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COUNSELORS-AT-LAW

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July 5, 2022

Urban County Planning Commission  
200 E. Main Street  
Lexington, KY 40507

**Re: Zone map amendment for 6270 Athens Walnut Hill Pike (the “Property”)**

Dear Commission:

My firm represents Athens Property, LLC (the “Applicant”) as owner of the Property in this application for zone map amendment.

**1. Property Overview**

The Property is approximately 5.8494 acres<sup>1</sup> located in the Athens rural settlement near the intersection of Athens Walnut Hill Pike and Athens Boonesboro Road. According to Fayette County Public Schools’ website:

Athens School was originally a two-room school in Lexington located at 6270 Athens-Walnut Hill Road. In 1912, a four-room building was constructed to house grades 1-12. In 1927, a high school was built across the street, and the other building was used for elementary students. An addition was built onto the high school in 1967. The following year, the high school was converted to an elementary school and the original four-room structure was torn down.

In 2006, Athens Elementary closed its doors to move to a new location at 930 Jouett Creek Drive.<sup>2</sup>

Following the School’s closure, the Property was sold to private parties. Since 2008 the Property has been home to Athens Schoolhouse Antiques, a monthly antique show. In fall 2021, Athens Lunchroom opened for food service at limited hours.

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<sup>1</sup> The Applicant also owns approximately 4.64 acres across the road at 6251 Athens Walnut Hill Pike. The zone map amendment does not include that parcel, nor are any changes in use or improvements proposed for that parcel.

<sup>2</sup> “The History of Our School: from Athens to ACE”, [www.fcps.net/page/3960](http://www.fcps.net/page/3960).

## 2. Zoning Request

The Applicant requests to change the zoning from its current Agricultural Rural (A-R) and Single-Family Residential (R-1D) zones<sup>3</sup> to a Neighborhood Business (B-1) zone with certain restrictions as addressed below.

## 3. Purpose

The Property is currently operating under the terms of an administrative appeal with several restrictions on the uses and days/times of operation. These restrictions arose out of the transition from the prior school use to the antique sale and café use because the School predated the zoning ordinance and was not a permitted use in any agricultural zone. The Board of Adjustment ultimately determined that the proposed uses were no more intense than the traditional use as a public high school and elementary school and approved the request.

While the administrative review decision has been amended, the remaining restrictions on the use and operation of the Property continue to present limitations on the viability of the existing uses, and in turn, the maintenance and preservation of the School itself. The Applicant explored the possibility of further amendments under the Board of Adjustment's purview and learned further amendments lacked support.

The primary goal of the Property owners is to generate enough income to preserve, protect, and maintain the School. The Applicant's members each live just doors away from the Property and believe in the historical and aesthetic value of the School, which has been part of the Athens community for nearly a century. The School building remains structurally sound, but as with all older buildings, requires significant costs to maintain and repair; there are other upgrades and improvements which are anticipated in the coming years that will be costly. Without a viable economic use of the Property, it is unlikely FCPS, LFUCG, or any other private entity would be willing to take on the expense of maintaining this building. *In other words, the Applicant seeks the B-1 zone for the Property in order to preserve the School and keep the Athens rural settlement intact.*

## 4. Applicant's Vision and Plan

The Applicant's plan for the Property is to continue its present use, adding additional hours of operation and the ability to use the existing structures—including the gymnasium—to hold small events. Under the present Board of Adjustment permissions, the strictly limited days and hours of operation, as well as the limited uses, would prohibit these small changes.

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<sup>3</sup> The Property is split-zoned, with a small corner at the northeastern portion being R-1D.



**5. Comprehensive Plan**

The Property is located within the Rural Service Area therefore this application is not subject to Placebuilder. However, the application agrees with the goals and objectives of the Comprehensive Plan:

<u><b>Comprehensive Plan Goals &amp; Objectives</b></u>	<u><b>Analysis</b></u>
<p><u>Theme C, Goal 1, Objective d:</u> Encourage development that promotes and enhances tourism.</p> <p><u>Theme C, Goal 2, Objective d:</u> Provide entertainment and other quality of life opportunities that attract young, and culturally diverse professionals, and a work force of all ages and talents to Lexington.</p>	<p>The Property is located just off Boone Creek Scenic Byway. The proposed zoning would permit more opportunities for tourists to spend more time in this area for shopping, recreation, and eating.</p> <p>These are quality of life opportunities which benefit locals and tourists alike, demonstrating the value of the Athens rural settlement.</p>
<p><u>Theme D, Goal 3, Objective a:</u> Protect historic resources and archaeological sites.</p>	<p>The B-1 zone will permit the Property to have slightly more economic opportunity without changing the historic School or changing the character of the Athens rural settlement. The zone change is necessary to allow the owners to continue maintaining the School.</p>
<p><u>Theme D, Goal 3, Objective b:</u> Incentivize the renovation, restoration, development and maintenance of historic residential and commercial structures.</p> <p><u>Theme D, Goal 3, Objective c:</u> Develop incentives to retain, restore, preserve and continue use of historic site and structures, rural settlements and urban and rural neighborhoods.</p> <p><u>Theme E, Goal 2, Objective a:</u> Protect and enhance the natural, cultural, historic and environmental resources of Lexington-Fayette County's Rural Service Area and Bluegrass farmland to help promote the general agricultural brand and ensure Lexington-Fayette County remains the Horse Capital of the World.</p>	<p>The application represents the creative balance of preservation and development which the Comprehensive Plan prioritizes. Instead of changing the Property to make it work for the development, the Applicant found uses which will preserve and fit with the existing structures and historical activities.</p> <p>The Applicant desires to attract attention to the Athens area they love without changing it. In other words, to show everyone else what is so special about this rural community.</p>

The application further implements several policies for rural developments identified in the Comprehensive Plan for the same reasons addressed above: promote context-sensitive agritourism in the Rural Service Area (Protection Policy #6); encourage economic opportunities for a wide array of agritourism while preserving the Bluegrass identity (Livability Policy #1); and emphasize the preservation, protection, and promotion of the iconic Bluegrass landscape along rural gateways and roadways serving as primary tourist routes (Livability Policy #2).

**6. Rural Land Management Plan**

This application also complies with the goals and objectives of the 2017 Rural Land Management Plan (RLMP).

<p><u>Goal B</u>: Protect the integrity of the rural landscape.</p> <p><u>Objective 1</u>: Rural Settlements, crossroads.</p>	<p>The application proposes no expansion of existing buildings or new improvements. There will be no adverse impact on the Athens rural settlement. Instead, preservation of the School will help protect the character of the settlement.</p>
<p><u>Goal C</u>: Protect environmentally sensitive areas and wildlife habitat.</p> <p><u>Objective 4</u>: Protect native flora and fauna.</p>	<p>The Development Plan proposes no new structures or improvements, preserving the existing mature trees and plantings in their natural state.</p>
<p><u>Goal D</u>: Protect our cultural and historic heritage.</p> <p><u>Objective 2</u>: Protect rural resources from adverse effects associated with urban development.</p>	<p>Instead of razing the School building or proposing a higher intensity commercial, industrial, or agricultural use, the Applicants seek to modestly expand the existing operation within the existing structures.</p>

**7. Restrictions for Proposed Zoning**

The Applicant recognizes that certain B-1 uses may be undesirable on this Property. Because the Applicant wishes to preserve the existing character of the vicinity, the Applicant will discuss voluntary conditional zoning restrictions with Planning Staff to craft appropriate protections for the surrounding properties. Those proposed restrictions will be presented to the Planning Commission at the public hearing.



## 8. Development Plan

*The Applicant does not propose any new structures or expansions of the existing School.* The Development Plan submitted reflects that the Property will remain as-is.

### a. Variance Request

The Applicant seeks a variance from the landscape and buffering requirements of Article 18 as follows:

- i. Article 18-3(a)(1)(2) (requiring 15-foot buffer adjacent to all common boundaries between a business zone and a residential zone): Applicant requests a variance to reduce the buffer to 5-feet if a six (6) foot high wall or fence is constructed in compliance with note 7. This variance would apply to the border with 6290 Athens Walnut Hill Pike (the owner of which supports this application generally). There is a mature hedge along this boundary already which accomplishes the goals of this requirement.
- ii. Article 18-3(a)(1)(8) (requiring 15-foot buffer adjacent to all common boundaries between a business zone and an A-R zone): Applicant requests a variance to reduce the buffer to 5-feet as above. This variance would apply to the borders with 171 S. Cleveland Road, and 6200 Athens Walnut Hill Pike (a PDR farm), the owner of which is supportive of this project. There is a mature hedge along this boundary already which accomplishes the goals of this requirement.
- iii. Article 18-3(a)(1) Column D (requiring a hedge, fence, wall, or earth mound): Applicant requests a variance to eliminate this requirement because of the mature growth on all three boundaries which Applicant intends to remain undisturbed and replace as necessary (as discussed below).

The variances satisfy the review requirements of Article 18-7(d). First, the variances arise from special circumstances at the Property. Because the Property was used as a school for many years, a thick line of mature trees and natural growth screens the Property on all three adjoining boundaries; it is not “open” to any adjoining residential or agricultural use.

Second, requiring the applicant to buffer and screen without the variances will be an unnecessary hardship on the Applicant because there is existing screening which accomplishes the objectives set forth in the Zoning Ordinance. Requiring additional screening and buffering will only reduce the usable areas of the Property at a cost to Applicant which does not have any appreciable impact on screening from the adjacent properties.

Third, the Applicant has done nothing to create the special circumstances which impact this Property. The Property has not had any expansion since 1967, and the prior uses and existing

Planning Commission  
July 5, 2022  
Page 6

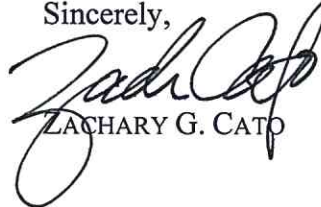
tree lines are believed to be even older than that. The conditions on the Property predate the Zoning Ordinance itself.

Lastly, the variances 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. No changes to the footprint of the School or the Property itself are contemplated. A moderate increase in the hours of operation will not meaningfully change the impact on the neighborhood because there is already more than sufficient parking and open space. The Property has been operated for weekend antique sales for years without issues in the neighborhood, and no new issues are anticipated. The fact is that for many decades the Property was used for a much more active and intense use: a public school. If the existing screening and buffers were adequate for that use, they are adequate for the uses proposed by the Applicant.

### 9. Summary

The Applicant is excited to continue offering a unique experience in the Athens rural settlement, and to do so in a manner that is respectful of the history and rural nature of the area. We look forward to presenting to the Commission and answering any questions about the application. Thank you for your time and consideration.

Sincerely,



ZACHARY G. CATO

Encl.