

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: Granted OMPC authority to act on variance associated with zoning map amendment, revised related sections to conform {7.31, 7.33, 7.331, 7.332, 7.334}; clarified OMBA authority and responsibility in hearing appeal to change from one non-conforming use to another as authorized in Art. 4, renumbered subsequent section {7.34, 7.35}; changed appeal time from action of the Zoning Administrator from 60 to 30 days to comply with KRS 100.257 {7.35}.	11-Dec-2003	02-Mar-2004	05-Feb-2004	06-Apr-2004
OMPC granted authority to act on a conditional use permit associated with a zoning map amendment	11-May-2017	15-Aug-2017	01-Jun-2017	14-Jun-2017

7.1 ESTABLISHMENT. The Board of Adjustment as constituted at the time of the adoption of this Zoning Ordinance shall continue in power. Future appointments shall be made as required by KRS 100.217 and by the legislative bodies.

7.2 PROCEEDINGS. The Board of Adjustment shall conduct meetings at the call of the Chairman who shall give written or oral notice to all members of the Board at least seven (7) days prior to the meeting, which notice shall contain the date, time, and place of the meeting, and the subject or subjects which will be discussed. A simple majority of the total membership of the Board of Adjustment shall constitute a quorum.

The Board of Adjustment shall adopt Bylaws for the transaction of business and shall keep minutes and records of all proceedings, including regulations, transactions, findings, determinations, the number of votes for and against each question, whether any member is absent or abstains from voting, all of which shall immediately upon adoption be filed in the office of the Board. A transcript of the minutes of a Board of Adjustment meeting shall be provided if requested by a party, at the expense of the requesting party, and the transcript shall constitute the record.

7.3 POWERS. The Board of Adjustment shall have the following powers:

7.31 General Powers. The Board of Adjustment may employ or contract with planners or other persons as it deems necessary to accomplish its assigned duties. The Board shall have the right to receive, hold, and spend funds which it may legally receive from any and every source in and out of the Commonwealth of Kentucky, including the United States Government, for the purpose of carrying out the provisions of this Zoning Ordinance.

The Board shall have the power to issue subpoenas to compel witnesses to attend its meetings and give the evidence bearing upon the questions before it. The Chairman of the Board of Adjustment shall have the power to administer oaths to witnesses prior to their testifying before the Board on any issue. The Planning Commission shall assume all powers and duties otherwise exercised by the Board of Adjustments in hearing and deciding applications for variances pursuant to KRS 100.231, 100.233, 100.237, 100.241, 100.243, 100.247, and 100.251 in a circumstance where a proposed development requires a zoning map amendment and one (1) or more variances or conditional use permits.

7.32 Conditional Use Permits. The Board shall have the power to hear and decide applications for conditional use permits to allow the proper integration into the planning area of uses which are specifically named in this Zoning Ordinance which may be suitable only in specific locations in the zone only if certain conditions are met and which would not have an adverse influence on existing or future development of the subject property or its surrounding neighborhood. The Owensboro Metropolitan Planning Commission may hear and finally decide applications for conditional use permits when a proposed development requires a zoning map amendment and one (1) or more conditional use permits, in accordance with the procedures specified in Sections - 7.31 of this Article

7.321. The Board may approve, modify, or deny any application for a conditional use permit. If it approves such a permit, it may attach necessary conditions such as time limitations, requirements that one or more things be done before the request can be initiated, or conditions of a continuing nature and which would not have an adverse influence on existing or future

development of the subject property or other property in the neighborhood. Any such conditions shall be recorded in the Board's minutes and on the conditional use permit along with a reference to the specific section in the Zoning Ordinance listing the conditional use under consideration. The Board shall have power to revoke conditional use permits for non-compliance with the condition thereof. Furthermore, the Board shall have a right of action to compel offending structures or uses removed at the cost of the violator and may have judgment in personam for such cost.

7.322. The granting of a conditional use permit does not exempt the applicant from complying with all the requirements of building, housing, and other regulations.

7.323. In any case where a conditional use permit has not been exercised within the time limit set by the Board or within one (1) year if no specific time limit has been set, the granting of such conditional use permit shall be reconsidered by the Board of Adjustment at a public hearing with notice as required under Section 7.324 herein below. Exercised as set forth in this Section shall mean that binding contracts for the construction of the main building or other improvements have been let; or in the absence of contracts that the main building or other improvements is under construction to a substantial degree or that prerequisite conditions involving substantial investment shall be under contract, in development or completed. When construction is not a part of the use, exercised shall mean that the use is in operation in compliance with the conditions as set forth in the permit.

7.324. The Zoning Administrator shall review all conditional use permits, except those for which all conditions have been permanently satisfied, at least once annually and shall have the power to inspect the land or structure where the conditional use is located in order to ascertain that the landowner is complying with all of the conditions which are listed on the conditional use permit. If the landowner is not complying with all the conditions, which are listed on the conditional use permit, the Zoning Administrator shall report the fact in writing to the Chairman of the Board of Adjustment and to the landowner. The report shall state specifically the manner in which the landowner is not complying with the conditional use allowed on the conditional use permit. The Board shall hold a hearing on the report within a reasonable time, and notice of the time and place of the hearing shall be

furnished to the landowner at least one (1) week prior to the hearing. If the Board of Adjustment finds that the facts alleged in the report of the Zoning Administrator are true and that the landowner has taken no steps to comply with them between the date of the report and the date of the hearings, the Board of Adjustment may authorize the Zoning Administrator to revoke the conditional use permit and take the necessary legal action to cause the termination of the activity on the land which the conditional use permit authorizes.

7.325. Once the Board of Adjustment has granted a conditional use permit and all of the conditions required are of such type that they can be completely and permanently satisfied, the Zoning Administrator upon request of the applicant may, if the facts warrant, make a determination that the conditions have been satisfied and enter the facts which indicate that the conditions have been satisfied and the conclusion in the margin of the copy of the conditional use permit which is on file with the county clerk as required in KRS 100.344. Thereafter said use, if it continues to meet the other requirements of the regulations, will be treated as a permitted use.

7.33 Dimensional Variances. The Board shall have the power to hear and decide on applications for dimensional variances where, by reason of the exceptional narrowness, shallowness, or unusual shape of a site on the date of adoption or amendment of this Zoning Ordinance or by reason of exceptional topographic conditions, or some other extraordinary situation or condition of that site, the literal enforcement of the dimensional requirements (height or width of building or size of the yards, but not population density) of this Zoning Ordinance would deprive the applicant of reasonable capacity to make use of the land in a manner equivalent to the use permitted other landowners in the same zone. The Board may impose any reasonable conditions or restrictions on any variance it decides to grant. The Board shall have power to revoke variances for non-compliance with the condition thereof. Furthermore, the Board shall have a right of action to compel offending structures or uses removed at the cost of the violator and may have judgment in persona for such cost. The Owensboro Metropolitan Planning Commission may hear and finally decide applications for variance when a proposed development requires a zoning map amendment and one (1) or more variances, in accordance with the procedures specified in Sections - 7.31 of this Article.

7.331. Before any variance is granted, the Board or the Planning Commission must find all of the following which shall be recorded along with any imposed conditions or restrictions in minutes and records and issued in written form to the applicant to constitute proof of the dimensional variance:

- (1) The specific conditions in detail which are unique to the applicant's land and do not exist on other land in the same zone.
- (2) The manner in which the strict application of the provisions of this Zoning Ordinance would deprive the applicant of a reasonable use of the land in the manner equivalent to the use permitted other landowners in the same zone.
- (3) That the unique conditions and circumstances are not the result of actions of the applicant taken subsequent to the adoption or amendment of this Zoning Ordinance.
- (4) Reasons that the variance will preserve, not harm the public safety and welfare, and will not alter the essential character of the neighborhood.

7.332. The Board or the Planning Commission shall not possess the power to grant a variance to permit a use of any land, building, or structure, which is not permitted by this Zoning Ordinance in the zone in question.

7.333. A dimensional variance applies to the property for which it is granted, and not the individual who applies for it. A variance also runs with the land and is transferable to any future owner of the land, but it cannot be transferred by the applicant to a different site.

7.334. All variances and conditional use permits approved by the Board of Adjustment or the Planning Commission shall be recorded in the office of the County Court Clerk at the expense of the applicant.

7.34 Non-Conforming Use and Structure Appeals.

The Board of Adjustment shall have the authority to hear and decide appeals, as authorized in Article 4, concerning non-conforming uses and structures. In approving an appeal, the Board must find, in addition to all requirements of Article 4, that the non-conformity of the use and/or the non-conformity of the structure would not be increased in scope or area of its operation, and

that it would not have an adverse effect on existing or future development of the subject property or the surrounding area. In approving an appeal, the Board may require appropriate conditions be met to ensure the health, safety, and welfare of the community and to protect the essential character of the surrounding area.

7.35 Administrative Review. The Board of Adjustment shall have the power to hear and decide cases where it is alleged by an applicant that there is an error in any order, requirement, decision, grant, or refusal made by the Zoning Administrator in the enforcement of this Zoning Ordinance. Appeals under this Section must be taken within thirty (30) days of the date of official action by the Zoning Administrator.

7.4 GRIEVANCES. Appeals to the Board may be taken by any person, or entity claiming to be injuriously affected or aggrieved by an official action or decision of the Zoning Administrator. Such appeal shall be taken within thirty (30) days after the appellant or his agent receives notice of the action appealed from, by filing with said officer and with the Board a notice of appeal specifying the grounds thereof, and giving notice of such appeal to any and all parties of record. Said officer shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken and shall be treated as and be the respondent in such further proceedings. At any hearing by the Board, any interested person may appear and enter his appearance, and all shall be given an opportunity to be heard. The Board shall fix a reasonable time for hearing the appeal and give public notice in accordance with KRS Chapter 424, as well as written notice to the appellant and the Building Inspector at least one (1) week prior to the hearing, and shall decide it within sixty (60) days. The affected party may appear at the hearing in person or by attorney.

7.5 APPEALS. Any person or entity claiming to be injured or aggrieved by any final action of the Board of Adjustment may appeal from the action to the Circuit Court of Daviess County. All appeals shall be taken in the Circuit Court within thirty (30) days after the action or decisions of the Board of Adjustment, and all decisions which have not been appealed within thirty (30) days shall become final. After the appeal is taken, the procedure shall be governed by the rules of civil procedure. When an appeal has been filed, the Clerk of the Circuit Court shall issue a summons to all parties and shall cause it to be delivered for service as in any other law action.