

The Corporation of the Municipality of Brockton



By-Law 2021-047

Being a By-Law to Authorize the Signing of a Conditional Building Permit Agreement With Kevin McKague for the Purpose of Construction on 203 Cargill Road Related to Interior Renovation and Repair Work.

Whereas The Council for the Corporation of the Municipality of Brockton deems it expedient to enter into a Conditional Building Permit Agreement with Kevin McKague with respect to construction on lands legally described as PT LT 23 CON A BRANT PT 1, 2, & 3, 3R7834; T/W R380430; BROCKTON, bearing parcel identifier number (33234-0106 (LT)) and municipally known as 203 Cargill Road, Cargill ON related to interior renovation and repair work for five residential suites and two commercial suites;

Now Therefore the Council of the Corporation of the Municipality of Brockton enacts as follows;

- 1.0 That the Corporation of the Municipality of Brockton Council hereby enter into a Conditional Building Permit Agreement with Kevin McKague which is attached as "Schedule A" and forms part of this By-Law;
- 2.0 The execution by the Mayor and Clerk of said agreement dated April 13, 2021, between the Corporation of the Municipality of Brockton and Kevin McKague is hereby authorized, ratified, and confirmed.
- 3.0 This By-Law shall come into full force and effect upon final passage.
- 4.0 This By-Law may be cited as the "McKague Conditional Building Permit Agreement By-Law".

Read, Enacted, Signed and Sealed this 13th day of April, 2021.

Mayor – Chris Peabody

Clerk – Fiona Hamilton

CONDITIONAL BUILDING PERMIT AGREEMENT

Hereinafter called the “Agreement”

THIS AGREEMENT dated the 13 day of April 2021.

BETWEEN:

Kevin McKague

(hereinafter the “Owner”)

-and-

The Corporation of the Municipality of Brockton

(hereinafter the “Municipality”)

WHEREAS the Owner is the registered owner of certain lands municipally known as 203 Cargill Road and more particularly described in Section 1;

AND WHEREAS construction on the lands related to interior renovation and repair work for five residential suites and two commercial suites will require the issuance of a “Building Permit” under subsection 8(2) of the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended;

AND WHEREAS the Owner has requested a conditional building permit (the “Conditional Building Permit”) for interior renovation and repair work for three residential suites and two commercial suites (the “Subject Construction”) from the Municipality prior to meeting all requirements to obtain a “Building Permit”;

AND WHEREAS the construction on the lands related to the “Conditional Building Permit” complies with by-laws enacted under s.34 and 38 of the *Planning Act*;

AND WHEREAS compliance under s.34 and 38 of the *Planning Act* is considered applicable law under Subsection 8(2) of the *Building Code Act* for the issuance of a “Building Permit” for the additional two residential suites;

AND WHEREAS the Chief Building Official is satisfied that meeting such requirements would unreasonably delay the proposed construction;

AND WHEREAS the Chief Building Official considers the restoration of the site to be feasible in the event that all necessary approvals are not ultimately obtained by the Owner;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the mutual covenants hereinafter expressed and other good and valuable consideration, the Parties hereto agree one with the other as follows:

1. LANDS SUBJECT TO AGREEMENT

The lands affected by this Agreement (hereinafter referred to as the “Lands”) are as follows:

Legally described as : PT LT 23 CON A BRANT PT 1, 2, & 3, 3R7834; T/W R380430; BROCKTON, bearing parcel identifier number (33234-0106 (LT)) and municipally known as 203 Cargill Road, Cargill ON.

2. CONDITIONAL BUILDING PERMIT

The Municipality acknowledges that the Chief Building Official is entitled to issue a Conditional Building Permit for the Subject Construction to be erected on the Lands provided that the Owner agrees to assume all risks involved in commencing construction before every requirement for a building permit has been met, and to this end, hereby will indemnify and save harmless the Municipality from and against all claims arising from the issuance of the conditional building permit.

3. OWNER’S COVENANTS

The Owner hereby covenants and agrees:

- (a) to assume all risks involved in commencing construction of the Subject Construction before every requirement of a Building Permit has been met, and to this end, hereby will indemnify and save harmless the Municipality from and against all claims, actions, costs and, or awards arising from the issuance of the Conditional Building Permit;
- (b) to obtain and file any required plans and approvals prerequisite to the issuance of a Building Permit by October 31st 2021.
- (c) to immediately stop construction on the subject lands and secure the site to the satisfaction of the Chief Building Official, if in the opinion of the Chief Building Official, any impediment arises to prevent the lawful continuation of the construction project;
- (d) to immediately take measures to remove the Subject Construction and restore the site if all necessary approvals have not been obtained by the timeframe specified in subsection 3(b) and within one year from the date of the issuance of the Conditional Building Permit removal of the subject construction if ordered in writing by the Chief Building Official;
- (e) to comply with all development standards and approvals that are applicable to the Lands including but not limited to site servicing, grading, fire protection, and storm water management;
- (f) to provide and maintain access for emergency vehicles and water supply to the satisfaction of the fire department;

4. SITE RESTORATION

The restoration of the Lands referred to in this Agreement shall be subject to the conditions present at the time of the conditional building permit application and shall include limiting the scope of construction as stipulated by the conditional building permit. Restoration must commence within fourteen (14) days of the date set out in Subsection 3(b) or at such later time as may be directed by the Chief Building Official and must be completed no later than one (1) year of the date of the issuance of the Conditional Building Permit.

5. MUNICIPAL ENTRY AND RESTORATION

If the Chief Building Official determines that the Subject Construction has not been removed or the site restored as required by this agreement, the Chief Building Official may cause the Subject Construction to be removed and the Lands restored and for this purpose the Chief Building Official, an inspector and their agents may enter upon the Lands and into the buildings or structures governed by this Agreement at any reasonable time without a warrant.

6. PRIORITY LIEN

The Municipality shall have a lien on the subject lands for any amount spent by the Municipality pursuant to section 5 of this Agreement on the removal of the subject construction and restoration of the site, other than the amount provided pursuant to section 7 of this Agreement, and the amount shall have priority lien status and the Municipality shall be entitled to add the amount to the taxes of the subject land pursuant to the *Municipal Act, 2001*, R.S.O. 2001.

7. SECURITY

The Owner shall provide to the Municipality securities in the form of an Irrevocable Letter of Credit from a chartered bank or trust company, issued in accordance with the requirements of the Municipality, or a certified cheque, in the amount of \$3,000.00 to cover the performance and cost of any obligations arising from non-compliance with this agreement. The letter of credit or certified cheque shall be refundable upon satisfactory compliance of the provisions of the conditional building permit and the issuance of the building permit.

8. NOTICE

- (a) If any notice is required to be given by the Municipality to the Owner with respect to this Agreement, such notice shall be mailed, delivered or sent by facsimile transmission to:
- Kevin McKague
203 Cargill Road
Cargill, ON N0G 1J0
Tel.: 519 804 4370
Email : kmckague@gmail.com
Attention: Kevin McKague, Owner
- (b) If any notice is required to be given by the Owner to the Municipality with respect to this Agreement, such notice shall be mailed, delivered or sent by facsimile transmission to:
- Municipality of Brockton
100 Scott Street P.O. Box 68
Walkerton, ON.
N0G 2V0
Tel: 519-881-2223
Fax.: 519-881-2991
Attention: Dieter Weltz, Chief Building Official

9. REGISTRATION OF AGREEMENT

This agreement may be registered against the subject lands and the Municipality is entitled to enforce its provisions against the Owner and any and all subsequent owners of the subject lands. If the agreement is registered against the subject lands the Owner shall incur the cost of registering the agreement on title.

10. GOVERNING LAW

This Agreement shall be interpreted under and is governed by the laws of the Province of Ontario.


Whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as “without limiting the generality of the foregoing” do not precede such list or reference.

The Owner and the Municipality agree that all conditions contained in this Agreement shall be severable, and that should any condition in this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining conditions and the remainder of the Agreement shall remain valid and not terminate thereby.

IT IS HEREBY DECLARED THAT this Agreement, provisions, and conditions herein contained shall be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals duly attested to by their proper signing officers in that behalf.

SIGNED, SEALED & DELIVERED

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) Name: Kevin McKague
) Title: Owner
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) **The Corporation of the**
) **Municipality of Brockton**
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) _____
) Name: Chris Peabody
) Title: Mayor
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) Name: Fiona Hamilton,
) Title: Clerk