

Conditional Permits

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Conditional Permits – Frequently Asked Questions

What benefit is a conditional permit?

Where the outstanding approvals are delayed mainly because of ‘red tape’ and the Chief Building Official is satisfied that your application is likely to be approved in the same form as described in the permit application, a conditional permit can save valuable time. A common example involves a project that has received Site Plan endorsement but for which no Agreement has been executed. In such circumstances, several weeks can be saved.

Can I apply for a conditional permit at the same time as I apply for my building permit?

Not normally. To qualify for a conditional permit, building code, zoning and other internal plan reviews must be complete. A conditional permit is not a ‘fast track’ to these essential approvals.

Does a conditional permit cost extra?

Yes. A fee of between \$100 and \$2,000 applies to conditional permits in addition to the normal building permit fee. This fee is non refundable even if the Chief Building Official decides not to issue a conditional permit.

Must I pay development charges before obtaining a conditional permit?

All fees and development charges must be paid before a conditional permit is issued.

Can I apply for a conditional permit prior to obtaining site plan approval?

Yes. BUT Stamped Site Plan *endorsed* drawings bearing the signature of the Director of Planning are required prior to an application for a conditional building permit.

I have applied to the Committee of Adjustment for a minor variance. Do I qualify for a conditional permit pending the hearing?

A conditional permit may be available *after* a favourable variance has been allowed by the Committee of Adjustment *and* only if no written or verbal objections are received by the Committee.

What happens if I cannot meet the conditions of the permit by the due date?

In this situation or where a formal objection to a variance is filed, your conditional permit will be revoked. Pending all efforts to resolve the outstanding matters, construction must cease and the site secured. If, after all available appeals the conditions of the permit cannot be met, the site must be restored to its predevelopment condition. All costs are borne by the applicant.

Does a conditional permit entitle me to disregard any other legislation that regulates construction?

No. All relevant construction standards must be met.

How long does it take to obtain a conditional permit?

In addition to our normal permit approval period, it takes several days to consider a conditional permit application and to prepare and execute an Agreement. During this time the Chief Building Official consults other Town departments and external jurisdictions to discuss the outstanding approvals.

Is a conditional permit worth the risk?

A conditional permit does not afford the certainty normally associated with a building permit. Only the applicant can evaluate the potential costs associated with a conditional permit and balance the risk against the benefit of an earlier construction start. In many cases a conditional permit may not be worth the risk to the applicant.

01/01/09

Conditional Permit Requirements

A conditional permit may be issued, at the sole discretion of the Chief Building Official before all necessary approvals are obtained for a full building permit. In order to qualify for a conditional permit an applicant must:

1. File a complete building permit application, which application has been reviewed and determined to comply with
 - ◆ the Ontario Building Code,
 - ◆ lot grading and site servicing standards, and
 - ◆ zoning bylaws passed under sections 34 & 38 of the Planning Act or variances thereto allowed by the Committee of Adjustment.
2. Demonstrate compliance with the following applicable laws as set out in the Ontario Building Code s. 2.4.1.3:
 - ◆ Toronto Conservation Authority Approval
 - ◆ Environmental Assessment Act [Subsection 5(3)]
 - ◆ Ontario Heritage Act [Section 30, Subsections 33(1), 34(1) and Section 42]
3. Pay the prescribed fee and complete a Conditional Permit Application declaring the reasons why unreasonable delays in construction will occur if a conditional permit is not granted and the outstanding approvals which must be obtained in respect of the proposed building. A copy of the deed to the land is also required to confirm ownership.

At this stage, the Chief Building Official reviews the assembled information and decides whether to issue a conditional permit. In arriving at that decision the Chief Official will have regard to the nature of the construction, the outstanding approvals required, the anticipated delays and the risks associated with permitting construction to proceed.

The Chief Building Official may seek input from other agencies or Town Departments whose requirements could be compromised. For example, Engineering will require payment of fees, posting of securities, topsoil removal approval and approval of grading & service connections prior to issuance of a conditional permit.

The Planning Department will require that the applicant has first obtained Site Plan Control approval including payment of fees. It is essential that the applicant co-ordinate the submission of drawings to ensure that the approved site plan and elevation drawings are consistent with those submitted for the building permit.

4. A conditional permit agreement is prepared which sets out the time frame required for obtaining all outstanding approvals and the amount of any securities required.
5. Upon receipt of the agreement signed by the owner and any required security, it will be executed by the Chief Administrative Officer or the Chief Building Official according to bylaw 128-93 and the conditional permit will be issued. The permit holder is provided with a permit card which clearly indicates the conditional nature of the permit. External agencies whose requirements may be compromised may be notified that a conditional permit has been issued.
6. As the date for compliance approaches, and if the full building permit has not been issued, the enforcement terms of the agreement are implemented.
7. Upon the applicant obtaining all the necessary approvals, the security shall be returned and a new permit card issued.



Conditional Permit Application

Associated Application Number	Building Permit processing must be complete except for the outstanding matters cited in this application. Conditional permit applications will not be accepted for projects that have not been reviewed for compliance with the Ontario Building Code and the Town's zoning bylaws. Please attach a copy of the deed to confirm property description and ownership.
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A conditional permit application will not be accepted unless compliance with each of the following applicable laws has been declared and documented by the applicant. **Please initial the appropriate box** indicating either that the law is not applicable or that the necessary certification of compliance is attached.

Not Applicable	Documentation Attached	
		Toronto & Region Conservation Authority
		Environmental Assessment & Protection Act [s. 5(3)]
		Ontario Heritage Act [s.30, 33(1), 34(1), 42]

Advise in detail why unreasonable delays in construction would occur if a conditional permit is not granted

Date: _____ Permit Holder: (signature): _____

(print): _____

Outstanding Approvals normally required prior to the issuance of a building permit

	Site plan endorsement		Site plan agreement
	Minor Variance final & binding		Subdivision registration

NOTE: A fee of 10% of the Building Permit Fee (maximum \$2,000, minimum \$100) must accompany this application and is not refundable in the event a conditional permit is denied.

CONDITIONAL PERMIT AGREEMENT

THIS AGREEMENT made on {date}

B E T W E E N :

{Land Owner of Record according to Deed}

(hereinafter called the “Owner”)

- and -

The Corporation of the Town of Markham

(hereinafter called the “Town”)

WHEREAS the Owner has requested a conditional permit from the Town’s Chief Building Official prior to meeting all requirements to obtain a building permit under section 8(2) of the Ontario Building Code Act, S.O. 1992, c. 23 (the “BCA”);

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

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

AND WHEREAS the Chief Building Official requires that the Owner enter into an agreement with the Town as a precondition to the issuance of a conditional permit;

AND WHEREAS this agreement is entered into pursuant to section 8(3)(c) of the BCA;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the mutual covenants hereinafter expressed and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties hereto agree as follows:

1. The lands affected by this agreement (hereinafter referred to as the “subject lands”) are as follows:

ALL AND SINGULAR those certain parcels or tracts of land lying and being in the Town of Markham, in the Regional Municipality of York, and being composed of {Legal Description of property s shown on the Deed} and also known as:

{Civic Address}

2. The construction affected by this agreement (herein referred to as the “subject construction”) is that construction proposed in a permit application filed with the Town’s Building Department and identified as application number **{Permit Number}**

3. Upon execution of this agreement by the Owner and subject to compliance by the Owner with the conditions set out in paragraph 4. below, the Chief Building Official for the Town agrees to issue a Conditional Permit for the subject construction to be erected on the subject lands.

4. The Owner hereby covenants and agrees:

- (a) to assume all risks involved in commencing construction before every requirement for a building permit has been met,
- (b) to indemnify and save harmless the Town (including its Mayor and Councillors, employees, servants and agents) from and against any and all claims, demands or proceedings arising from the issuance of the conditional permit or construction carried out by the Owner on the subject lands,
- (c) to obtain all approvals prerequisite to the issuance of a building permit by

{Expiry Date}

- (d) to file any required plans and specifications of the subject construction by the date cited in sub-paragraph 4.(c);
- (e) to cease and desist carrying out any work or improvements to the subject lands and to otherwise stop construction and secure the subject lands to the satisfaction of the Chief Building Official if, in the opinion of the Chief Building Official, any impediment arises that prevents the lawful continuation of construction or site work or if an appeal is filed with the Ontario Municipal Board with respect to a minor variance that is required for the lawful continuation of construction and erection buildings and or structures on the subject lands;
- (f) to remove all improvements made to the subject lands pursuant to a conditional permit and otherwise restore the subject lands to the satisfaction of the Chief Building Official, if all required planning and development approvals or permits or permissions have not been obtained from the requisite governmental authority by the date cited in sub-paragraph 4.(c);
- (g) to comply with all development standards that are applicable to the subject lands including but not limited to site servicing, grading, tree protection, fire protection, and storm water management;
- (h) to provide and maintain access for emergency vehicles and water supply to the satisfaction of the Town's fire department; and
- (i) without limiting the generality of the foregoing, to satisfy any specific conditions set out in Schedule 'A' to this agreement no later than the date cited in sub-paragraph 4.(c).

5. The Owner acknowledges and agrees that the site restoration referred to in paragraph 4(d) above shall be to the conditions present at the time of permit application by the Owner and shall include the removal by the Owner of all construction improvements and debris, the replacement of all vegetative matter, the stabilization of slopes and the restoration of drainage patterns. Restoration must seriously commence within 30 days of the date cited in sub-paragraph 4.(c) or at such later time as may be directed by the Chief Building Official.

6. The Owner acknowledges and agrees that if the Chief Building Official determines, in its sole discretion, that the subject construction and improvements have not been removed or that the subject lands have not been restored as required by this agreement, the Chief Building Official may cause the subject construction to be removed and the subject lands restored and for this purpose the Chief Building Official, an Inspector and their agents may enter upon the subject lands and into the building governed by this agreement at any reasonable time without a warrant to effect the site restoration. To that end, the Owner hereby appoints the Town as its duly authorized agent in that regard.

7.
 - (a) The Owner agrees to deliver a Letter of Credit in a form satisfactory to the Town, in the amount of \$50,000 as security for the due performance of the Owner's obligations set out in this agreement.
 - (b) If the Chief Building Official determines that the subject construction has not been removed or subject lands restored as required by this agreement, the Town may draw upon the letter of credit and use the proceeds thereof to restore the subject lands as provided for in paragraph (5).
 - (c) Should there be full compliance with this Agreement, the Letter of Credit will be returned to the Owner at the address provided on the application for the building permit.
 - (d) Should costs associated with the restoration of the site be incurred by the Town in excess of the amount of the letter of credit, the Town shall have a lien on the subject land for such amount and the amount shall be deemed to be municipal taxes and may be collected in the same manner and with the same priorities as municipal taxes.

8. This agreement may be registered against title to the subject lands and the Town is entitled to enforce its provisions against the Owner (including its successors and assigns) and, subject to the Registry Act and the Land Titles Act, any and all subsequent owners of the subject lands. The Owner shall pay the Town \$200.00 on account of the Town's costs to register and or release this agreement from title to the subject lands.

IN WITNESS WHEREOF the Parties hereto have hereunto affixed their signatures

SIGNED AND DELIVERED

OWNER

Name:
Title:

I have authority to bind the Corporation

Name:
Title:

I have authority to bind the Corporation

**THE CORPORATION OF THE TOWN
OF MARKHAM**

Name: JOHN C. WRIGHT
Title: CHIEF BUILDING OFFICIAL

Sample

SCHEDULE "A"

Being conditions and their particulars on the basis of which a conditional building permit is issued to:

Property Owner of Record

for construction at:

Civic Address

according to permit number:

00-000000 000 CP

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	Condition
1	That the site development agreement file number SC 00-000000 has been properly executed, all necessary securities posted, and all title registration requirements satisfied.
2	That no construction commence prior to consultation with the Town's Parks and Open Space Planning Authorities respecting tree protection requirements.
3	That no internal sewer and water construction be allowed until the servicing drawings are approved by the Engineering Department
4	That no occupancy of the building authorized by this permit shall occur until all conditions of this agreement have been satisfied, an unconditional building permit is issued and such occupancy is authorized in accordance with the requirements of the Ontario Building Code.
5	That the Owner agrees to indemnify and save harmless the Town for proceeding prior to approval of the Servicing & Grading Plan and Stormwater Management Report.

PLEASE INSTRUCT YOUR BANK TO INCORPORATE THE FOLLOWING IN THEIR LETTER OF CREDIT:

IRREVOCABLE LETTER OF CREDIT

To: The Corporation of the Town of Markham
101 Town Centre Blvd
Markham ON L3R 9W3

We hereby authorize The Corporation of the Town of Markham to draw on
_____[BRANCH]_____, of _____[CITY]_____, _____[POSTAL CODE]_____
for the account of _____[BANK CUSTOMER]_____, up to the aggregate amount of _____
[DOLLAR AMOUNT, CANADIAN]_____, available on demand as follows:

Pursuant to the request of our customer, _____[BANK CUSTOMER]_____ we _____
_____[BANK]_____, _____[BRANCH]_____, _____[CITY]_____, hereby

establish and give to you an irrevocable Letter of Credit in your favour in the total
amount of _____, as required pursuant to an Agreement made
between The Corporation of the Town of Markham and
_____ which may be drawn on by you at any time and from
time to time upon written demand for payment made upon us by you which demand we
shall honour without enquiring whether you have a right as between yourself and our
customer to make such demand and without recognizing any claim of our said customer.

The amount of this Letter of Credit may be reduced from time to time as advised by
notice in writing given to us from time to time by you.

It is understood that this obligation is between the _____[BANK]_____ and The
Corporation of the Town of Markham and any notice referred to in the preceding
paragraph shall not be used for any other purpose than herein set forth.

It is further understood that the obligation of the undersigned under this Credit is an
obligation to pay money only and that in no circumstances shall the _____[BANK]
_____ be obliged to perform or cause to be performed any work under the said Agreement.

This irrevocable Letter of Credit will continue to _____[DATE - ONE YEAR] _____ and will expire at our counters on that date and you may call for payment of the full amount outstanding under this irrevocable Letter of Credit at any time up to the close of business on that date. It is a condition of this irrevocable Letter of Credit that it shall be deemed to be automatically extended for one year from the present or any future expiration date hereof, unless thirty days prior to such date we shall notify you in writing by Registered Mail that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt by you of such notice you may draw hereunder.

Partial drawings are permitted.

The demand drawn under this Letter of Credit is to be endorsed and shall state on its face that it is drawn on _____[BANK] _____, _____[ADDRESS] _____ irrevocable

Letter of Credit # _____, dated _____.

_____[DATE] _____

BANK NAME

Per: _____[Authorized Signing Officer]_____

Per: _____[Authorized Signing Officer]_____

Conditional Permits – Relevant Extracts

Building Code Act S.O. 1992, Chapter 23 (a.a. to 2006)

8 (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).

(3.1) Delegation re conditional permits 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.

(4) Criteria 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.

(5) Registration 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 owner and, subject to the Registry Act and the Land Titles Act, any and all subsequent owners of the land

(6) Enforcement of agreement 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.

(7) Lien 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.

(8) Deemed taxes 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) shall be deemed to be taxes imposed under section 3 of the Provincial Land Tax Act for the purposes of sections 26 and 27 of that Act.

O.Reg 350/06 – The Building Code

1.3.1.5. Conditional Permits

(1) The chief building official shall not issue a conditional permit for any stage of construction under subsection 8 (3) of the Act unless compliance with the following applicable laws has been achieved in respect of the construction of the proposed building:

(a) regulations made by a conservation authority under clause 28 (1) (c) of the Conservation Authorities Act with respect to permission of the authority for the construction of a building or structure if, in the opinion of the authority, the control of flooding, erosion, dynamic beaches or pollution or the conservation of land may be affected by the development,

(b) section 5 of the Environmental Assessment Act with respect to the approval of the Minister or the Environmental Review Tribunal to proceed with an undertaking,

(c) subsection 24 (3) of the Niagara Escarpment Planning and Development Act,

(d) subsection 30 (2) of the Ontario Heritage Act with respect to the consent of the council of a municipality for the alteration or demolition of a building,

(e) section 33 of the Ontario Heritage Act with respect to the consent of the council of a municipality for the alteration of property,

(f) section 34 of the Ontario Heritage Act with respect to the consent of the council of a municipality for the demolition of a building,

(g) section 34.5 of the Ontario Heritage Act with respect to the consent of the Minister to the alteration or demolition of a designated building,

(h) subsection 34.7 (2) of the Ontario Heritage Act with respect to the consent of the Minister to the alteration or demolition of a designated building,

(i) section 42 of the Ontario Heritage Act with respect to the permit given by the council of a municipality for the erection, alteration or demolition of a building.

(2) 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.

(3) 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 the construction in respect of which the conditional permit is issued is required in order to comply with an order issued under subsection 21 (1) of the Fire Protection and Prevention Act, 1997 or under subsection 15.9 (4) of the Act.

(4) A permit issued under subsection 8 (3) of the Act shall indicate its conditional nature.