

Building Code Enforcement Issues

Date:	May 16, 2007
To:	Planning and Growth Management Committee
From:	Chief Building Official and Executive Director
Wards:	All Wards
Reference Number:	P:\2007\Cluster B\BLD\CBO Office\PGM006

SUMMARY

This report discusses the tools that are available to Toronto Building to stop the construction of buildings that do not conform to plans approved through the Building Permit process.

Section 8(13) of the Building Code Act prohibits the construction of buildings except in accordance with plans and specifications approved by the Chief Building Official. Despite this, sometimes the construction of buildings, for which a permit has been issued subject to a particular set of plans, is built with variations in the location and/or size of the building, or materials used in the construction of the building.

Improving the ability of Toronto Building Staff to stop work on construction projects that do not conform to approved plans will require a review of the existing inspections practices, manpower, fees for Building Permits, as well as a detailed review of the Building Code, and Building Code Act.

Financial Impact

The recommendations contained in this report have **no** financial impact beyond what has already been approved in the current year's budget

DECISION HISTORY

At its meeting on January 18, 2007, the Planning and Growth Management Committee requested the Chief Building Official and Executive Director to report on ways to ensure

that construction is halted on buildings that do not conform to the plans approved as part of the Building Permit process.

PG 1.2(8), Planning and Growth Management Committee – January 18, 2007
<http://www.toronto.ca/legdocs/mmis/2007/pg/decisions/2007-01-18-pg01-dd.pdf>

ISSUE BACKGROUND

The Ontario Building Code Act

The Building Code Act, 1992 is the provincial statute governing the construction, renovation and change of use of buildings. The Ontario Building Code Act sets out the legal requirements for the construction of buildings, the issuance of building permits, compliance with approved building plans, and when construction of a building can be inspected, and stopped by a Building Inspector.

1. Prohibition on Construction

Section 8(11) of the Building Code Act states the following regarding construction and demolition of buildings:

No person shall construct or demolish a building or cause a building to be constructed or demolished except in accordance with this Act and the building code. 1992, c. 23, s. 8 (11).

2. Changes to Approved Building Plans

Sections 8(12) and 8(13) of the Building Code Act state the following regarding changes to approved building plans:

8(12)

No person shall make a material change or cause a material change to be made to a plan, specification, document or other information on the basis of which a permit was issued without notifying, filing details with and obtaining the authorization of the chief building official. 1992, c. 23, s. 8 (12).

8(13)

No person shall construct or demolish a building or cause a building to be constructed or demolished except in accordance with the plans, specifications, documents and any other information on the basis of which a permit was issued or any changes to them authorized by the chief building official. 1992, c. 23, s. 8 (13).

3. Orders issued by Building Inspectors

Section 12(2) of the Act describes an order that can be issued by a Building Inspector when it is determined that the building being inspected does not comply with the Building Code or Building Code Act:

An inspector who finds a contravention of this Act or the building code may make an order directing compliance with this Act or the building code and may require the order to be carried out immediately or within such time as is specified in the order. 1992, c. 23, s. 12 (2).

Section 14(1) of the Building Code Act describes an order that can be issued by a Building Inspector if any previous orders issued under the Act have not been complied with:

If an order made under section 12 or 13 is not complied with within the time specified in it, or where no time is specified, within a reasonable time, the chief building official or registered code agency, as the case may be, may order that all or any part of the construction or demolition cease. 1992, c. 23, s. 14 (1); 2002, c. 9, s. 21 (1).

Due to the specific wording of the legislation, the ability for Building Inspectors to issue orders is somewhat limited. For instance; an inspector cannot immediately issue an order to stop construction once it is determined that the building is not being constructed according to plans. They must first issue an order under Section 12(2) and only then, after a specified or reasonable time frame has passed, can they issue an order to stop construction or demolition.

4. The Frequency of Inspections

Section 10.2 (1) and (2) of the Building Code Act places an obligation on the property owner to notify a Building Inspector at prescribed stages that the construction is ready to inspect. The Building Inspector is then required to respond to the request within two days of receiving notification:

(1) At each stage of construction specified in the building code, the prescribed person shall notify the chief building official or the registered code agency, if any, that the construction is ready to be inspected. 2002, c. 9, s. 17.

(2) After the notice is received, an inspector or the registered code agency, as the case may be, shall carry out the inspection required by the building code within the prescribed period. 2002, c. 9, s. 17.

2006 Summary of Building Inspection Activity in Toronto

- In 2006, Toronto Building issued approximately 32,500 building permits;
- The total construction value of the permits issued is approximately \$3.68 billion;
- Toronto Building Inspectors carried out approximately 162,000 building inspections, or 5 inspections for every building permit issued;
- Of those 162,000 inspections completed in 2006, approximately 40,000 inspections resulted from complaints received from members of the public.

COMMENTS

Opportunities to Determine Non-conformance with Approved Plans

Currently, Building Inspectors in the City of Toronto have two ways to identify items of non-conformance with approved building permit plans. The first is for the inspector to visit the site and inspect the work in person; however, the frequency of these inspections is generally limited to the inspections requested. The second method to identify issues of non-conformance with approved plans is for a third party verification and measurement of the building attributes carried out by a qualified professional.

1. The Frequency of Inspections

Although Section 12(1) of the Building Code Act gives a building inspector the authority to enter a building or construction site at any reasonable time, once a building permit has been applied for or given, most inspections are only carried out at the time prescribed by Article 1.3.5.1 of the Building Code. This provides only a limited number of opportunities for the inspector to be at the construction site and identify any non-conformance with the approved building permit plans.

It should be noted that Article 1.3.5.2 of the Building Code gives the authority to pass by-laws for additional inspections, providing for more opportunities for inspectors to notice any non-conformities with respect to the approved building permit plans. The City of Toronto has added three inspections in addition to those required in Article 1.3.5.1 of the Building Code, giving Toronto Building a level of service in excess of the provincial requirements. These inspections are also required to be carried out by the Building Inspector within two business days of receiving notification from the property owner.

The current level of inspection service offered by Toronto Building is supported by the building permit fees paid for by the applicant. Any proposed increases in the number of inspections required could result in potential increases to building permit fees to cover the costs associated with the increased service level.

2. Third Party Verification and Measurement

Section 18.-(1) of the Building Code Act gives Building Inspectors the authority to request any documents or other pieces of information required for them to carry out their inspections. Currently Toronto Building requires that an ‘as-built’ survey be provided to the Building Inspector prior to the construction of the first floor walls of an infill housing project. This is requested to assist the inspector in confirming that the project will comply with the setbacks, height, and other requirements of the approved building permit plans.

The survey must be prepared and sealed by an Ontario Land Surveyor, and provide the following information: 1) a full legal description of the property; 2) the location of the building, including dimensions for the required setbacks from all property lines; and, 3) the elevation of the first floor, to be used as a reference point to confirm compliance with the maximum building height requirement.

While this practice does not specifically limit an Inspectors authority to ask for a survey for any type of construction, it is largely intended to be used for infill housing projects (new houses) only, where issues of conformity arise more frequently.

A survey prepared and sealed by an Ontario Land Surveyor is the best and most accurate way to ensure that a building is located properly and will satisfy the requirements of the approved building permit plans, however, it is limited in the number of projects that it is currently required for, and could add substantial time and money costs to projects, or simply not be a practical alternative.

Current Practices With Respect to Issuing Orders

The Building Code Act itself does not define a specific period of time between which and order to comply, and an order to stop work can be issued. The Act refers to a “specified” or “reasonable” amount of time to allow for compliance between an order issued under Section 12 or 13 of the Act, and an order to stop work under Section 14. This wording clearly leaves an option available to inspectors or municipalities to assign specified time periods between the issuance of orders to comply and orders to stop work.

The current practice of Toronto Building is to rely on the allowance within the Act for a reasonable time to be permitted to pass between issuing orders to comply and orders to stop work. This allows inspectors to evaluate the situations based on their specific circumstances. Aspects of the construction such as: the size of the building; the scope of the work being done; the extent of the discrepancy of the non-conformity with respect to the approved building plans; and the significance of the non-conformity to the rest of the project.

Final Considerations

As has been detailed in this report, the ability of Building Inspectors to do their jobs is heavily regulated by the Building Code and Building Code Act, including their ability to

write orders to require compliance and to stop construction that does not comply with approved building plans. By virtue of the rigorous legislative framework surrounding it, the Building Code enforcement process must rely on accepted practices and legal precedent.

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SIGNATURE

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