



BUILDING BULLETIN

Building Services

Subject:	Conditional Building Permits
Building Bulletin No:	BD.BB.18.06
Date Issued:	July 12, 2018
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Reference:	s. 8(3) <i>Building Code Act</i>

A. Purpose

The purpose of this Building Bulletin is to:

- Clarify the authority of the Chief Building Official under the *Building Code Act* to issue conditional building permits;
- Balance customer service with the Chief Building Official's responsibility to ensure administrative fairness and consistent treatment of all permit applicants; and
- Outline the criteria and to strengthen controls over the issuance of conditional building permits that will help to ensure a consistent and fair approach is followed in each case.

B. Background and Definitions

As background, where a landowner wants to construct a building they must apply for and obtain a building permit from the Chief Building Official. Once a permit applicant has met all of the conditions of the *Building Code Act*, the Chief Building Official must issue the requested permit.

In contrast, and in recognition of the complexities of complying with the requirements of the *Building Code Act*, the Act allows the Chief Building Official, at their discretion, to issue a conditional building permit. This may be done when an applicant has not fulfilled all of the

requirements for a full building permit, but is in compliance with a set of reduced requirements. Should the applicant subsequently not be able to fulfill all of the requirements for a full permit, they bear the full risk of restoring the site to its original condition.

The Chief Building Official is under no obligation to issue a conditional permit and the permit applicant has no right of appeal should a conditional permit not be issued.

B.1. A Tool to Assist in the Development Process

Conditional building permits are a tool used in the overall development process to manage the significant number of development applications in the Town. However, it is worth stressing that an applicant has no absolute right to receive a conditional permit. Rather, issuing such a permit is at the discretion of the Chief Building Official and requires the applicant to enter into a conditional building permit agreement with the Town.

Any conditions that the Town may wish to put on the construction would be included in the conditional building permit agreement.

B.2. Conditions to Issue a Conditional Permit

The *Building Code Act* allows for the issuance of a conditional permit at the discretion of the Chief Building Official, however, three (3) conditions need to be satisfied:

1. The project meets zoning and some specific environmental, heritage and other regulations referred to as "applicable law";
2. The Chief Building Official is of the opinion that unreasonable delays in the construction would occur if a permit was not issued; and
3. The applicant enters into a conditional building permit agreement with the Town that sets out the timelines within which they must comply with the remainder of requirements for a building permit, including how and if the site must be restored should those requirements not be met.

B.3. Delegated Authority

Town Council through the enactment of By-law No. 2010-066 delegates to the Chief Building Official the authority to enter into Conditional Building Permit Agreements made under s. 8(3)(c):

Delegation re conditional permits

(3.1) A principal authority may, in writing, delegate to the chief building official the power to enter into agreements described in clause (3) (c) and may impose conditions or restrictions with respect to the delegation. 2002, c. 9, s. 14 (3).

B.4. Conditional Building Permit Agreement

All applicants are required to enter into a conditional building permit agreement with the Chief Building Official prior to issuance of same.

C. General Interpretation and Requirements

The Chief Building Official shall not issue a conditional building permit unless:

1. A permit has been granted by the appropriate Conservation Authority;
2. Regulations under the Ontario Heritage Act have been met;
3. A Committee of Adjustment Decision has been passed and no objections were noted;
4. An agreement plus securities has been signed by the applicant and the Town; and
5. The Chief Building Official is of the opinion that unreasonable delays in construction would occur.

C.1. Conditional Permit Requests

An Applicant may request to the Chief Building Official by completing the Supplementary Application for a Conditional Building permit (Form B3###)

C.2. Criteria to Not Process a Conditional Building Permit Request

The following objective criteria are reasons not to process a conditional building permit:

- a) To avoid paying increased fee or charges (i.e. January 1st indexing)
- b) To avoid building code changes
- c) History of non-compliance with the *Building Code Act* (construction without a permit)

C.3. Different Stages of Conditional Building Permits

Conditional building permits are not required to be issued in stages. However, the Chief Building Official has a longstanding practice in place to issue the type of conditional permit relevant to the immediate construction which helps to both prevent unreasonable delays in construction and protect the Town's interests.

1. A conditional building permit may be issued for all or part of the construction of a building, save and except for Occupancy. An Occupancy Permit shall not be issued for a conditional building permit.
2. The staged permitting process is used by the CBO, particularly for large complex construction, where an application is not eligible for the issuance of a full permit may include one or more of the following stages of construction:
3. For example, footings and foundation only or construction up to framing. Staged conditional permitting helps to both prevent unreasonable delays in construction and protect the Town's interests.

C.4. Demonstrating an Unreasonable Delay in Construction

The *Building Code Act* provisions relating to conditional permits is broadly worded so that Chief Building Officials, with their experience and expertise, can review a proposed construction project and decide whether it will be unreasonably delayed if a conditional permit is not issued.

However, accepting the claims of applicants, without adequate due diligence to allow the Chief Building Official to make an informed decision as to the veracity of claims of unreasonable delays increases the risk that conditional building permits are being approved when they are not actually warranted.

Applying due diligence to assertions of applicants requesting a conditional building permit is necessary in order to support a decision to issue a conditional building permit.

Prior to approving the conditional permit application, the following factors are to be taken into consideration in order to obtain reasonable assurance that Conditional Permit applicants' assertions of unreasonable delays in construction are valid:

1. Economic considerations in which could forestall development;
2. Shortage of trades or the scheduling of same;
3. Expected inclement weather
4. Volume of building permit applications under review

C.5. Permit Application Intake

1. Permit applications are to be processed in accordance with established procedures
2. A full building permit application shall be submitted in addition to the conditional building permit form as described above.

C.6. Zoning Review

1. Conditional permit applications are to be reviewed for zoning by-law compliance in accordance with established procedures of the Department.
2. The proposed building shall comply with the applicable zoning by-laws made under s. 34 & 38 of the Planning Act and all minor variances granted by the Committee of Adjustment are final and binding.
3. A conditional building permit will not be processed where non-compliance with the applicable zoning by-law has been determined, save and except for minor variances granted by the Committee of Adjustment.

C.7. Committee of Adjustment & Minor Variances

Under the *Planning Act*, the Committee of Adjustment may impose conditions if an application is approved. These conditions must be satisfied before a building permit is issued, unless otherwise specified by the Committee. Conditions may include approvals from outside agencies, sediment control, location survey information or any other condition that the Committee feel is appropriate.

For the purposes of issuing a conditional permit under subsection 8(3) of the Act, a person is exempt from the requirement in clause 8(3)(a) of the Act of compliance with by-laws passed under sections 34 and 38 of the *Planning Act* where,

- (a) a committee of adjustment has made a decision under section 45 of the *Planning Act* authorizing one or more minor variances from the provisions of any by-laws made under sections 34 and 38 of that Act,
- (b) such minor variance or variances result in the achievement of full compliance with such by-laws, and
- (c) no person informed the committee of adjustment of objections to the minor variances either in writing or in person at the hearing of the application.

Where the Committee of Adjustment has made their decision in accordance with the above, the Chief Building Official may issue a conditional building permit *within the 20 day appeal* period required by the *Planning Act*, subject the following conditions being satisfied:

1. Written confirmation from the Secretary, Committee of Adjustment or Town Clerk that no objections have been received either in writing or in person at the hearing of the application;
2. The building permit application is otherwise deemed complete; and
3. All other requirements for a complete application have been satisfied and conforms to all other applicable law.

C.8. Building Code Review during the Conditional Building Permit Application Process

1. Review for compliance with the Ontario Building Code must be completed for the stage(s) of construction requested and deemed satisfactory prior to issuance of the conditional permit.
2. Where a conditional permit is only for a portion of the entire work (i.e. footings & foundation), the Building Inspector may sign off on that portion provided:
 - a) It has been confirmed that the issuance of the conditional permit will not adversely affect the outstanding building code issues or other approvals;
 - b) The outstanding building code issues are listed as conditions within the Agreement; and
 - c) The proposed building has been reviewed for zoning by-law compliance in accordance with established procedures of the Division.

C.9. Conditional Building Permit Fees

All fees and charges in addition to the Conditional Building Permit Fee(s) noted above shall be made payable prior to the issuance of the conditional building permit.

C.10. Issuing a Conditional Building Permit

Where a decision is made to process and issue a conditional building permit, the following are the necessary steps:

1. Permit applications are to be issued in accordance with established procedures of the Division.
2. The agreement is to be signed by the Applicant and Chief Building Official and attached to the permit file.
3. The permit holder is issued a special permit placard clearly identifying:
 - a) the conditional permit,
 - b) the conditional nature,
 - c) stages of construction approved conditionally (i.e. footing & foundation only); and
 - d) the expiration date of the conditional permit.

C.11. Request to Extend Stages of Construction and Timeframes

Where a request has been made by the permit holder to extend the stages of construction, the following will be completed:

1. All requests to extend a stage(s) of the construction under the Agreement, shall be submitted in writing to the Chief Building Official;
2. The request shall include the stage(s) of construction to be extended and the reasons for the request; and
3. The Chief Building Official may review and approve requests from the permit holder to extend timeframes and/or authorize certain aspects of construction during the review period for full permit issuance. For example, windows delivered to site may be allowed to be installed.

C.12. Due Diligence: Approving and Monitoring Conditional Permits

Once a conditional permit is issued the primary enforcement action that can be taken where an applicant does not comply with the conditional permit agreement is to revoke the permit and, in extreme cases, require the applicant to restore the site to its original condition. This is considered a very serious step and the Division generally only uses it as a last resort.

C.13. Monitoring and Enforcing the Conditional Permit after Issuance

The conditional permit agreement may outline a number of conditions that must be satisfied within specified timeframes. Moreover, a standard condition included in the conditional agreement is that failure to comply with one or more conditions under the Agreement may result in revocation of the permit.

To be effective, there must be sufficient, timely monitoring of the conditions set out in the CP agreement. Construction under a CP is governed by two key documents: the permit and the CP agreement. The permit allows the holder to construct to the stage specified by the permit and the agreement contains provisions requiring the permit holder to perform certain tasks within a specified time frame.

The Chief Building Official's main recourse for non-compliance with agreements is to revoke the conditional permit. This is considered a serious step and one of last recourse. This makes it even more important to only issue CPs where it is likely the permit applicant will be able to adhere to the terms of the CP agreement.

C.14. Enforcement Guidelines

Upon issuance of the conditional building permit, the following is to be completed:

1. The Building Assistant or Inspector will set the expiry date of the permit that coincides with the signed Agreement.
2. The Building Assistant or Inspector will assign a follow up inspection to the Building Inspectors *20 business days* from the date of issuance of the conditional building permit.
3. The Building Assistant or Inspector will assign a follow up inspection to the Building Inspectors on the date two (2) weeks prior to the expiry date of the Agreement.
4. Where a full building permit has not been issued by the follow-up date noted above, a Notice will be sent to the permit holder and owner.
5. The Notice will warn that the enforcement terms of the Agreement will be implemented if the full building permit has not been issued by the expiration date of the Agreement.
6. The Building Assistant will ensure that any requested inspections beyond the stages permitted in the conditional permit will not be scheduled, unless authorized by the Chief Building Official.
7. Where it has been determined that construction has proceeded beyond the permitted stages of construction, an Order to Comply may be issued under the *Building Code Act* in addition to administration fees.
8. Unless authorized by the Chief Building Official, where construction has not commenced within 20 business days (i.e. Footing inspection not scheduled), the conditional building permit will be revoked.
9. Where a conditional building permit has been revoked, the Applicant will be required to proceed with the full building permit process.

C.15. When Construction Proceeds Beyond Approved Stages

The conditional template agreement states:

The Owner acknowledges that the fees and/or charges paid in accordance with Section 2(d) and further referred to in Section 2(e) shall be forfeited as liquidated damages if:

- (a) any construction or other work has proceeded which, in the opinion of the Chief Building Official, is beyond that which is authorized by the conditional building permit;

Where the Building Inspector determines construction has proceeded beyond the permitted stages of construction as outlined in the Agreement, the following will be completed:

1. Notice will be sent to the permit holder and owner warning that the enforcement terms of the Agreement will be implemented including possible revocation of the conditional building permit as outlined in the Agreement.
2. The Notice will further state:
 - a. that a minimum \$150.00 administration fees is applicable, in addition to re-inspection and/or plans examination fees;
 - b. construction shall not proceed any further until a full building permit has been issued and that the site shall be secured and safe from the public, and
 - c. that further action under the Building Code Act may be taken where construction proceeds without the benefit of a full building permit.
3. The permit holder will be given 5 business days to respond to the Notice and will be required to submit all required information, documents and reports to obtain the full building permit.
4. Prescribed timeframes outlined in the building code for the applicable permit type are not applicable and will reviewed by the Building Inspector on a non-priority basis during high volume periods.
5. Where it has been determined that construction has proceeded beyond the permitted stages of construction, an Order to Comply may be issued under the *Building Code Act* in addition to administration fees.

C.16. Revoking the Conditional Building Permit

The revocation of a conditional building permit will be completed in accordance with established procedures and sole discretion of the Chief Building Official.

C.17. Reinstating the Construction Site

Where the Chief Building Official revokes a conditional building permit, measures to reinstate the site to its original or at near original condition, will be completed in accordance with established procedures and sole discretion of the Chief Building Official

D. Reference Information

Ontario Building Code Act

E. Attached

N/A

F. Review Cycle

This building bulletin will be reviewed annually by the Chief Building Official.

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