Department of Licenses and Inspections
CITY OF PHILADELPHIA

FAQ:
Is a Zoning Permit required to add, modify, or extinguish an easement?

Background:

The Philadelphia Zoning Code defines an easement as 'a *right granted for the purpose of limited public or quasi-public access across private land.'* Common easements include, but are not limited to, alleys and shared driveways.

Pursuant to Section 14-109 of the Zoning Code, an easement is classified as a private agreement for which the City is not responsible to monitor or enforce.

While easements are not directly regulated by the Zoning Code, they may impact other Zoning Code requirements. Zoning Code provisions impacted by easements include, but are not limited to, the following:

- Rear yard and side yard measurements
- Sight triangle measurements impacting fence allowances
- Parking accessed by a shared driveway

Additionally, easements <u>do</u> directly impact Building Construction and Occupancy Code requirements and property rights policies outlined in Code Bulletin A-1703. Conversely, development approved under a zoning permit may be affected. Examples of conditions that are impacted by easements include:

- Minimum exterior wall ratings and allowable openings
- Egress from all properties with rights to an easement
- Allowable encroachments
- Property rights pertaining to shared easements

Answer:

A zoning permit is only <u>required</u> to add, modify, or extinguish an easement if it creates a non-compliant condition under the Zoning Code or it is necessary to demonstrate compliance with the Zoning Code. Such conditions may include non-compliant rear yard, side yard, fencing, or parking access.

If the new, modified, or extinguished easement results in a non-compliant condition under the Zoning Code, a zoning permit application must be filed to obtain a refusal and seek a variance from Zoning Board of Adjustment (ZBA).

A zoning permit application that includes development <u>should</u> identify any existing or proposed easement to allow for a complete review and avoid downstream impacts. A failure to identify easements will not in itself invalidate a zoning permit; however, the inclusion of easements will:

- Enable the Department to positively verify compliance with the Zoning Code.
- Ensure that the building examiner has complete information to analyze egress and fire protection requirements that may impact the building design.
- Provide an early identification of an issue that may significantly impact project design, such as:
    - o Conditions that may render a property non-compliant with the Building Construction and Occupancy Code (i.e. extinguishing an easement that provides access to the public way for emergency escape and rescue, etc.).
    - o Prohibited encroachments.
    - o Required consent of all property owners with rights to the easement, as outlined in Code Bulletin A-1703, Property Rights Issues Related to the Permit Process.

Additional Notes:

- The issuance of a zoning permit shall not be misconstrued to demonstrate compliance with other provisions of the Philadelphia Code or policies of the Department. Non-compliant conditions may result in the need for new zoning permits or the issuance of a violation notice.

- New, modified, or extinguished easements must be recorded with the Department of Records. A building permit for development will not be issued until new or modified easements are recorded.

Related FAQs:

- Can I change a property's lot lines even if the proposed change might not comply with the building code?

- When may an existing nonconforming condition continue when consolidating lots?

Questions?

Call 311 or (215) 686-8686 (if outside Philadelphia) or submit an online form via http://www.phila.gov/li/get-help.

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