

<p style="text-align: center;">DEPARTMENT OF LICENSES AND INSPECTIONS</p> <p style="text-align: center;"><b>CODE BULLETIN OF INFORMATION</b></p> <p style="text-align: right;"><b>No. A-1701</b></p>	<p style="text-align: center;">CODE OF GENERAL ORDINANCES OF THE CITY OF PHILADELPHIA</p>
	<p style="text-align: center;">TITLE 4 – BUILDING CONSTRUCTION AND OCCUPANCY CODE TITLE 14 — Zoning Code</p>
<p>SUBJECT OF BULLETIN:</p> <p style="text-align: center;"><b>PROPERTY RIGHTS ISSUES RELATED TO THE PERMIT PROCESS</b></p>	<p>REFERENCE CODE SECTION(S):</p> <p style="text-align: center;">A-102.5 A-202.6 14-109</p>
<p style="text-align: center;">ISSUED BY</p>	<p>ISSUE DATE</p> <p style="text-align: center;">March 1, 2017</p>
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<p>TITLE: Chief Code Official</p>	<p style="text-align: center;">PAGE 1 OF 4</p>

## BACKGROUND

The property rights of individuals may be impacted through the issuance of zoning and building permits. While the Department has no code authority to enforce such property rights agreements, the issuance of permits with disregard to such rights is not seen as good public service to our citizens.

## ISSUE

The Philadelphia Zoning Code speaks directly to the issue of private property rights as follows:

***§ 14-109. Relationship to Private Agreements.***

*Where the provisions of this Zoning Code impose a greater restriction than that imposed by a private agreement, including but not limited to any easement, covenant, or deed restriction, the provisions of this Zoning Code will control. Where the provisions of a private agreement impose a greater restriction than this Zoning Code, the provisions of the private agreement may be enforced between private parties notwithstanding the provisions of this Zoning Code. The existence of a private agreement shall not excuse any failure to comply with this Zoning Code. The City shall not be responsible for monitoring or enforcing private agreements.*

While the Department is clearly not responsible for enforcing private agreements regarding property rights, it is authorized by the Code to adopt policies and procedures to address the intent of the code and applicable national standards, including decisions of the Court. See Sections A-102.5 and A-202.6 of the Administrative Code.

## DISCUSSION

The Department does not wish to create personal hardships and conflicts between property owners through its issuance of zoning and building permits. When private agreements and property rights issues are found during the review of permit applications, the Department needs to establish firm policies to not ignore such rights and agreements.

The issuance of permits confers certain rights of use and non-conformity upon a property regardless of future changes in the Zoning and Building Codes.

## **DIRECTION**

The Department of Licenses and Inspections has established the following permit issuance policies regarding the types of property rights and agreement issues that arise during the processing of permit applications.

### **A. Easements**

#### Existing Easements

Construction may only be permitted if all property owners with deeded rights to the easement agree to extinguish such easement.

Permit applications involving the reconstruction of a structure with an existing easement will be reviewed on a case by case basis. For example, if a permit application is proposing the reconstructing of one building comprising a tunnel alley, the Department may approve it with the extinguishment of the easement above the 2nd floor. The extinguishment shall involve the cooperation of all parties with easement access.

#### Proposed Easements

If a property owner seeks to create an easement for purposes related to construction (i.e. footing encroachment, access), then the easement must be recorded with Department of Records through a revised deed.

### **B. Property Line Encroachments**

#### Proposed Encroachments

Encroachments are not permitted at any level without a recorded easement. See below for Party Walls.

#### Existing Encroachments

Existing encroachments are viewed as a civil matter unless encroachment violates the Building Code.

The permit applicant is not required to address an existing encroachment through a zoning permit for a lot adjustment unless the construction of the encroachment was done in violation of the Codes.

The existing encroachment may not be extended without the creation of an easement (see Easements).

The applicant shall be advised if the encroachment results in a violation of the Building Code. Language shall be included in the zoning permit to alert affected parties including the building plans examiner.

### **C. Party Walls**

All party wall construction shall be in accordance with the standards of the applicable code (Building, Existing Building or Residential). The Department's policy with regards to construction on or near property lines and/or party walls is as follows:

1. **Constructing an addition that will extend the existing party wall vertically.**
  - a. The proposed construction is permitted to use the entire width of the existing party wall.
  - b. Joists that are proposed to be attached to the party wall shall not extend beyond the property line.
  - c. When applicable, existing chimneys, whether currently used or not, shall be extended as required to comply with the minimum clearance and termination point provisions of the code.

- d. An Engineer's Report shall be submitted with the building permit application to the plans examiner stating that the existing party wall can adequately support the additional loads. The report shall include a statement that the proposed construction will not adversely affect the existing adjoining structure(s).
2. **Constructing a lower level below the existing party wall (footing and foundation).**
  - a. The proposed construction is not permitted to encroach beyond the thickness of the existing foundation wall above without a recorded easement.
  - b. The existing foundation system is required to be adequately supported and underpinned. (See Code Bulletin B-0503, Excavations and the Protection of Foundations, for requirements related to protecting against settlement and lateral translation.)
  - c. In accordance with the code, the person making or causing an excavation to be made, shall provide written notice to the owners of adjoining buildings advising them that the excavation is to be made and that the adjoining buildings shall be protected. Said notification shall be delivered not less than 10 days prior to the scheduled starting date of the excavation.
3. **Constructing an addition in which the party wall will be extended horizontally.**

The proposed construction is not permitted to encroach over the property line unless express written consent is provided by the adjoining property owner. A copy of this consent shall be submitted to the plans examiner to be made a part of the permanent record.

#### **D. Conflicts between Existing Zoning Lots and Deed Descriptions**

The zoning record is used to define the parameters of the lot for zoning purposes. With the exception of dimensional errors, existing deed descriptions or tax accounts do not supersede the zoning record.

Section 14-304(7)(.3)(c) of the Philadelphia Zoning Code requires that a deed be recorded to reflect lot adjustments, providing the direct link between the zoning permit and the deed.

Any existing conflicts between the deed and a zoning permit will be viewed as a legally non-confirming condition which may be grandfathered but not extended. An extension will be defined as a modification to the exterior envelope or an additional lot adjustment.

If the zoning/use registration permit application does not involve a modification or additional lot adjustment, there will be no need to take action to ensure the agreement between the zoning records and the deed. If permit application does involve either element, the applicant will be directed to reconcile the zoning record and the deed.

Violations of the Building Code are addressed in a similar but independent manner. If the plans examiner determines that a condition need not be addressed for the issuance of a zoning permit but wants to ensure that others including the building plan examiner is alerted to the condition, it shall be appropriate to include such information in the language of the zoning permit.

#### **E. Conflicts between Existing Zoning Lots and OPA Accounts**

Office of Property Assessment (OPA) parcel tax accounts shall correspond to zoning lots for record keeping purposes. Applicants shall be directed to reconcile the two, regardless of the activity level proposed by the permit application.

#### **F. No Existing Zoning Records and Non-Conforming Lots**

In cases where the Department has no existing zoning records, the Department shall utilize the deed and the submitted site plan to establish current legally non-conforming conditions.

Multiple parcels may have been utilized through an undocumented “unity of use” which may continue until a zoning change is made.

If the zoning/use registration permit application involves a modification of the existing structure’s footprint or a lot adjustment, the applicant will be directed to reconcile the zoning record and the deed(s). This can be done through a formal consolidation of the parcels or as a formally documented unity of use.

Should an applicant choose to dissolve an existing undocumented unity of use by removing existing uses and structures, the remaining existing parcels reflected in the deed(s) may be considered legally non-conforming lots.

### **G. Existing Alleys**

Alleys often provide for a means of egress to a public way for multiple properties.

In most cases, a property owner has a right to an existing alley even if it is not recorded in the deed. In the past it was not uncommon to omit reference to an alley when recording a deed. Applicants shall be encouraged to research the property to find the original deed if alley access is an issue.

Before the Department issues any permits related to the extinguishment of an alley, an effort shall be made by the applicant to ensure that required egress from existing buildings is not impeded. In many cases, the extinguishment of an alley would make a building less code compliant by closing off a required means of egress to the public way.

### **H. Vertical Subdivisions**

Buildings are sometimes divided into separate ownership for floors or spaces within those buildings. The Zoning Code regulates lots as “parcels of land” and regulates the structures and uses that exist on such lots. It does not regulate ownership of “parcels” that may exist within those buildings. Therefore, zoning permits will not be issued for the subdivision of portions of a building which exist on a lot. A zoning permit for subdivision or lot adjustment shall only be issued as it relates to the parcel of land.

### **I. Recording**

Whenever a document is required to be recorded as a condition of an issued zoning permit, including but not limited to deed restriction, agreement, or lot line relocation, such recordation is required prior to the issuance of the building permit.