

## **ORDINANCE 17-2017**

### **AN ORDINANCE APPROVING AND ADOPTING TEXT AMENDMENTS TO APPENDIX F, ARTICLES III and V OF THE OWENSBORO METROPOLITAN ZONING ORDINANCE FOR THE CITIES OF OWENSBORO AND WHITESVILLE, AND DAVIESS COUNTY.**

**WHEREAS**, the Owensboro Metropolitan Planning Commission met in regular session on May 11, 2017 and proposed an amendment to the text of the Zoning Ordinance for the Cities of Owensboro and Whitesville, and Daviess County regarding revisions to Article III and V; and

**WHEREAS**, by a vote of 9-0, the Owensboro Metropolitan Planning Commission has recommended that the proposed text amendments to the Owensboro Metropolitan Zoning Ordinance be approved as being in compliance with the goals and objectives of the adopted Comprehensive Plan and be submitted to the Owensboro City Commission, Whitesville City Commission, and Daviess County Fiscal Court for approval and adoption by the legislative bodies. Findings of fact in support of adoption of the proposed revisions to the Owensboro Metropolitan Zoning Ordinance are as follows:

1. These Amendments to Article III and V will help allocate wisely the use of land for various activities by encouraging sound land development policies;
2. These amendments to Article III and V are an example of creating flexible zoning regulations for existing redeveloping neighborhoods; and
3. These amendments to Article III and V will allow necessary access for the continued maintenance and upgrading of our existing utility supply systems.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF OWENSBORO, AS  
FOLLOWS:**

**Section 1.** That the statements recited in the preamble hereinabove, upon which the adoption of this ordinance is predicated, are hereby adopted and incorporated by reference, as if fully set forth herein.

**Section 2.** That text amendments to Appendix F of the Owensboro Municipal Code pertaining to Article III - General Zone & District Regulations of the Owensboro Metropolitan Zoning Ordinance for the Cities of Owensboro and Whitesville, and Daviess County shall be the same and are hereby approved and adopted, as more particularly set out in the attached Exhibit A, which is incorporated by reference as if fully set forth herein.

**Section 3.** That text amendments to Appendix F of the Owensboro Municipal Code pertaining to Article V - Administration, Enforcement & Violations of the Owensboro Metropolitan Zoning Ordinance for the Cities of Owensboro and Whitesville, and Daviess County, as more particularly set out in the attached Exhibit B, which is incorporated by reference as if fully set forth herein.

**Section 4.** That the attached amendments to the Zoning Ordinance shall be kept on file and available for public inspection in the office of the Owensboro Metropolitan Planning Commission.

**Section 5.** All prior ordinances or parts thereof, in conflict with the provision of this ordinance, are to the extent of any such conflict, hereby repealed.

**Section 6.** This ordinance shall become effective upon its adoption and publication according to law.

**INTRODUCED AND PUBLICLY READ ON FIRST READING**, this the 18th day  
of July, 2017.

**PUBLICLY READ AND FINALLY APPROVED ON SECOND READING**, this the  
1st day of August, 2017.

/s/ Thomas H. Watson  
Thomas H. Watson, Mayor

ATTEST:

/s/ Beth Cecil  
Beth Cecil, City Clerk

Article amendments approved unless noted:	OMPC	Owensboro	Daviess Co.	Whitesville
Revised zoning ordinance	08-Sep-1979	14-Mar-1980	27-Dec-1979	07-Apr-1980
Public utility facilities	12-Jan-1984	06-Mar-1984	22-Feb-1984	?
General zone & district regulations revised with setback adjustments and detailed provisions for accessory buildings	14-May-1987	16-Jun-1987	24-Jun-1987	24-Aug-1987
Excavation in flood plains, amended {3-2(c)(5)}	21-Apr-1994	07-Jun-1994	01-Jun-1994	not applic.
Vehicular access to lots, relocated to Article 13 {3-8}	18-Apr-1996	21-May-1996	22-May-1996	?
2003 Review Committee: Only one principal structure per lot in single-family zones unless a Planned Residential Development {3-2(c)(1)}; excavation permit requirement made same countywide {3-2(c)(5)} 15' side yard setback min. for single-family uses extended to R-4DT zone {3-5(a)(3)}; public utility may authorize building in easement subject to criteria {3-5(c)(1)}; cellular antenna towers exempted from height limitations except for KY Airport Zoning or as otherwise specified {3-6(b)(1)}; accessory buildings to not exceed the area of the ground floor of the principal structure on lots under ½ acre, renumbered subsequent subsections {3-6(c)}; sight triangle dimensions on one-way streets adopted as regulation {3-6(f)(1)}; unenclosed covered porches allowed to project into prescribed front yard setback a distance of 8 feet except in planned residential developments {3-7(c)(5)}; Ky. Building Code applied to swimming pool enclosures {3-7(f)}; measurement policies for the height of fences and walls adopted as regulation, height of walls and fences outside of industrial zones in side yards restricted to 6' and in residential zone front yards to 3' except as required by Art. 17 {3-7(g)(1)(2)}; electric fences prohibited in residential or MHP zones {3-7(g)(3)(b)}; restricted construction of private walled structures in yards adjoining arterial, expressway, or major collector streets {3-7(g)(4)}; chimneys allowed to project into required setback a max. of 2' if structure is a min of 3' from property line, renumbered subsequent subsection {3-7(k)}.	11-Dec-2003	02-Mar-2004	05-Feb-2004	06-Apr-2004
Revision to Section 3-7(g) Walls and Fences relative to heights in residential side and rear street yards	10-July-2008	19-Aug-2008	07-Aug-2008	?
Revisions to reference new regulations contained in Article 21 relative to properties within Downtown Overlay Districts	10-Sep-2009	20-Oct-2009		
Revisions to Section 3-2(c)5 Cut and Fill Permits	14-Feb-2013		21-Mar-2013	n/a

**3-1 INTENT AND PURPOSE.** The purpose of this Article is to establish and describe the following items: general regulations applicable to zones and districts; exceptions and adjustments to site requirements as prescribed for principal buildings in Article 8 of this Zoning Ordinance; regulations for accessory buildings, structures and features in required yards; and general limitations for vehicular access to lots.

**3-2 APPLICATION OF ZONE AND DISTRICT REGULATIONS.** The regulations set by this Zoning Ordinance within each zone and district shall be minimum or maximum limitations, as appropriate to the case, and shall apply uniformly to each class or kind of structure or land, except as hereinafter provided.

**3-2(a) Agricultural Land Use Exemptions.**

Notwithstanding any other provision of this Zoning Ordinance, land which is used solely for agricultural use as defined in this Zoning Ordinance shall have no regulations imposed as to building permits, certificates of occupancy, height, yard, or location requirements for agricultural buildings, except that setback lines may be required for the protection of existing and proposed streets and highways and that buildings or structures in a designated floodway or floodplain or which tend to increase flood heights or obstruct the flow of flood waters may be fully regulated.

**3-2(b) Public Utility Facilities Excepted; Acquisitions, Disposals and Changes, Referral to Commission; Effect - KRS 100.324.**

Public utilities operating under the jurisdiction of the energy regulatory commission and utility regulatory commission or the bureau of vehicle regulation or federal power commission and common carriers by rail shall not be required to receive the approval of the OMPC for the location or relocation of any of their service facilities. Service facilities include all facilities of such

utilities and common carriers by rail other than office space, garage space, and warehouse space when such space is incidental to a service facility. The energy regulatory commission and utility regulatory commission and the bureau of vehicle regulation shall give notice to the OMPC of any hearing which effects locations or relocations of service facilities within the planning area of Daviess County.

**(1) Nonservice Facilities Must Comply with Zoning Ordinance.** The nonservice facilities excluded in this section must be in accordance with the regulations of this Zoning Ordinance.

**(2) Service Facility Information Requested by OMPC.** Upon request of the OMPC, the public utilities referred to in this section shall provide the OMPC with

information concerning service facilities which have been located on and/or relocated on private property.

**(3) Agreement of Public Facility Proposals with Comprehensive Plan.** All proposals for acquisitions or disposition of land for public facilities, or changes in the character, location, or extent of structures or land for public facilities, excluding state and federal highways and public utilities and common carriers by rail mentioned in this section, shall be referred to the OMPC to review in the light of its agreement with the Comprehensive Plan and the OMPC shall within sixty (60) days from the date of its receipt review the project and advise the referring body whether the project is in accordance with the Comprehensive Plan, whether it approves or disapproves of the project, and it shall state the reasons for disapproval in writing and make suggestions for change which will in the OMPC's opinion better accomplish the objectives of the Comprehensive Plan. A majority of the entire membership of the legislative body may override the disapproval of the OMPC.

**3-2(c) Buildings, Structures and Land Use Must Conform to Zoning Regulations.** No building, structure, or land shall hereinafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or structurally altered except in conformity with all of the regulations specified in this Zoning Ordinance for the zone and district in which it is located unless otherwise specifically permitted in this Zoning Ordinance.

**(1) No More than One Principal Structure Per Lot.** There shall be no more than one principal structure and its accessory structures on any lot or parcel of land unless otherwise specifically permitted in this Zoning Ordinance or unless a development plan is approved by the OMPC as provided by Article 16 of this Zoning Ordinance. In R-1A, R-1B, R-1C, and R-1T zones, there shall be only one principal structure and its accessory structures on any lot or parcel of land, unless a Planned Residential Development is approved by the OMPC as provided by Article 10 of this Zoning Ordinance.

**(2) Site Requirements.** No building or other structure shall hereafter be erected or altered (a) to exceed the height, bulk or floor area ratio; (b) to accommodate or house a greater number of families; (c) to occupy a greater percentage of lot area; (d) to have narrower or smaller rear yards, front yards, side yards, or other open

spaces; or (e) to have less perimeter and interior lot landscaping for vehicular use area and noncompatible land uses than required by the provisions of this Zoning Ordinance. Site requirements within the Downtown Overlay Districts shall comply with Article 21 of this ordinance.

**(3) Site Requirements Must Be Met for Each Building or Land Use.** No part of a yard, open space, off-street parking, loading space or other special use area required about or in connection with any building or land for the purpose of complying with this Zoning Ordinance, shall be included as part of a yard, open space, off-street parking, loading space or other special use area similarly required for any other building or land unless otherwise specifically permitted in this Zoning Ordinance. Site requirements within the Downtown Overlay Districts shall comply with Article 21 of this ordinance.

**(4) Permitted and Prohibited Uses.** Only those uses specifically named as principal, accessory or conditional uses or those uses substantially similar to principal, accessory or conditional uses are permitted in each zone or district. All uses specifically named as prohibited and all uses not specifically named which lack substantial similarity to permitted uses are prohibited. See Article 21 for prohibited uses within Downtown Overlay Districts.

**(5) No Excavation, Cut or Fill Without Permit.** No excavation, cut or fill of earth or debris shall hereafter be undertaken unless a permit is issued by the Zoning Administrator for such excavation, cut, or fill. (*City of Owensboro*) No excavation, cut or fill of earth or debris shall hereafter be undertaken unless a permit is issued by the local government engineer for such excavation, cut, or fill. (*Unincorporated Daviess County*) As an exception to the foregoing, excavation, cut or fill related to agricultural uses, for public utilities, and in approved subdivisions and developments may be undertaken without such permits, if it occurs entirely outside of areas of special flood hazard and if it would not affect any stream where base flood data has not been provided. Areas subject to potential flooding shall require development permits as specified in Article 18 of this Zoning Ordinance.

**3-3 CONVERSION OF BUILDINGS.** The conversion of any building or buildings, either residential or nonresidential, so as to accommodate an increased number of dwelling units or families or to accommodate another

permitted use shall be permitted only within a zone in which a new building for similar occupancy would be permitted under this Zoning Ordinance. The resulting occupancy shall comply with the requirements governing new construction in such zone with respect to building codes, parking supply, and landscape buffers. If the conversion involves no expansion of principal building volume or no conversion of an accessory building into a principal building, the resulting occupancy shall be exempt from the following requirements: minimum lot size, maximum floor area, lot coverage, dimensions of yards, and minimum open space. Any conversion that involves changes other than those stated above shall be subject to all site requirements stated above, and such further requirements as may be specified hereinafter applying to such zone.

**3-4 SUBDIVISION COORDINATION REQUIRED.** In all cases where the ownership of land is divided for the purpose of eventual development of lots, the provisions of the Subdivision Regulations shall apply in addition to the provisions of this Zoning Ordinance.

**3-4(a) No New Nonconforming Yards or Lots.** No yard or lot existing at the time of adoption of this Zoning Ordinance shall be reduced in dimension or area below the minimum requirements set forth herein, unless approved as a special exception by the OMPC. Yards or lots created after the adoption of this Zoning Ordinance shall meet at least the minimum requirements established by this Zoning Ordinance.

**3-4(b) Water Supply and Sewage Disposal Requirements.** It shall be unlawful to construct any building unless the associated water supply and sewage disposal facilities meet the requirements of the health department. Wherever water and sewer mains are accessible, buildings shall be connected to such mains. The health department's certificate approving proposed or completed water and sewage facilities must accompany application for building permits and certificates of occupancy.

**3-5 ADJUSTMENTS TO PRINCIPAL BUILDING YARD REQUIREMENTS PRESCRIBED IN ARTICLE 8.** Yard requirements for principal buildings shall conform to the dimensions prescribed in Article 8 of this Zoning Ordinance unless adjusted by the provisions of the following subsections.

**3-5(a) Adjustments to Yards Adjoining Streets.**

**(1) Yard Adjoins Freeway or Expressway.** For any yard that adjoins a freeway or expressway, the minimum setback requirement for principal buildings shall be twenty feet (20') from the edge of the freeway or expressway right-of-way.

**(2) Yard Adjoins Alley.** For any yard that adjoins an alley, setback requirements shall apply as if the alley did not exist and the property lines on either side of the alley were a common line between two adjoining properties. Setbacks in yards adjoining alleys within the Downtown Overlay Districts shall comply with the requirements contained in Article 21 of this ordinance.

**(3) Yard Adjoins Street Other Than Freeway, Expressway or Alley.** For any side or rear yard that adjoins a street other than a freeway, expressway or alley, the minimum setback requirement for principal buildings shall equal the front yard setback requirement for a street of such classification and zone; except that in single-family residential and townhouse zones and single-family residential uses within R-4DT zones; side yards along local streets may be reduced to fifteen feet (15') where lots are back-to-back. Setbacks in yards adjoining streets within the Downtown Overlay Districts shall comply with the requirements contained in Article 21 of this ordinance.

**3-5(b) Adjustments to Yards Adjoining More Restrictive Zones.**

**(1) Side Yard Adjoins More Restrictive Zone.** When the side yard of a subject lot in any zone adjoins the side or rear yard of a lot in a more restrictive zone, the side yard requirement for the subject lot shall equal the more restrictive side yard requirement of the adjoining zone. Setbacks within the Downtown Overlay Districts shall comply with the requirements contained in Article 21 of this ordinance.

**(2) Rear Yard Adjoining More Restrictive Zone.** When the rear yard of a subject lot in any zone adjoins the side or rear yard of a lot in a more restrictive zone, the rear yard requirement for the subject lot shall equal the more restrictive rear yard requirement of the adjoining zone. Setbacks within the Downtown Overlay Districts shall comply with the requirements contained in Article 21 of this ordinance.

**3-5(c) Adjustments to Yards Designated On Plats of Record.**

(1) **Public Utility Easements.** Principal buildings, accessory buildings and signs shall not be erected in public utility easements, unless otherwise specifically permitted pursuant to Article 5 of this Zoning Ordinance. ~~approved by the appropriate utilities or agencies. Approval by appropriate utilities or agencies shall be in writing and shall include:~~

~~(a) a statement that allows the Zoning Administrator to issue a building permit for the structure or feature to be constructed in the public utility easement.~~

~~(b) a statement providing that "the landowner and public utilities/agencies shall hold the Zoning Administrator and OMPC harmless from any claims resulting from the location of a structure or feature within a public utility easement and/or drainage easement."~~

(2) **Building Setback Lines.** When the building setback lines designated on a plat of record conflict with the requirements of this Zoning Ordinance, principal buildings shall conform to the more-restrictive setback requirements, or to the more restrictive build to lines in the case of properties regulated by Article 21. When the building setback lines designated in private restrictions conflict with the requirements within the Downtown Overlay District, private restrictions are encouraged to be released so that the principal building may comply with the requirements contained in Article 21 of this ordinance, or a variance must be sought.

**3-5(d) Adjustments to Yards for Existing Alignment of Buildings Along a Street.** For any yard that adjoins a street other than a freeway, expressway or alley, the required setback for a new, separate principal building may be reduced to

(1) the average of the actual setbacks of the existing principal buildings that are located nearest both sides of the proposed building site, and in the same block front; or

(2) the average of the prescribed minimum requirement and the actual setback of the existing principal building that is located nearest one side of the proposed building site, and in the same block front.

(3) In any case not excepted herein below, the proposed building setback shall be at least ten feet (10') from the edge of the street right-of-way, and shall not violate the

setback line designated on a record plat. The ten-foot limitation does not apply in the B-2 Central Business Zone or to planned residential development projects as permitted by Article 10 of this Zoning Ordinance.

(4) Any intersecting street other than an alley shall constitute the end of the block front.

(5) For buildings within the Downtown Overlay Districts, adjustments for yards for a separate principal building shall comply with the regulations contained within Article 21 of this ordinance.

**3-5(e) Adjustments to Yards for Additions to Legally Nonconforming Buildings.** When an existing principal building adjoins any legally nonconforming yard, additions may be made to the building in such yard, subject to the following limitations.

(1) Such addition shall be located no closer to the lot line than the part of the original principal building foundation that is closest to the lot line.

(2) Such addition shall be located at least ten feet (10') from the edge of any street right-of-way, including alleys, and at least three feet (3') from any lot line adjoining property in a residential zone, and shall not violate the setback line designated on a record plat.

(3) For additions to legally nonconforming buildings within the Downtown Overlay District, adjustments to yards shall comply with the requirements contained within Article 21 of this ordinance.

**3-6 GENERAL PROVISIONS FOR ACCESSORY BUILDINGS, STRUCTURES AND FEATURES.** The provisions of this section shall regulate the location, height and size of all buildings, structures and features that are accessory to principal buildings or land uses.

**3-6(a) Use Limitations.** Unless provision is specifically made elsewhere in this Zoning Ordinance, the following use limitations shall apply.

(1) In residential and manufactured housing park zones, accessory buildings shall not be used for or involved with the conduct of any business, trade or industry.

(2) In any zone, no accessory structure or building shall be used in whole or in part for human occupancy.



(3) In any zone, temporary structures and accessory buildings may be allowed for the storage of equipment during construction.

**3-6(b) Height.** Accessory buildings, structures and features shall not exceed the height limitations for principal buildings for the zones in which they are located.

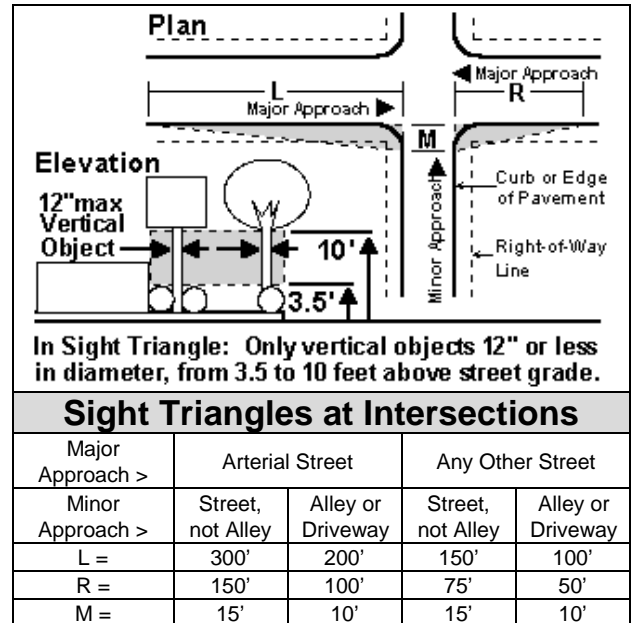
**(1) Exceptions to Height Limitations.** The height limitations of this Zoning Ordinance shall not apply to church spires, belfries, cupolas and domes not intended for human occupancy; monuments, water towers, observation towers, transmission towers, windmills, chimneys, smoke stacks, derricks, conveyors, flag poles, light poles, masts, aerials and cellular antenna towers except as restricted by Kentucky Airport Zoning Commission regulations or other Articles of this Zoning Ordinance.

**3-6(c) Size Limitations.** On lots less than one-half (1/2) acre in size, accessory structures shall not exceed the square footage of the ground floor of the principal building located on the lot, unless a variance is granted by the Owensboro Metropolitan Board of Adjustment. In all cases, maximum lot coverage shall not be exceeded.

**3-6(d) Lot Coverage.** Accessory buildings, structures and features, together with principal buildings, shall not exceed maximum lot coverage for the zones in which they are located. Lot coverage within the Downtown Overlay Districts shall comply with the regulations contained within Article 21.

**3-6(e) Encroachments.** Accessory buildings, structures, walls, fences, swimming pools, sports courts, and features shall not encroach upon or be located within public rights-of-way, public utility easements, or adjoining lots, unless specifically permitted pursuant to Article 5 of this Zoning Ordinance, elsewhere in this article.

**3-6(f) Sight Triangles for Traffic Visibility.** Notwithstanding any other provisions of this Zoning Ordinance, in any zone, at any street intersection or any driveway intersection, accessory buildings, structures and features erected or installed shall conform with the limitations of the applicable sight distance triangles as shown in the following illustration and table, unless specifically excepted below.



**(1) One-Way Street Exception.** Sight triangles shall not apply on one-way streets at corners where traffic does not approach the intersection. On one way streets, if the major approach traffic comes from the RIGHT, then the LEFT sight triangle dimensions shall be applied to the RIGHT corner.

**(2) Principal Building Exception.** Sight triangles shall not apply to principal buildings located in conformance with building setback requirements of Article 8 and Article 21 or setback adjustments of this article.

**(3) Utility Device Exception.** Authorized utility devices, such as poles, control boxes, traffic signs and signals, etc. are excepted from strict conformance with sight triangles. However, the location of these devices should adhere as closely as possible to such limitations.

**3-7 SPECIFIC PROVISIONS FOR ACCESSORY BUILDINGS, STRUCTURES AND FEATURES.** In addition to the general provisions of Section 3-6, the provisions of this section shall regulate the location, height and size of accessory buildings, structures and features.

**3-7(a) Minor Projections Permitted.** For the purposes of these provisions, a minor projection shall be any part of a structure that does not touch the ground but projects out from the part of the structure that is attached to the ground. A minor projection shall extend no more than two feet (2') over any setback line required for the structure of which it is a part.



**3-7(b) Enclosed Accessory Buildings.** For the purposes of these provisions, an enclosed accessory building shall be any accessory structure or part thereof that is covered by a roof, rigid canopy, rigid awning, or similar watertight, solid element, and that contains walls, doors, windows, screens, or other elements that generally obstruct access from the adjoining yard. Enclosed accessory buildings shall conform to the setback requirements listed below.

**(1) Permitted As For Principal Buildings.** Enclosed accessory buildings may be located anywhere on a lot where principal buildings are permitted.

**(2) Permitted in Rear Yards.** Enclosed accessory buildings may be located in required rear yards. They shall be located no closer than three feet (3') to lot lines adjoining freeways, expressways, alleys, or other lots. They shall conform to setback requirements for principal buildings from lot lines adjoining arterial, collector or local streets.

**(3) Separation from Other Enclosed Buildings.** Each enclosed accessory building shall be located no closer than six feet (6') to a principal building or any other enclosed accessory building on the same lot.

**3-7(c) Unenclosed Accessory Buildings.** For the purposes of these provisions, an unenclosed accessory building shall be any accessory structure or part thereof that is covered by a roof, rigid canopy, rigid awning, or similar watertight, solid element, and, except for buildings from which it may project, is supported only by columns, posts, piers, or similar elements. Unenclosed accessory buildings shall provide free access from the adjoining yard into the covered space at all times. Unenclosed accessory buildings may be freestanding, may be attached to enclosed accessory buildings, may be attached to principal buildings, or may connect separate enclosed buildings to each other. Unenclosed accessory buildings shall conform to the setback requirements listed below.

**(1) Permitted As For Principal Buildings.** Unenclosed accessory buildings may be located anywhere on a lot where principal buildings are permitted.

**(2) Permitted in Rear Yards.** Unenclosed accessory buildings may be located in required rear yards. They shall be located no closer than three feet (3') to lot lines adjoining freeways, expressways, alleys, or other lots.

They shall conform to setback requirements for principal buildings from lot lines adjoining arterial, collector or local streets, unless excepted below.

**(3) Permitted in Business and Industrial Zones in Vehicular Use Areas Adjoining Streets.** In business or industrial zones, unenclosed accessory buildings that shelter vehicular use areas may be located in required yards adjoining streets. No column, post or pier supporting such structure may exceed two feet (2') in diameter or width. No portion of such structure shall be located closer than twenty-five feet (25') to an adjoining lot in any residential zone. All unenclosed accessory buildings within the Downtown Overlay District shall meet the standards of Article 21 with respect to location of any vehicular areas adjoining streets.

**(4) Permitted to Project Over Public Rights-of-Way.** In business and industrial zones, where principal buildings are located three feet (3') or less from lot lines that adjoin street rights-of-way, unenclosed accessory awnings, canopies or marquees may project from such principal buildings over public rights-of-way, subject to provisions of the local building code and Article 9 and Article 21 of this Zoning Ordinance.

**(5) Permitted to Project into Required Front Yards.** Unenclosed covered porches, which are attached to a principal structure, may project into a prescribed front yard setback a distance of not more than eight feet (8'), where the floor level of the unenclosed covered porch is not over three feet (3') above the average finished grade and the floor level does not extend above the level of the first floor of the principal building. In all cases, a minimum of 10 feet from the street right-of-way line shall be maintained. Unenclosed covered attached porches that project into required front yards shall remain open and shall not be enclosed with screening, windows, glass or other building material. Guardrails shall be permitted. The building inspector may require evidence that private deed restrictions are not violated. No unenclosed covered porches may encroach upon or be located within public right-of-way or public utility easements, unless specifically permitted elsewhere in this article. This provision is not applicable to Planned Residential Development projects as provided for in Article 10 of this zoning ordinance, or to Downtown Overlay Districts as provided for in Article 21 of this zoning ordinance.

**3-7(d) Lightweight Covered Structures.** For the purposes of these provisions, a lightweight covered structure shall be any accessory structure that is supported by buildings or by lightweight poles or posts, and is covered by a flexible fabric or latticework. Lightweight covered structures shall conform to the setback requirements listed below.

**(1) Permitted As For Principal Buildings.** Lightweight covered structures may be located anywhere on a lot where principal buildings are permitted.

**(2) Permitted in Rear Yards.** Lightweight covered structures may be located in required rear yards. They shall be located no closer than three feet (3') to lot lines adjoining freeways, expressways, alleys, or other lots. They shall conform to setback requirements for principal buildings from lot lines adjoining arterial, collector or local streets, unless excepted below.

**(3) Permitted in Business and Industrial Zones in Yards Adjoining Streets.** In business or industrial zones, lightweight covered structures may be located in required yards adjoining streets. They shall conform to setback requirements for principal buildings from lot lines adjoining other lots.

**(4) Permitted to Project Over Public Rights-of-Way.** In business and industrial zones, where principal buildings are located three feet (3') or less from lot lines that adjoin street rights-of-way, lightweight covered awnings or canopies may project from such principal buildings over public rights-of-way, subject to provisions of the local building code and Article 9 and Article 21 of this Zoning Ordinance.

**(5) Permitted in Other Zones in Yards Adjoining Streets.** In zones other than business or industrial, lightweight covered structures may be located in required yards adjoining streets. They shall project no more than eight feet (8') from the principal building wall and no closer than ten feet (10') to the edge of the street right-of-way. They shall conform to setback requirements for principal buildings from lot lines adjoining other lots. This provision is not applicable to Downtown Overlay Districts as provided for in Article 21 of this ordinance.

**3-7(e) Outdoor Floors and Stairs.** For the purpose of these provisions, an outdoor floor shall be any pedestrian, ground pavement or floor structure that is not enclosed

within principal or accessory buildings. Outdoor stairs shall be any paved or structural steps that are not enclosed within principal or accessory buildings.

**(1) Up to Three Feet (3') Above Grade.** Where the floor level of outdoor floors or the step level of outdoor stairs is no more than three feet (3') above the adjoining finished grade, such feature may be located in any required yard.

**(2) More Than Three Feet (3') Above Grade, At or Below First Floor Level.** Where the floor level of outdoor floors or the step level of outdoor stairs is more than three feet (3') above the adjoining finished grade, and is at or below the first floor level of the principal building, such feature shall be located no closer than ten feet (10') to the edge of any street right-of-way or closer than three feet (3') to any other lot line. This provision is not applicable in the Downtown Overlay District as provided for in Article 21 of this ordinance.

**(3) More Than Three Feet (3') Above Grade, Above First Floor Level.** Where the floor level of outdoor floors or the step level of outdoor stairs is more than three feet (3') above the adjoining grade, and is above the first floor level of the principal building, such feature shall conform to the setback requirements for principal buildings when attached to principal buildings, and shall conform to the setback requirements for enclosed accessory buildings in all other cases. This provision is not applicable in the Downtown Overlay District as provided for in Article 21 of this ordinance.

**3-7(f) Swimming Pools and ~~Tennis-Sports~~ Courts.** Swimming pools and ~~tennis-sports~~ courts shall conform to the setback requirements applicable to enclosed accessory buildings. Swimming pools and sports courts shall not encroach upon or be located within a public utility easement, unless otherwise specifically permitted pursuant to Article 5 of this Zoning Ordinance. Walls and fences around such features shall conform to the requirements in this Zoning Ordinance and the Kentucky Building Codes.

**3-7(g) Walls and Fences.** Walls and fences may be located in required yards subject to the following limitations. Support posts may exceed the fence height by a maximum dimension of one foot (1') inclusive of any terminating ornamentation or finial. Walls and fences within Downtown Overlay District shall comply with the requirements of Article 21 of this ordinance.

**(1) Height in Industrial Zones.** In industrial zones, a wall or fence in any yard may be of any height, subject to sight triangle visibility requirements. In yards whose grade is higher than the adjoining street grade, fence or wall height may be measured from the main grade of the yard.

**(2) Height Outside of Industrial and Residential Zones.** Outside of industrial and residential zones, a wall or fence of not more than six feet (6') in height may be erected or maintained within any rear or side yard adjoining an arterial, collector or local street, subject to sight triangle visibility requirements. In non-industrial zones other than residential, a wall or fence of not more than six feet (6') feet in height may be erected in any front yard, subject to sight triangle visibility requirements. A wall or fence of not more than eight feet (8') in height may be erected in any other rear yard. A wall or fence of not more than six feet (6') in height may be erected in any non-street side yard. Where walls and fences are located in conformance with setback requirements for principal buildings, they shall conform to the height limitations for principal buildings for the zone in which they are located.

**(3) Height in Residential zones** In residential zones, a wall or fence of not more than three feet (3') in height may be erected in any front yard, except as otherwise required by Article 17 or Article 21 of these regulations. A wall or fence of not more than six feet (6') in height may be erected within any interior side yard. A wall or fence of not more than eight feet (8') in height may be erected or maintained within any interior rear yard or rear yard adjoining an alley. A wall or fence of not more than four feet (4') in height may be erected or maintained in any rear or side yard adjoining an arterial, collector or local street, unless a variance is granted by the Owensboro Metropolitan Board of Adjustment. On lots with more than one street frontage, the front yard shall be determined as along the street designated by the property address. Where corner residential lots are back to back and oriented so that rear yards abut, fences and walls within street side yards may be increased to a maximum of six feet (6') and fences and walls within street rear yards may be increased to eight feet (8'). Where corner residential lots are back to back and oriented so that rear and side yards abut, the four foot (4') maximum fence height in street side and rear yards shall apply. Where walls and fences are located in conformance with setback

requirements for principal buildings, they shall conform to the height limitations for principal buildings for the zone in which they are located. In yards whose grade is higher than the adjoining street grade, fence or wall height may be measured from the main grade of the yard.

**(4) Prohibited in Residential and MHP zones.**

- (a) Barbed Wire.** Barbed wire on walls and fences shall be prohibited in residential or MHP zones, but shall be permitted in all other zones. Barbed wire may be installed upon walls or fences that are accessory to legally nonconforming commercial or industrial uses in any zone. Barbed wire along any boundary adjoining residential or MHP zones shall be at least six feet (6') above ground level. Fences in the Downtown Overlay District shall conform to provisions in Article 21.
- (b) Electrical Fences.** Electrical fences shall be prohibited in residential or MHP zones. Electrical fences shall also be prohibited in the Downtown Overlay district.

**(5) Required Landscape Buffers.** Article 17 of this Zoning Ordinance may impose additional requirements or limitations on walls and fences erected to satisfy perimeter landscaping requirements. In yards adjoining arterial, expressway, or major collector streets, private walled structures shall not be erected within parking and landscaping setbacks (roadway buffers) required by Section 13.622.

Article amendments approved unless noted:	OMPC	Owensboro	Daviess Co.	Whitesville
Revised zoning ordinance	08-Sep-1979	14-Mar-1980	27-Dec-1979	07-Apr-1980
2003 Review Committee: Building permit time to construction reduced to 180 days to conform to Kentucky Building Code {5.225}	11-Dec-2003	02-Mar-2004	05-Feb-2004	06-Apr-2004

**5.1 ZONING ADMINISTRATOR.** Provisions of this Zoning Ordinance shall be enforced by an Administrative Officer, designated by the Legislative Bodies to administer said Ordinance.

**5.11.** The Zoning Administrator shall be authorized to issue building permits, ~~and/or~~ certificates of occupancy, and encroachment permits in accordance with the literal terms of the Zoning Ordinance, but may not have the power to permit any construction or to permit any use or any change of use which does not conform to the literal terms of the Zoning Ordinance.

The Zoning Administrator shall keep accurate records in a permanent file for the issuance of building permits, certificates of occupancy, encroachment permits, inspection violations, stop orders, and condemnations.

**5.12.** If the Zoning Administrator finds any provisions of the Zoning Ordinance being violated, the person or persons responsible for such violations shall be notified by the Zoning Administrator through registered mail. Said notification shall order the discontinuation of any illegal use of land, buildings, and/or structure. Any permit or certificate of occupancy issued in conflict with the provisions of the Zoning Ordinance shall be null and void.

**5.13.** The Zoning Administrator shall be registered to inform and/or report his actions to the OMPC. Said report shall be in writing and issued to the OMPC on or before each monthly meeting.

**5.2 BUILDING PERMITS REQUIRED.** No building or other structures, including accessory buildings, shall be erected, moved, added to, or structurally altered, nor shall any of said activities be commenced without a building permit therefor, issued by the Zoning Administrator. No building permit shall be issued by him except in conformity with the provisions of this Zoning Ordinance

unless he has a written order from the Board of Adjustment in the form of an administrative review decision, a conditional use permit, or dimensional variance as provided under the provisions of Section 7.3.

**5.21 Exceptions.** No building permit shall be required for recurring maintenance work, or for the installation of required improvements according to an approved subdivision plat.

#### **5.22 Procedure.**

**5.221 Application.** In applying to the Zoning Administrator for a building permit, the applicant shall submit a plan along with the application, drawn to scale, showing the dimensions of all structures to be constructed or altered and all existing structures, the use of structures, yards depths and any other information for determining conformance with this Zoning Ordinance. The City or County Health Officer's certificate approving proposed water and sewage facilities must accompany applications according to Section 3.9 of the Zoning Ordinance.

**5.222 Issuance.** If the proposed construction or alteration conforms with all applicable ordinances, regulations and codes, the Zoning Administrator shall issue a building permit authorizing such construction or alteration. If proposed construction or alteration fails to conform, the Zoning Administrator shall refuse to issue a building permit and shall cause delivery of written notice to the applicant stating the reasons for refusal. The Zoning Administrator shall act upon applications for building permits within two (2) weeks from the date of their submission.

**5.223 Restraint of Construction without Permit.** If no building permit has been issued and a builder begins or continues to build, a restraining order may be obtained upon application to the proper court of

record, and evidence of the lack of a building permit shall establish a prima facie case for the issuance of the restraining order.

**5.224 Validity.** The issuance of a building permit shall not waive any provisions of this regulation.

**5.225 Duration.** Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within one hundred eighty (180) days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of one hundred eighty (180) days after the time the work is commenced. The building official is authorized to grant, in writing one or more extensions of time, for periods not more than one hundred eighty (180) days each. The extension shall be requested in writing and justifiable cause demonstrated.

### **5.3 CERTIFICATE OF OCCUPANCY REQUIRED.**

No person shall use or permit the use of any structure or premises or part thereof hereafter created, erected, changed, converted, enlarged or moved, wholly or partly, until a certificate of occupancy shall have been issued by the Zoning Administrator. Such certificate shall show that the structure or use, or both, or the premises, or the affected part thereof, are in conformity with the provisions of this Zoning Ordinance. It shall be the duty of the Zoning Administrator to issue such certificate if he finds that all of the provisions of this Zoning Ordinance have been met, and to withhold such certificate unless all requirements of the Zoning Ordinance have been met.

**5.31 Exceptions.** No certificate of occupancy shall be required for recurring maintenance work, or for the installation of required improvements according to an approved subdivision plat.

**5.32 Temporary Certificates of Occupancy.** A temporary certificate of occupancy may be issued by the Zoning Administrator for a period not exceeding six (6) months during alterations or partial occupancy of a building pending its completion in accordance with general rules or regulations concerning such temporary certificate and with such additional conditions or safeguards as are necessary in the circumstances of the case to protect the safety of the general public.

**5.33 Certificate of Occupancy for Existing Uses or Structures.** Upon application from the owner or tenant, and upon inspection to determine the facts in the case, the Zoning Administrator shall issue a certificate of occupancy for any building, premises or use, certifying

that the building, premises or use is in conformity with the provisions of this Zoning Ordinance or that a legal non-conformity exists as specified in the certificate.

**5.34 Structures And Uses To Be As Provided In Building Permits, Plans And Certificates of Occupancy.** Building permits or certificates of occupancy issued on the basis of plans and applications approved by the Zoning Administrator authorize only the use, arrangement and construction set forth in such permits, plans and certificates, and no other. The use, arrangement or construction at variance with that authorized shall be deemed a violation of this Zoning Ordinance.

**5.4 ENCROACHMENT PERMIT REQUIRED.** Any person desiring to cause, allow or place any encroachment in, under, on or over any public right-of-way, public utility easement or drainage easement, shall file a written application with the Zoning Administrator.

**5.41 Procedure.** The application shall be accompanied by the applicable fee and shall be in the form prescribed by the Zoning Administrator, and include the following information:

- a. Name and address of applicant, the property owner, any other person responsible for the proposed encroachment, and any contractor or other person who will be making the proposed encroachment;
- b. The proposed location and dimensions of the encroachment;
- c. Nature of the encroachment;
- d. Expected date to begin and the date to complete the work or placement of the encroachment;
- e. A site plan showing the relation of the encroachment to the easement, right of way, and any utility facilities;
- f. A traffic control plan if determined necessary by the Zoning Administrator, including pedestrian and bicycle traffic;
- g. The signature of each applicant, property owner and contractor;
- h. A statement from each affected utility and agency waiving the prohibition for the proposed encroachment and acknowledging that the Zoning Administrator may issue an encroachment permit for the encroachment in the right-of-way or utility easement, subject to any conditions upon which the waiver of the encroachment is granted;
- i. A statement from the property owner and each utility and agency that is waiving the prohibition for the encroachment that "the property owner and each utility and agency waiving the prohibition shall hold the Zoning Administrator and OMPC harmless from



any claims against the Zoning Administrator and OMPC resulting from the issuance of the encroachment permit in conformity with the conditions of the waiver”; and

i. A statement from the property owner that “the property owner shall indemnify and hold each utility and agency waiving the prohibition harmless from any claims against said utility or agency resulting from the issuance of the encroachment permit or any encroachment on the easement or right-of-way.”

All required information must be submitted before an application is considered complete. If all materials are not submitted, they will be returned to the applicant along with the filing fee until such time that all submission requirements are met. Failure to obtain all required agency/utility signatures will result in denial of the encroachment permit application. Any decision rendered by the Zoning Administrator may be appealed to the Board of Adjustment.

**5.42 Issuance.** Within 14 business days of receiving a complete application, the Zoning Administrator will render a decision to the applicant. In reviewing the application, the Zoning Administrator may consult with the affected utility or agency regarding the application and any proposed condition for the grant of a waiver. If the Zoning Administrator determines that each affected utility and agency has granted a waiver and that the applicant’s request will not unreasonably interfere with access to or use of the easement, or right-of-way, by any affected utility or agency, he will issue an encroachment permit, including any conditions upon which the permit is granted. The encroachment permit shall be recorded in the Office of the Daviess County Clerk within 30 days of its issuance and before beginning any work on the proposed encroachment.

**5.43 Permit Refusal or Revocation.** Any application for an encroachment permit may be denied and any encroachment permit may be modified or revoked, by written order of the Zoning Administrator, effective immediately, and a copy of the order shall be mailed to the permittee(s), owner(s), and each affected party at the address specified in the application or permit, upon any one or more of the following grounds:

a. Failure to obtain a waiver from each affected utility and agency;

b. Misrepresentation of any material fact in the application;

c. Violation of or failure to conform to the terms or conditions of the permit or any waiver;

d. Violation of or failure to conform to any provision of this Ordinance or applicable law; or

e. If the Zoning Administrator determines at any time that, because of a change in circumstances, modification or removal of all or any part of the encroachment is necessary for any utility or agency to have access to or use of the easement.

The revocation of an encroachment permit shall be filed by the Zoning Administrator in the Office of the Daviess County Clerk.

If an encroachment is placed or being placed in violation of this Ordinance, the Zoning Administrator may issue a Notice of Violation requiring that the encroachment be removed and take any other action authorized by this Article 5 or applicable law.

**5.44 Validity.** The issuance of an encroachment permit shall not waive any other provision of this Ordinance.

**5.45 Duration.** Every encroachment permit issued shall become invalid unless the work authorized by such permit is commenced within thirty (30) days after its issuance, or if the encroachment authorized is not completed within one hundred eighty (180) days after the work begins. The Zoning Administrator may grant in writing one or more extensions of time for periods not more than thirty (30) days each. Any extension must be requested in writing and must adequately demonstrate justifiable cause for granting the extension.

**5.46 Maintenance of Encroachments.** The owner and any permittee shall be responsible for all costs associated with the relocation or removal of any encroachment located or placed without an encroachment permit, or for violation of any condition of the encroachment permit, or that becomes necessary to allow access to or use of an easement by any utility or agency for which the easement was created. The owner or permittee will bear all costs of repairing any and all damage to any right of way, easement, utility facilities or public improvements resulting from the owner’s or permittee’s installation, removal or maintenance of an encroachment. Each owner and permittee assumes all risk of damage to any encroachment placed in a public utility easement or right-of-way and shall have no recourse against any utility or agency for any damage to an encroachment.

#### **5.4-5 COMPLAINTS REGARDING VIOLATIONS.**

Whenever a violation of this Zoning Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Zoning Administrator. He shall record properly such complaint, immediately

investigate, and take action thereon as provided by this Zoning Ordinance.

**5.5-6 PENALTIES FOR VIOLATIONS.** Any person or entity who violates any of the provisions of this Zoning Ordinance adopted pursuant hereunder for which no other penalty is provided, shall, upon conviction, be fined no less than ten (10) but no more than five hundred (500) dollars for each conviction. Each day of violation shall constitute a separate offense. Any person, owner, or agent who violates the Ordinance shall, upon conviction, be fined not less than one hundred (100) nor more than five hundred (500) dollars for each lot or parcel which was the subject of sale or transfer, or a contract for sale or transfer.