

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
Creation of encroachment permit process	11-May-2017	01-Aug-2017	03-Aug-2017	14-Jun-2017

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, 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;
- h. The signature of each applicant, property owner and contractor;
- i. 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;
- j. 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

k. 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.

5.5 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.

5.6 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.