

Encroachments

The purpose of this brochure is to explain to owners and builders how encroachments may affect their ability to obtain a building permit in the City of Burnaby.

"This information is provided for convenience only and is not in substitution of applicable City Bylaws or Provincial or Federal Codes or laws. You must satisfy yourself that any existing or proposed construction or other works complies with such Bylaws, Codes or other laws."

Encroachments into Neighbouring Property

Occasionally a builder or developer will discover that for historical reasons a principal building on an adjoining lot is encroaching on the property that they wish to develop, or that the work they are proposing may result in permanent or temporary encroachment into their neighbor's property. It is important to note that encroachments are a civil matter that the owner of the property being developed must resolve with any and all affected neighbours. Except as outlined below, the City does not facilitate, monitor or enforce encroachment agreements amongst property owners. Accordingly, encroachments, properly addressed, will not prohibit the owner/developer from building a new building.

All British Columbia Building Code (the Building Code) issues resulting from an encroachment, however, must be addressed before the permit for the new building can be issued. In the example of the existing encroaching building, for spatial separation compliance the encroaching building will be considered a second building on the property, and both the existing building and the proposed building will be reviewed for allowed openings and exterior wall construction; alternatively fully sprinklering the buildings, wired glass in steel frames for facing openings, etc., might be considered.

If the owner/developer of the property finds that as a result of a neighbor's encroachment, Building Code requirements unduly restrict the construction of the new residential use building, he or she must deal directly with the owner of the encroaching building regarding its alteration or removal. Such alteration or removal must be undertaken under an appropriate permit.

In some instances, however, the two property owners may be able to address the encroachment by entering into an appropriate registered legal agreement (e.g., easement). In such circumstances two situations can arise:

- If Building Code requirements make some legal accommodation necessary (e.g., acceptable exiting can only be achieved by way of trespass, or spatial separation requirements call for restrictions on future construction) the City must be included as a named third party in such agreement (with a clause in the agreement that it will not be discharged or modified without the prior written consent of the City) and the Building Department must be provided with a copy of any registered enabling documents before the permit is issued.
- If Building Code compliance is not affected by the encroachment (e.g., in-ground encroachments when excavation, shoring and underpinning are anchored into neighboring property), the two property owners should still enter into an appropriate legal agreement before construction is undertaken and prior to permit issuance the owner/developer shall provide the City with written notice that he/she has or will obtain private easements from neighbors affected by encroachments associated with the construction.

Owners should seek independent legal advice when addressing such matters.

Encroachment into Public Easements and Right of Ways

Permanent in-ground encroachments into City easement or right of way areas, such as structures, concrete footings or drain tiles, are not permitted. Aerial encroachment, when permitted by the Engineering Department, is limited to a maximum of 2' - 0" into the easement area subject to maintaining a minimum 9' - 0" clearance (measured from finished grade) to the underside of the encroaching structure. Asphalt (2" thick) or interlocking bricks are permitted to pave driveways. In all cases the Engineering Department's approval is required (see [Easement Trespass Application](#)). No building permit will be issued until the Engineering Department notifies the Building Department of its approval. For all temporary construction encroachments, please check with the City's Engineering Department.

Any other proposed encroachments over or into easements or right of ways held by public utilities, provincial highways, crown corporations, power lines, pipelines, etc. must be approved by the registered holder of the easement before a building permit can be issued.

Persons wishing to obtain a building permit to construct or alter a building over the Canadian National Rail Train Tunnel must first obtain the written permission from the Maintenance Supervisor, Bridge and Structures, of the CNR.

Owners or builders undertaking a development near a water course or stream should also be aware of the Land Development Guidelines for the Protection of Aquatic Habitats regulated by the B.C. Ministry of Environment and the Federal Department of Fisheries and Oceans.

Further Information

For further information on existing building encroachments and Building Code compliance measures, please contact the Building Department at 604-294-7130. For further information on encroachments into public easements, contact the Engineering Department at 604-294-7460.

Related Articles

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- [Infill Housing – Be a Good Neighbour](#)