

**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].