

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
Nonconforming lots of record {4.2}	17-Apr-1981	22-May-1981	26-Apr-1981	06-Jul-1981
2003 Review Committee: Nonconforming lot subdivisions for existing residences, added new subsection {4.21}	11-Dec-2003	02-Mar-2004	05-Feb-2004	06-Apr-2004
Revisions to reference new regulations contained in Article 21 relative to properties within Downtown Overlay Districts	10-Sep-2009	20-Oct-2009		

4.1 INTENT. Within the zones and districts established by this Zoning Ordinance, or amendments thereto, there exist lots, uses of land and structures, and characteristics of use which were lawful before this Zoning Ordinance was adopted or amended, but which would be prohibited, regulated, or restricted under the terms of this Zoning Ordinance or future amendment. It is the intent of this Zoning Ordinance to permit these non-conformities to continue until they are removed, but not to encourage their survival. It is further the intent of this Zoning Ordinance that non-conformities shall not be enlarged or extended beyond the scope and area of their operation at the time of the adoption or amendment of this Zoning Ordinance, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same zone.

4.11. To avoid undue hardship nothing in this Zoning Ordinance shall be deemed to require a change in the plans, construction, or designated use of any building or premises on which an application for a building permit was filed with the Building Inspector prior to the date of adoption of this Zoning Ordinance or amendment thereto. The issuance of said permit shall be valid only in the event that construction on said structure or premises, in accordance with the plans and specifications submitted with the application for a building permit, is begun within sixty (60) days after the date of issuance of said permit and is diligently carried on. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where grading or excavation, or demolition or removal of an existing building has been begun preparatory to rebuilding or reusing the premises, such grading or excavation, or demolition or removal shall be deemed to be actual construction provided that work shall be carried on diligently.

4.2 NON-CONFORMING LOTS OF RECORD. At the time of the adoption of this Zoning Ordinance, there exist lots of official record which do not include sufficient land to conform to the site development or other requirements of the zone(s) in which they are located. The Zoning Administrator may issue building permits for such lots, if proposed structures can comply with all site development

requirements of Section 8.5 for the applicable zone(s) with the exception of **minimum lot size** and **minimum lot frontage** requirement; and if proposed parking area/driveway access characteristics can comply with the requirements of Section 13.6. If proposed structures or parking areas/driveway access characteristics cannot comply with the abovementioned requirements, an application may be submitted to the Board of Adjustment for a variance from the terms of this Zoning Ordinance (see Section 7.33 herein), or the owner might consider submitting an application for an R-1T Townhouse Zone (in residential cases, where applicable), or agreeing to limit vehicular access to and from lot by an available alley. The Board of Adjustment shall not have the authority to vary the number of parking spaces required for a particular use on a non-conforming lot.

4.21. A non-conforming lot may not be further subdivided or consolidated, in whole or in part, with another parcel in a manner that increases its non-conformity. It may, however, be altered so as to decrease its non-conformity. However, the Planning Commission may approve the subdivision of a lot, which has two or more legally constructed principal structures, into separate parcels for the purpose of the sale or transfer of the individual residences if the Planning Commission finds that the properties have been used in a separate and distinct manner with separate utilities and other facilities so that the resulting subdivision will not constitute a material change in the use of the property.

4.3 NON-CONFORMING USES OF LAND. Where at the date of adoption or amendment of this Zoning Ordinance, lawful use of land exists which would not be permitted by the regulation imposed by this Zoning Ordinance, the use may be continued so long as it remains otherwise lawful provided:

4.31. No such non-conforming use shall be enlarged or extended to occupy a greater area of land than was occupied at the date of adoption or amendment of this Zoning Ordinance.

4.32. No non-conforming use shall be moved in whole or in part to any portion of the lot or parcel other than

that occupied by such use at the date of adoption or amendment of this Zoning Ordinance. However, said use may be moved to another position on the lot or parcel through appeal to the Board of Adjustment under Section 7.4 herein below.

4.33. When a non-conforming use of land is discontinued or abandoned so as to show a gross lack of diligence in usage for eighteen (18) months or more (except when governmental action prevents such use), the land shall not thereafter be used except in conformity with the regulations of the zone or district in which it is located.

4.34. Nonconforming uses located within the Downtown Overlay Districts shall comply with the provisions for non-conforming uses contained in Article 21 of this ordinance.

4.4 NON-CONFORMING STRUCTURES. Where a lawful structure exists at the effective date of adoption or amendment of this ordinance that could not be built under the terms of this Zoning Ordinance by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful subject to the following provisions.

4.41. No such non-conforming structure may be enlarged or altered in a way which increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity.

4.42. Should such non-conforming structure or non-conforming portion of a structure be damaged, destroyed, or demolished by any means, it may be reconstructed or repaired but not to exceed the number of cubic feet existing in it and not to extend or enlarge the scope and area of its operation prior to its damage, destruction, or demolition except as otherwise provided in Section 4.55 herein below.

4.43. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the zone or district in which it is located after it is moved. However, said structure may be moved to another part of the same lot by appeal to the Board of Adjustment as provided under Section 7.4 herein below.

4.44. Nonconforming structures located within the Downtown Overlay Districts shall comply with the

provisions for non-conforming structures contained in Article 21 of this ordinance.

4.5 NON-CONFORMING USES OF STRUCTURES OR OF STRUCTURES AND PREMISES IN COMBINATION. If lawful use involving individual structures of structure and premises in combination exists at the date of adoption or amendment of this Zoning Ordinance that would not be allowed in the zone or district under the terms of this Zoning Ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

4.51. No existing structure devoted to a use not permitted by this Zoning Ordinance in the zone or district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the zone or district in which it is located except as provided in Section 4.55 herein below.

4.52. Any non-conforming use may be extended throughout any parts of a building which were arranged or designed for such use at the date of adoption or amendment of this Zoning Ordinance, but no such use shall be extended to occupy any land outside such building.

4.53. If no structural alterations are made, any non-conforming use of a structure, or structure and premises, may be changed to another non-conforming use by appeal to the Board of Adjustment as provided under Section 7.34 herein below if the proposed use is in the same or a more restrictive classification. In permitting such change, the Board of Adjustment may require appropriate conditions and safeguards in accord with the provisions of this Zoning Ordinance.

4.54. Any structure, or structure and land in combination, in or on which a non-conforming use is superseded by a permitted use, shall thereafter conform to the regulations for the zone or district, and the non-conforming use may not thereafter be resumed.

4.55. When a non-conforming use of a structure, or structure and premises in combination, is halted because of the damage, destruction, or demolition of the structure by any means; the structure may be reconstructed or repaired but not to exceed the number of cubic feet existing in it prior to its damage, destruction, or demolition, and the non-conforming use resumed but not to exceed or enlarge the scope and area of its operation prior to its damage, destruction, or demolition.

4.56. When a non-conforming use of a structure, or structure and premises in combination, intentionally is discontinued or abandoned so as to show a gross lack of diligence in usage for eighteen (18) months or more (except when governmental action prevents such use), the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the zone or district in which it is located.

4.57. Nonconforming uses of structures and nonconforming uses of structures and premises in combination located within the Downtown Overlay Districts shall comply with the provisions for uses of structures and nonconforming uses of structures and premises in combination contained in Article 21 of this ordinance.

4.6 REPAIRS AND MAINTENANCE. On any non-conforming structure or portion of structure and on any structure containing a non-conforming use, work may be done on ordinary repairs, or on repair or replacement of walls, fixtures, wiring, plumbing, or other parts provided that the cubic content of the non-conforming structure or portion shall not be increased. Nothing in this Zoning Ordinance shall be deemed to prevent the strengthening, repairing, or restoring to a safe condition of any structure or part thereof.

4.7 CONDITIONAL USES NOT NON-CONFORMING USES. Any existing principal permitted use at the date of the adoption or amendment of this Zoning Ordinance which would thereafter require a conditional use permit shall without further action be deemed a conforming use, but any enlargement or replacement of such use, in buildings or on land, shall require a conditional use permit.