

ORDINANCE NO. 103 - 2022

AN ORDINANCE CHANGING THE ZONE FROM AN AGRICULTURAL RURAL (A-R) ZONE AND A SINGLE-FAMILY RESIDENTIAL (R-1D) ZONE TO A NEIGHBORHOOD BUSINESS (B-1) ZONE FOR 5.6879 NET (5.8494 GROSS) ACRES, FOR PROPERTY LOCATED AT 6270 ATHENS WALNUT HILL PIKE. (ATHENS PROPERTY, LLC; COUNCIL DISTRICT 12).

WHEREAS, at a Public Hearing held on August 25, 2022, a petition for a zoning ordinance map amendment for property located at 6270 Athens Walnut Hill Pike from an Agricultural Rural (A-R) zone and a Single-Family Residential (R-1D) zone to a Neighborhood Business (B-1) zone for 5.6879 net (5.8494 gross) acres, was presented to the Urban County Planning Commission; said Commission recommending conditional approval of the zone change by a vote of 8-0; and

WHEREAS, this Council agrees with the recommendation of the Planning Commission; and

WHEREAS, the recommendation form of the Planning Commission is attached hereto and incorporated herein by reference.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That the Zoning Ordinance of the Lexington-Fayette Urban County Government be amended to show a change in zone for property located at 6270 Athens Walnut Hill Pike from an Agricultural Rural (A-R) zone and a Single-Family Residential (R-1D) zone to a Neighborhood Business (B-1) zone for 5.6879 net (5.8494 gross) acres, being more fully described in Exhibit "A" which is attached hereto and incorporated herein by reference.

Section 2 – That under the provisions of Article 6-7 of the Zoning Ordinance, the following use restrictions are imposed via conditional zoning:

- a. The following uses shall be prohibited:
 - i. Drive-through facilities.
 - ii. Research development and testing laboratories or centers.
 - iii. Medical and dental offices, clinics and laboratories.
 - iv. Telecommunication towers, satellite dishes, antennae and transmitters.
 - v. 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.
 - ix. Parking lots and parking structures.
 - x. Repair of household appliances.
 - xi. Miniature golf or putting courses.
 - xii. Indoor theaters, with more than two (2) screens or stages.
 - xiii. Rental of equipment whose retail sale would be permitted in the B-1 zone.
 - xiv. Dwelling units.
 - xv. Animal grooming facilities.
 - xvi. Tattoo parlors.
 - xvii. Form-based neighborhood business project.
 - xviii. Day shelters.
 - xix. Extended stay hotels.
- b. The following uses in excess of 500 square feet shall be prohibited:
- i. Telephone exchanges, radio and television studios.
 - ii. Quick copy services utilizing xerographic or similar processes, but not utilizing offset printing methods.
 - iii. Computer Centers.
 - iv. Athletic club facilities.
 - v. Offices of veterinarians, animal hospitals or clinics.

These restrictions are appropriate and necessary to reduce the potential impact of the allowable uses on the Athens rural settlement.

Section 3 - That the Lexington-Fayette Urban County Planning Commission is directed to show the amendment on the official zone map atlas and to make reference to the number of this Ordinance.

Section 4 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: September 22, 2022



MAYOR

ATTEST:



CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: September 29, 2022-1t

0938-22:TWJ:X:\Cases\PLANNING\22-LE0003\LEG\00765312.DOCX

Rec'd by _____

Date: _____

RECOMMENDATION OF THE
URBAN COUNTY PLANNING COMMISSION
OF LEXINGTON AND FAYETTE COUNTY, KENTUCKY

IN RE: **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. (Council District 12)

Having considered the above matter on August 25, 2022, at a Public Hearing, and having voted 8-0 that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend **CONDITIONAL APPROVAL** of this matter 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. Drive-through facilities.
 - ii. Research development and testing laboratories or centers.
 - iii. Medical and dental offices, clinics and laboratories.
 - iv. Telecommunication towers, satellite dishes, antennae, and transmitters.
 - v. 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.
- ix. Parking lots and parking structures.
- x. Repair of household appliances.
- xi. Miniature golf or putting courses.
- xii. Indoor theaters, with more than two (2) screens or stages.
- xiii. Rental of equipment whose retail sale would be permitted in the B-1 zone.
- xiv. Dwelling units.
- xv. Animal grooming facilities.
- xvi. Tattoo parlors.
- xvii. Form-based neighborhood business project.
- xviii. Day shelters.
- xix. Extended-stay hotels.

- b. The following uses in excess of 5000 square feet shall be prohibited:
 - i. Telephone exchanges, radio and television studios.
 - ii. Quick copy services utilizing xerographic or similar processes, but not utilizing offset printing methods.
 - iii. Computer Centers.
 - iv. Athletic club facilities.
 - v. Offices of veterinarians, animal hospitals or clinics.

These restrictions are appropriate and necessary to reduce the potential impact of the allowable uses on the Athens rural settlement.

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.

ATTEST: This 9th day of September, 2022.



 Secretary, Jim Duncan

LARRY FORESTER
 CHAIR

Note: The corollary development plan, PLN-MJDP-22-00044: ATHENS PROPERTY LLC, was approved by the Planning Commission on August 25, 2022 and certified on September 8, 2022.

Note: A dimensional variance was approved by the Planning Commission on August 25, 2022.

K.R.S. 100.211(7) requires that the Council take action on this request by November 23, 2022.

At the Public Hearing before the Urban County Planning Commission, this petitioner was represented by **Nathan Billings, attorney**.

OBJECTORS

- None

OBJECTIONS

- None

VOTES WERE AS FOLLOWS:

AYES: (8) Barksdale, Bell, de Movellan, Forester, Michler, Nicol, Pohl, and Worth
NAYS: (0)

ABSENT: (3) Penn, Davis, Meyer

ABSTAINED: (0)

DISQUALIFIED: (0)

Motion for APPROVAL of PLN-MAR-22-00011 carried.

Enclosures: Application
Justification
Legal Description
Plat
Staff Report
Applicable excerpts of minutes of above meeting

MAP AMENDMENT REQUEST (MAR) APPLICATION

1. CONTACT INFORMATION (Name, Address, City/State/Zip & Phone No.)

Applicant: ATHENS PROPERTY, LLC
Owner(s): ATHENS PROPERTY LLC, 5943 ATHENS WALNUT HILL PIKE, LEXINGTON, KY 40515
Attorney: Zach Cato, 145 CONSTITUTION ST, LEXINGTON, KY 40507

2. ADDRESS OF APPLICANT'S PROPERTY

6270 ATHENS WALNUT HILL PIKE, LEXINGTON, KY 40515

3. ZONING, USE & ACREAGE OF APPLICANT'S PROPERTY

Zoning	Existing		Requested		Acreage	
		Use	Zoning	Use	Net	Gross
A-R, R-1D		Retail/Restaurant	B-1	Retail/Restaurant/Small Events	5.6879	5.8494

4. EXISTING CONDITIONS

a. Are there any existing dwelling units on this property that will be removed if this application is approved?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
b. Have any such dwelling units been present on the subject property in the past 12 months?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
c. Are these units currently occupied by households earning under 40% of the median income? If yes, how many units? If yes, please provide a written statement outlining any efforts to be undertaken to assist those residents in obtaining alternative housing.	<input type="checkbox"/> YES <input type="checkbox"/> NO

5. URBAN SERVICES STATUS (Indicate whether existing, or how to be provided)

Roads:	
Storm Sewers:	
Sanity Sewers:	
Refuse Collection:	
Utilities:	<input checked="" type="checkbox"/> Electric <input checked="" type="checkbox"/> Gas <input checked="" type="checkbox"/> Water <input checked="" type="checkbox"/> Phone <input checked="" type="checkbox"/> Cable



BILLINGS LAW FIRM ^{PLLC}
COUNSELORS-AT-LAW

ZACHARY G. CATO, ESQ.
zach.cato@blfky.com

145 Constitution Street
Lexington, Kentucky 40507
(o) (859) 225-5240
(f) (859) 225-5241

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 acres¹ 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.²

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.

¹ 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.

² "The History of Our School: from Athens to ACE", www.fcps.net/page/3960.

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2. Zoning Request

The Applicant requests to change the zoning from its current Agricultural Rural (A-R) and Single-Family Residential (R-1D) zones³ 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.

³ 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>Comprehensive Plan Goals & Objectives</u>	<u>Analysis</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>

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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

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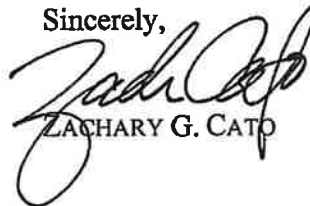
tree lines are believed to be even older than that. The conditions on the Property predate the Zoning Ordinance itself.

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.

ATHENS PROPERTY, LLC
(PLN-MAR-22-00011)

6270 ATHENS WALNUT HILL PIKE

Rezone the property to allow for neighborhood commercial uses.

Applicant/Owner

Athens Property, LLC
5943 Athens Walnut Hill Pike
Lexington, KY 40515
zach.cato@blfky.com



Application Details

Acreage:

5.6879 (5.8494 gross) acres

Current Zoning:

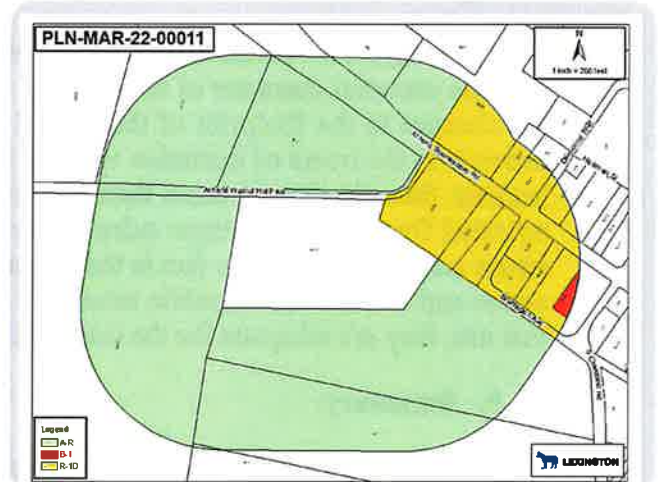
Agricultural Rural (A-R) zone
Single Family Residential (R-1D) zone

Proposed Zoning:

Neighborhood Business (B-1) zone

Description:

The applicant is seeking to rezone the subject property to the Neighborhood Business (B-1) zone to expand the existing uses of the site, and incorporate new uses, such as event space.



Public Engagement

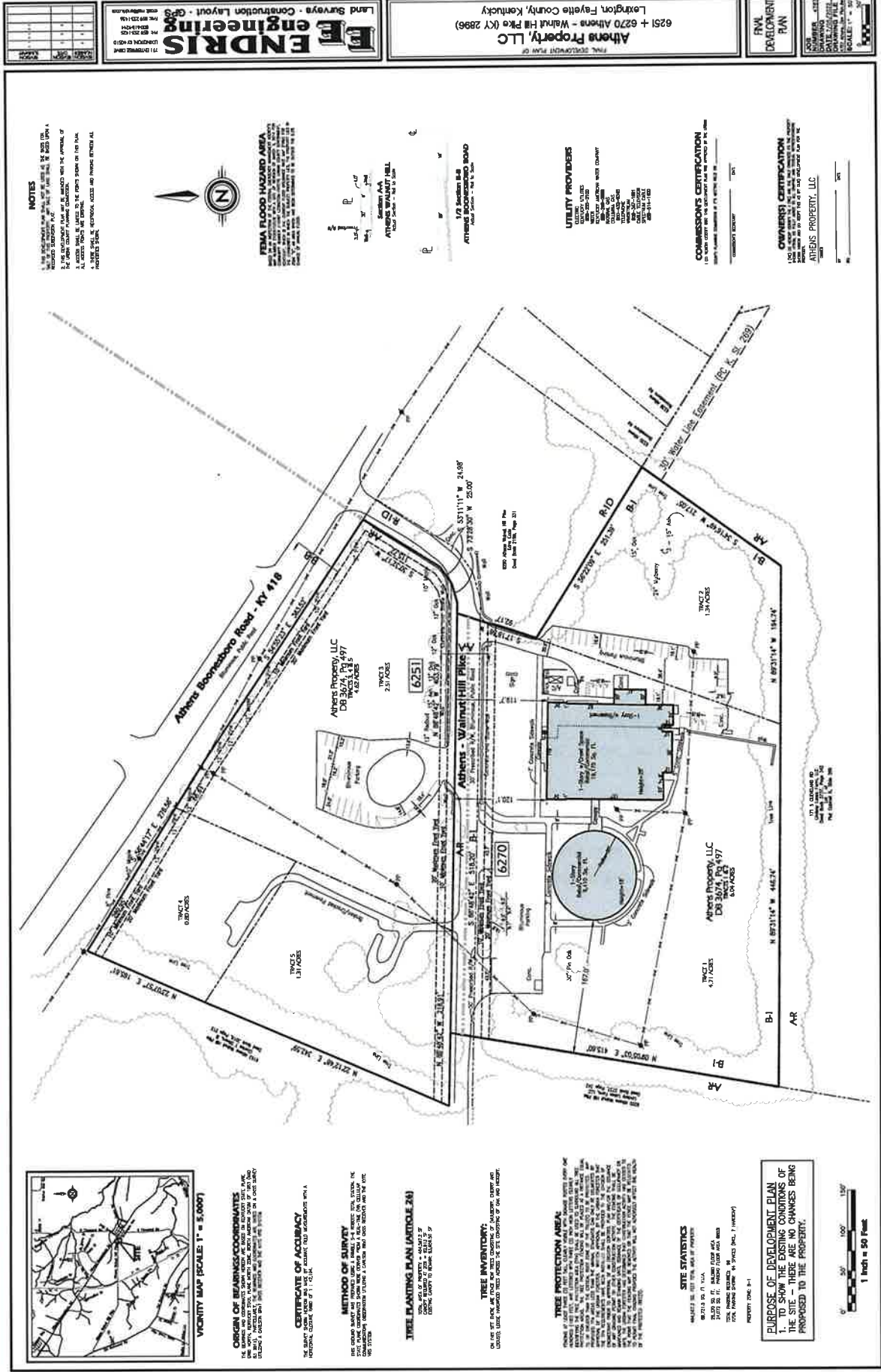
- No information has been provided related to public engagement.

Status

- Public Engagement
- Pre-Application Meeting
- Application Review
- Planning Staff Review
- Technical Review Committee
- Zoning/Subdivision Committee Meetings
- Planning Commission Hearing
- Urban County Council Meeting

DISCLAIMER: Plans are subject to change. Visit the Accela Citizen Portal (lexingtonky.gov/plans) or contact Planning for the latest information.

Development Plan



NOTES

1. THIS DEVELOPMENT PLAN IS BASED UPON THE RECORD SURVEY PLAN BY ENDRIS ENGINEERING, INC., DATED 07/13/2022, AND THE RECORD SURVEY PLAN BY ENDRIS ENGINEERING, INC., DATED 07/13/2022.
2. ALL DIMENSIONS ARE TO THE CENTERLINE UNLESS OTHERWISE NOTED.
3. A 100' BUFFER SHALL BE MAINTAINED FROM ALL EXISTING AND PROPOSED UTILITIES.
4. A 100' BUFFER SHALL BE MAINTAINED FROM ALL EXISTING AND PROPOSED STRUCTURES.
5. A 100' BUFFER SHALL BE MAINTAINED FROM ALL EXISTING AND PROPOSED DRIVEWAYS.

FEMA FLOOD HAZARD AREA

THIS DEVELOPMENT IS SITUATED WITHIN A FEMA FLOOD HAZARD AREA. THE FLOOD HAZARD AREA IS SHOWN ON THE FEMA FLOOD HAZARD MAP, DATED 07/13/2022, AND IS IDENTIFIED AS A 100-YEAR FLOOD HAZARD AREA. THE DEVELOPER SHALL OBTAIN A LETTER OF MAP ACTUATION FROM FEMA PRIOR TO CONSTRUCTION.

UTILITY PROVIDERS

ATHEMOS ENGINEERING, INC.
 1000 Athens Booneboro Road
 Lexington, KY 40502
 606-253-1100
 www.atemos.com

COMMISSIONER CERTIFICATION

I, _____, Commissioner of the State of Kentucky, hereby certify that the above described land is the property of _____, and that the above described land is being offered for sale in accordance with the provisions of the Kentucky Uniform Gifts to Minors Act, KRS 204.010, and that the above described land is being offered for sale in accordance with the provisions of the Kentucky Uniform Gifts to Minors Act, KRS 204.010.

CONVEYANCE CERTIFICATION

I, _____, Attorney at Law, hereby certify that the above described land is the property of _____, and that the above described land is being offered for sale in accordance with the provisions of the Kentucky Uniform Gifts to Minors Act, KRS 204.010, and that the above described land is being offered for sale in accordance with the provisions of the Kentucky Uniform Gifts to Minors Act, KRS 204.010.

ENDRIS ENGINEERING, INC.
 711 DREWING DRIVE
 SUITE 100
 LEXINGTON, KY 40502
 606-253-1100
 www.endris.com

Athens Property, LLC
 6251 & 6270 Athens - Walnut Hill Pike (KY 2896)
 Lexington, Fayette County, Kentucky

FVM DEVELOPMENT PLAN

DATE: 07/13/2022
 SCALE: 1" = 50'

LEXINGTON
 Planning

ORIGIN OF BEARINGS/COORDINATES

THE BEARINGS AND COORDINATES SHOWN ON THIS PLAN WERE OBTAINED FROM THE RECORD SURVEY PLAN BY ENDRIS ENGINEERING, INC., DATED 07/13/2022, AND THE RECORD SURVEY PLAN BY ENDRIS ENGINEERING, INC., DATED 07/13/2022.

CERTIFICATE OF ACCURACY

I, _____, Surveyor, hereby certify that the above described land is the property of _____, and that the above described land is being offered for sale in accordance with the provisions of the Kentucky Uniform Gifts to Minors Act, KRS 204.010, and that the above described land is being offered for sale in accordance with the provisions of the Kentucky Uniform Gifts to Minors Act, KRS 204.010.

METHOD OF SURVEY

THIS SURVEY WAS CONDUCTED USING A TOTAL STATION AND A GPS RECEIVER. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF THE KENTUCKY SURVEYING ACT, KRS 204.010, AND THE KENTUCKY UNIFORM GIFTS TO MINORS ACT, KRS 204.010.

TREE PLANTING PLAN (ANNEXURE 2A)

THIS PLAN SHOWS THE LOCATION AND SPECIES OF TREES TO BE PLANTED ON THE ABOVE DESCRIBED LAND. THE TREES TO BE PLANTED ARE:

- 1. 10' Diameter American Elm (Ulmus americana)
- 2. 10' Diameter White Oak (Quercus alba)
- 3. 10' Diameter Red Oak (Quercus rubra)
- 4. 10' Diameter Loblolly Shortleaf Pine (Pinus taeda)

TREE PROTECTION AREA

THIS PLAN SHOWS THE LOCATION AND BOUNDARIES OF THE TREE PROTECTION AREA. THE TREE PROTECTION AREA IS THE AREA WITHIN WHICH THE TREES TO BE PLANTED SHALL BE PROTECTED FROM DAMAGE OR REMOVAL.

PURPOSE OF DEVELOPMENT PLAN

THE PURPOSE OF THIS DEVELOPMENT PLAN IS TO SHOW THE LOCATION AND BOUNDARIES OF THE PROPOSED DEVELOPMENT AND TO SHOW THE LOCATION AND BOUNDARIES OF THE TREE PROTECTION AREA. THIS PLAN IS BEING SUBMITTED TO THE BOARD OF ZONING AND PLANNING FOR REVIEW AND APPROVAL.

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

DESCRIPTION OF ZONE CHANGE

Zone Change & Acreage:	A-R to B-1: 5.58 net (5.69 gross) acres
	R-1D to B-1: <u>0.11 net (0.16 gross) acres</u>
	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.

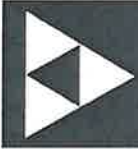
The Athens schoolhouse was initially constructed in 1926 to serve the needs of the rural communities along the western portion of Fayette County. At the time of closing it had 316 students and 25 employees. During its history as a school, the property was in consistent use as an educational facility, 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.

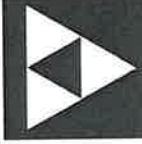


- iv. Telephone exchanges, radio and television studios.
- v. Computer and data processing centers.
- vi. Brew-pubs.
- vii. Self-service laundry or laundry pick-up stations, including clothes cleaning establishments of not more than forty (40) pounds capacity and using a closed-system process.
- viii. 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-MIDP-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.

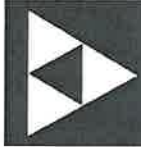
Article 18-3(a)(1) states that for any office or business zone (except P-2), that adjoins any residential zone, there shall be a minimum buffer area of 15 feet adjacent to all common boundaries (located behind the building line) except street frontage, which will contain one tree per 40 feet of linear 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.

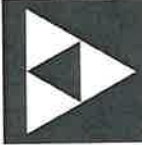
Next, the applicant indicates requests to reduce the buffer between the proposed B-1 zone and the A-R zone (a71 S. Cleveland Road, and 6200 Athens Walnut Hill Pike) from 15 feet to 5 feet citing the mature hedge along the boundary, which they believe accomplishes the goal of the requirement. Again, the 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.

UPDATED STAFF FINDINGS

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. Drive-through facilities.
 - ii. Research development and testing laboratories or centers.
 - iii. Medical and dental offices, clinics and laboratories.
 - iv. Telecommunication towers, satellite dishes, antennae, and transmitters.
 - v. 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.
 - ix. Parking lots and parking structures.
 - x. Repair of household appliances.
 - xi. Miniature golf or putting courses.
 - xii. Indoor theaters, with more than two (2) screens or stages.
 - xiii. Rental of equipment whose retail sale would be permitted in the B-1 zone.
 - xiv. Dwelling units.
 - xv. Animal grooming facilities.
 - xvi. Tattoo parlors.
 - xvii. Form-based neighborhood business project.
 - xviii. Day shelters.
 - xix. Outdoor live entertainment and/or dancing, cocktail lounges or nightclubs.
 - xx. Extended-stay hotels.
 - b. The following uses in excess of 5000 square feet shall be prohibited:
 - i. Telephone exchanges, radio and television studios.
 - ii. Quick copy services utilizing xerographic or similar processes, but not utilizing offset printing methods.
 - iii. Computer Centers.
 - iv. Athletic club facilities.

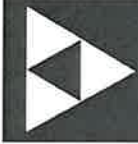


- v. Offices of veterinarians, animal hospitals or clinics.
These restrictions are appropriate and necessary to reduce the potential impact of the allowable uses on the Athens rural settlement.
- 4. This recommendation is made subject to approval and certification of PLN-MJDP-22-00044: Athens Property, 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.

HBB/TW
08/25/2022

Planning Services/Staff Reports/MAR/2022/PLN-MAR-22-00011 Athens Property LLC Updated Findings.pdf

I SUPPLEMENTAL STAFF REPORT ON VARIANCE REQUEST



Since the August Zoning Committee meeting, the petitioner has modified their variance request. The applicant has reduced their request to the property perimeter 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 eliminate the need for a double row of hedges and maintaining the existing single row of hedge that borders the property. The double row of hedges is a component of the 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.

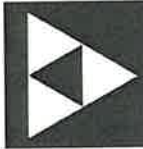
Article 18-3(a)(1) states that for any office or business zone (except P-2), that adjoins any residential zone, there shall be a minimum buffer area of 15 feet adjacent to all common boundaries (located behind the building line) except street frontage, which will contain one tree per 40 feet of linear 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.

CASE REVIEW

The applicant's modification to their variance request is reflective of both the space that is available on the site, and the historical buffering that has developed between the Athens Schoolhouse and the adjacent residential and agricultural land uses. Following the review of the initial staff report, the applicant has removed their request to reduce the property perimeter screening requirements between the proposed Neighborhood Business (B-1) zone and the Agricultural Rural (A-R) zone, as they currently exceed the requirements of Article 18-3(a)(1). Additionally, the petitioner has reduced the requested variance for the portions of the property that abut the Single Family Residential (R-1D) zone as they currently have the space to provide the buffering and have a more dense tree coverage than required. The applicant has modified the request, and is now requesting that the required double hedge to a single hedge along the property perimeter.

Within their letter of justification, the applicant indicates that the proposed variance arises from special circumstances at the property because it was used as a school for many years, and was developed with a thick line of trees and natural growth. The applicant posits that the current mature growth screens the property on all three adjoining boundaries; it is not "open" to any adjoining residential or agricultural use. Furthermore, the applicant indicates that no changes to the structure or the property have taken place since 1967 and the proposed modification is not a willful violation of the Zoning Ordinance.

Additionally, the applicant indicates that the variance will not adversely affect 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. The applicant has proposed no changes to the footprint of the school or the property. They indicate that the property has been operated for weekend antique sales for years without issues in the neighborhood, and



no new issues are anticipated. They indicate that the existing screening and buffers were adequate for the historical school use and the current use, which are substantially similar to the future uses of the property.

In an effort to maintain the site and the mature growth along the property's boundaries, the applicant has also proposed a tree preservation area, which would be designated on the associated development plan. A note on the development plan would be added that would obligate the owner to maintain the buffer and plantings, remove dead/diseased plant life, and replace it as necessary under the supervision of the Urban Forester. They opine that this note will ensure the long-term safety and security of the buffering and will maintain the present character of the property and the adjoining parcels.

As the requested variance would modify the required landscape buffering of the property, the petition was presented to the Landscape Review Committee (LRC) at their August 23, 2022 meeting. At this meeting, the LRC reviewed the application, and the current situation of the site. Their discussion included concerns with the potential harmful plants in the buffer area, the need for a note to be added to the plan to protect the buffer area, and the potential for degradation of the buffer area. The applicant's representative provided insight into the overall plan for the area and indicated their want to add a tree preservation note. The LRC voted to recommend approval of the requested variance to Article 18-3(a)(1) by the applicant, Athens Schoolhouse, LLC, on the condition that the applicant include a note on the Development Plan regarding maintaining the existing tree line.

Staff agrees with the applicant and the recommendation from the Landscape Review Committee regarding the appropriateness of the proposed variance to the property perimeter screening requirements.

STAFF RECOMMENDS: **APPROVAL OF THE VARIANCE TO THE PROPERTY PERIMETER SCREENING, FOR THE FOLLOWING REASONS:**



1. Granting the requested variance should not adversely affect the public health, safety, or welfare; nor should it affect the character of the general vicinity, as the current buffer area includes tree canopy that exceeds the current regulations and has buffered the single family residence from the historical school use for many decades.
2. The request is not a result of a willful violation of the Zoning Ordinance. The applicant has taken care to go through the necessary process for this project and has requested the variance prior to commencing construction.

This recommendation of Approval is made subject to the following conditions:

- a. Provided the Planning Commission and Urban County Council approves the requested zone change to the B-1 zone, otherwise the requested variances shall be null and void.
- b. The development shall be constructed in accordance with the approved Final Development Plan, or as amended by the Planning Commission, and a note referencing the Tree Preservation Area along the R-1D zone shall be added to the plan.
- c. All necessary permits shall be obtained from the Divisions of Planning, Traffic Engineering, Engineering, and Building Inspection prior to construction and occupancy.
- d. Action of the Planning Commission shall be noted on the Development Plan for the subject property.

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).

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

- 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 AMENDMENTS

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:

1. 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.
2. 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.

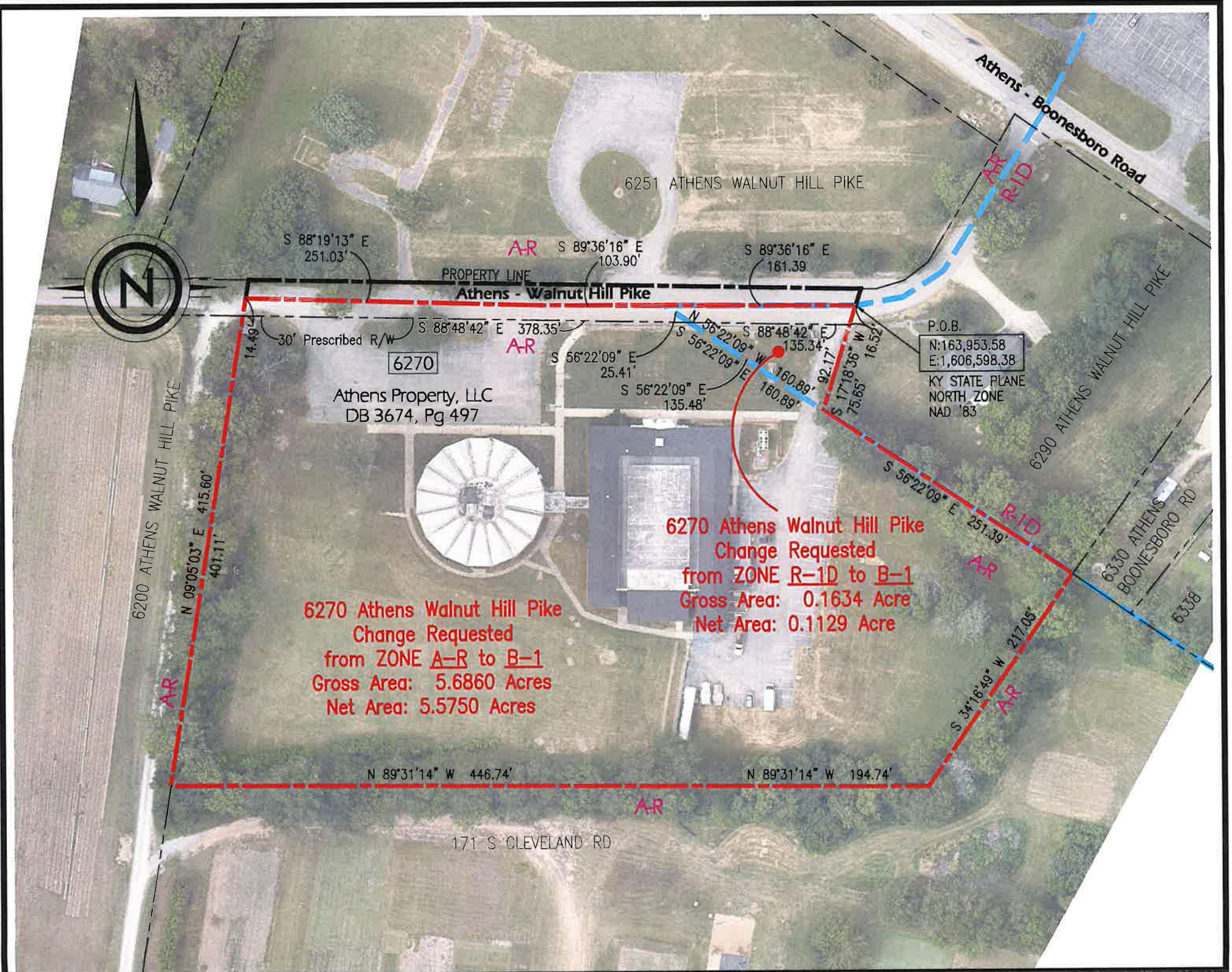
Commission Questions – Mr. de Movellan asked about the buffer requirement for railroad tracks, being that there are tracks along the edge of the property, and if the tracks were owned by the applicant. Mr. Billings consulted Ms. Wade, and Ms. Wade indicated that the buffer was 15 feet with a fence. Additionally 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.

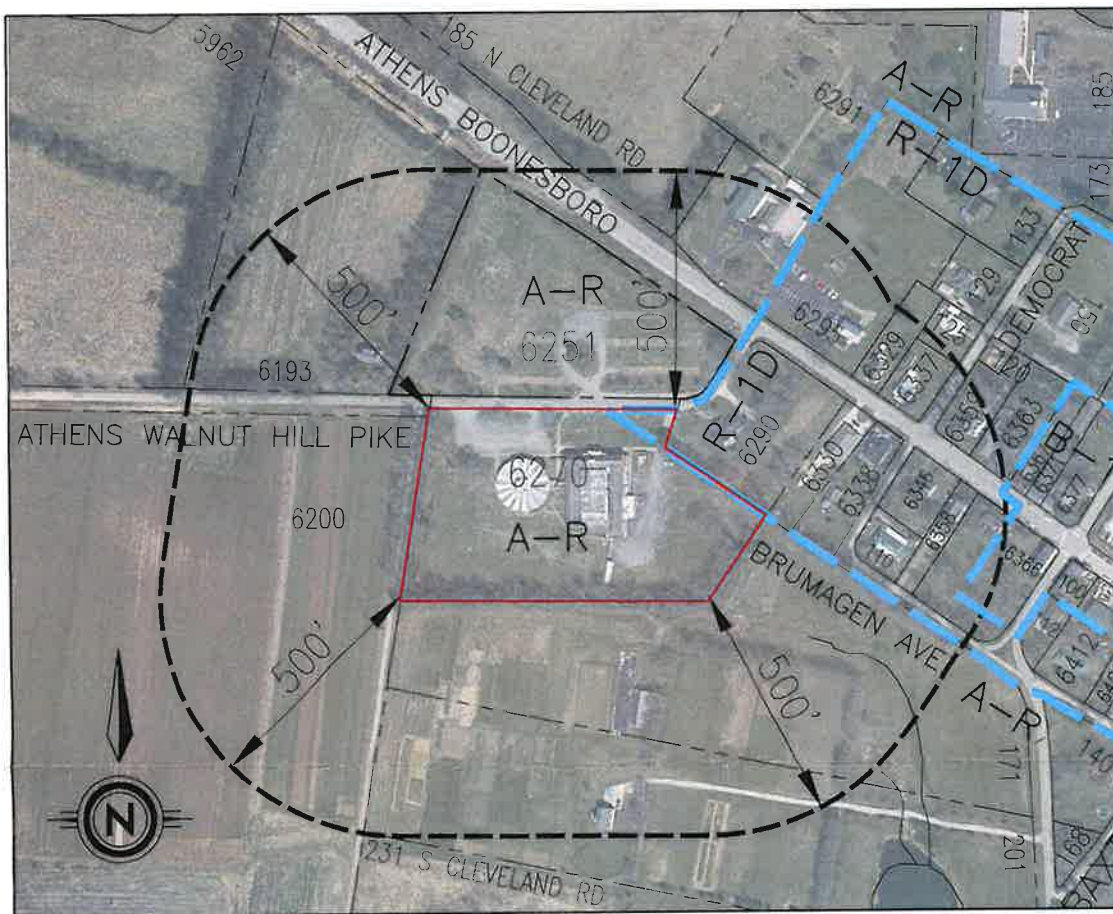
Blake Hall, 36 Richmond Ave, stated he was in support because it allows a transitional zone for varied developments, but did want to see drive-thrus moved from an accessory use to a conditional use.



PROPERTY MAP



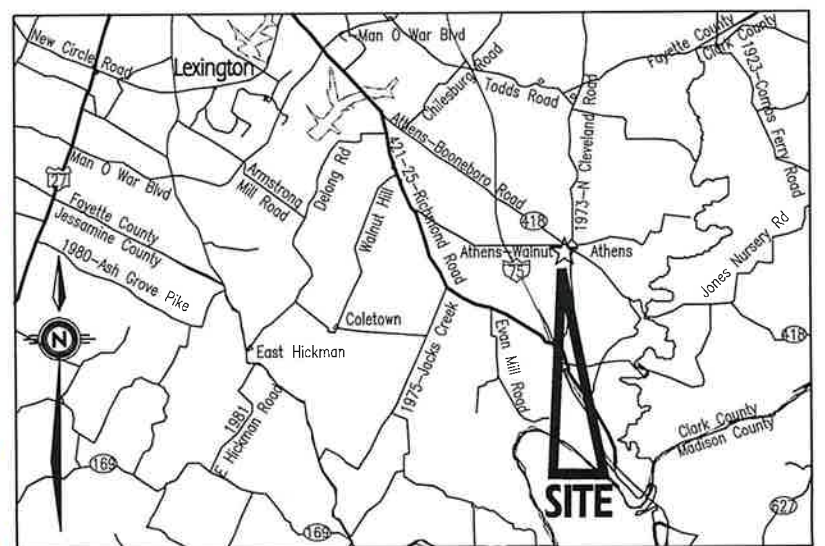
1 Inch = 100 Feet



NOTIFICATION AREA MAP



1 Inch = 400 Feet



**VICINITY MAP
SCALE: 1" = 3 miles**

STATE OF KENTUCKY
KEVIN M. PHILLIPS
 3350
 LICENSED PROFESSIONAL LAND SURVEYOR

[Signature]
 7/12/2022

PREPARED BY:

ENDRIS
 engineering

771 Enterprise Drive
 Lexington, Ky 40510
 Phone: (859) 253-1425
 Fax: (859) 233-1436

FROM	TO	NET	GROSS
A-R	B-1	5.5750 Acres	5.6860 Acres
R-1D	B-1	0.1129 Acre	0.1634 Acre

TITLE: Athens Property, LLC
 ADDRESS: 6270 Athens - Walnut Hill Pike
 APPLICANT: Athens Property, LLC
 5943 Athens Walnut Hill Pike, Lexington, KY 40515
 OWNER: Athens Property, LLC
 5943 Athens Walnut Hill Pike, Lexington, KY 40515
 DATE FILED OR AMENDED: July 12, 2022

Rec'd by _____
Date: _____

RECOMMENDATION OF THE
URBAN COUNTY PLANNING COMMISSION
OF LEXINGTON AND FAYETTE COUNTY, KENTUCKY

IN RE: **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. (Council District 12)

Having considered the above matter on **August 25, 2022**, at a Public Hearing, and having voted **8-0** that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend **CONDITIONAL APPROVAL** of this matter 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. Drive-through facilities.
 - ii. Research development and testing laboratories or centers.
 - iii. Medical and dental offices, clinics and laboratories.
 - iv. Telecommunication towers, satellite dishes, antennae, and transmitters.
 - v. 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.
 - ix. Parking lots and parking structures.
 - x. Repair of household appliances.
 - xi. Miniature golf or putting courses.
 - xii. Indoor theaters, with more than two (2) screens or stages.
 - xiii. Rental of equipment whose retail sale would be permitted in the B-1 zone.
 - xiv. Dwelling units.
 - xv. Animal grooming facilities.
 - xvi. Tattoo parlors.
 - xvii. Form-based neighborhood business project.
 - xviii. Day shelters.
 - xix. Extended-stay hotels.
- b. The following uses in excess of 5000 square feet shall be prohibited:
- i. Telephone exchanges, radio and television studios.
 - ii. Quick copy services utilizing xerographic or similar processes, but not utilizing offset printing methods.
 - iii. Computer Centers.
 - iv. Athletic club facilities.
 - v. Offices of veterinarians, animal hospitals or clinics.

These restrictions are appropriate and necessary to reduce the potential impact of the allowable uses on the Athens rural settlement.

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.

ATTEST: This 9th day of September, 2022.



 Secretary, Jim Duncan

LARRY FORESTER
 CHAIR

Note: The corollary development plan, PLN-MJDP-22-00044: ATHENS PROPERTY LLC, was approved by the Planning Commission on August 25, 2022 and certified on September 8, 2022.

Note: A dimensional variance was approved by the Planning Commission on August 25, 2022.

K.R.S. 100.211(7) requires that the Council take action on this request by November 23, 2022.

At the Public Hearing before the Urban County Planning Commission, this petitioner was represented by **Nathan Billings, attorney.**

OBJECTORS

- None

OBJECTIONS

- None

VOTES WERE AS FOLLOWS:

AYES: (8) Barksdale, Bell, de Movellan, Forester, Michler, Nicol, Pohl, and Worth
NAYS: (0)

ABSENT: (3) Penn, Davis, Meyer

ABSTAINED: (0)

DISQUALIFIED: (0)

Motion for APPROVAL of PLN-MAR-22-00011 carried.

Enclosures: Application
Justification
Legal Description
Plat
Staff Report
Applicable excerpts of minutes of above meeting

MAP AMENDMENT REQUEST (MAR) APPLICATION

1. CONTACT INFORMATION (Name, Address, City/State/Zip & Phone No.)

Applicant: ATHENS PROPERTY, LLC
Owner(s): ATHENS PROPERTY LLC, 5943 ATHENS WALNUT HILL PIKE, LEXINGTON, KY 40515
Attorney: Zach Cato, 145 CONSTITUTION ST, LEXINGTON, KY 40507

2. ADDRESS OF APPLICANT'S PROPERTY

6270 ATHENS WALNUT HILL PIKE, LEXINGTON, KY 40515

3. ZONING, USE & ACREAGE OF APPLICANT'S PROPERTY

Existing		Requested		Acreage	
Zoning	Use	Zoning	Use	Net	Gross
A-R, R-1D	Retail/Restaurant	B-1	Retail/Restaurant/Small Events	5.6879	5.8494

4. EXISTING CONDITIONS

a. Are there any existing dwelling units on this property that will be removed if this application is approved?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
b. Have any such dwelling units been present on the subject property in the past 12 months?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
c. Are these units currently occupied by households earning under 40% of the median income? If yes, how many units? If yes, please provide a written statement outlining any efforts to be undertaken to assist those residents in obtaining alternative housing.	<input type="checkbox"/> YES <input type="checkbox"/> NO

5. URBAN SERVICES STATUS (Indicate whether existing, or how to be provided)

Roads:	
Storm Sewers:	
Sanity Sewers:	
Refuse Collection:	
Utilities:	<input checked="" type="checkbox"/> Electric <input checked="" type="checkbox"/> Gas <input checked="" type="checkbox"/> Water <input checked="" type="checkbox"/> Phone <input checked="" type="checkbox"/> Cable



BILLINGS LAW FIRM PLLC
COUNSELORS-AT-LAW

ZACHARY G. CATO, ESQ.
zach.cato@blfky.com

145 Constitution Street
Lexington, Kentucky 40507
(o) (859) 225-5240
(f) (859) 225-5241

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 acres¹ 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.²

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.

¹ 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.

² "The History of Our School: from Athens to ACE", www.fcps.net/page/3960.

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2. Zoning Request

The Applicant requests to change the zoning from its current Agricultural Rural (A-R) and Single-Family Residential (R-1D) zones³ 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.

³ 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>Comprehensive Plan Goals & Objectives</u>	<u>Analysis</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>

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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

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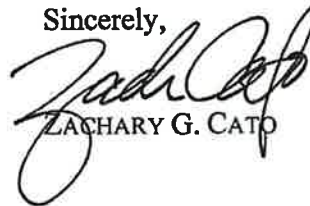
tree lines are believed to be even older than that. The conditions on the Property predate the Zoning Ordinance itself.

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.

ATHENS PROPERTY, LLC
(PLN-MAR-22-00011)

Rezone the property to allow for neighborhood commercial uses.

6270 ATHENS WALNUT HILL PIKE

Applicant/Owner

Athens Property, LLC
5943 Athens Walnut Hill Pike
Lexington, KY 40515
zach.cato@blfky.com



Application Details

Acreage:

5.6879 (5.8494 gross) acres

Current Zoning:

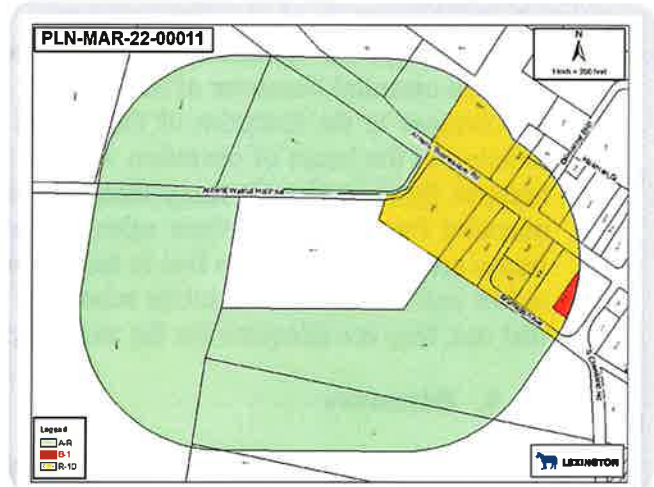
Agricultural Rural (A-R) zone
Single Family Residential (R-1D) zone

Proposed Zoning:

Neighborhood Business (B-1) zone

Description:

The applicant is seeking to rezone the subject property to the Neighborhood Business (B-1) zone to expand the existing uses of the site, and incorporate new uses, such as event space.



Public Engagement

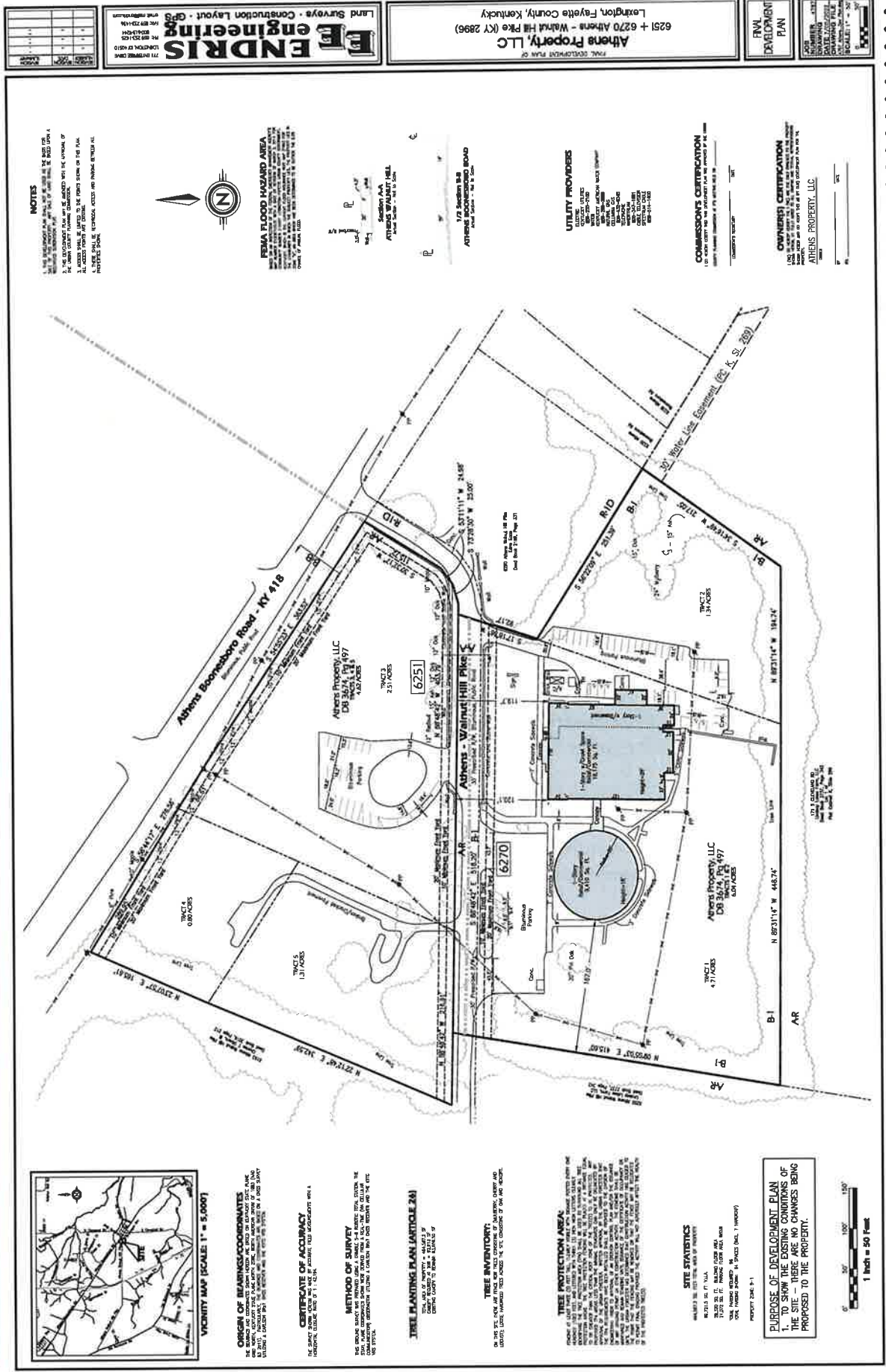
- No information has been provided related to public engagement.

Status

- Public Engagement
- Pre-Application Meeting
- Application Review
- Planning Staff Review
- Technical Review Committee
- Zoning/Subdivision Committee Meetings
- Planning Commission Hearing
- Urban County Council Meeting

DISCLAIMER: Plans are subject to change. Visit the Accela Citizen Portal (lexingtonky.gov/plans) or contact Planning for the latest information.

Development Plan



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

DESCRIPTION OF ZONE CHANGE

Zone Change & Acreage:	A-R to B-1: 5.58 net (5.69 gross) acres
	R-1D to B-1: <u>0.11 net (0.16 gross) acres</u>
	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-ID) 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

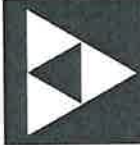
The applicant opines that the proposed rezoning is in agreement with the adopted Goals, Objectives, and Policies of the 2018 Comprehensive Plan. They state that the proposed rezoning will encourage development that promotes and enhances tourism by providing an amenity located near the Boone Creek Scenic 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).

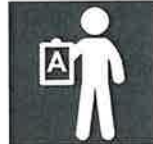
Staff finds that the Rural Land Management Plan can be met with the proposed rezoning of the subject property and reuse of the structure if the property is restricted via conditional zoning restrictions.

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.

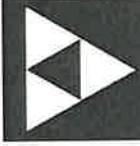


- iv. Telephone exchanges, radio and television studios.
- v. Computer and data processing centers.
- vi. Brew-pubs.
- vii. Self-service laundry or laundry pick-up stations, including clothes cleaning establishments of not more than forty (40) pounds capacity and using a closed-system process.
- viii. 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.

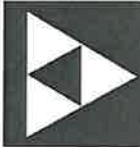
Article 18-3(a)(1) states that for any office or business zone (except P-2), that adjoins any residential zone, there shall be a minimum buffer area of 15 feet adjacent to all common boundaries (located behind the building line) except street frontage, which will contain one tree per 40 feet of linear 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.

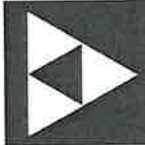
Next, the applicant indicates requests to reduce the buffer between the proposed B-1 zone and the A-R zone (a71 S. Cleveland Road, and 6200 Athens Walnut Hill Pike) from 15 feet to 5 feet citing the mature hedge along the boundary, which they believe accomplishes the goal of the requirement. Again, the 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.

UPDATED STAFF FINDINGS

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. Drive-through facilities.
 - ii. Research development and testing laboratories or centers.
 - iii. Medical and dental offices, clinics and laboratories.
 - iv. Telecommunication towers, satellite dishes, antennae, and transmitters.
 - v. 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.
 - ix. Parking lots and parking structures.
 - x. Repair of household appliances.
 - xi. Miniature golf or putting courses.
 - xii. Indoor theaters, with more than two (2) screens or stages.
 - xiii. Rental of equipment whose retail sale would be permitted in the B-1 zone.
 - xiv. Dwelling units.
 - xv. Animal grooming facilities.
 - xvi. Tattoo parlors.
 - xvii. Form-based neighborhood business project.
 - xviii. Day shelters.
 - xix. Outdoor live entertainment and/or dancing, cocktail lounges or nightclubs.
 - xx. Extended-stay hotels.
 - b. The following uses in excess of 5000 square feet shall be prohibited:
 - i. Telephone exchanges, radio and television studios.
 - ii. Quick copy services utilizing xerographic or similar processes, but not utilizing offset printing methods.
 - iii. Computer Centers.
 - iv. Athletic club facilities.



- v. Offices of veterinarians, animal hospitals or clinics.
These restrictions are appropriate and necessary to reduce the potential impact of the allowable uses on the Athens rural settlement.
- 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.

HBB/TW
08/25/2022

Planning Services/Staff Reports/MAR/2022/PLN-MAR-22-00011 Athens Property LLC Updated Findings.pdf

I SUPPLEMENTAL STAFF REPORT ON VARIANCE REQUEST



Since the August Zoning Committee meeting, the petitioner has modified their variance request. The applicant has reduced their request to the property perimeter 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 eliminate the need for a double row of hedges and maintaining the existing single row of hedge that borders the property. The double row of hedges is a component of the 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.

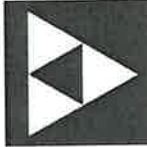
Article 18-3(a)(1) states that for any office or business zone (except P-2), that adjoins any residential zone, there shall be a minimum buffer area of 15 feet adjacent to all common boundaries (located behind the building line) except street frontage, which will contain one tree per 40 feet of linear 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.

CASE REVIEW

The applicant's modification to their variance request is reflective of both the space that is available on the site, and the historical buffering that has developed between the Athens Schoolhouse and the adjacent residential and agricultural land uses. Following the review of the initial staff report, the applicant has removed their request to reduce the property perimeter screening requirements between the proposed Neighborhood Business (B-1) zone and the Agricultural Rural (A-R) zone, as they currently exceed the requirements of Article 18-3(a)(1). Additionally, the petitioner has reduced the requested variance for the portions of the property that abut the Single Family Residential (R-1D) zone as they currently have the space to provide the buffering and have a more dense tree coverage than required. The applicant has modified the request, and is now requesting that the required double hedge to a single hedge along the property perimeter.

Within their letter of justification, the applicant indicates that the proposed variance arises from special circumstances at the property because it was used as a school for many years, and was developed with a thick line of trees and natural growth. The applicant posits that the current mature growth screens the property on all three adjoining boundaries; it is not "open" to any adjoining residential or agricultural use. Furthermore, the applicant indicates that no changes to the structure or the property have taken place since 1967 and the proposed modification is not a willful violation of the Zoning Ordinance.

Additionally, the applicant indicates that the variance will not adversely affect 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. The applicant has proposed no changes to the footprint of the school or the property. They indicate that the property has been operated for weekend antique sales for years without issues in the neighborhood, and



no new issues are anticipated. They indicate that the existing screening and buffers were adequate for the historical school use and the current use, which are substantially similar to the future uses of the property.

In an effort to maintain the site and the mature growth along the property's boundaries, the applicant has also proposed a tree preservation area, which would be designated on the associated development plan. A note on the development plan would be added that would obligate the owner to maintain the buffer and plantings, remove dead/diseased plant life, and replace it as necessary under the supervision of the Urban Forester. They opine that this note will ensure the long-term safety and security of the buffering and will maintain the present character of the property and the adjoining parcels.

As the requested variance would modify the required landscape buffering of the property, the petition was presented to the Landscape Review Committee (LRC) at their August 23, 2022 meeting. At this meeting, the LRC reviewed the application, and the current situation of the site. Their discussion included concerns with the potential harmful plants in the buffer area, the need for a note to be added to the plan to protect the buffer area, and the potential for degradation of the buffer area. The applicant's representative provided insight into the overall plan for the area and indicated their want to add a tree preservation note. The LRC voted to recommend approval of the requested variance to Article 18-3(a)(1) by the applicant, Athens Schoolhouse, LLC, on the condition that the applicant include a note on the Development Plan regarding maintaining the existing tree line.

Staff agrees with the applicant and the recommendation from the Landscape Review Committee regarding the appropriateness of the proposed variance to the property perimeter screening requirements.

STAFF RECOMMENDS: **APPROVAL OF THE VARIANCE TO THE PROPERTY PERIMETER SCREENING, FOR THE FOLLOWING REASONS:**



1. Granting the requested variance should not adversely affect the public health, safety, or welfare; nor should it affect the character of the general vicinity, as the current buffer area includes tree canopy that exceeds the current regulations and has buffered the single family residence from the historical school use for many decades.
2. The request is not a result of a willful violation of the Zoning Ordinance. The applicant has taken care to go through the necessary process for this project and has requested the variance prior to commencing construction.

This recommendation of Approval is made subject to the following conditions:

- a. Provided the Planning Commission and Urban County Council approves the requested zone change to the B-1 zone, otherwise the requested variances shall be null and void.
- b. The development shall be constructed in accordance with the approved Final Development Plan, or as amended by the Planning Commission, and a note referencing the Tree Preservation Area along the R-1D zone shall be added to the plan.
- c. All necessary permits shall be obtained from the Divisions of Planning, Traffic Engineering, Engineering, and Building Inspection prior to construction and occupancy.
- d. Action of the Planning Commission shall be noted on the Development Plan for the subject property.

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).

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

- 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:

1. 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.
2. 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.

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.

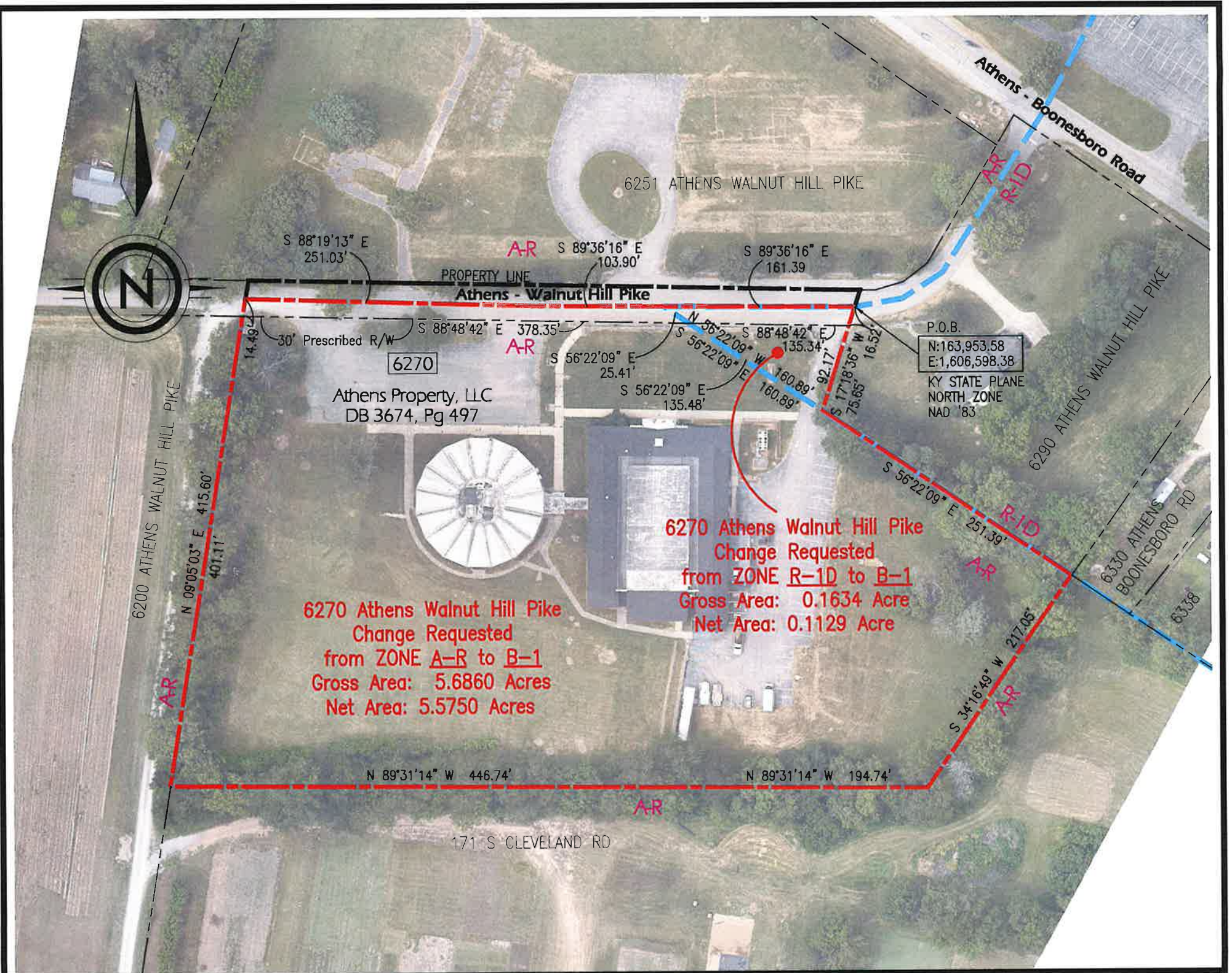
Commission Questions – Mr. de Movellan asked about the buffer requirement for railroad tracks, being that there are tracks along the edge of the property, and if the tracks were owned by the applicant. Mr. Billings consulted Ms. Wade, and Ms. Wade indicated that the buffer was 15 feet with a fence. Additionally 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.



6270 Athens Walnut Hill Pike
 Change Requested
 from **ZONE A-R** to **B-1**
 Gross Area: 5.6860 Acres
 Net Area: 5.5750 Acres

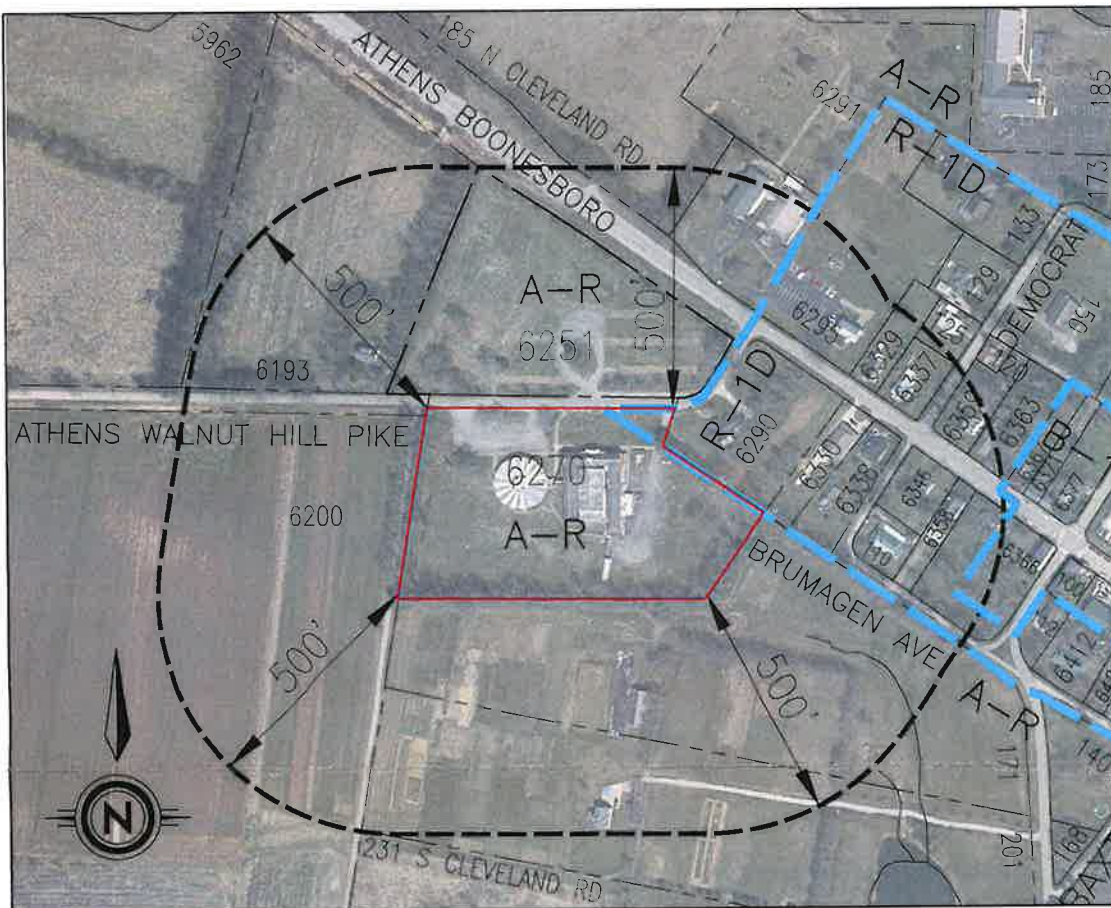
6270 Athens Walnut Hill Pike
 Change Requested
 from **ZONE R-1D** to **B-1**
 Gross Area: 0.1634 Acre
 Net Area: 0.1129 Acre

P.O.B.
 N:163,953.58
 E:1,606,598.38
 KY STATE PLANE
 NORTH ZONE
 NAD '83

PROPERTY MAP



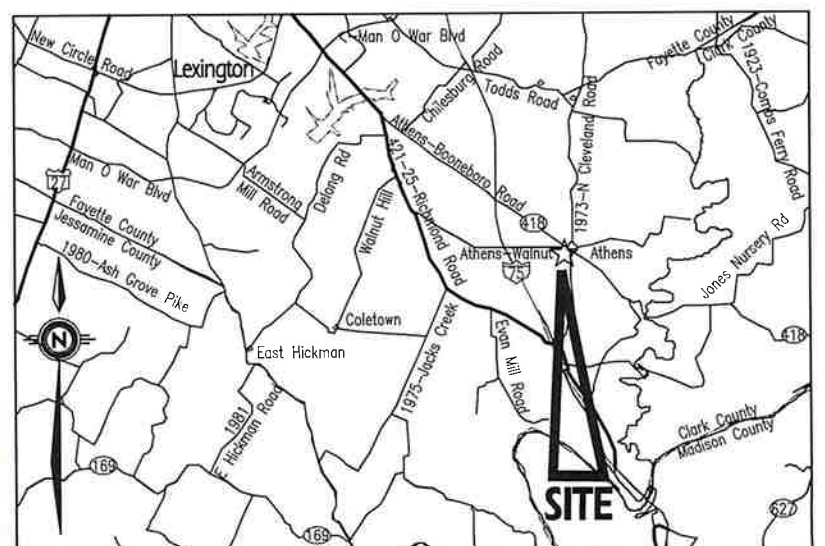
1 Inch = 100 Feet



NOTIFICATION AREA MAP



1 Inch = 400 Feet



VICINITY MAP
 SCALE: 1" = 3 miles

STATE OF KENTUCKY
 KEVIN M. PHILLIPS
 3350
 LICENSED PROFESSIONAL LAND SURVEYOR

[Signature]
 7/12/2022

PREPARED BY:

ENDRIS
 engineering

771 Enterprise Drive
 Lexington, Ky 40510
 Phone: (859) 253-1425
 Fax: (859) 233-1436

FROM	TO	NET	GROSS
A-R	B-1	5.5750 Acres	5.6860 Acres
R-1D	B-1	0.1129 Acre	0.1634 Acre

TITLE: Athens Property, LLC
 ADDRESS: 6270 Athens - Walnut Hill Pike
 APPLICANT: Athens Property, LLC
 5943 Athens Walnut Hill Pike, Lexington, KY 40515
 OWNER: Athens Property, LLC
 5943 Athens Walnut Hill Pike, Lexington, KY 40515
 DATE FILED OR AMENDED: July 12, 2022