

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.