necessary to protect the environmentally sensitive area along South Elkhorn Creek, and to protect the adjacent Ft. Springs rural settlement from incompatible development.

ATTEST: This 8<sup>th</sup> day of September, 2017.

  
Secretary, Jim Duncan

WILLIAM WILSON  
CHAIR

Note: The corollary development plan, PLN-MJDP-17-00082: Newton's Attic Property – Ft. Springs was approved by the Planning Commission on August 24, 2017 and certified on September 7, 2017.

Note: A conditional use for a school for academic instruction and dimensional variances were approved to increase the maximum allowable front setback in the Neighborhood Business (B-1) portion of the property; and to eliminate the zone-to-zone screening between the A-R and the B-1 zones internal to the property for this request, by the Planning Commission at this hearing.

K.R.S. 100.211(7) requires that the Council take action on this request by November 22, 2017.

At the Public Hearing before the Urban County Planning Commission, this petitioner was represented by **Darby Tuner, attorney.**

**OBJECTORS**

- None

**OBJECTIONS**

- None

**VOTES WERE AS FOLLOWS:**

AYES: (10) Bell, Berkley, Brewer, Cravens, Forester, Mundy, Owens, Plumlee, Richardson, and Wilson

NAYS: (0)

ABSENT: (1) Penn

ABSTAINED: (0)

DISQUALIFIED: (0)

Motion for **CONDITIONAL APPROVAL** of **PLN-MAR-17-00025** carried.

Enclosures: Application  
Plat  
Staff Report  
Applicable excerpts of minutes of above meeting

## MAP AMENDMENT REQUEST (MAR) APPLICATION

**1. CONTACT INFORMATION (Name, Address, City/State/Zip & Phone No.)**

<b>Applicant:</b> Newton's Attic, 4388 Fort Springs Pinckard Road, Lexington, KY 40513
<b>Owner(s):</b> GRAVITY WINS, LLC, 4388 FORT SPRINGS PINCKARD RD, LEXINGTON, KY 40513
<b>Attorney:</b> Darby Turner, Bingham Greenbaum Doll, LLP, 300 West Vine Street, Suite 1200, Lexington, KY 40507

**2. ADDRESS OF APPLICANT'S PROPERTY**

4974 OLD VERSAILLES RD, LEXINGTON, KY (a portion of)
--

**3. ZONING, USE & ACREAGE OF APPLICANT'S PROPERTY**

Zoning	Existing Use	Zoning	Requested Use	Acreage	
				Net	Gross
B-1	Academic Instruction	A-R	Academic Instruction	1.16	2.71
A-R	Academic Instruction	B-1	Academic Instruction	1.16	1.16

**4. EXISTING CONDITIONS**

a. Are there any existing dwelling units on this property that will be removed if this application is approved?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
b. Have any such dwelling units been present on the subject property in the past 12 months?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
c. Are these units currently occupied by households earning under 40% of the median income? If yes, how many units? If yes, please provide a written statement outlining any efforts to be undertaken to assist those residents in obtaining alternative housing.	<input type="checkbox"/> YES <input type="checkbox"/> NO

**5. URBAN SERVICES STATUS (Indicate whether existing, or how to be provided)**

Roads:	LFUCG
Storm Sewers:	LFUCG
Sanity Sewers:	LFUCG
Refuse Collection:	LFUCG
Utilities:	<input checked="" type="checkbox"/> Electric <input checked="" type="checkbox"/> Gas <input checked="" type="checkbox"/> Water <input checked="" type="checkbox"/> Phone <input checked="" type="checkbox"/> Cable



June 28, 2017

LFUCG Planning Commission  
c/o Mr. William Wilson, Chairperson  
200 East Main Street  
Lexington, Kentucky 40507

Re: Zone Map Amendment Application –  
Portion of 4974 Old Versailles Road from B-1 to A-R  
Portion of 4974 Old Versailles Road from A-R to B-1

Dear Members of the Planning Commission:

We represent Newton's Attic, Inc. for its application for a zone map amendment request for property located at 4974 Old Versailles Road. The subject property is 5.42 acres in one lot, and it is currently split between the B-1 zone (Neighborhood Business) (currently 1.7 acres) and the A-R zone (Agricultural Rural) (currently 3.8 acres). The applicant is seeking the following:

First, a net neutral zone swap for the subject property to re-designate a 1.16 acres portion of the B-1 zone (Neighborhood Business) to A-R zone (Agricultural Rural) and vice versa, so that the subject property has 1.7 acres of B-1 zone (Neighborhood Business) and 3.8 acres of net A-R zone (Agricultural Rural) after the zone swap. This zone swap is fully encompassed within the existing boundaries of the subject property.

Second, a waiver of any perimeter landscaping requirements in Article 18 of the Zoning Ordinance between the new abutment lines of the B-1 zone (Neighborhood Business) and the A-R zone (Agricultural Rural) located within lines on the subject property.

Third, an approval of a conditional use permit in the revised A-R zone (Agricultural Rural) for a school for academic instruction, but with no building(s).

As discussed more fully below, these requests comply with the 2013 Comprehensive Plan.

Since 2012, the applicant has operated Newton's Attic at the subject property to educate students about the fun and exciting activities related to science, technology, engineering and mathematics (STEM). The programs offered at Newton's Attic attract parents, students and teachers from Fayette County and surrounding areas, providing many with their first experience with hands on STEM training. In addition to local middle and high schools, Newton's Attic has collaborated with University of Kentucky, Berea College, Eastern Kentucky University and Western Kentucky University. The subject property currently has limited structures for use with its educational and training programs. It has an existing metal structure (8,000 sq. ft.) for instructions, including shop machines and computers, and an existing storage structure (5,000 sq.

300 West Vine Street, Suite 1200  
Lexington, KY 40507

859.231.8500 main  
859.255.2742 fax

[www.bgdlegal.com](http://www.bgdlegal.com)

ft.) for large equipment. During winter and inclement weather, Newton's Attic's capacity to shelter and protect its students from the elements is significantly limited.

The applicant desires to add more space under roof to shelter its students year round and in bad weather. As part of that expansion, applicant would enlarge or replace the existing equipment structure to provide a 26,000 sq. ft. building for utilization as a school of academic instruction. While a building for a school of academic instruction is a conditional use in the A-R zone (Agricultural Rural), it is limited to a structure of no more than 10,000 sq. ft. The community is better served by swapping portions of the B-1 zone (Neighborhood Business) with the A-R zone (Agricultural Rural) to accomplish the desired expansion. These requests are necessary given the *uniqueness* of the subject property.

The subject property is located within Fort Springs, which is one of the few remaining historic rural settlements in Fayette County. Rural settlements were mostly located in the Rural Service Area, but, historically, they included a mix of uses in addition to small residential lots: *schools*, churches and general stores, groceries, taverns and other businesses serving residents in the rural settlements and the surrounding farms. In 1971, the City-County Planning Commission published the Historic Survey, Rural Settlements in Fayette County in which it was reported that only 15 rural settlements or clusters were left in Fayette County. Since 1971, many of those rural settlements have dwindled as older residents have moved, the Urban Services Area has expanded, the housing stock was not replaced or repaired, and small businesses serving those communities closed.

Fort Springs is generally restricted in its redevelopment, which may have assisted with its continuance as a rural settlement. It is a mixed use, most likely as a part of the 1968 Comprehensive Plan, which includes 12-14 acres of R-1D zone (Single Family Residential), 14 acres of A-R zone (Agricultural Rural) and 6 acres B-1 zone (Neighborhood Business). But, the unique geography of Fort Springs has restricted any major redevelopment. The northern boundary has a steep incline to Versailles Road, and the South Elkhorn Creek (and the adjacent 100 year flood plain) forms the southern boundary of most of Fort Springs. That watershed makes further development of Fort Springs (and especially the subject property) very difficult in that there is little useable land in the B-1 zone (Neighborhood Business). But, the A-R zone (Agricultural Rural) area is too small to farm. Further, Fort Springs also is mostly landlocked by the Blue Grass Airport.

The ability to properly utilize the subject property is even more restricted than the remainder of Fort Springs. The subject property is only 5.42 acres (3.8 acres in the A-R zone (Agricultural Rural) and 1.7 acres in the B-1 zone (Neighborhood Business)). Only 1 acre of the subject property's B-1 zone (Neighborhood Business) is located outside of the 100 year floodplain. The 3.8 acres of the subject property that is located in the A-R zone (Agricultural Rural) is too small for most agricultural operations. The applicant seeks to expand the useable

land of the subject property through the zone swap to have 1.16 net (1.16 gross) acres of the existing A-R zoned (Agricultural Rural) land added to the B-1 zone (Neighborhood Business) and to have 1.16 net acres (1.29 gross) of the existing B-1 zoned (Neighborhood Business) land added to the A-R zone (Agricultural Rural). All with the result of no net change to the amount of B-1 zoned (Neighborhood Business) land and A-R zoned (Agricultural Rural) land as currently exists.

The subject property may be the only property in Fayette County in which this zone swap is advisable because of its uniqueness. As discussed above, the subject property is located in a rural settlement and has historically been used as a rural commercial property. There are very few split zoned parcels between an A-R zone (Agricultural Rural) and a B-1 zone (Neighborhood Business) in Fayette County. The subject property is further benefitted in that there is an equal amount of useable and unusable land in which to swap, leaving the overall zone split as neutral. The subject property is likely the only parcel in Fayette County that falls within those unique parameters.

The zone swap would preserve, protect and enhance an existing use in a rural settlement (Themes D and E of the Comprehensive Plan) and would expand a historic use, specifically a school, in a rural settlement. Rural settlements were scattered throughout the Rural Service Area, serving residential, educational and commercial needs for the area. For decades, Fort Springs had a church, tavern and post office, all of which were a hub of social activity for the area. More recently, the subject property was utilized as a tractor dealership and plant nursery. Currently, the businesses located within Fort Springs include a carpet store and U-Haul dealer (4976 and 4982 Old Versailles Road), a farrier supplier (4981 Old Versailles Road), an antiques store (4934 Old Versailles Road), and a school for academic instruction (the subject property), all of which are located on the eastern end of Fort Springs. Most of the residential lots are located on the western end of Fort Springs. There are no active agricultural operations in the immediate vicinity of the eastern end of Fort Springs. The applicant has become a major new reason for people to visit Fort Springs. As a school for academic instruction, the applicant's use of the subject property is similar to the historic uses in the rural settlements. The applicant's expansion will increase the vitality of Fort Springs and longevity thereof without affecting the rural landscape. The applicant's enlarged facility would preserve an educational use in Fort Springs.

The application complies with Theme C of the Comprehensive Plan by showcasing a local asset that could lead to STEM jobs and will retain a talented workforce. The zone swap will also allow the expansion of STEM educational and training resources on underutilized land. The applicant is known in the community for its STEM educational and training resources. Currently, the applicant has limited capacity to educate more students. The applicant only uses 1.7 acres for its regular operations, and its existing instructional structure is limited to 8,000 sq. ft. That structure houses the students and most of the shop machines and computers. The

BINGHAM GREENEBAUM DOLL LLP

LFUCG Planning Commission

Page 4

June 28, 2017

applicant cannot expand its instructional courses without a larger building to protect students from the weather and add more shop machines and computers. This expansion would keep the applicant from needing to move its facility to another location. .

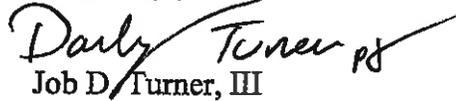
By moving a portion of the subject property into the A-R zone (Agricultural Rural), it would benefit the implementation of the Consent Decree (Theme B of the Comprehensive Plan). Portions of the subject property are located in a sensitive watershed. South Elkhorn Creek forms the southern boundary of Fort Springs, and the 100 year flood plain thereof greatly reduces the net usable land of Fort Springs for redevelopment. The zone swap will re-designate all of that sensitive area as A-R zone (Agricultural Rural), naturalizing that stream corridor by allowing only less intensive uses and creating a buffer area. This benefit is accomplished while not expanding the area for the more intensive use on the remainder of the subject property.

The zone swap is totally within the boundaries of the subject property. Requiring the perimeter landscaping between the new abutment lines of the B-1 zone (Neighborhood Business) to A-R zone (Agricultural Rural) located within lines on the subject property is clearly not necessary or appropriate.

Lastly, applicant seeks a conditional use permit to allow academic instruction in the A-R zone (Agricultural Rural). Applicant intends to use the acreage in the zone for outdoor hand-on learning courses. As discussed above, applicant desires to have all the structures for a school for academic instruction located in the B-1 zone (Neighborhood Business). This request complies with the 2013 Comprehension Plan for the same reasons as stated above and does not change the current use of the property.

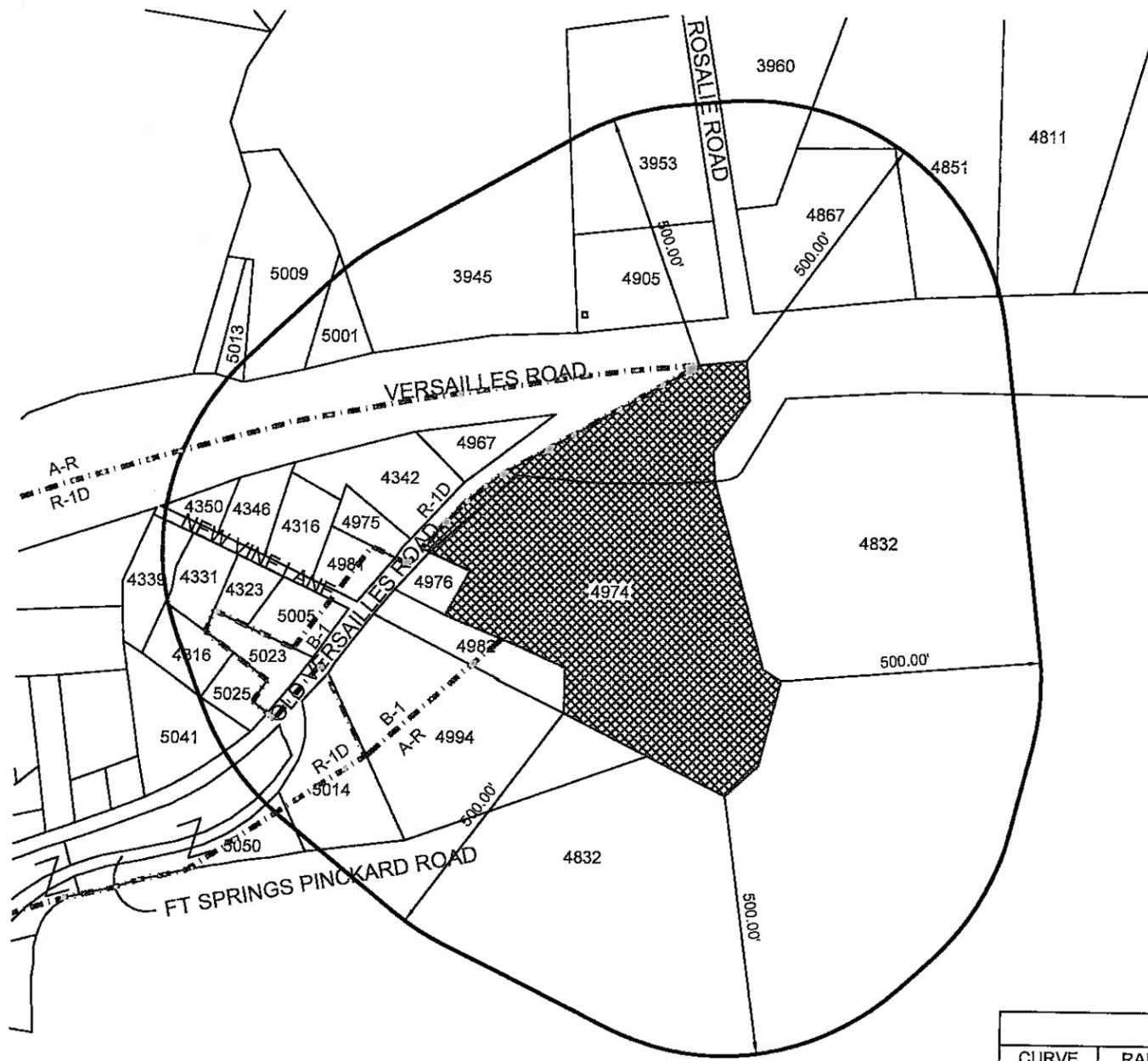
This application is consistent with all of the Themes, Goals and Objectives of the 2013 Comprehensive Plan, and we appreciate your favorable consideration of thereof.

Very truly yours,

  
Job D. Turner, III

cc: Newton's Attic, Inc.  
P. Branden Gross, Esq.

JDT/mlw

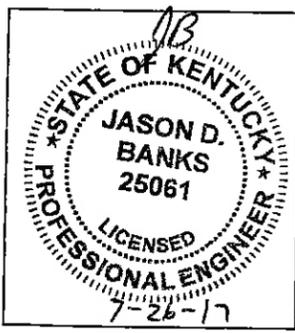
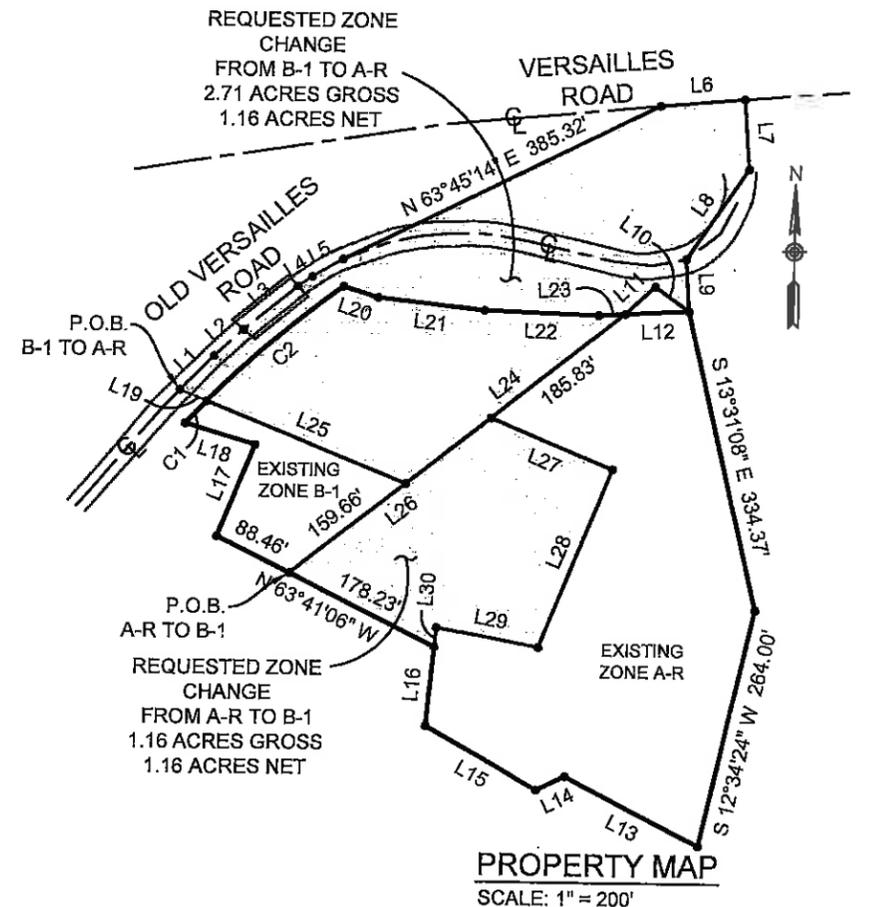
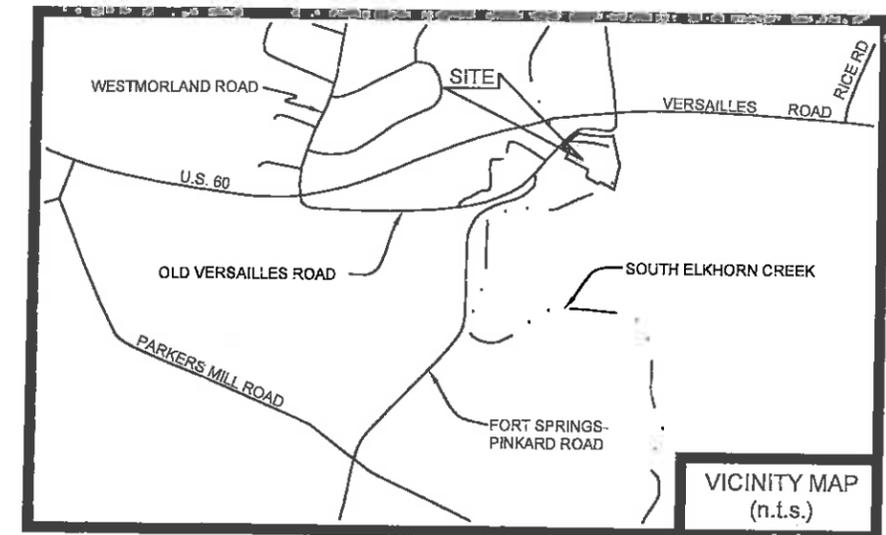


**NOTIFICATION MAP**  
SCALE: 1" = 300'



LINE TABLE		
LINE	BEARING	DISTANCE
L1	N 44°29'03" E	52.47'
L2	N 47°01'37" E	42.58'
L3	N 50°32'13" E	75.77'
L4	N 55°43'21" E	18.91'
L5	N 59°52'38" E	38.52'
L6	N 85°03'39" E	92.00'
L7	S 04°39'23" E	76.00'
L8	S 34°10'35" W	119.16'
L9	S 04°05'14" E	56.94'
L10	N 54°22'16" W	45.24'
L11	S 47°03'30" W	44.69'
L12	N 86°37'55" E	69.61'
L13	N 63°14'17" W	165.25'
L14	S 64°23'58" W	35.30'
L15	N 60°46'06" W	140.74'
L16	N 05°15'54" E	86.30'
L17	N 21°37'16" E	107.68'
L18	N 73°25'19" W	79.70'
L19	N 68°08'46" W	31.75'
L20	S 73°00'35" E	39.14'
L21	S 83°35'35" E	117.30'
L22	S 88°06'34" E	126.80'
L23	N 86°37'55" E	29.09'
L24	S 51°50'51" W	303.05'
L25	N 68°08'46" W	235.58'
L26	N 51°50'51" E	276.89'
L27	S 68°02'45" E	146.05'
L28	S 21°57'15" W	210.00'
L29	N 79°50'21" W	114.79'
L30	S 05°15'54" W	21.03'

CURVE TABLE				
CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING
C1	1094.46'	33.37'	33.37'	N 43°21'22" E
C2	1094.46'	194.34'	194.09'	N 49°18'59" E



TITLE: GRAVITY WINS, LLC PROPERTY	From	To	Net	Gross
Property Address: 4974 OLD VERSAILLES ROAD	A-R	B-1	1.16	1.16
Applicant Name/Address: NEWTON'S ATTIC 4972 Old Versailles Road, Lexington, Kentucky 40504	B-1	A-R	1.16	2.71
Owner: GRAVITY WINS, LLC 4388 Fort Springs Pinckard Road, Lexington, Kentucky 40510				
Prepared by: BANKS ENGINEERING INC.				
Date Filed or Amended: July 24, 2017				
	TOTAL		2.32	3.87

**STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT**

**PLN-MAR-17-00025: NEWTON'S ATTIC**

**DESCRIPTION**

<b>Zone Change:</b>	<b><u>REQUEST</u></b>		<b><u>ACREAGE</u></b>	
	<b><u>FROM</u></b>	<b><u>TO</u></b>	<b><u>NET</u></b>	<b><u>GROSS</u></b>
	B-1	A-R	1.16	2.71
	A-R	B-1	1.16	1.16
		<b>TOTAL</b>	2.32	3.87

**Location:** 4974 Old Versailles Road

**EXISTING ZONING & LAND USE**

<u>Properties</u>	<u>Zoning</u>	<u>Existing Land Use</u>
Subject Property	B-1 & A-R	School for Academic Instruction
To North	A-R & R-1D	Single-Family Residence and Agricultural
To East	A-R	Airport Rural Activity Center (RAC)
To South	A-R & B-1	Agricultural & Retail Sales Establishment
To West	A-R & R-1D	Single-Family Residential

**URBAN SERVICES REPORT**

Roads – Versailles Road (US 60) is a four-lane roadway with dedicated turn lanes, and the major corridor that connects Lexington-Fayette County to Versailles and other communities to the west. It also intersects Old Versailles Road immediately north of the subject property. It is the primary roadway that serves the Ft. Springs rural settlement near the Fayette/Woodford County boundary. No roadway improvements to Old Versailles Road are planned in association with the requested development at this location. There are no internal local streets or access easements planned within the subject property and access to the site will not be modified.

Curb/Gutter/Sidewalks – Old Versailles Road has been constructed without gutter, curbing or sidewalks because these facilities are often associated with urban rather than rural roadways.

Storm Sewers – The Ft. Springs rural settlement is located within the South Elkhorn watershed. The South Elkhorn Creek runs through the subject property along the north and east property lines. A FEMA Special Flood Hazard Area has been designated associated with the creek, which covers approximately 60% of the subject property, leaving about 2.3 acres of developable land.

Sanitary Sewers – The Ft. Springs rural settlement is not connected to any sanitary sewer system, thus the subject property utilizes a septic system. No known problems exist with this current situation and there are no plans to extend sanitary sewers to the area, which is primarily rural, and miles from the Urban Service Area.

Refuse – The Urban County Government does not provide refuse collection service to the Rural Service Area; therefore, the school relies upon private refuse collection.

Police – The nearest police station is the West Sector Roll Call Center, located about 5½ miles to the east of the subject property, near New Circle Road on Old Frankfort Pike.

Fire/Ambulance – Fire station #14 serves the Ft. Springs area. This station is located about 4½ miles to the east of the subject property, near the intersection of Alexandria Drive and Roanoke Road.

Utilities – Electric, gas, cable television, water, and phone service all exist in the area, or can be extended if necessary.

## **COMPREHENSIVE PLAN AND PROPOSED USE**

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment; promoting successful, accessible neighborhoods; and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World. The 2013 Comprehensive Plan also recommends developing incentives to retain, restore, preserve and continue the use of historic sites and structures, rural settlements and commercial structures (Theme D, Goal #3c.); and supporting the agricultural economy, horse farms, general agricultural, and the character of the Rural Service Area (Theme E, Goal #2).

The Rural Land Management Plan, adopted by the Planning Commission in 1999, identified the rural settlements for planning purposes and recommended a comprehensive study of the 15 settlements, including Ft. Springs, located outside of the Urban Service Area. The *2007 Study of Rural Settlements* made specific recommendations for the settlements throughout Fayette County.

The petitioner proposes to expand an existing school for academic instruction, known as Newton's Attic, on a split-zoned parcel in the Rural Service Area of Fayette County. This expansion requires a zone change due to the limitations on non-agricultural conditional uses in the A-R zone. A conditional use and dimensional variances are also requested in association with this zone change application.

## **CASE REVIEW**

The petitioner has requested a zone change swap from a Neighborhood Business (B-1) zone to an Agricultural-Rural (A-R) zone for 1.16 net (2.71 gross) acres of land, and from an Agricultural Rural (A-R) zone to a Neighborhood Business (B-1) zone for 1.16 net and gross acres of land, located at the intersection of Old Versailles Road and Versailles Road (US 60).

The subject property, which is located on the south side of Old Versailles Road, is a 5.42-acre tract that is split-zoned between the B-1 and A-R zones. The B-1 zoning is located along the property's frontage, with the A-R zoning to the rear of the lot, between the roadway and the South Elkhorn Creek. The creek forms the northern and eastern boundaries of the subject property; its associated FEMA floodplain and 25' setback severely limit the development potential of the site.

Agricultural land borders the subject property to the north and east, and the Ft. Springs rural settlement borders the site to the south and west. Ft. Springs is a small settlement that began in the 1820s by three emancipated slaves. It is characterized by a mixture of single-family residences (R-1D zone), a church and cemetery, and several neighborhood businesses (B-1 zone), including Bailey's Carpet Barn and Newton's Attic, both of which are visible from Versailles Road. Historically, Ft. Springs had a population of 150 people, had a post-office, a tavern (built on top of a spring and used as a fort during the Civil War), and a school in addition to the residences and church that still exist. This rural settlement is one of many studied about a decade ago to inform the 2007 Comprehensive Plan.

The property currently contains a principal structure used for a school for academic instruction (located in the B-1 zone), and several accessory structures (located in the A-R zone). The school, Newton's Attic, is not a traditional school, but rather one that focuses on providing additional educational opportunities outside of the typical classroom setting, often in an after-school and/or camp setting. Their curriculum focuses on science, technology, engineering and mathematics (STEM) activities that are fun for children.

The petitioner proposes a zone swap in order to expand the existing school for academic instruction with a 26,000 square foot building (replacing an existing structure on the lot). The petitioner first requested a conditional use in the A-R zone earlier this year from the Board of Adjustment, but once informed by the staff that the Zoning Ordinance limited a school building to only 10,000 square feet in the A-R zone, the petitioner began reviewing other options, ultimately settling on the zone swap concept. The site currently

has 1.7 acres of B-1 zoning and 3.8 acres of A-R zoning, which might be more than enough land for the operation of the school, except the land within the B-1 zone is significantly encumbered by the 100-year floodplain and its 25' setback associated with South Elkhorn Creek. This portion of the property is designated as an environmentally sensitive area, but other parts of the site are beyond the floodplain and setback, but are restricted due to the A-R zoning category.

The location of the site is important to the evaluation of this zone change request. At first blush, the subject property appears to part of the Ft. Springs rural settlement on the south side of Versailles Road in just west of the Airport Rural Activity Center, and between 2001 and 2007 it was included in the boundaries of the settlement. The 1999 Rural Land Management Plan first identified the historic rural settlements as a specific land use category (RS), and recommended more detailed study of the 15 settlements since one had not been accomplished since 1971. The 2001 Comprehensive Plan included an implementation task for completing the study before the next Comprehensive Plan.

By 2007, the three phase study was complete, and its recommendations were incorporated into the 2007 Comprehensive Plan. At that time, the boundaries of nine rural settlements were adjusted, including that of Ft. Springs. The Plan removed the subject property in its entirety as well as several parcels on the north side of Versailles Road. Therefore, although located next to the rural settlement of Ft. Springs, it is no longer a part of the settlement for planning purposes, and should be considered as any other split-zoned parcel located in the Rural Service Area.

The 2013 Comprehensive Plan no longer contains a detailed land use element and map, but the Goals and Objectives of the Plan are utilized to help assess whether a proposed zone change can be found to be in agreement with the Plan, and other studies and plans should also be considered by the Planning Commission. Theme E, Goal #3 encourages the support of our agricultural economy and the character of the Rural Service Area, and Theme D, Goal #3c. recommends developing incentives to retain, restore, preserve and continue the use of rural settlements and commercial structures. Generally, the Comprehensive Plan is written to guide and encourage development inside the Urban Service Area, and less attention is placed on the Rural Service Area. The planning policy of directing urban uses to the Urban Service Area, and maintaining or reducing urban-type uses in the rural area remains and is interwoven throughout the 2013 Comprehensive Plan and the 1999 Rural Land Management Plan.

The 1999 Rural Land Management Plan (RLMP) also identified 23 non-agricultural or non-residential pockets of urban zoning that "have the potential for being developed in a manner incompatible with a program of rural preservation." The RLMP recommended that most of the sites, including the 6 acres of business zoning in Ft. Springs that included the 1.3 acres on the subject site, be downzoned (in this case to an R-1D zone) (page IV-45). Since a business use has remained at this locations for many decades, and wishes to continue/expand, it is unlikely that the site will be redeveloped for single-family residences as suggested by the RLMP.

Although, the goals and objectives listed previously focus on planning policy in the rural area, they are not enough for the staff to find that the requested rezoning is furthering the vision, goals, objectives or policy statements of the 2013 Comprehensive Plan. Also, the petition is not following the recommendation of the RLMP for residential use at this location.

Given that the request cannot be found to be in agreement with the Plans, the staff has considered whether there has been a major unanticipated change of an economic, physical, or social nature since the adoption of the 2013 Plan, or whether the existing zoning is inappropriate and the proposed zoning is appropriate. In this instance, there have been no major unanticipated changes in this immediate area since the adoption of the current Comprehensive Plan. Therefore, the appropriateness of the existing and proposed zones must be reviewed.

The petitioner opines that the existing zoning configuration is inappropriate and the proposed zoning configuration is appropriate for this site located just outside the rural settlement. The subject property is generally constrained in its development due to several factors, which make the property and this request a unique situation. First, the South Elkhorn Creek flows through the property and creates the northern and eastern edges of the site. The floodplain associated with the creek, as well as the 25-foot setback required by Article 19 of the Zoning Ordinance occupy more than 70% of the property, which significantly restricts the development potential of the site. Second, the existing B-1 zoning boundary followed the former right-of-way of Old Versailles Road, and therefore crosses the site at a 45-degree angle. When the roadway was realigned to create a more standard intersection with Versailles Road, the zoning boundaries were not modified, which left the majority of the B-1 zoning within the FEMA floodplain and with little development potential. Third, the 3.8-acre A-R zoned land is too small for a typical farm, and is more appropriately located along the environmentally sensitive area of the site. The petitioner contends that this zone swap will create a buffer of less intense zoning to protect a sensitive watershed. Fourth, the subject property is between the Ft. Springs rural settlement boundary and the Bluegrass Airport/Rural Activity Center boundary, leaving little opportunity for development or further expansion beyond that requested now. Lastly, the proposed rezoning will result in a reduction of B-1 zoning, albeit in the right-of-way of Versailles and Old Versailles Road, that generally complies with the intent of the Rural Land Management Plan. Based upon these facts, the staff agrees and supports the proposed rezoning.

The Staff Recommends: **Approval**, for the following reason:

1. The existing Agricultural Rural (A-R) zone and Neighborhood Business (B-1) zone configuration is inappropriate, and the proposed reconfiguration on the subject property is appropriate, for the following reasons:
  - a. The South Elkhorn Creek flows through the property and creates the northern and eastern edges of the site. The floodplain associated with the creek, as well as the 25-foot setback required by Article 19 of the Zoning Ordinance occupy more than 70% of the property, which significantly restricts the development potential of the site.
  - b. The existing B-1 zoning boundary followed the former right-of-way of Old Versailles Road, and therefore crosses the site at a 45-degree angle. When the roadway was realigned to create a more standard intersection with Versailles Road, the zoning boundaries were not modified, which left the majority of the B-1 zoning within the FEMA floodplain and with little development potential.
  - c. The existing 3.8-acre A-R zoned land is too small for a typical agricultural use, and the A-R zoning is more appropriately located along the environmentally sensitive area of the site. The requested zone swap will create a buffer of less intense zoning to protect a sensitive watershed.
  - d. The subject property is located between the Ft. Springs rural settlement boundary and the Bluegrass Airport/Rural Activity Center boundary, leaving little opportunity for development or further expansion beyond that requested now.
  - e. The proposed B-1 and A-R zoning more closely matches the developable area of the site and will allow the expansion of an existing school for academic instruction.
  - f. The proposed zone swap will result in a reduction of B-1 zoning, albeit in the right-of-way of Versailles and Old Versailles Road, that generally complies with the intent of the Rural Land Management Plan to protect the Rural Service Area from incompatible development patterns.
2. This recommendation is made subject to the approval and certification of PLN-MJDP-17-00082: Newton's Attic Property – Ft. Springs, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions for the property B-1 zone shall be imposed on the subject property:  
Prohibited Uses
  - a. Automobile service stations, and automobile and vehicle refueling stations.
  - b. Rental of equipment whose retail sale would otherwise be permitted in the B-1 zone.
  - c. Banquet facilities.
  - d. Self-service car washes.

- e. Extended-stay hotels.
- f. Drive-through facilities.

These restrictions are appropriate and necessary to protect the environmentally sensitive area along South Elkhorn Creek, and to protect the adjacent Ft. Springs rural settlement from incompatible development.

TLW/dw  
8/3/2017  
Planning Services/Staff Reports/MAR/2017/PLN-MAR-17-00025.doc

**STAFF REPORT FOR CONDITIONAL USE & VARIANCES REQUESTED FROM  
PLANNING COMMISSION**

**PLN-MAR-17-00025: NEWTON'S ATTIC, LLC**

**REQUESTED CONDITIONAL USE**

1. A school for academic instruction (with no building) in the Agricultural Rural (A-R) zone.

**REQUESTED VARIANCES**

1. To increase the maximum allowable front setback from 20 feet to 331 feet in the Neighborhood Business (B-1) portion of the property.
2. To eliminate the required zone-to-zone screening between the A-R and the B-1 zones internal to the property.

**ZONING ORDINANCE**

Article 6-4(c) states: "The Planning Commission may hear and act upon requested conditional uses and variances associated with a zone change. If the Planning Commission should choose to hear a conditional use or variance request, the Planning Commission shall have all of the powers and responsibilities of the Board of Adjustment, as defined in Articles 7-6(a) and 7-6(b) of the Zoning Ordinance. All conditional use and variance applications shall be acted upon by the Planning Commission within ninety (90) days of the application, unless postponed further by the applicant."

Article 8-1(d)20 lists schools for academic instruction as a conditional use in the A-R zone, provided that all buildings used for such use contain no more than a total of 10,000 square feet.

Article 8-16(b)4 allows a school for academic instruction as a principal permitted use in the B-1 zone.

Article 8-16(h) requires a minimum front setback of ten (10) feet and a maximum of twenty (20) feet in the B-1 zone.

Article 18-3(a)(1)8 requires that, when any business, office or industrial zone adjoins any portion of the Agricultural Rural (A-R) zone, a 15-foot buffer between zones is required. This buffer shall consist of one tree per 40 feet of linear boundary (or fraction thereof), plus a continuous 6-foot high planting or hedge. In the alternative, one evergreen tree per 15 feet of linear boundary (or fraction thereof), planted 15 feet on center; or one tree per 20 linear feet of boundary (or fraction thereof), consisting of 50% of deciduous trees from Group A of the Planting Manual, plus 50% evergreen or small flowering trees.

**CASE REVIEW**

The subject property is the site of what is known as Newton's Attic, which is a school for academic instruction with a science and technology-oriented curriculum. The applicant (Newton's Attic, LLC) is requesting a conditional use permit in conjunction with a "net neutral zone swap" of 1.16 acres. The entire property contains 5.42 acres and is a single lot that is split-zoned A-R (Agricultural Rural) and B-1 (Neighborhood Business). The applicant is proposing that 1.16 acres of the B-1 portion of the property be re-zoned to A-R, and 1.16 acres of the A-R portion of the property be re-zoned to B-1. There is an existing building in what is now the B-1 portion of the property that will remain (as a principal permitted use in the B-1 zone) and will continue to be used as part of the school. There is a second building in what is now the A-R portion of the property (future B-1 zone), which will be removed and replaced with a new 26,000 square-foot structure. The 1.16-acre portion of the property that will be re-zoned to A-R will have no building but will be used as outdoor classroom space and for other school activities.

Approximately three months ago, the applicant submitted an application to the Board of Adjustment for a conditional use permit to expand the school by constructing the proposed 26,000 square-foot building. Unfortunately, what was (and is currently) proposed greatly exceeds the 10,000 square-foot maximum for non-agricultural buildings in the A-R zone, particularly with the existence of the other building in the A-R portion of

the property (also used for the school). The application was subsequently recommended for postponement to allow the applicant an opportunity to pursue other options. It was eventually withdrawn, and the applicant has determined that the proposed zone change/land swap is the most appropriate means to their desired end. In conjunction with this zone change application, a conditional use is requested to allow the A-R portion of the property to continue to be used as part of the school. Additionally, two variances have been requested to further facilitate their proposal.

Newton's Attic has been in existence since 2012 and utilizes the entire 5+ acre property. It serves middle and high school students in Central Kentucky and has collaborated with UK, Berea College, Eastern Kentucky University and Western Kentucky University. There are two buildings on the property, one of which (a metal building) is used for instruction (and contains shop machines and computers) and one of which is used for storage of large equipment. There is currently little available room to shelter students from inclement weather, and to allow year-round use of the property. The applicant is therefore proposing to construct the new, enlarged building, which will allow that and an expansion of the use, and will allow them to better serve existing as well as future students.

The property is extremely limited in its capability for development or expansion of structures, as there is a large area of 100-year FEMA floodplain associated with the South Elkhorn Creek, which flows both through and around the property. The existing building near the front of the property is in the B-1 portion of the lot that will remain B-1, and is located approximately 90 feet from the right-of-way of Old Versailles Road. This makes the building non-conforming and has precipitated the one variance request, because generally the B-1 zone has a minimum and maximum setback requirement of 10 and 20 feet, respectively. However, it is actually the large building that is proposed that should be the subject of the variance. This building will be approximately 331 feet from the right-of-way of Old Versailles Road; and if a variance is approved for that distance, it will resolve the non-conforming situation of the existing building. That building is proposed in the only logical (and allowable) space on the property due to the presence and configuration of the floodplain; and because of the floodplain on the property, it is impossible to meet the current B-1 setback requirement, and serves to justify this variance request.

The second variance is one that has been approved by the Board of Adjustment on numerous occasions. The subject property is split-zoned and has been for years. In cases where a commercial zone adjoins an agricultural zone, Article 18 of the Zoning Ordinance requires zone-to-zone screening, consisting of a 15-foot buffer area with multiple plantings. Generally, this occurs along property lines and is relatively easy to implement. In cases such as this, where the zone line is interior to the property, it is impractical (and sometimes impossible) to comply with that requirement due to the severe disruption to development that would likely occur. Requiring compliance with Article 18 in this case would serve no logical purpose and would further restrict the already reduced developable area of the property.

Granting approval of the conditional use in what will be the A-R portion of the property, once re-zoned, will allow the school to continue operation as it has since 2012. There is currently no plan to construct any buildings in that part of the property. In the future, if determined that there is a need to locate any buildings in the A-R portion of the property, it may only be up to a total of 10,000 square feet and will require Board of Adjustment approval for another conditional use permit.

With regard to the requested variances, both are justifiable, will improve the overall development of the property, and have staff support. As required by Article 18 of the Zoning Ordinance, the Landscape Review Committee reviewed the variance pertaining to the elimination of the required zone-to-zone screening at their regularly scheduled meeting on August 15. They were in agreement with the staff's assessment and saw the variance as logical and necessary in order to further develop the property for its continued use as a school. After a brief discussion, with questions answered by the applicant's representative, they recommended approval of the variance request.

**The Staff Recommends: Approval of the requested conditional use, for the following reasons:**

- a. Granting the requested conditional use should not adversely affect the subject or surrounding properties. The school has been in existence on this property since 2012 and will continue operation on the property as it always has. No new buildings are proposed for the A-R portion of the property. Should any buildings

be proposed in the future for the A-R portion of the property, size will be limited to a total of 10,000 square feet and will require Board of Adjustment approval of a conditional use.

- b. Necessary public services and facilities, such as fire and police protection, are available and adequate to the subject property. Sewage treatment is privately provided by septic system, and must be inspected by the Fayette County Board of Health for adequacy prior to either the expansion of the existing building or the construction of the new building.

**The Staff Recommends: Approval of the variance to increase the maximum allowable setback in the B-1 zone from 20 feet to 331 feet,** for the following reasons:

- a. Granting the requested variance will not adversely affect the public health, safety or welfare, nor will it alter the character of the general vicinity. The proposed building will be in the same location as the existing building, which is already at a much greater setback than the current requirement.
- b. The special circumstances that serve to justify the variance are the current location of the existing buildings, one of which is at least 90 feet from the right-of-way (and non-conforming) and the other at a much greater setback; and the presence of 100-year FEMA floodplain on much of the property, which prohibits locating the proposed building anywhere within 10 to 20 feet of the right-of-way.
- c. Strict application of the Zoning Ordinance would nearly preclude construction of the proposed building. The property is already severely constricted with regard to development capability, which would be even more true if made to comply with the 10 to 20-foot setback requirement.

**The Staff Recommends: Approval of the landscape variance to waive the zone-to-zone screening requirements between the B-1 and the A-R zones,** for the following reasons:

- a. Granting the requested landscape variance will not adversely affect the public health, safety or welfare; will not alter the character of the general vicinity; and will not cause a hazard or nuisance to the public. Granting the variance will help to maintain a cohesive redevelopment of the property and will allow the school to continue to operate as it has since 2012.
- b. Granting the requested variance will not result in an unreasonable circumvention of the Zoning Ordinance. The subject property has been used as a school for academic instruction since 2012 and is being redeveloped to allow it to continue and grow. The landscape variance, in conjunction with the setback variance, will facilitate that. The property has been split-zoned for years, and has never had the need to vary the zone-to-zone screening requirements until now.
- c. The special circumstances that apply to this property that help to justify the variance are the large amount of FEMA flood hazard area that takes up most of the property, limiting developable area; and the historical split zoning of the property.
- d. Strict application of the requirements of the Zoning Ordinance would prevent the most efficient layout of the property and would likely prohibit expansion of the school, which is a reasonable desire and/or expectation.
- e. Although the circumstances surrounding the requested variance are associated with the proposed zone change, this variance, along with the setback variance, is requested in an effort to accomplish an efficient design of the property in basically the only available developable area.

**These recommendations of approval are made subject to the following conditions:**

1. Should the subject property be rezoned to A-R and B-1 as proposed, it shall be developed according to the submitted Zoning Development Plan, or as further amended by the Planning Commission.
2. All necessary permits, including a Zoning Compliance Permit, Building and Paving permits, and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to any construction, and prior to occupancy of the new building.
3. Due to the size of the proposed building and its location, the design of the parking lot, access drive and internal circulation shall be subject to review and approval by the Division of Traffic Engineering prior to construction of the new building.
4. Due to the large size of the proposed building and the presence of 100-year FEMA floodplain, a storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
5. A note shall be placed on the Zoning Development Plan indicating the variances that the Planning Commission has approved for this property [under Article 6-4(c) of the Zoning Ordinance].

2. **NEWTONS' ATTIC ZONING MAP AMENDMENT & NEWTON'S ATTIC – FT. SPRINGS PROPERTY ZONING DEVELOPMENT PLAN**

- a. PLN-MAR-17-00025: NEWTON'S ATTIC (10/1/17)\*- petition for a zone map amendment from an Agricultural Rural (A-R) zone to a Neighborhood Business (B-1) zone, for 1.16 net and gross acres, and from a Neighborhood Business (B-1) zone to an Agricultural Rural (A-R) zone, for 1.16 net (2.71 gross) acres, for property located at 4974 Old Versailles Road (a portion of). A conditional use permit and dimensional variances are also requested.

**COMPREHENSIVE PLAN AND PROPOSED USE**

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment; promoting successful, accessible neighborhoods; and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World. The 2013 Comprehensive Plan also recommends developing incentives to retain, restore, preserve and continue the use of historic sites and structures, rural settlements and commercial structures (Theme D, Goal #3c.); and supporting the agricultural economy, horse farms, general agricultural, and the character of the Rural Service Area (Theme E, Goal #2).

The Rural Land Management Plan, adopted by the Planning Commission in 1999, identified the rural settlements for planning purposes and recommended a comprehensive study of the 15 settlements, including Ft. Springs, located outside of the Urban Service Area. The *2007 Study of Rural Settlements* made specific recommendations for the settlements throughout Fayette County.

The petitioner proposes to expand an existing school for academic instruction, known as Newton's Attic, on a split-zoned parcel in the Rural Service Area of Fayette County. This expansion requires a zone change due to the limitations on non-agricultural conditional uses in the A-R zone. A conditional use and dimensional variances are also requested in association with this zone change application.

**The Zoning Committee Recommended: Approval.**

**The Staff Recommends: Approval, for the following reason:**

1. The existing Agricultural Rural (A-R) zone and Neighborhood Business (B-1) zone configuration is inappropriate, and the proposed reconfiguration on the subject property is appropriate, for the following reasons:
  - a. The South Elkhorn Creek flows through the property and creates the northern and eastern edges of the site. The floodplain associated with the creek, as well as the 25-foot setback required by Article 19 of the Zoning Ordinance occupy more than 70% of the property, which significantly restricts the development potential of the site.
  - b. The existing B-1 zoning boundary followed the former right-of-way of Old Versailles Road, and therefore crosses the site at a 45-degree angle. When the roadway was realigned to create a more standard intersection with Versailles Road, the zoning boundaries were not modified, which left the majority of the B-1 zoning within the FEMA floodplain and with little development potential.
  - c. The existing 3.8-acre A-R zoned land is too small for a typical agricultural use, and the A-R zoning is more appropriately located along the environmentally sensitive area of the site. The requested zone swap will create a buffer of less intense zoning to protect a sensitive watershed.
  - d. The subject property is located between the Ft. Springs rural settlement boundary and the Bluegrass Airport/Rural Activity Center boundary, leaving little opportunity for development or further expansion beyond that requested now.
  - e. The proposed B-1 and A-R zoning more closely matches the developable area of the site and will allow the expansion of an existing school for academic instruction.
  - f. The proposed zone swap will result in a reduction of B-1 zoning, albeit in the right-of-way of Versailles and Old Versailles Road, that generally complies with the intent of the Rural Land Management Plan to protect the Rural Service Area from incompatible development patterns.
2. This recommendation is made subject to the approval and certification of PLN-MJDP-17-00082: Newton's Attic Property – Ft. Springs, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions for the property B-1 zone shall be imposed on the subject property:

**Prohibited Uses**

  - a. Automobile service stations, and automobile and vehicle refueling stations.
  - b. Rental of equipment whose retail sale would otherwise be permitted in the B-1 zone.
  - c. Banquet facilities.
  - d. Self-service car washes.
  - e. Extended-stay hotels.
  - f. Drive-through facilities.

\* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

These restrictions are appropriate and necessary to protect the environmentally sensitive area along South Elkhorn Creek, and to protect the adjacent Ft. Springs rural settlement from incompatible development.

b. **REQUESTED CONDITIONAL USE**

1. A school for academic instruction (with no building) in the Agricultural Rural (A-R) zone.

The Zoning Committee Recommended: **Approval**

c. **REQUESTED VARIANCES**

1. To increase the maximum allowable front setback from 20 feet to 331 feet in the Neighborhood Business (B-1) portion of the property.
2. To eliminate the required zone-to-zone screening between the A-R and the B-1 zones internal to the property.

The Zoning Committee Recommended: **Approval**, to the following variance request:

1. To increase the maximum allowable front setback from 20 feet to 309 feet in the Neighborhood Business (B-1) portion of the property; and

The Zoning Committee Recommended: **Postponement**, to the following variance request:

2. To eliminate the required zone-to-zone screening between the A-R and the B-1 zones internal to the property.

The Staff Recommends: **Approval of the requested conditional use**, for the following reasons:

- a. Granting the requested conditional use should not adversely affect the subject or surrounding properties. The school has been in existence on this property since 2012 and will continue operation on the property as it always has. No new buildings are proposed for the A-R portion of the property. Should any buildings be proposed in the future for the A-R portion of the property, size will be limited to a total of 10,000 square feet and will require Board of Adjustment approval of a conditional use.
- b. Necessary public services and facilities, such as fire and police protection, are available and adequate to the subject property. Sewage treatment is privately provided by septic system, and must be inspected by the Fayette County Board of Health for adequacy prior to either the expansion of the existing building or the construction of the new building.

The Staff Recommends: **Approval of the variance to increase the maximum allowable setback in the B-1 zone from 20 feet to 331 feet**, for the following reasons:

- a. Granting the requested variance will not adversely affect the public health, safety or welfare, nor will it alter the character of the general vicinity. The proposed building will be in the same location as the existing building, which is already at a much greater setback than the current requirement.
- b. The special circumstances that serve to justify the variance are the current location of the existing building, which is at least 90 feet from the right-of-way (and non-conforming), and the presence of 100-year FEMA floodplain on much of the property, which prohibits locating the new building anywhere within 10 to 20 feet of the right-of-way.
- c. Strict application of the Zoning Ordinance would nearly preclude construction of the proposed building. The property is already severely constricted with regard to development capability, which would be even more true if made to comply with the 10 to 20-foot setback requirement.

The Staff Recommends: **Postponement of the landscape variance to waive the zone-to-zone screening requirements between the B-1 and the A-R zones**, for the following reason:

- a. The Landscape Review Committee has not had an opportunity to review the requested variance. The next scheduled meeting is on August 15; and if a quorum is present, a recommendation on the requested landscape variance will likely be made. Although the staff sees the requested variance as logical and justified, until that meeting occurs, it is best to defer a substantive recommendation.

These recommendations of approval are made subject to the following conditions:

1. Should the subject property be rezoned to A-R and B-1 as proposed, it shall be developed according to the submitted Zoning Development Plan, or as further amended by the Planning Commission.
2. All necessary permits, including a Zoning Compliance Permit, Building and Paving permits, and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to any construction, and prior to occupancy of the new building.
3. Due to the size of the proposed building and its location, the design of the parking lot, access drive and internal circulation shall be subject to review and approval by the Division of Traffic Engineering prior to construction of the new building.
4. Due to the large size of the proposed building and the presence of 100-year FEMA floodplain, a storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.

- d. PLN-MJDP-17-00082: NEWTON'S ATTIC PROPERTY – FT. SPRINGS (10/1/17)\* - located at 4974 Old Versailles Road  
(Banks Engineers)

\* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

The Subdivision Committee Recommended: Approval subject to the following conditions:

1. Provided the Urban County Council rezones the property B-1 & A-R; 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. Urban Forester's approval of tree inventory map.
5. Department of Environmental Quality's approval of environmentally sensitive areas.
6. Denote: This property shall be developed in accordance with Article 19 of the Zoning Ordinance.
7. Denote lot coverage and floor area ratio per Article 21 of the Zoning Ordinance.
8. Resolve need for additional off-street parking area, and associated landscaping requirement.
9. Provided the Planning Commission grants the requested waiver to Articles 8-16(h) of the Zoning Ordinance.
10. Provided the Planning Commission grants the requested waiver to Articles 18-3(a)(i) of the Zoning Ordinance.
11. Denote height of proposed building (35' maximum).

Staff Zoning Presentation – Ms. Wade presented and summarized the staff report and recommendations for this zone change, and displayed photographs of the subject property and aerial photographs of the general area. She said that this is zone change swap, from an A-R zone to a B-1 zone, and from a B-1 zone to and A-R zone for approximately 3¼ total acres. She said the applicant is proposing the zone swap to make the property more developable, because currently most of the B-1 zone is located within the floodplain.

Ms. Wade said that the existing user of the subject property is Newton's Attic, a school for academic instruction, which is more an afterschool and camp facility, providing specialized education. She said the applicant is proposing to replace an existing structure and build a larger structure than is permitted in the A-R zone.

Ms. Wade said the applicant cited several Goals & Objectives of the 2013 Comprehensive Plan that they believed they met. She referred to the 1999 Rural Land Management Plan and the Ft. Springs Rural Settlement Study, as it relates to the Rural Service Area. The subject property was removed from the Ft. Springs rural settlement boundary in 2007. She said the staff doesn't believe that the application meets either the 2013 Comprehensive Plan or the Rural Land Management Plan, but it is appropriate to swap these zones based on unique situations.

Ms. Wade said that the staff is recommending approval of this zone change with six conditional zoning restrictions.

Development Plan Presentation – Mr. Martin presented a rendering of this preliminary development plan, which was displayed, depicting the existing and proposed building, the creek and the extensive floodplain and the 25' setback. He said there are two variances requested.

Mr. Martin said the Subdivision Committee recommended approval of this preliminary development plan with a few conditions. He said there are standard conditions on the plan, including denote that the property will be develop in accordance to Article 19, which is the floodplain ordinance. He said that the applicant needs to denote their lot coverage and floor area ratio, and the height of the building on the plan. He said the applicant also needs to resolve the need for additional off-street parking and associated landscaping.

Mr. Martin said there was considerable discussion and concern by the staff and other government divisions regarding the gravel area, ADA compliance and the possible need for additional paving.

Requested Conditional Use and Variances - Ms. Wade presented the staff report and the staff's recommendations for the requested conditional use for the school for academic instruction for the portion of the property that is being requested to change to the A-R zone.

Ms. Wade also addressed the two variances the applicant is requesting. The first is to increase the maximum setback in the B-1 zone from 20 feet to 331 feet; the second is to eliminate the zone-to-zone screening between the A-R and the B-1 zones.

Ms. Wade said that the applicant would like utilize the floodplain/creek area for school activities by the students. She said the build to range will need to be adjusted. She said the existing building already is currently not meeting the 10-20 foot setback requirements and the narrow frontage of the B-1 zone along Old Versailles Road makes the variance justified.

She said regarding the zone-to-zone screening that cuts through the property, the staff believes that it would be a more unified development if the screening wasn't located on the zone line. She said the staff took the zone-to-zone landscape variance to the Landscape Review Committee on August 15, 2017, and they recommended approval. She said the staff is also recommending approval of the two variances, as well as the conditional use.

Applicant Presentation – Darby Turner, attorney, was present representing the petitioner. He said the applicant is in agreement with the staff.

Citizen Comment – There were no citizens present to speak to this application.

Zoning Action – A motion was made by Mr. Owens, seconded by Mr. Brewer, and carried 10-0 (Penn absent) to approve PLN-MAR-17-00025: NEWTON'S ATTIC, for the reasons provided by the staff.

Development Plan Action – A motion was made by Mr. Owens, seconded by Mr. Brewer, and carried 10-0 (Penn absent) to approve PLN-MJDP-17-00082: NEWTON'S ATTIC PROPERTY – FT. SPRINGS, for the reasons provided by the staff.

Conditional Use - A motion was made by Mr. Owens, seconded by Mr. Brewer, carried 10-0 (Penn absent) to approve the conditional use for a school for academic instruction, as recommended by the staff.

Requested Variance Action – A motion was made by Mr. Owens, seconded by Mr. Brewer, carried 10-0 (Penn absent) to approve the requested variances, for the reasons provided by the staff.