

Background

During the Daviess County Fiscal Court's consideration of a recent request for B-4 General Business zoning within a Rural Community, there was considerable discussion regarding the allowance of limited business activity within identified Rural Communities that are more restrictive than the uses allowed in B-4 General Business zones. As a result of this discussion the Daviess County Fiscal Court asked the Owensboro Metropolitan Planning Commission to consider amending the Owensboro Metropolitan Zoning Ordinance to conditionally permit limited retail sale of merchandise within the AU Urban Agriculture zone. Currently, the Owensboro Metropolitan Zoning Ordinance conditionally permits limited retail sale of merchandise within the AR Rural Agriculture zone. These uses items are limited by the ordinance to "limited sale of hobby items, toys, gifts; antiques; newspaper, magazines, stationery, books, flowers; "flea-market": items; other similar retail sales activities which would not infringe upon the rural nature of the surrounding vicinity by excessive traffic generation, noise or other nuisances."

The ordinance further explains that "this provision shall not be interpreted to provide for the establishment of general, neighborhood or highway business centers which would typically require business zone classification; the intent of this provision is to permit limited sales uses in rural areas which would not noticeably affect the vicinity, in order to maintain the integrity of the business zone intent in rural areas while simultaneously minimizing hardship to limited and geographically scattered community businesses. An applicant to such conditional use should be made aware of the maximum scope of business which the Board of Adjustment and vicinity residents would tolerate to assure the use does not inadvertently become undesirable in intensity."

The Comprehensive Plan identifies rural community areas throughout Daviess County. These established Rural Communities are designated as the areas to provide for small-lot rural housing and other urban-related commercial, industrial or similar activities that may be needed in the Rural Service Area. The Comprehensive Plan notes that the development policies for the Urban Service Area should generally apply to urban development within the Rural Communities.

The two agricultural zones were established to designate between areas that should remain rural in nature and those agricultural areas located within the Urban Service Area or within Rural Communities that could potentially develop to a more urban type use. A zone change from AU to a more urban classification should be encouraged for

projects that promote the objectives of the Comprehensive Plan. The AR Rural Agriculture zone was established to preserve the rural character of the Daviess County Rural Service area by promoting agriculture and agriculture related uses, and by discouraging all forms of urban development except for rural residential uses and limited conditional uses. A zone change from AR to a more urban classification would deprecate the objective of the Comprehensive Plan and should be discouraged.

In short, the AU zone anticipates the area as appropriate for a more urban development pattern than the AR zone. As a result, only the AR zone has conditionally permitted limited sales of retail items, as the AU zone would logically rezone to a more urban classification to allow business activities within the Urban Service Areas or Rural Communities.

In light of the construction of the zoning ordinance to accomplish the objections of the Comprehensive Plan, a recommendation **to deny** the text amendment can be made with the following supporting **Findings of Fact**:

1. The designation of two agricultural zones, the AU Urban Agriculture zone and the AR Rural Agriculture zone serve to implement the objectives of the Comprehensive Plan by identifying areas appropriate for preservation or development;
2. The AU Urban Agriculture zone is designated by the Owensboro Metropolitan Zoning Ordinance as a zone that is located in areas appropriate for urban development, specifically the Urban Service Area and identified Rural Communities;
3. The Comprehensive Plan states that development policies for Rural Communities should generally follow the development policies for the Urban Service Area;
4. Rural Communities should provide for small lot rural housing and other urban related commercial or industrial activities that may be needed in the rural service areas;
5. AU Urban Agriculture zones are encouraged to change to more urban classifications for projects that promote the objectives of the Comprehensive Plan within the Urban Service Area and within Rural Communities; and,
6. Conditionally permitted uses for limited sales activities should be reserved for the AR Rural Agriculture zone to allow very limited uses in the rural areas, whereas AU Urban Agriculture zones are expected to develop into more urban type zoning classifications to accommodate residential, commercial and industrial uses.

However, the argument can be made that AU conversion to more urban zones may not always be as desirable in areas that contain agricultural and scattered residential uses, which can be the case within Rural Communities and even within the Urban Service Area.

One of the Land Use goals of the Comprehensive Plan states is “Allocate wisely the use of land for various activities by encouraging sound land development policies” with Objectives “2. Accommodate all intensities of land use activity and 3. Group activities so that uses of greater intensity (Industrial and commercial) do not harm weaker types (residential and agricultural)”

Another land use goal of the plan is to “Protect our rural areas from intrusion by incompatible urban activities by encouraging growth in the Urban Service Area and Rural Communities” and “Promote adequate, attractive, and accessible shopping and service facilities for all segments of the community.”

Many areas of AU zoning within the Urban Service Area or Rural Communities abut scattered residential uses, which do not approach typical urban densities. The criteria for new locations of General Business zoning may be met in these situations if the proposed change is “major-street oriented” even in the absence of existing B4 General Business zoning in the immediate vicinity. The Comprehensive Plan also includes a land use goal to “Avoid the introduction of urban activities that would have a detrimental effect on residential activity, but allow some mixture of appropriate nonresidential uses.”

The allowance of a conditional use permit within the AU Urban Agricultural zones for limited retail sales of merchandise would help to promote development of limited businesses in these areas without the necessity of a zoning change to a more intense B-4 General Business zone, which would permit a wide variety of business uses that may be less desirable to the residents within the immediate vicinity. By allowing these limited uses as conditional use permits, the goal to accommodate all types of land use activity would be promoted by allowing even more diversity of commercial activities within the Urban Service Area and the Rural Communities.

Further, allowing conditional use permits within the AU zone would perhaps allow more properties within the Rural Communities and Urban Service Areas to be developed for business uses that otherwise may not qualify for the more intense B-4 General Business zone, emphasizing the current focus of the City of Owensboro, the City of Whitesville and Daviess County to be supportive of and encourage new business and entrepreneur ventures.

Therefore, in light of the promotion of business activities within the City of Owensboro, the City of Whitesville, and Daviess County, and the desire to provide protection from undesirable uses that may infringe on residential and agricultural uses that may be located in the general vicinity, a recommendation **to approve** the text amendment can be made with the following supporting

Findings of Fact:

1. The AU Urban Agriculture zone is designated by the Owensboro Metropolitan Zoning Ordinance as a zone that is located in areas appropriate for conversion to urban development within the Urban Service Area and identified Rural Communities;
2. The Comprehensive Plan states that development policies for Rural Communities should generally follow the development policies for the Urban Service Area;
3. The Comprehensive Plan contains an adopted goal to “Avoid the introduction of urban activities that would have a detrimental effect on residential activity, but allow some mixture of appropriate nonresidential uses”;
4. Allowing conditionally permitted limited retail uses within an AU Urban Agriculture zone would promote the development of limited retail sales in Rural Communities and the Urban Service Area while providing protection to residential and agricultural uses in these areas by limiting the intensity of the allowable commercial activity; and,
5. The addition of a provision to conditionally permit limited retail sales in the AU zone will accommodate a less intense array of retail uses within the Rural Communities and the Urban Service Area, while still providing for a property owner’s right to rezone to the more urban zone of B-4 General Business if the criteria of the Comprehensive Plan can be met .