



## MEMORANDUM

To: Development Services staff  
From: Matthew Seubert for Tina Axelrad, Zoning Administrator  
Date: April 1, 2020  
Re: **Denver Zoning Code (DZC) Interpretation and Clarification — Party Wall or Common Wall, Detached Structures (DZC §13.3)**

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### Summary

This memo provides a written code Interpretation of the following term, currently undefined in the DZC: Party Wall:

“A wall on a property boundary, constructed without openings, as a common support to structures or parts of structures on both sides for the common benefit of both.”

This memo also provides a written Clarification that addresses the following:

Q #1: What is the minimum separation between two structures to consider them two Detached Structures as defined in the Denver Zoning Code (DZC), rather than one Structure?

- A. There is no specified minimum separation. It can be any distance provided there is a discernable gap (obvious and open from ground to sky) between the two Structures, and further provided that the two Structures are not adjoining, touching, attached, connected, or structurally integrated with each other in any way, except as specified in the Q #2 exception below.

Q #2. Are there exceptions to the above answer to Q #1 to allow adjoining or touching Structures to be considered two Detached Structures?

- A. Yes. Two Structures are Detached if they do not share a common wall or a party wall, per the definition of Structure, Detached in DZC §13.3.
1. In general, two structures are considered Detached even if connected, when the connection is only by a Tunnel, Breezeway, or similar connection (as determined by the Zoning Administrator) that is not a common or party wall.
  2. Another example of this exception is two individual building walls that abut each other, but where the abutting walls are not party or common walls.

### Definitions

#### **Detached Structure**

DZC §13.3 defines “Structure, Detached” as:

**“Any structure having no party wall or common wall with another structure.** Bridges, tunnels, breezeways and other similar means of connecting one structure to another shall not, for the purposes of this Code, be considered to constitute a party wall or common wall.”<sup>1</sup>

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<sup>1</sup> This definition is nearly identical to the definition of “Structure, Detached” in Former Chapter 59 §59-2(281), which also includes certain exceptions for attached garages.

As stated in the definition above, the following elements are not considered “a party or common wall,” and therefore cannot be used to connect two otherwise Detached Structures and create a single (attached) Structure:

- Bridge
- Tunnel (defined in DZC— see below)
- Breezeway (defined in DZC — see below)
- Other similar means of connecting one structure to another (which also is not a party or common wall).

Another example of two Detached Structures is two individual building walls that abut each other, but where the abutting walls are not party or common walls. Denver sees this most often in our commercial mixed-use zone districts (e.g., Larimer Square), where two commercial Buildings’ individual exterior walls abut each other, but each Structure is considered a separate Detached Structure. In this case, for example where commercial or mixed-use Buildings abut each other, or where two Detached Accessory Structures abut each other but do not share a common or party wall, such Structures are considered separate Detached Structures, even though they touch each other. See example 4 at the end of this document.

Note that the DZC does not define “attached structure.”<sup>2</sup> Generally, working backwards from the definition of “Detached Structure” above, two structures are “attached” if connected by “a party wall or common wall.”

#### **Party Wall or Common Wall**

“Party wall or common wall” is not a defined term in the DZC. When a word or term is not defined in the zoning code, but the word/term is defined in Denver’s adopted building code, DZC §13.2.A.2 directs that the word shall be construed as defined in the building code. §13.2.A.3 stipulates that words or terms not defined in the DZC nor the building code shall be given their usual customary meanings except where the context clearly indicates a different meaning. When making a Code Interpretation §12.4.6.3.F.1 instructs the Zoning Administrator to: “Employ the definitions contained in Article 13 to determine the meaning of words and phrases, or if not defined in Article 13, apply the plain meanings of all other words and phrases. When not defined in Article 13, if a word or phrase is subject to differing interpretations, then the Zoning Administrator shall apply the meaning assigned first by the D.R.M.C., as applicable, and then by a dictionary in general use.”

In this case, the term party wall or common wall is not defined in the building code. Although the following requirement for “Party Walls,” is provided by the International Building Code (IBC) adopted by the City of Denver, however, it is not a definition per se, but is still instructive:

#### **International Building Code (2015 Edition), Section 706.1 Party Walls.**

Any wall located on a lot line between adjacent buildings, *which is used or adapted for joint service between the two buildings*, shall be constructed as a fire wall in accordance with Section 706. *Party walls shall be constructed without openings* and shall create separate buildings. (Emphasis added)

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<sup>2</sup> It’s difficult to suggest a definition of “attached structure” that is not circular or defined in the negative. Here’s one attempt: An attached structure is a single structure that has all its component parts physically connected to and structurally integrated with each other.

If a term is undefined in the IBC, §201.4 states that “such terms shall have ordinarily accepted meanings such as the context implies.”

The term “party wall” also has specific meaning under common and statutory real property law, which assigns to each owner on either side of a “party wall” a protected property right to use the shared party wall as long as the wall remains standing (unless the owners agree otherwise in writing). In this specialized context, a “party wall” means: “A wall erected on a property boundary as a common support to structures on both sides, which are under different ownerships...for the common benefit of both in supporting the construction of contiguous buildings.” Black’s Law Dictionary (5<sup>th</sup> Ed.). Please note that there are exceptions to this definition, for example, the properties may or may not be under different ownership. Webster’s dictionary defines party wall as: “A wall which divides two adjoining properties and in which each of the owners shares the rights.”

Taking into account guidance from the International Building Code, Black’s Law Dictionary, and other references, this written Interpretation of the DZC provides the following definition of the existing undefined term:

***Party Wall*** is interpreted to mean:

**“A wall on a property boundary, constructed without openings, as a common support to structures or parts of structures on both sides for the common benefit of both.”**

Black’s Law Dictionary and other similar references do not have a separate definition of “common wall,” and instead refer to the definition of “party wall” as a synonym for the term “common wall.” In zoning terms, a common wall is a party wall that does not coincide with a property boundary.

To be clear, in the Denver zoning codes, construction of a Party Wall will usually NOT create two adjacent and separate Buildings – that is, the built portions on either side of the shared Party Wall or common wall will be treated as a single Building and one Structure for zoning purposes. For example:

1. Two side-by-side dwelling units located inside a Structure, where a shared party wall or common wall separates the two dwelling units along a shared property (ownership) line, is considered a single Building and one Structure for zoning purposes.
  - In zoning, this is a “Duplex” building form: One primary structure, two interior dwelling units, one zone lot (and potential for one or two different property/parcel owners).
2. A vehicle garage (or carport) connected to a single dwelling unit, where the connection is a shared party or common wall, is considered a single Building and one Structure for zoning purposes.
  - In zoning, this could be a “Suburban House” building form: One primary structure, one interior dwelling unit, accessory vehicle parking located inside the primary structure, one zone lot (and typically one property/parcel owner). A carport attached to a single dwelling unit is another example, as shown in Example 2 at the end of this document.
3. In contrast, two individual abutting walls may separate two commercial properties on either side of a shared property line. Another example is two Detached Accessory Structures with walls that abut each other, even if located on the same zone lot. These walls would not be considered a common or party wall, as they are not adapted for joint service between the two buildings. Importantly, a

common or party wall is one wall assembly, not two separate and independent but abutting walls. In both these examples, there are two Buildings, two Detached Structures, and sometimes two separate Zone Lots. See example 4 at the end of this document.

- In zoning, an example could be two “General” building form structures abutting each other: Two primary structures, two separate interior spaces for permitted uses, typically two zone lots (and typically two property/parcel owners).

### **Breezeway or Tunnel**

DZC §13.3 also contains a definition of Tunnel/Breezeway, which specifies:

An above-ground (or below-ground in the case of a Tunnel) passage that is less than 7’ in *any* horizontal dimension and connects two structures. The connected structures may be either a primary and detached accessory structures, or two or more primary structures. The definition further specifies that a Breezeway is not a “Room”.

According to this definition, a Breezeway or Tunnel is a passage that connects two Structures. These two Structures are otherwise detached or separate, except for the permitted Breezeway or Tunnel.

- A Tunnel/Breezeway must be less than 7’ in at least one horizontal dimension and may not exceed 70 square feet in gross area.
- A breezeway is not merely any structural element connecting two structures. For example, an uncovered Deck that connects two Detached Structures is not a Breezeway.
- “Passage” is not defined in the DZC. Dictionary definitions such as Webster’s specify that a passage, or passageway, is a corridor or a covered walkway between rooms or buildings.

Considering the definitions of Detached Structure and Breezeway/Tunnel above, as well as the context of the other definitions, if two Structures are connected only by a Breezeway or Tunnel, they are considered two separate Detached Structures. See Example 1 at end of document.

## Discussion

### **One Structure or Two Detached Structures?**

*KEY: Zoning review will not divvy up different parts of the same structurally integrated Building and treat those different parts as separate Detached Structures.*

For example, a front or rear Porch, or exterior stairs, structurally integrated with and attached to the house is part of the house; a Deck that is touching the house is part of the house; a Balcony protruding from the 2nd floor is part of the house. “The house” is one Structure and, with all its component parts, is appropriately considered and treated by zoning as a single “Completely Enclosed Structure.” All these different parts of the Structure are jointly serviced by a shared party or common wall, and will not be treated as Detached Structures for purposes of zoning review. See example 3 at the end of this document.

In contrast, when a structure is not structurally integrated into and not attached to the house, it is not part of the house, and therefore is not part of the single “completely enclosed structure” that is the house. For example:

- If a Deck is proposed near the house, but is not attached to, structurally integrated with, and

touching the house, the Deck is considered a separate Detached Structure.

- A non-load-bearing Garden Wall running horizontally between two Single-Unit Dwellings, touching each Dwelling where the Garden Wall meets it, does not create a single Two Unit Dwelling structure (see DZC §11.12.2.1.C.2). The two primary structures remain two separate Single Unit Dwelling structures. As a general rule, a Fence or Wall running between and touching two Structures does not automatically turn the two Structures into one Structure, unless the wall is a Party Wall or Common Wall as explained above.
- Two Detached Structures that are connected by an above-ground or below-ground passageway or connector (i.e., a Tunnel or Breezeway), when such connector does not constitute a Room as defined in the DZC, do not become a single Structure. (See example 1).

### **How much distance can there be between the deck and the house for the deck to become “detached”?**

The DZC is silent on that point. Generally, it can be any distance provided there is a discernable gap (obvious and open from ground to sky) between the deck structure and the house, and further provided that the deck is not adjoining, touching, attached, connected, or structurally integrated with the house in any way. However, as explained previously, there are exceptions to this general rule:

- 1) In general, two structures are considered Detached even if connected, when the connection is only by a Tunnel, Breezeway, or similar connection (as determined by the Zoning Administrator) that is not a common or party wall.
- 2) Another example of this exception is two individual building walls that abut each other, but where the abutting walls are not party or common walls. These buildings are considered detached under the zoning regulations. See example 4.

### **Zoning Administrator Findings**

Per DZC §12.4.6.4.A.1, the Zoning Administrator finds this interpretation is consistent with the intent of this code to guide Denver’s prosperous and sustainable future by providing clear regulations and processes that result in predictable, efficient, and coordinated review processes. Per §12.4.6.4.A.2, the Zoning Administrator finds that this interpretation is consistent with the intent of Suburban, Urban Edge, Urban and General Neighborhood contexts to provide certainty to owners, developers and neighborhood interests about the limits of what is allowed in such areas. This interpretation is consistent with the intent of the Urban Center Neighborhood context to ensure new development contributes positively to established neighborhoods and character; and is consistent with the intent of the Master Planned Context to provide clarity and predictable outcomes as development proceeds.

This code interpretation and clarification is a final decision of the Zoning Administrator and may be appealed to the Denver Zoning Board of Adjustment within 15 days from the date of this interpretation according to DZC §12.4.8, Appeal of Administrative Decision.

## Examples

### 1. Breezeway Connecting Two Detached Structures:



*Each of the above examples illustrate two Detached Structures connected by a Breezeway.*

### 2. Not a Breezeway; Single (Attached) Structure:



*The above examples illustrate one Structure comprised of different building elements – not two Detached Structures. In both examples, a common wall supports and services both built elements, making that common wall – and the elements on either side of the wall – part of a single Structure. The carport is not a Breezeway because it does not connect two separate Structures.*

**3. A Single Structure – Integrated Exterior Building Elements:**



*Buildings with an attached landing, stairs, or deck. The stairs or deck are part of the subject Building or Structure, and not a separate, Detached Structure.*

**4. Abutting Detached Structures**



Two (or more) adjacent commercial Structures with abutting walls. Such walls do not constitute a party or common wall and are not used for joint service of the two (or more) Buildings. Zoning treats these Buildings as separate Detached (Primary) Structures.