

Development Plan Action – A motion was made by Mr. de Movellan, seconded by Mr. Bell and carried 7-0-1 (Nicol abstaining) (Davis, Meyer, and Penn absent) to approve PLN-MJDP-22-00043: ETHINGTON AND ETHINGTON TRACT 1 (AMD) adding to condition #13 that there will be no additional drive-thrus at this development.

- V. **ZONING ITEMS** - The Zoning Committee met on Thursday, August 4, 2022, at 1:30 p.m. to review zoning map amendments and Zoning Ordinance text amendments. The meeting was attended by Commission members: Graham Pohl Zach Davis, Larry Forrester, and Bruce Nicol. Staff members in attendance were: Traci Wade, Autumn Goderwis, Hal Baillie, Tom Martin, Daniel Crum, Samantha Castro, Bill Sheehy, Doug Burton, Division of Engineering and Tracy Jones, Department of Law. The Committee members reviewed applications and made recommendations as noted.

A. **ABBREVIATED PUBLIC HEARINGS ON ZONING MAP AMENDMENTS**

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

Abbreviated public hearings will be held on petitions meeting the following criteria:

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

B. **FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS** - Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) Proponents (10 minute maximum OR 3 minutes each)
 - (b) Objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
 - (a) Petitioner's comments (5 minute maximum)
 - (b) Citizen objectors (5 minute maximum)
 - (c) Staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s).

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

1. **ATHENS PROPERTY, LLC ZONING MAP AMENDMENT & ATHENS PROPERTY, LLC ZONING DEVELOPMENT PLAN**

- a. **PLN-MAR-22-00011: ATHENS PROPERTY, LLC** – a petition for a zone map amendment from an Agriculture Rural (A-R) and Single-Family Residential (R-1D) zone to a Neighborhood Business (B-1) zone, for 5.6879 net (5.8494 gross) acres, for property at 6270 Athens Walnut Hill Pike.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2018 Comprehensive Plan, Imagine Lexington, seeks to provide flexible yet focused planning guidance to ensure equitable development of our community's resources and infrastructure that enhances our quality of life, and fosters regional planning and economic development. 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 applicant is seeking to rezone the subject property to the Neighborhood Business (B-1) zone to allow for the full use of the site for retail, restaurant, and event space activities. The applicant indicates that the current restrictions, set by the Board of Adjustment, limit the usability and economic viability of the property.

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

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

1. A restricted Neighborhood Business (B-1) zone is in agreement with the 2018 Comprehensive Plan's Goals, Objectives, and Policies, for the following reasons:
 - a. The proposed rezoning will encourage development that promotes and enhances tourism by providing an amenity located near the Boone Creek Scenic Byway (Theme C, Goal #1.d; Livability Policy #2).
 - b. The proposed development will provide an additional quality of life opportunity, which benefit both local residents and tourists, demonstrating the value of the Athens rural settlement (Theme C, Goal #2.d).

- c. The proposed development will allow for increased usage of the property that will not modify or change the character of the Athens rural settlement (Theme D, Goal #3.a) and will attract attention to the settlement, by preserving and restoring the Athens schoolhouse for continued use (Theme D, Goal #3.c; Theme E, Goal #2.a).
- d. The proposed rezoning will promote context-sensitive agritourism in the Rural Service Area (Protection Policy #6), while encouraging economic opportunities for a wide array of rural tourism and preserving the Bluegrass identity (Livability Policy #1).
2. The justification and corollary development plan are in agreement with the Objectives of the 2017 Rural Land Management Plan.
 - a. The proposed development will protect the rural landscape by proposing no expansion of existing buildings or new improvements, and preserving and protecting the cultural and historic heritage of the Athens rural settlement (Goal B, Objective #1).
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are recommended via conditional zoning:
 - a. The following uses shall be prohibited:
 - i. Banks, credit agencies, security and commodity brokers and exchanges, credit institutions, savings and loan companies, holding and investment companies.
 - ii. Research development and testing laboratories or centers.
 - iii. Medical and dental offices, clinics and laboratories.
 - iv. Telephone exchanges, radio and television studios.
 - v. Computer and data processing centers.
 - vi. Brew-pubs.
 - vii. Self-service laundry or laundry pick-up stations, including clothes cleaning establishments of not more than forty (40) pounds capacity and using a closed-system process.
 - viii. Automobile service stations, provided such use conforms to all requirements of Article 16.
 - ix. Parking structures; provided such use conforms to the conditions of Article 16, and provided that at least twenty-five percent (25%) of the first floor is occupied by another permitted use or uses in the B-1 zone.
 - x. Repair of household appliances.
 - xi. Miniature golf or putting courses.
 - xii. Quick copy services utilizing xerographic or similar processes, but not utilizing offset printing methods.
 - xiii. Indoor theaters, with more than one (1) screens or stages.
 - xiv. Rental of equipment whose retail sale would be permitted in the B-1 zone.
 - xv. Dwelling units.
 - xvi. Arcades, including pinball and electronic games.
 - xvii. Pawnshops.
 - xviii. Athletic club facilities.
 - xix. Animal grooming facilities.
 - xx. Mail service facilities.
 - xxi. Tattoo parlors.
 - xxii. Form-based neighborhood business project.
 - xxiii. Day shelters.
 - xxiv. Offices of veterinarians, animal hospitals or clinics.
 - xxv. Outdoor live entertainment and/or dancing, cocktail lounges or nightclubs.
 - xxvi. Extended-stay hotels.
 - xxvii. Parking lots.
 - xxviii. Drive through facilities.

These restrictions are appropriate and necessary to reduce the potential impact of the allowable uses on the Athens rural settlement, and working within the restraints of the established infrastructure.

4. This recommendation is made subject to approval and certification of PLN-MJDP-22-00044: Athens Property, LLC, prior to forwarding a recommendation to the Urban County Council.
- b. Variance Request - The applicant is seeking two dimensional variances, requesting relief from the required property perimeter screening requirements for the portions of the property that abut the Single Family Residential (R-1D) zoning and the Agricultural Rural (A-R) zoning. The applicant is also seeking to reduce the minimum required property perimeter requirements as regulated in of Article 18-3(a)(1) of the LFUCG Zoning Ordinance.

The Zoning Committee Recommended: **Postponement**, for the reason provided by staff.

The Staff Recommends: **Postponement** for the following reason:

1. The Landscape Review Committee has not yet had an opportunity to review the requested variance. The next scheduled meeting is on August 23, 2022; and if a quorum is present, a recommendation on the requested variance

will likely be made. Although the staff is concerned with the merits of the request, until that meeting occurs, it is best to defer a substantive recommendation.

- c. PLN-MJDP-22-00044: ATHENS PROPERTY LLC (10/3/2022)* - located at 6270 ATHENS WALNUT HILL PIKE, LEXINGTON, KY.

Project Contact: Endris Engineering

Note: The purpose of this plan is to expand the allowable use within the existing development, in support of the requested zone change from an Agricultural Rural (A-R) zone to a Neighborhood Business (B-1) zone.

The Staff Recommends: Postponement. There are questions regarding compliance with required parking.

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

1. Provided the Urban County Council rezones the property B-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. Urban Forester's approval of tree inventory map.
5. United States Postal Service Office's approval of kiosk locations or easement.
6. Addition of Article 16 Code of Ordinances note.
7. Addition of note stating compliance with stormwater manuals.
8. Provided the Planning Commission grants the requested variance for the property perimeter screening.
9. Discuss compliance with parking requirements.
10. Discuss tree protection area and long term maintenance.
11. Discuss Placebuilder criteria.

Staff Presentation – Mr. Baillie presented the staff report and recommendations for the zone change application. He displayed photographs of the subject property and of the general area. He stated that the applicant was seeking a zone map amendment from an Agricultural Rural (A-R) zone and Single Family Residential (R-1D) zone to a Neighborhood Business (B-1) zone, for 5.6879 net (5.8494 gross) acres. The applicant is seeking this zone change to allow for the full use of the site for retail, restaurant, and event space activities. According to the applicant, the current Board of Adjustment restrictions limit the usability and economic viability of the property. The current restrictions allow for the applicant to run an antique store, and a small restaurant during certain hours of the day.

Mr. Baillie highlighted the history of the property and the surrounding area, noting how the property has changed over time and how a zone change is possible due to the school being in the Athens Rural Settlement area due to the Rural Land Management Plan approved in 2017. Mr. Baillie indicated that staff and the applicant had discussions on what prohibited uses and restricted uses would be appropriate and staff came up with 20 prohibited uses and 5 restrictive uses. Mr. Baillie shared a revised list of proposed conditional zoning restrictions with the commission.

Mr. Baillie concluded stating that staff is recommending approval of the zone change.

Commission Questions – Mr. Nicol asked about the Rural Land Management Plan and what that led to this property being added to the amended boundary Athens Rural Settlement in the 2007 Comprehensive Plan. Mr. Baillie stated that once it is approved, it will not change unless there was another plan is adopted to take it out. There has not been such a plan since 2007.

Ms. Worth asked if there was a PDR farm adjacent to this property and if the property would be a landscape buffer because of the PDR farm. Mr. Baillie indicated that there is a PDR farm next to the property, and highlighted its location on a map. Additionally he stated that there were property perimeter screening requirements for all urbanized zones against agricultural zones and that in this case there was a 15 foot landscape buffer requirement, which includes hedges and trees. Mr. Baillie concluded saying that the applicant is trying to be good neighbors and preserve the tree canopy along the borders of the property.

Staff Development Plan Presentation – Mr. Tom Martin oriented the commission to the development plan and highlighted the adjoining uses. Mr. Martin noted that over the years there has been very little physical changes to the property, with the exception of some additional parking, and the parking that the applicant is adding.

Additionally, Mr. Martin highlighted the tree protection area around the property and added that the applicant has added a note to establish a tree protection area (TPA) and replace any dead trees. Mr. Martin stated that at the time of the final development plan, the Planning Commission can refine those types of protections and include restrictions to protect the historic nature of the school.

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

Mr. Martin concluded the presentation stating that staff was recommending approval of the development plan, and noted that the evaluation and approval from the Board of Health of the septic system for this site.

Staff Variance Presentation – Mr. Baillie started the presentation explaining that the applicant had eliminated 2 of their 3 variance requests and were instead focusing on the reduction of the property perimeter screening requirement between the R-1D zone and the proposed B-1 zone. Mr. Baillie indicated that the applicant was seeking to reduce the requirement from a double hedge to a single hedge between a neighborhood business zone and a single family residential zone.

Mr. Baillie highlighted the landscape buffer location on a map and gave the applicant's justification for the need for the variance. The applicant noted the significant tree line that borders the entire property, and indicated that the tree line is significantly denser than the typical buffer. Mr. Baillie made mention of Mr. Martin's potential development note that the applicant would have to replace any downed hedges or trees, as well as that the Landscape Review Committee recommended approval of this variance.

Mr. Baillie concluded by saying that staff is agreeable with the variance request because it would not adversely affect the welfare of the property or the historical character of the property and the current buffer exceeds the recommended buffer between a B-1 zone and an R-1 zone. The approval recommendation is based on staff's conditions.

Commission Questions – Ms. Meyer inquired if this was the time to ensure the same protections for the border along the PDR property, would this be the time to do so, or at the time of the development plan discussion? Mr. Baillie responded saying that the way this is written, it covers all boundaries of the property including the buffer between the B-1 and the A-R zones.

Applicant Presentation – Nathan Billings, attorney for the applicant, started his presentation asking those in the audience who were for the zone change to stand up. Mr. Billings stated that generally when you have this many people in attendance for a zone change it is people who are against and not for the change to happen. This time it was the opposite, and in addition to those in attendance, Mr. Billings had 99 letters of support from the community.

Mr. Billings continued saying that they are by and large in agreement with staff, with the exception of one thing and continued giving the applicant's vision for the property. The structure as it operates today will largely remain as it exists today just with increased hours of operation and less restrictions from the Board of Adjustment, with the long term goal of preserving the property and structures of the school. Additionally, Mr. Billings mentioned that there is not a good zone for what they are looking to do, but the B-1 zone was the closest one, and called what they envision the property as "B-1 lite."

Mr. Billings continued, giving a detailed history of the schoolhouse, and what it has been since the Fayette County School Board sold it in 2007 and how the applicant did not rush to apply for a zone change. After various discussions with staff, the applicant came to the conclusion that their initial Board of Adjustment measures were not enough for what they wanted to do, and filed for the zone change. Additionally, Mr. Billings indicated that the property across the street from the schoolhouse will remain in the A-R zone because it is not in the Rural Settlement area.

Mr. Billings stated their application was in compliance with the Comprehensive Plan and that while there are 46 principal uses in the B-1 zone, they are cutting that list in half and only ask that staff reconsider the outdoor concert/live music prohibited use. Additionally in order to allow for live music here they would need a conditional use from the Board of Adjustment, as well as a dimensional variance. Due to this, Mr. Billings is asking the Planning Commission to strike the portion of section 19 that allows for cocktail lounges and nightclubs, but keep the live music and outdoor entertainment section.

Mr. Billings went into detail about the community engagement for this zone change. Although it is not required for this specific property, there was significant engagement with the community and Mr. Billings gave a breakdown of the meetings.

Commission Questions – Ms. Worth asked if the owners were considering selling the property and if they would be willing to speak to the Commission about it. Mr. Billings started his answer that legally, the owners did not have to disclose that, but that they have no intention of selling the property right now.

Mr. Nicol asked if they dark green areas on the outline of the property map were going to be the tree protection area. Mr. Billings indicated that it was and that they have agreed to the staff's revised notes on the development plan.

Mr. de Movellan asked if there were any restrictions on amplification for a conditional use for live music. Mr. Billings stated that the parameters of that conditional use would be determined during a Board of Adjustment process.

Mr. Michler had a question about the distance requirement for a conditional use for live music. Ms. Wade indicated that the conditional use has to be 100 feet from the zone line, so if your property was 100-200 feet deep, it would be possible to meet that requirement.

Public Comment – Dottie Bean, 1364 Deer Lake Circle, discussed her objection to proposed improvements to Athens Boonesboro Road by the Kentucky Transportation Cabinet.

George W Mankel III, 6377 Athens Boonesboro Rd, voiced his support for the zone change and his appreciation for the owners and asked the Commission to approve this zone change.

Dan Graves, 3500 N Cleveland Road, implored the Commission to look at this as an opportunity and not as a slippery slope, and voiced his support.

Mike Harrell, address not given, stated that his property wraps around the property and could not ask for better neighbors. He is in full support of the zone change.

Commission Questions – Mr. Michler commented that he knew Mr. Mankel who spoke, and his band One Lane Bridge and that his band should be allowed to play at the property.

Zoning Action – A motion was made by Mr. Michler, seconded by Mr. Nicol and carried 8-0 (Davis, Meyer, and Penn absent) to approve PLN-MAR-22-00011: ATHENS PROPERTY, LLC, with the four staff recommendations deleting the restriction or outdoor live entertainment of dancing.

Development Plan Action – A motion was made by Mr. Michler, seconded by Mr. Nicol and carried 8-0 (Davis, Meyer, and Penn absent) to approve PLN-MJDP-22-00044: ATHENS PROPERTY LLC with the seven conditions removing the “Discuss Placebuilder Criteria”

Variance Action – A motion was made by Mr. Michler, seconded by Ms. Worth and carried 8-0 (Davis, Meyer, and Penn absent) to approve the variance request to reduce the hedge requirement from two to one along the Single-Family Residential (R-1D) zone, subject to the four conditions recommended by the staff.

C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMEMENDMENTS

- 1. PLN-ZOTA-22-00006: AMENDMENT TO ARTICLE 22, APPENDIX C TO CREATE THE PLANNED UNIT DEVELOPMENT (PUD-3) ZONE** – petition for a Zoning Ordinance text amendment to create a new Planned Unit Development 3 (PUD-3) zone (Article 22) to allow a mixed-use development that would permit a blend of residential, commercial, entertainment, and industrial uses.

INITIATED BY: Turner Property 4, LLC

PROPOSED TEXT: Copies are available from the staff.

The Zoning Committee Recommended: Postponement.

The Staff Recommends: Postponement, for the following reasons:

- The proposed text amendment does not yet fully meet the intent and requirements established by Article 22 of the Zoning Ordinance regarding the creation of a Planned Unit Development (PUD). The site criteria, design standards, and proposed uses necessitate greater review.
- The proposed text amendment does not provide a planning process that is conforming with Article 21 of the Zoning Ordinance.

Staff Presentation – Mr. Baillie presented and summarized the staff report and recommendations for the text amendment. Mr. Baillie began by presenting the regulations associated with the establishment of a PUD and stated that he would be going over all the steps prior to stating staff’s findings. Mr. Baillie presented a list of proposed uses in the PUD-3 zone by the applicant including restaurants, dwelling units, and parks. In addition to the proposed uses, Mr. Baillie presented accessory, conditional, and prohibited uses.

Mr. Baillie transitioned to the applicant's site criteria noting that it started with the applicant's proposed development off Leestown Road, but as they worked with staff and the neighborhood, they transitioned to something that could be utilized all around the Urban Service Area. The parcel would need to be directly adjacent to a major arterial or corridor roadway, be at least 10 acres, and be currently zone as a business or industrial use. Additionally, Mr. Baillie discussed the applicant's connections to the 2018 Comprehensive Plan, including identifying areas of infill, enabling existing neighborhoods to flourish, and developing a variety of new jobs.

To conclude, Mr. Baillie stated that staff is recommending approval. Mr. Baillie said that staff saw this as a collaboration between the applicant, the neighborhood, and staff to create a zone that could be transferrable across the Urban Service Area and in agreement with the goals and objectives of the Comprehensive Plan.

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

Commission Questions – Mr. de Movellan asked if after the initial 10 acre lot size requirement, would any expanded or added parcel have to meet that 10 acre requirement as well. Mr. Baillie indicated that an expanded development would not have to meet the lot size requirement again, but it would have to be business or industrial in nature.

Mr. de Movellan additionally asked that with residential being one of the permitted uses, why is outdoor entertainment/rodeos a permitted use. Mr. Baillie responded stating that with an applicant like this could blend the residential uses with other uses in their overall plan and that developments like this PUD and the mixing of uses is in line with the Comprehensive Plan.

Mr. Michler asked about the tree canopy goals for the city and what percentage that they look for. Mr. Baillie stated that the overall goal was 30% in the urbanized area.

After Mr. Baillie's response, Mr. Michler asked why this PUD-3 is only asking for 15%. Mr. Baillie responded saying that each zone's canopy requirement is different. This specific requirement is more in line with an I-1 zone, which asks for 10% tree canopy coverage.

Mr. Nicol asked that if this text amendment passes, could it be used throughout the Urban Service Area and if it is fair to summarize that this plan will allow dwelling units in quasi industrial space. Mr. Baillie indicated that it can be used throughout the Urban Service Area if approved and that this approach is similar to the adaptive reuse projects and encourages a redevelopment of industrial space.

Applicant Presentation – Mr. Nathan Billings, attorney for the applicant, began his presentation by answering questions asked by Mr. Nicol and Mr. Michler about the mixing of different uses and the tree canopy requirements. Mr. Billings stated in the affirmative that they were trying to mix seemingly conflicting uses because they have a property that drove this ZOTA request, but they were not asking for a zone change at this time. There are other properties around Lexington, where this potential ZOTA could be applicable, which gives the Planning Commission the ability to control what types of uses go into the PUD-3 zone.

Mr. Billings indicated that this was not something that they came up with in a month, they have had months of discussion with staff and the neighborhood throughout the process. Mr. Billings gave the reasons for asking for a PUD stating that the applicant owns a unique I-1 zoned property and wants to revitalize historically used tobacco warehouses, but the I-1 zone regulations are prohibitive. Additionally the other mixed-use zones would have had limitations that would restrict what the applicant wants to do with the property.

After discussion with the Planning staff, Mr Billings indicated that the applicant wanted to create their own zone to allow for the continued I-1 uses, with the flexibility of the other mixed-uses. Mr. Billings presented pictures of the subject property off Leestown Road and discussed a few areas of concern that the Meadowthorpe Neighborhood had and what types of uses they were concerned about. Due to these concerns from the neighborhood, the applicant has agreed to not have adult day cares, rehab centers, community centers, or a child-care center on the subject property.

Mr. Billings concluded, once again highlighting the months of work and communication with Planning staff and the neighborhood and offered to answer any questions from the Planning Commission.

Commission Questions – Mr. de Movellan asked about the buffer requirement for railroad tracks, being that there are tracks along the edge of the property, and if the tracks were owned by the applicant. Mr. Billings consulted Ms. Wade, and Ms. Wade indicated that the buffer was 15 feet with a fence. Additionally Mr. Billings stated that the railroad tracks were not owned by the applicant.

Mr. Michler asked why there was so little tree canopy for this property, especially if you can plant trees in parking lots. Mr. Billings stated that he thought they were increasing the canopy from the current 10% to 15%.

Mr. Michler also asked if there could be a variance to reduce the tree canopy. Ms. Wade responded saying that applicants can ask for a waiver to the tree canopy standards, but there are some guidelines for that occurring. Ms. Wade also stated that she did not think that we were going to reach the 30% via industrial land, it will most likely come from residential. Additionally, Ms. Wade stated that if a residential development was proposed as part of a PUD-3, the Planning Commission could require 30% tree canopy coverage on the land.

Citizen Comment – Rock Daniels, 1519 Old Leestown Road, president of the Meadowthorpe Neighborhood Association, stated that the applicant and staff had all been very helpful during these discussions. He stated he was hopeful the development would be an asset to Lexington and the neighborhood.

Blake Hall, 36 Richmond Ave, stated he was in support because it allows a transitional zone for varied developments, but did want to see drive-thrus moved from an accessory use to a conditional use.