

## 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.