

# STAFF REPORT ON PETITION FOR ZONE MAP AMENDMENT PLN-MAR-22-00011: ATHENS SCHOOLHOUSE, LLC

## DESCRIPTION OF ZONE CHANGE

Zone Change	A-R to B-1: 5.58 net (5.69 gross) acres
& Acreage:	R-1D to B-1: 0.11 net (0.16 gross) acres
	Total: 5.69 net (5.85 gross) acres
Location:	6270 Athens Walnut Hill Pike



## EXISTING ZONING & LAND USE

PROPERTIES	ZONING	EXISTING LAND USE
Subject Properties	A-R / R-1D	Restaurant/Antique Shop
To North	A-R	Parking
To East	R-1D	Single Family Residential
To South	A-R	Agricultural
To West	A-R	Agricultural

## URBAN SERVICE REPORT

**Roads** - The subject property has frontage along Athens Walnut Hill Pike, a local roadway that connects Old Richmond Road and Athens Boonesboro Road. The roadway is reflective of an agricultural rural roadway and has provided access to the subject property since the Athens School was constructed in the 1920s.

**Curb/Gutter/Sidewalks** - Athens Walnut Hill Pike was constructed as an agricultural rural local roadway and does not include sidewalks, curb, or gutter facilities as would typically be constructed in the Urban Services Area.

**Utilities** - Utilities such as water, electricity, and phone service are typically available to rural areas, whereas cable television, internet, and natural gas may not be available to the subject property.

**Storm Sewers** - The subject property is split between two watersheds: the Baughman Fork along the northern portion of the property and the Boggs Fork along the southern portion of the property. There are no special flood hazards on the subject property nor any past flooding issues. The property does not currently include access to public storm sewer systems, as it is outside the Urban Service Area, and was constructed prior to the establishment of the modern regulations.

**Sanitary Sewers** - The subject property is located outside the Urban Service Area and, as such, does not have a sanitary sewer service. No sewers are planned for this area. The Health Department governs septic systems outside of the Urban Services Area.

**Refuse** - Properties outside the Urban Service Area must either obtain private refuse collections, or the property owners are responsible for taking their refuse to an approved location.

**Police** - The nearest police station is located about nine miles northeast of the subject property at the East Sector Roll Call Center.

**Fire/Ambulance** - The nearest fire station (#18) is located approximately two miles south of the subject property, at the corner of S. Cleveland Road and Old Richmond Road.

**Transit** - There are no transit facilities within proximity to the subject property.

**Parks** - The Athens Ballfield Complex is the closest public park, located less than a mile northwest of the subject property.

## SUMMARY OF REQUEST

The applicant is seeking to rezone the subject property from the Agricultural Rural (A-R), and Single Family Residential (R-1D) zones to the Neighborhood Business (B-1) zone to allow for the expansion of use of the old Athens schoolhouse.

## RURAL DEVELOPMENT



Development within the Rural Service Area (RSA) should consider the unique assets and opportunities offered by Lexington's agricultural landscape. For this reason, the 2017 Rural Land Management Plan (RLMP), in tandem with applicable policies from Imagine Lexington listed below, should act as the primary guide for all rural development endeavors and should be directly addressed in development proposals within the RSA.

Due to the distinct difference between urban place-types and rural area considerations, the RLMP is better suited to guide the limited development within the RSA than the criteria set out in the Placebuilder. Additionally, the numerous policies, goals, and objectives within Imagine Lexington focusing on rural development link directly to the goals and objectives laid out by the RLMP. These provide additional support for defining the intended nature of rural development and its impacts on the agricultural community.

## PROPOSED ZONING



This zone is intended to accommodate neighborhood shopping facilities to serve the needs of the surrounding residential area. Generally, they should be planned facilities and should be located as recommended in the Comprehensive Plan. This zone should be oriented to the residential neighborhood, and should have a roadway system which will be adequate to accommodate the anticipated vehicular traffic.

## PROPOSED USE



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.

## APPLICANT & COMMUNITY ENGAGEMENT



The applicant has not indicated the form of outreach they have conducted. The applicant should describe the engagement that they have conducted prior to Planning Commission consideration.

## PROPERTY & ZONING HISTORY



The subject property is located within one of Fayette County's small rural settlements within the eastern portion of the county. Small rural communities in Fayette County with rural service characteristics include Athens, Avon, Bracktown, Fort Spring, Jimtown, Loradale, and Nihizertown/Pricetown. Both Athens and Fort Spring were 19th-century precinct centers, and each contained a post office at one time. The Athens rural settlement is located adjacent to an existing National Register historic district, which encompasses six contributing buildings and surrounds the intersection of Athens Boonesboro and Cleveland Roads. During the review and the adoption of the 2007 Comprehensive Plan, the boundaries of five rural settlement areas were expanded, including the Athens rural settlement. This adjustment within the Athens settlement added several properties, including the subject property, as a result of an evaluation of the historic and current landscape and land use patterns, historic plats, historic significance of the community, the built environment, and the pattern of existing residential buildings.

The Athens schoolhouse was initially constructed in 1926 to serve the needs of the rural communities along the western portion of Fayette County. At the time of closing it had 316 students and 25 employees. During its history as a school, the property was in consistent use as an educational facility, but was also utilized for community and social events. The structure itself has experience various expansions and modifications during its lifetime, with the latest occurring in 1967.



The zoning within the Athens rural settlement was updated during the 1969 comprehensive rezoning of Fayette County. The area within the current boundary is comprised of Single Family Residential (R-1D), Neighborhood Business (B-1), and Agricultural Rural (A-R) zoning. During the period that the comprehensive rezoning occurred, the subject property remained zoned A-R, as the school was operated by the state and was not subject to the Zoning Ordinance.

Since the schools closure, the Board of Adjustment (BOA) has heard three separate administrative appeals (A-2008-6; BOA-2018-00084; BOA-2019-00017) to allow the utilization of the structure for antique sales and an accessory restaurant. In each case, the BOA found in favor of the appeal to allow the use; however, established sets of conditions that limited the full use of the structure and the days / hours of operation. The current conditions state that retail sales shall conclude by 6:30 p.m. on any day, and shall take place on no more than 12 days in any month. The restaurant's hours of operation are limited to between 6 a.m. to 2 p.m. daily, except when operated in conjunction with the antique sales, during which they may operate until 6:30 p.m. The restaurant is limited in size to that of the existing cafeteria. Finally, no alterations or additions to the exterior of the building are allowable, and the hosting of special events related to a commercial purpose are prohibited.

## COMPREHENSIVE PLAN COMPLIANCE



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.

### GOALS, OBJECTIVES & POLICIES

The applicant opines that the proposed rezoning is in agreement with the adopted Goals, Objectives, and Policies of the 2018 Comprehensive Plan. They state that 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). The applicant indicates that the proposed development will also provide an additional quality of life opportunity, which benefit locals and tourists alike, demonstrating the value of the Athens rural settlement (Theme C, Goal #2.d).

In addition to the potential amenities that would be added to the location, the applicant stresses that while the proposed change in zoning allows for increased usage of the property, they will not be seeking to modify the school or change the character of the Athens rural settlement (Theme D, Goal #3.a). The applicant indicates that the desire is to attract attention to the settlement, while preserving and restoring the property for continued use (Theme D, Goal #3.c; Theme E, Goal #2.a).

Finally, the applicant opines that the proposed rezoning implements several policies for rural developments identified in the Comprehensive Plan. They state that 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 agritourism and preserving the Bluegrass identity (Livability Policy #1). They also emphasize the preservation, protection, and promotion of the iconic Bluegrass landscape along rural gateways and roadways, which serve as primary tourist routes (Livability Policy #2).

Staff agrees that these Goals, Objectives, and Policies of the 2018 Comprehensive can be met with the proposed rezoning of the subject property and the reuse of the established structure. Whereas other properties outside of the rural settlement area would not be appropriate for a more intense zone, those areas that are within rural settlements may be appropriate given the historical context and built form. The situation of the site within the rural settlement, and the historical construction of a school that was meant to service greater than 300 students and 25 staff members reflects an intensity of land use that is similar to some of the land uses allowable within the Neighborhood Business (B-1) zone. The potential impact of increased activity in the site will necessitate greater review and approval of the septic system by the Fayette County Board of Health.

Despite the applicant's focus on preservation and restoration of the structure, they have not provided definitive



guidelines as to how that preservation would be maintained in the future. Without providing protections against demolition or degradation due to neglect, the applicant has no requirement to preserve the structure in the future. Staff recommends that the applicant work with the Office of Historic Preservation, the Historic Preservation Commission, and the Board of Architectural Review to review Landmark designation for the property, so that the property can be protected in the future.

### **RURAL LAND MANAGEMENT PLAN**

In addition to the Goals and Objectives of the Comprehensive Plan, the applicant opines that the proposed rezoning is in agreement with the 2017 Rural Land Management Plan and the 1999 Rural Service Area Land Management Plan. They indicate that the proposed development will protect the rural landscape by proposing no expansion of existing buildings or new improvements. They further stress that there will be no adverse impact on the Athens rural settlement, protecting the cultural and historic heritage of the settlement (Goal B, Objective #1).

Staff finds that the Rural Land Management Plan can be met with the proposed rezoning of the subject property and reuse of the structure if the property is restricted via conditional zoning restrictions.

### **CONDITIONAL ZONING RESTRICTIONS**

Within their letter of justification, the applicant indicates that they recognize that certain B-1 zone uses may be undesirable on this property, but do not describe those uses that are inappropriate. In review of the application, the property's unique situation within an established rural settlement, and the potential impact that shifts in land use may have on the environment and the historical/cultural fabric of the community, staff recommends use restrictions to the site. The list of restrictions are enumerated in the staff findings.

Staff believes that these uses 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.

## **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. This certification must be accomplished within two weeks of the Planning Commission's approval.

## STAFF REPORT ON VARIANCE REQUEST



As part of their application, the petitioner is also 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 seeking to reduce the minimum required property perimeter requirements as regulated in of Article 18-3(a)(1) of the LFUCG Zoning Ordinance.

Before any variance is granted, the Planning Commission must find the following:

- a. The granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Planning Commission shall consider whether:
  1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or in the same zone.
  2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
  3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.
- b. The Planning Commission shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulation from which relief is sought.

### ZONING ORDINANCE

Article 6-4(c) states that the Planning Commission may hear and act upon requested variances associated with a zone change. In such cases, they may assume all of the powers and responsibilities of the Board of Adjustment, as defined in Article 7-6(b) of the Zoning Ordinance.

Article 18-3(a)(1) states that for any office or business zone (except P-2), that adjoins any residential zone, there shall be a minimum buffer area of 15 feet adjacent to all common boundaries (located behind the building line) except street frontage, which will contain one tree per 40 feet of linear boundary, or fraction thereof, from Group A or B only, plus, 1) a double row of six feet high hedge or 2) a six feet high fence, wall or earth mound.

Article 18-3(a)(1) states that for any office or business zone (except P-2), that adjoins any A-R zone, there shall be a minimum buffer area of 15 feet adjacent to all common boundaries except street frontage, which will contain one tree per 40 feet of linear boundary, or fraction thereof, of native species from Group A of Plant List plus continuous six feet high planting or hedge or, 1) one evergreen tree/15 feet of linear boundary, or fraction thereof, planted 15 feet on center; or 2) one tree/20 feet of linear boundary, or fraction thereof, that is a combination of 50 percent deciduous, native species trees from Group A and 50 percent evergreen trees or small flowering trees.

### CASE REVIEW

The applicant is seeking two dimensional variances and the elimination of the a wall, fence, or mound, that are required by the property perimeter screening requirements. These requirements are for the portions of the property that abut the Single Family Residential (R-1D) zone and the Agricultural Rural (A-R) zone. The Zoning Ordinance requires buffering of a specific distance and regulated planting materials to provide screening between more intense commercial land uses and surrounding residential and agricultural land uses. The specific provisions were added to the Ordinance to decrease the impact of light and sound on adjacent properties, which may be caused by events or activities, such as those that the applicant has expressed interest in developing on the property.

The two abutting zones require different buffering. The area between the proposed B-1 zone and the R-1D zone requires a minimum buffer area of 15 feet adjacent to all common boundaries (located behind the building line) except street frontage, which will contain one tree per 40 feet of linear boundary, or fraction thereof, from Group A or B only, plus, 1) a double row of six feet high hedge or 2) a six feet high fence, wall or earth mound. The area between the proposed B-1 zone and A-R zone requires a minimum buffer area of



15 feet adjacent to all common boundaries except street frontage, which will contain one tree per 40 feet of linear boundary, or fraction thereof, of native species from Group A of Plant List plus continuous six feet high planting or hedge or, 1) one evergreen tree/15 feet of linear boundary, or fraction thereof, planted 15 feet on center; or 2) one tree/20 feet of linear boundary, or fraction thereof, that is a combination of 50 percent deciduous, native species trees from Group A and 50 percent evergreen trees or small flowering trees. In both situations, the 15-foot Landscape Buffer Area (LBA) may be reduced to five feet when used in conjunction with a six-foot high wall or fence.

Applicant has requested a variance to reduce the required buffer between the proposed B-1 zone and the established R-1D zone (6290 Athens Walnut Hill Pike) from 15 feet to 5 feet without the use of a six foot fence or wall. They indicate that there is a mature hedge along this boundary already, which they believe accomplishes the goals of this requirement. From the information provided by the applicant, staff believes that the applicant is concerned with the required width along the driveway that abuts the R-1D zone, as well as the requirement of the double row of six feet high hedge or a six feet high fence, wall or earth mound. The applicant's supposition that the current landscaping accomplishes the goals of the requirement is incorrect as there is only a single hedge, whereas the Ordinance expressly requires a double hedge, nor is the hedge 6 feet in height. The boundary does include a tree stand along the perimeter of the property that could meet the requirements of the Ordinance, but have not been described by the applicant. Furthermore, staff is nonplussed as to why the applicant is seeking to reduce the size of the landscape buffer, as seemingly there is more than enough room to accomplish the buffer area along the R-1D zone boundary.

Next, the applicant indicates requests to reduce the buffer between the proposed B-1 zone and the A-R zone (a71 S. Cleveland Road, and 6200 Athens Walnut Hill Pike) from 15 feet to 5 feet citing the mature hedge along the boundary, which they believe accomplishes the goal of the requirement. Again, the applicant's supposition that the current landscaping accomplishes the goals of the requirement is incorrect as there are specific requirements for the transition between commercial zoning and agricultural zoning. The applicant has also not provided adequate information as to the established buffering for the property. Furthermore, the staff remains bewildered as to the applicant's request to reduce the landscape buffer area from 15 feet to 5 feet along the A-R zone, as there is no proposed development that would occupy that space within the buffer area.

The final request is to eliminate the requirement of a hedge, fence, wall, or earth mound for those portions of the property that reduced to 5 feet. The applicant indicates that the mature growth that is established meets the goal of the buffering. Staff disagrees with the applicants supposition that the established boundary meets the goal of buffering as it does not meet the minimum standards established by the Zoning Ordinance.

The applicant provides four justifications for the variance request. First, they indicate that the variances arise from special circumstances as the property was used as a school and there are mature trees and natural growth, which currently screens the property on all three adjoining boundaries. The use of the property historically does not constitute a special circumstance as the applicant is seeking a new zone and an increase in the intensity of land use on the property. The mature trees can act as part of the screening for the site, but do not constitute a replacement for the requirements of the zone.

Next, the applicant indicates that the current regulations represent an unnecessary hardship on the applicant as the implementation of the Zoning Ordinance would reduce the usable areas of the property at a cost that they indicate will not have an appreciable impact on screening from the adjacent properties. Staff disagrees with the applicants statement that the proposed buffering would reduce the usability of the site. The applicant has indicated throughout their application and depicted on their development plan that there would be no modifications to the historical layout of the proposed site. The applicant's statement suggests that the areas surrounding the site are planned for future use. Additionally, the cost of screening per the Ordinance does not represent a undue or unnecessary hardship.

Additional, the applicant indicates that they have done nothing to create the special circumstances, which impact this property. The applicant indicates that the property has not had any expansion since 1967, and the prior uses and existing tree lines are believed to be even older than that. They indicate that the conditions on the property predate the Zoning Ordinance. The applicant's statement that the historical context of the site



suggest that the current regulations are not necessary are incorrect. The applicant is requesting an increase in the intensity of land use. The increase that has been requested by the applicant is subject to specific regulations to protect the health, safety and welfare of the community.

Finally, the applicant indicates that the proposed variance will not adversely effect public health, safety, or welfare; will not alter the essential character of the vicinity; and will not create a hazard or nuisance to the public. While staff agrees that the applicant has not proposed any new physical changes to the property, the increased intensity of land uses requires the increase in buffering between zones. Further, the applicant has not provided conditions that would require the maintenance of the property in its current form.

**STAFF RECOMMENDS: **POSTPONEMENT**, FOR THE FOLLOWING REASONS:**



- a. 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.