

Report to Council

Report Title: McKague Conditional Building Permit Agreement

Prepared By: Dieter Wetz, Building and Planning Manager/CBO

Department: Building and Planning

Date: April 13, 2021

Report Number: BLDG2021-09 **File Number:** C11BU, P10

Attachments: McKague Conditional Permit Agreement

Recommendation:

That the Council of the Municipality of Brockton hereby receives Report Number BLDG2021-09 – McKague Conditional Building Permit Agreement, prepared by Dieter Wetz, Building and Planning Manager/CBO and in doing so approves bringing forward a By-law for the Corporation of the Municipality of Brockton to enter into agreement with Kevin McKague for the purposes of a Conditional Building Permit.

Report:

Background:

A building permit application from has been submitted by Kevin McKague, Owner of 203 Cargill Road, Cargill Ontario, for interior renovation and repair work. The scope permit application for the conditional building permit is intended to permit the renovation and repair of three existing residential units and two commercial units. There are an additional two residential units that are shown and indicated on the proposed plans that are currently in contravention of the provisions of the municipal zoning by-law. The conditional permit is not being issued to grant permission for the additional two residential units as a subsequent permit (a change in use permit) will be issued if the necessary planning approval are obtained and the scope of work complies with the Ontario Building Code. A conditional permit cannot be issued for work that does not comply with applicable law as referenced in the Ontario Building Code. The Municipal zoning by-law is applicable law for the purposes of the Ontario Building Code. As the proposed plans are reflective of the entire proposed scope of project, I am of the opinion and feel it necessary to issue a conditional building permit to mitigate potential risk if planning approval is not obtained for the future proposed two residential units. The conditional permit is to ensure the existing building remains in a state of compliance. Until such time as all other necessary approvals and permits have been obtained, the building use and scope of construction is only as permitted as outlined by the conditional permit. All proposed construction is subject to compliance with the Building Code Act, the Ontario Building Code including all applicable.

In order for the issuance of a conditional permit there are requirements specified in the Building Code Act which are listed below specifically section 8 (3)(c) – “the applicant and such other person as the chief building official determines agree in writing with the municipality...” to the applicable subject terms outlined in the agreement.

The conditional building permit agreement is being presented to Council for the purposes of entering into agreement with Kevin McKague. The conditional building permit agreement being presented has been prepared by staff and has been returned signed by Kevin McKague, owner of 203 Cargill Road, Ontario forming part of the requirements for obtaining a conditional building permit.

Section 8(3) of the Building Code Act, Conditional permit;

Conditional permit

(3) Even though all requirements have not been met to obtain a permit under subsection (2), the chief building official may issue a conditional permit for any stage of construction if,

(a) compliance with by-laws passed under sections 34 and 38 of the *Planning Act* and with such other applicable law as may be set out in the building code has been achieved in respect of the proposed building or construction;

(b) the chief building official is of the opinion that unreasonable delays in the construction would occur if a conditional permit is not granted; and

(c) the applicant and such other person as the chief building official determines agree in writing with the municipality, upper-tier municipality, board of health, planning board, conservation authority or the Crown in right of Ontario to,

(i) assume all risk in commencing the construction,

(ii) obtain all necessary approvals in the time set out in the agreement or, if none, as soon as practicable,

(iii) file plans and specifications of the complete building in the time set out in the agreement,

(iv) at the applicant’s own expense, remove the building and restore the site in the manner specified in the agreement if approvals are not obtained or plans filed in the time set out in the agreement, and

(v) comply with such other conditions as the chief building official considers necessary, including the provision of security for compliance with subclause (iv). 1992, c. 23, s. 8 (3); 1997, c. 30, Sched. B, s. 7 (2); 1999, c. 12, Sched. M, s. 5 (1); 2002, c. 17, Sched. F, Table.

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).

Criteria

(4) In considering whether a conditional permit should be granted, the chief building official shall, among other matters, have regard to the potential difficulty in restoring the site to its original state and use if required approvals are not obtained. 1992, c. 23, s. 8 (4).

Registration

(5) Any agreement entered into under clause (3) (c) may be registered against the land to which it applies and the municipality, upper-tier municipality, board of health, planning board, conservation authority or the Province of Ontario, as the case may be, is entitled to enforce its provisions against the registered owner and, subject to the *Registry Act* and the *Land Titles Act*, any person acquiring any interest in the land subsequent to the registration of the agreement. 1999, c. 12, Sched. M, s. 5 (2); 2002, c. 17, Sched. F, Table; 2017, c. 34, Sched. 2, s. 5.

Enforcement of agreement

(6) If the chief building official determines that a building has not been removed or a site restored as required by an agreement under clause (3) (c), the chief building official may cause the building to be removed and the site restored and for this purpose the chief building official, an inspector and their agents may enter upon the land and into the building governed by the agreement at any reasonable time without a warrant. 1992, c. 23, s. 8 (6).

Lien

(7) If the building is in a municipality, the municipality shall have a lien on the land for the amount spent on the removal of the building and restoration of the site under subsection (6) and the amount shall have priority lien status as described in section 1 of the *Municipal Act, 2001* or section 3 of the *City of Toronto Act, 2006*, as the case may be. 2002, c. 17, Sched. F, Table; 2006, c. 32, Sched. C, s. 3 (1).

Deemed taxes

(8) If the building is in territory without municipal organization, the amount spent on the removal of the building and restoration of the site under subsection (6) is a debt owing to the Crown and may be collected under the *Provincial Land Tax Act, 2006* as if it was tax imposed under that Act. 1992, c. 23, s. 8 (8); 2006, c. 33, Sched. Z.3, s. 4 (1).

Sustainability Checklist:

What aspect of the Brockton Sustainable Strategic Plan does the content/recommendations in this report help advance?

- | | |
|---|-----|
| • Do the recommendations help move the Municipality closer to its Vision? | Yes |
| • Do the recommendations contribute to achieving Cultural Vibrancy? | N/A |
| • Do the recommendations contribute to achieving Economic Prosperity? | Yes |
| • Do the recommendations contribute to Environmental Integrity? | N/A |
| • Do the recommendations contribute to the Social Equity? | N/A |

Financial Impacts/Source of Funding:

- Do the recommendations represent a sound financial investment from a sustainability perspective?
N/A

There are no financial impacts related to the municipal budget for the purposes of entering into an agreement for a Conditional Building Permit.

Reviewed By:

Trish Serratore, Chief Financial Officer

Respectfully Submitted by:

Dieter Wetz, Building and Planning Manager/CBO

Reviewed By:

Sonya Watson, Chief Administrative Officer