

DEPARTMENT OF LICENSES AND INSPECTIONS <b>CODE BULLETIN OF INFORMATION</b> <b>No. Z-1401</b>		CODE OF GENERAL ORDINANCES OF THE CITY OF PHILADELPHIA
		TITLE 14 - ZONING CODE
SUBJECT OF BULLETIN:  <b>Impact of Previous Variances on          New Zoning Permit Applications</b>		REFERENCE CODE SECTION(S): <b>14-303(6)</b>
		ISSUE DATE <b>June 18, 2014</b>
		REVISION DATE(S)
ISSUED BY		
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TITLE: Deputy Commissioner		PAGE 1 OF 2

## BACKGROUND

A new Zoning Code became effective on August 22, 2012. It authorizes the Department of Licenses and Inspections (L&I) to issue zoning permits for properties that are currently subject to a variance, certificate, special exception or proviso approved by the Zoning Board provided the application is consistent with the terms of the prior Zoning Board approval.

## ISSUE

Section 14-303(6)(a)(.2) of the Zoning Code, as amended by City Council Bill No. 130764 (effective December 18, 2013), authorizes L&I to issue zoning permits “Regardless of whether the existing lot, structure, or use is currently the subject of a variance, permit, certificate, special exception, or proviso issued by the Zoning Board, provided that the application shall be consistent with the terms of the current Zoning Code and that variance, permit, certificate, special exception, or proviso. If the application is not consistent with or would require a modification of the terms of a variance, permit, certificate, special exception or proviso approved by the Zoning Board, or otherwise not consistent with this Zoning Code, the application shall be denied and referred to the Zoning Board for action pursuant to the applicable section.”

The Zoning Code does not clearly address whether the current Zoning Code or the previous variance, certificate, special exception or proviso should govern in cases of conflict. The Zoning Code does not indicate whether the application refusal should list the aspects of the application that are non-compliant with the Zoning Code or the previous Zoning Board approvals.

Additionally, the Zoning Code does not define the criteria under which an application may be deemed “consistent” with the terms of a previous Zoning Board decision. All subsequent applications on the subject property are approved or denied based on the individual examiner’s interpretation of “consistent”. This results in a subjective process imposing unpredictable constraints on responsible development.

The Zoning Board of Adjustment Rules and Regulations, Section 6.4, grants the Board the authority to allow minor adjustments to previous unexpired approvals. The existence of this section infers that there is a pivotal point of development which determines if a change requires approval of the Board or may be issued “as of right” as per Section 14-303(6)(a)(.2). Neither the Rules and Regulations nor the Zoning Code clearly define this juncture.

## **DISCUSSION**

The Zoning Code reflects the City's current land use and development policies and regulates land use in a way which promotes public health, safety, general welfare and a higher quality of life.

An application that complies with the Zoning Code is aligned with the City's current land use policies. Furthermore, a principal goal of the new Zoning Code is to remove barriers in the zoning process allowing responsible development to proceed "as of right." Therefore, applications conforming to the Zoning Code should be allowed to proceed "as of right" and should not be referred to the Zoning Board for action.

Conversely, an application that does not comply with the Zoning Code is not aligned with the City's current land use policies and should be evaluated with respect to those current policies.

As per the Rules and Regulations, adjustments to an unexpired permit require the approval of the Zoning Board of Adjustment but, at some point, these same adjustments may be approved as of right. The Zoning Board and the community can reasonably expect a project with an associated variance to be executed as approved. After the project reaches completion, it becomes unreasonably burdensome to require Zoning Board of Adjustment approval of subsequent applications complying with the current code. After project completion, subsequent applications should be reviewed independent of original variance to allow for continued development.

It is recognized that the Zoning Board has the right to place conditions on approvals. The conditions may result in the restriction of components which otherwise would be permitted by the Zoning Code. These restrictions are expressly stated as a proviso.

## **DIRECTION**

The direction provided in this code bulletin shall only apply to new applications for properties that are subject to a previous variance, certificate or special exception.

An active application shall be defined as one which has not reached completion through final approval of an associated building permit or, in the absence of a required building permit, one with a use not yet established.

All changes to an active application require the approval of the Zoning Board of Adjustment either through an administrative review or new permit denial, as appropriate.

If a subsequent permit application complies with the current Zoning Code but does not conform to a previous variance, certificate or special exception, the provisions of the current Zoning Code shall govern and L&I shall issue the permit.

If a subsequent permit application does not comply with the current Zoning Code, L&I shall deny the application and keep the refusal/referral specific to that proposed component that violates the current code.

If a subsequent permit application indicates that the original non-compliant condition still exists and is still non-compliant under the current Zoning Code, the permit application must comply with terms of a variance and related proviso or L&I shall deny the application.