



Procedures for Submittal of Encroachment Agreement

[Right-of-Way & Air Rights]

Be Advised: Obtaining approval through the Town of Zionsville does not supersede approval from your Homeowners Association (HOA). Please contact your HOA for approval of your project.

Process:

- Fill out Application for Encroachment
- Complete the enclosed Affidavit in Favor of the Town of Zionsville.
 - On an 8 ½” x 14” Legal sized paper
 - Document must have two inch (2”) margin at the top of the first page and the last, half-inch (½”) margins on interior pages or Boone County Recorder’s Office will charge additional \$1 per page.
- Submit a Site Plan:
 - On a minimum of 8 ½” x 11” sheet of paper.
 - Drawing should be to scale with north arrow.
 - Shall indicate all easements and easement line(s) & all right-of-way and right-of-way line(s).
 - The drawing should show the encroachment(s) and all necessary dimensions relating to the encroachment(s).
- Submit “Exhibit A”:
 - A copy of the deed for the property or a legal description of the property.
 - In addition, the date the deed was recorded, instrument number, etc.
- Submit a non-refundable application and review fees. Checks payable to Town of Zionsville. Per Ordinance No. 2013-17 and **§ 195.01 Fee Schedule**. Other fees may apply (inspection, etc.).

Submit all documents to the Town of Zionsville either by mail, drop off in the black drop box located in the Town Hall vestibule, or by email to the Planner I - Zoning staff member. Staff will review your request and you will be notified of the findings.

Town of Zionsville
Community & Economic Development
1100 W Oak Street
INDIANA 46077
(317) 873-8247

If approved, the Town of Zionsville will also sign off on the Affidavit, which will then be available for the applicant to take to the Boone County Recorder’s office for required recording. A copy of the recorded Affidavit is required to be on file with the Town of Zionsville. Please see instructions on the following page.



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After approval by the Town of Zionsville:

If approved, the applicant will retrieve the affidavit signed and notarized by the Town of Zionsville to be recorded at the Boone County Recorder's office.

Boone County Recorder's Office
202 Courthouse Square
LEBANON, INDIANA 46052
(765) 482-3070

1. Cost is \$25 flat fee.
2. Checks are made out to the Boone County Recorder.
3. Bring a Stamped and Self Addressed envelope.
4. The Recorder's office will mail the document to you.
5. Once recorded, forward a copy of the receipt to the Planning Department for temporary release.
6. Final recorded document to be submitted once received to the Planning Department for final release.



Town of Zionsville, Indiana

1100 West Oak Street, Zionsville, Indiana 46077

Application for Encroachment

1. SITE INFORMATION:

Address of Property:	
Subdivision/Development:	Lot/Suite Number:
State Parcel Number:	Zoning:

2. APPLICANT (BUILDER-CONTRACTOR)

3. PROPERTY OWNER

Contact Name:	Contact Name:
Company:	Company:
Address:	Address:
Phone:	Phone:
E-mail:	E-mail:
<input type="checkbox"/> <i>IF Different from Owner, Fill out Owner Authorization Form</i>	

4. ENCROACHMENT INFORMATION

<p>a. Describe Proposed Encroachment:</p>
<p>b. Location: <input type="checkbox"/> Right-of-Way <input type="checkbox"/> Air Rights <input type="checkbox"/> Easement</p>
<p>c. Type: <input type="checkbox"/> Sign <input type="checkbox"/> Landscaping <input type="checkbox"/> Fence <input type="checkbox"/> Tree <input type="checkbox"/> Deck <input type="checkbox"/> OTHER: _____</p>
<p>Estimated Cost :</p>

5. ADDITIONAL INFORMATION:

<input type="checkbox"/> Encroachment Agreement	For Recordation. Applicant should fill out and sign provided document.	8 ½ x 14 Agreement Provided? <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Site Plan	Drawing should be to scale with north arrow. It should indicate all easements and easement line(s) & all right-of-way and right-of-way line(s). The drawing should show the encroachment(s) and all necessary dimensions relating to the encroachment(s).	8 ½ x 11 min. Site Plan Provided? <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Exhibit A	A copy of the deed or a legal description of the property will be required. In addition, the date the deed was recorded, instrument number, etc.	Deed/Legal Provided? <input type="checkbox"/> Yes <input type="checkbox"/> No

The undersigned hereby certifies that they have the authority to make the above application, that the above information is true and correct, changes requested by this application are in conformance with all laws of the State of Indiana and Ordinances of the Town of Zionsville, that the Homeowners Association [if applicable] has been noticed, and that the encroachment will not be installed until proper certificates of completion and compliance are filed with the Department of Planning & Economic Development, Town of Zionsville, Indiana.

Signature of Applicant

Date: _____

Print: _____



**OWNER'S AUTHORIZATION FOR THE SUBMITTAL OF AN APPLICATION
FOR ENCROACHMENT FROM THE TOWN OF ZIONSVILLE, INDIANA**

The undersigned, _____, being the owner of record of the property commonly known as _____, hereby authorizes _____, to file an application for an Encroachment into the Right-of-Way, Air Rights and/or Easement, for conducting the following activity:

Signature of Owner: _____
Printed: _____
Address: _____

Email: _____
Telephone: _____
Date: _____

**Please be advised that all new construction must obtain a Certificate of Occupancy (C/O) prior to use or occupancy. A C/O cannot be issued until all required inspections have been scheduled and approved, including the final inspection. If a C/O has not been issued, such new construction will be in violation of State statutes and local ordinances; this could have a negative affect on any future sale of the property and/or on any insurance claims which may arise.*

TOWN OF ZIONSVILLE
CONSENT TO ENCROACHMENT AND ENCROACHMENT AGREEMENT
Air Rights and/or Right of Way

THIS CONSENT TO ENCROACHMENT AND ENCROACHMENT AGREEMENT ("Encroachment Agreement") is made and entered into effective the ____ day of _____, _____, by and between the **TOWN OF ZIONSVILLE, INDIANA**, a municipal corporation (hereinafter called "Town" or "Zionsville") and _____ (hereinafter called "Land Owner" or "Owner"), WITNESSETH THAT:

WHEREAS, the Town is the owner of a public right-of-way for _____ in the _____ Zoning District of the Town of Zionsville, located in Boone County, State of Indiana; and

WHEREAS, Land Owner is the owner of certain real estate located in the Zoning District of the Town of Zionsville, having the common address of _____, Zionsville, Indiana, (hereinafter the "Real Estate"), which is more particularly described in the legal description Exhibit "A" attached hereto; and

WHEREAS, the Real Estate is adjacent to and/or adjoins the above described right-of-way in Zionsville, Indiana; and

WHEREAS, the Land Owner applied to the Zionsville Building Commissioner for approval of an installation of a Sign/fence/structure/landscaping/etc. located upon the Real Estate (hereinafter "the Encroachment"), which will hang over/be located within described right-of-way and, therefore, encroach over, above, and upon the airway, right-of-way owned by the Town ; and

WHEREAS, the Zionsville Building Commissioner approved the requested Encroachment based on the Land Owners voluntary agreement to enter into this Encroachment Agreement and indemnify and hold the Town harmless as hereinafter provided;

NOW, THEREFORE, in consideration of the Town's approval of the requested installation and for and in consideration of the covenants and agreements hereinafter contained and set forth, the sufficiency of which is hereby acknowledged, the Town and the Owner now promise, covenant, and agree as follows:

1. The Town hereby consents to the Encroachment to be located over, above, and/or upon the Town's right-of-way as an installation located on the Real Estate.

2. It is mutually understood and agreed that consent to the Encroachment does not create in the Land Owner or his successors and assigns any right, title, or interest in and to that portion of the right-of-way owned by the Town upon which said Encroachment is or may hereafter be over, above, and/or located upon, and the Land Owner hereby specifically waives any right, title, and interest in and to that portion of the real estate owned by the Town within the boundaries of said existing right-of-way for the Real Estate which the Owner might heretofore have acquired, or might hereafter acquire by any means of adverse possession.

3. In consideration of the Town's consent to the Encroachment in the Real Estate right-of-way, the Owner does hereby certify, acknowledge, and affirm that the Town of Zionsville, Indiana, shall not be responsible or liable for any loss occasioned by the removal, alteration, or destruction (in whole or in part) of the installation Encroachment over, above, and/or located upon or within the right-of-way for the Real Estate, whether during the lawful exercise of the Town's right and duties in regard to the maintenance, repair, or improvements to said right-of way or on other occasions and whether caused in whole or in part by the negligence of the Town or its employees, agents, contractors, or representatives. The Town and its employees, agents, contractors, officials, and

other representatives are hereby released from financial responsibility for any and all losses the Owner incurs arising out of, related to, or associated with the Encroachment.

4. Land Owner and successors and assigns and successor owners in interest shall indemnify the Town of Zionsville, Indiana, and hold the Town harmless from any and all liability, damages, expenses, and costs, including reasonable attorney fees, arising out of or related to damages to property or injury to persons, including death, which result from, relate to, or arise in connection with the Encroachment within the right-of-way for the Real Estate. In the event it becomes necessary for the Town of Zionsville to enforce this indemnification and hold harmless provision, the Owner shall pay all reasonable costs the Town incurs in the enforcement thereof and in the enforcement of this Encroachment Agreement, including reasonable attorney fees. The Owner and successors and assigns and successor owners in interest to the Real Estate shall have an affirmative duty to inform all third parties with whom each negotiates for a possible sale, lease, assignment, mortgage, or transfer of the Real Estate of the existence of this Encroachment Agreement and the obligations hereunder.

5. In the event the Owner or successors and assigns or a successor owner in interest to the Real Estate breaches this Encroachment Agreement, in addition to all other legal and equitable rights and remedies the Town may have, the Owner hereby covenants and agrees that the consent granted to encroach may be revoked at any time thereafter upon the Town giving at least ninety (90) days prior written notice of termination of the Encroachment. Upon receipt of such notice, the Owner shall remove the Encroachment at his sole cost and expense prior to the termination date. Should he or his successors and assigns fail to timely remove the Encroachment, the Town may do so and is hereby released from any and all liability resulting from or associated with said removal of the Encroachment and from any diminution in the value of the Real Estate as a result thereof. All costs and expenses incurred to effectuate said removal, including related employee and court costs and attorney fees, shall be promptly reimbursed by the Owner to the Town within ten (10) days of being invoiced.

6. All notices, requests, and demands hereunder shall be in writing and shall be deemed to have been sufficiently given or served when presented personally, when delivered to an overnight courier service with guaranteed next business day delivery or, if deposited in the U.S. Mail, postage prepaid, certified or registered, addressed to the appropriate party at the address set forth below following the signatures of the parties hereto. Such notices, requests, and/or demands shall be effective upon the actual receipt thereof or, in the case of U.S. Mail, on the third calendar day after mailing. Either party may change its address as set forth herein by notice given to the other party as herein provided.

7. The covenants and agreements herein contained and set forth shall be construed as covenants and agreements running with the title to the above-described parcel of real estate and right-of-way, and shall be binding upon the parties hereto, their respective heirs, devisees, legal representatives, and assigns, and upon any person or entity acquiring an interest in the Real Estate.

8. Mike Dale as Building Commissioner for the Town of Zionsville, states that he is duly empowered to execute this Consent to Encroachment and Encroachment Agreement for and on behalf of the Town of Zionsville, Indiana.

IN WITNESS WHEREOF, the parties have hereunto executed this Consent to Encroachment and Encroachment Agreement, effective the day and year first above written.

TOWN OF ZIONSVILLE, INDIANA

By: _____

Printed: Mike Dale

Not personally, but in his capacity as

Building Commissioner for the Town of Zionsville.

Address:

Zionsville Town Hall

Attention: Mike Dale

1100 West Oak Street

Zionsville, Indiana 46077

Land Owner: _____

By: _____

Printed: _____

Title: _____

Physical Address:

Mailing Address:

STATE OF INDIANA)

)SS:

COUNTY OF BOONE)

Before me, a Notary Public in and for said County and State, personally appeared Mike Dale for and on behalf of the Town of Zionsville, Indiana, as the Building Commissioner of the Town of Zionsville, Indiana, who acknowledged the execution of the foregoing Consent to Encroachment and Encroachment Agreement.

WITNESS my hand and Notarial Seal this

_____ day of _____, _____

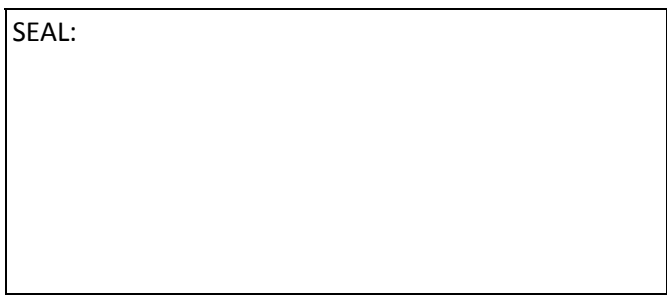
Signature _____

Printed: _____

My Commission Expires: _____

My Commission Number: _____

Residing in _____ County, INDIANA



STATE OF _____)

)SS:

COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____ who acknowledged the execution of the foregoing Consent to Encroachment and Encroachment Agreement and who, having been duly sworn, stated that any representations therein contained are true.

WITNESS my hand and Notarial Seal this

_____ day of _____, _____

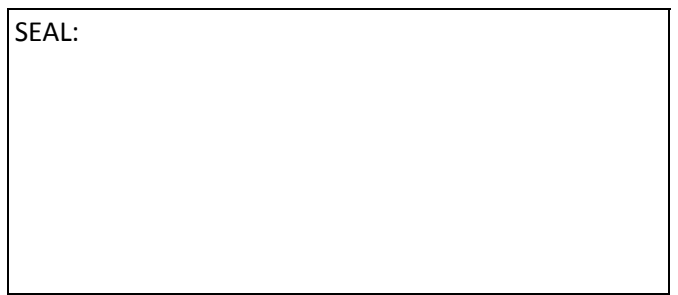
Signature _____

Printed: _____

My Commission Expires: _____

My Commission Number: _____

Residing in _____ County, _____



I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law.
Name: _____ Signature: _____

Instrument prepared by: Name: _____
Signature: _____